

Tab 1	CS/SB 1262 by EE, Hutson ; (Similar to 1ST ENG/H 07037) Election Dates for Municipal Office						
146136	A	S	RCS	CA, Lee	Delete L.34 - 57:	02/21 09:45 AM	
341020	AA	S	RCS	CA, Simmons	Delete L.22:	02/21 09:45 AM	

Tab 2	SB 804 by Passidomo ; (Similar to CS/1ST ENG/H 00631) Possession of Real Property						
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Tab 3	SB 582 by Rader ; (Identical to H 06009) Write-in Candidate Qualifying						
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Tab 4	CS/SB 1180 by EE, Steube (CO-INTRODUCERS) Brandes ; (Compare to CS/CS/H 00815) County and Municipal Public Officers						
153576	A	S	RS	CA, Steube	Delete L.28 - 30:	02/20 05:45 PM	
447520	SA	S	RCS	CA, Brandes	Delete L.28 - 30:	02/20 05:45 PM	

Tab 5	SB 1094 by Simmons ; (Identical to H 00523) Trespass on Airport Property						
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Lee, Chair
Senator Bean, Vice Chair

MEETING DATE: Tuesday, February 20, 2018

TIME: 1:30—3:30 p.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Bean, Vice Chair; Senators Brandes, Campbell, Perry, Rodriguez, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 1262 Ethics and Elections / Hutson (Similar H 7037)	Election Dates for Municipal Office; Requiring the governing body of a municipality to determine the dates on which initial and runoff elections for municipal office are held and providing options therefor; requiring municipal recall elections to be held concurrently with municipal elections under certain conditions, etc. EE 02/06/2018 Fav/CS CA 02/20/2018 Fav/CS RC	Fav/CS Yeas 4 Nays 3
2	SB 804 Passidomo (Similar CS/H 631)	Possession of Real Property; Authorizing a person with a superior right to possession of real property to recover possession by ejectment; providing that a person entitled to possession of real property has a cause of action to regain possession from another person who obtained possession of real property by forcible entry, unlawful entry, or unlawful detainer; requiring that the court determine the right of possession and damages, etc. JU 01/10/2018 Favorable CA 02/20/2018 Favorable RC	Favorable Yeas 5 Nays 1
3	SB 582 Rader (Identical H 6009)	Write-in Candidate Qualifying; Repealing provisions relating to write-in candidate residency requirements; repealing a requirement that all write-in candidates must reside within the district represented by the office sought at the time of qualification, etc. EE 02/13/2018 Favorable CA 02/20/2018 Favorable RC	Favorable Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, February 20, 2018, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1180 Ethics and Elections / Steube (Compare CS/CS/H 815)	County and Municipal Public Officers; Requiring that requests for travel authorization by county or municipal public officers be approved by the governing body of the county or municipality at a regularly scheduled meeting; requiring that approved travel be posted on the county's or municipality's website for a specified timeframe, etc. EE 02/13/2018 Fav/CS CA 02/20/2018 Fav/CS RC	Fav/CS Yeas 7 Nays 0
5	SB 1094 Simmons (Identical H 523)	Trespass on Airport Property; Providing enhanced criminal penalties for a trespass upon the operational area of an airport with specified intent if specified signage is posted, etc. CJ 02/12/2018 Favorable CA 02/20/2018 Favorable RC	Favorable Yeas 7 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 1262

INTRODUCER: Community Affairs Committee, Ethics and Elections Committee, and Senator Hutson

SUBJECT: Election Dates for Municipal Office

DATE: February 21, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1262 expressly preempts to the state the authority to establish the dates of elections of municipal officers and provides the exclusive method for establishing those dates. Any state law, municipal charter, or municipal ordinance that conflicts with the bill is superseded to the extent of the conflict. As a result, a municipality will no longer have authority to establish unilaterally the date of its municipal officer elections.

The bill requires the governing body of a municipality to choose from among the following dates to hold its elections: the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the third Tuesday in March in an odd-numbered or even-numbered year, or any combination thereof. The bill specifies that a municipality may not conduct more than one municipal general election cycle in a calendar year. The bill sets a format for runoff elections and allows elected municipal officers to continue in office until the next municipal election held in accordance with the bill.

The bill requires any county for which a special act has established a date for the election of municipal officers applicable to all municipalities within its jurisdiction occurring on a date other than that of the general election or on the first Tuesday after the first Monday in November of an odd-numbered year to have the election date for all municipalities within the jurisdiction be the third Tuesday in March. If a runoff is required, the municipality shall conduct its elections on the Tuesday 7 weeks before the third Tuesday in March and the runoff election on the third Tuesday in March.

The provisions of the bill that establish the method of selecting municipal election dates do not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election.

Lastly, the bill repeals s. 101.75, F.S., which allows a municipality to change its election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

II. Present Situation:

Article VI, s. 5(a) of the Florida Constitution requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective state and county officer whose term will expire before the next general election. Section 100.031, F.S., incorporates that constitutional provision into statute, but also requires a general election to be held in each county on the first Tuesday after the first Monday in November of each even-numbered year to choose a successor to each elective federal and district officer whose term will expire before the next general election.

Article VI, s. 6 of the Florida Constitution provides that registration and elections in municipalities must, and in other governmental entities created by statute may, be provided by general law. The Florida Election Code,¹ which is a collection of general laws, governs the conduct of municipal elections in the absence of an applicable special act, charter, or ordinance.² However, no act, charter, or ordinance may be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.³

Elections for municipal officers are conducted during the general election in November of even-numbered years unless the governing body of a municipality has adopted an ordinance to change the dates for qualifying and for the election of members of the governing body of the municipality.⁴ The ordinance may also provide for the orderly transition of office resulting from the date changes.⁵

Section 101.75, F.S., allows the governing body of a municipality to move the date of any municipal election to a date concurrent with any statewide or countywide election provided the

¹ Chapters 97-106, F.S., are known as "The Florida Election Code."

² Section 100.3605(1), F.S.

³ *Id.*

⁴ Section 100.3605(2), F.S.; *see also* s. 166.021(4), F.S.

⁵ Section 100.3605(2), F.S.

election date and dates for qualifying for the election are specifically provided for in the ordinance.⁶ However, if the voting devices used in the county are not available to the municipality during the statewide or countywide election, the municipality may provide that its election will be held 30 days before or after the statewide or countywide election.⁷

Any member of the governing body of a municipality may be removed from office by the electors of the municipality provided certain requirements are met.⁸ If the requirements are met but the municipal officer does not resign his or her office, a municipal recall election is held for the removal of that officer.⁹ A municipal recall election is held in conjunction with a general or special election if such an election is held during the defined timeframe for conducting a recall election.¹⁰

A municipality pays for the printing and delivery of ballots and instruction cards for a municipal election.¹¹

III. Effect of Proposed Changes:

The bill expressly preempts to the state the authority to establish the dates of elections of municipal officers. Any state law, municipal charter, or municipal ordinance that conflicts with the bill is superseded to the extent of the conflict. As a result, a municipality will no longer have the authority to establish unilaterally the date of its municipal officer elections.

The bill requires the governing body of a municipality to choose from among the following dates:

- The general election in November;
- The first Tuesday after the first Monday in November in an odd-numbered year; or
- The third Tuesday in March in an odd-numbered year or even-numbered year, or any combination thereof.

If a municipal charter or ordinance requires the municipality to conduct its election in a runoff format, the bill requires the municipality to choose from among the following options:

Initial Election	Runoff Election
Primary Election (Tuesday, 10 weeks prior to General Election)	General Election
Tuesday 10 weeks before the first Tuesday after the first Monday in November of an odd-numbered year	First Tuesday after the first Monday in November of an odd-numbered year
Tuesday 7 weeks before the third Tuesday in March	Third Tuesday in March

⁶ Section 101.75(3), F.S.

⁷ Section 101.75(1), F.S.

⁸ Section 100.361, F.S.

⁹ Section 100.361(4), F.S.

¹⁰ *Id.*

¹¹ Section 101.21, F.S.

The bill requires any county for which a special act has established a date for the election of municipal officers applicable to all municipalities within its jurisdiction occurring on a date other than that of the general election or on the first Tuesday after the first Monday in November of an odd-numbered year to have the election date for all municipalities within the jurisdiction be the third Tuesday in March. If a runoff is required, the municipality shall conduct its elections on the Tuesday 7 weeks before the third Tuesday in March and the runoff election on the third Tuesday in March.

The bill does not require a municipality to alter or amend its charter. Any municipal charter provision that conflicts with the bill is automatically superseded without further action by the municipality. Likewise, any ordinance that conflicts with the bill is automatically superseded without any further action of the municipality.

The provisions of the bill that establish the method of selecting municipal officer election dates does not affect the manner in which vacancies in municipal office are filled or the manner in which recall elections for municipal officers are conducted. However, the bill allows municipal recall elections to be held concurrently with municipal elections provided the municipal election occurs during a specific time-period.

In order to provide for an orderly transition of office, the bill provides that the terms of incumbent elected municipal officers affected by the change in election dates will be extended to the next municipal election held in accordance with the provisions of the bill.

The bill also repeals s. 101.75, F.S., which allows a municipality to change municipal officer election dates in order to hold its elections concurrently with a statewide or countywide election or, if the voting devices for a statewide or countywide election are not available, to hold its elections 30 days before or after the statewide or countywide election.

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill may require some municipalities to spend funds or take action requiring the expenditure of funds in order to comply with the new election date requirements created by the bill; however, Art. VII, section 18 of the Florida Constitution explicitly exempts election laws from the county/municipality “mandates” provision within that section.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 100.3605, 100.361, and 101.75.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Community Affairs on February 20, 2018:

- Allows a governing body of a municipality to choose the third Tuesday in March in an odd-numbered year or even-numbered year, or any combination thereof, to hold its elections.
- Allows a runoff to occur in the form where the initial action is held at an election on the Tuesday 7 weeks before the third Tuesday in March and the runoff election is held at an election on the third Tuesday in March.
- Requires any county for which a special act has established a date for the election of municipal officers applicable to all municipalities within its jurisdiction occurring on a date other than that of the general election or on the first Tuesday after the first Monday in November of an odd-numbered year to have the election date for all municipalities within the jurisdiction be the third Tuesday in March. If a runoff is required, the municipality shall conduct its elections on the Tuesday 7 weeks before the third Tuesday in March and the runoff election on the third Tuesday in March.

CS by Ethics and Elections on February 6, 2018:

- Clarifies that a municipality can choose to conduct its general election on a general election day, on the first Tuesday after the first Monday in an odd-numbered year, or on the third Tuesday in March; and
- Clarifies that a municipality may only conduct one municipal election per calendar year.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



146136

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2018	.	
	.	
	.	
	.	

The Committee on Community Affairs (Lee) recommended the following:

Senate Amendment (with title amendment)

Delete lines 34 - 57

and insert:

March in an odd-numbered year or even-numbered year, or any combination thereof.

(b) If a municipal charter or ordinance requires a runoff election for municipal office, the governing body of a municipality shall conduct its elections in any of the following formats:



146136

11 1. The initial election shall be held at the primary
12 election on the Tuesday 10 weeks before the general election and
13 the runoff election shall be held on the same date as the
14 general election.

15 2. The initial election shall be held at an election on the
16 Tuesday 10 weeks before the election held on the first Tuesday
17 after the first Monday in November in an odd-numbered year and
18 the runoff election shall be held at an election on the first
19 Tuesday after the first Monday in November in an odd-numbered
20 year.

21 3. The initial election shall be held at an election on the
22 Tuesday 10 weeks before the third Tuesday in March and the
23 runoff election shall be held at an election on the third
24 Tuesday in March.

25 (c) Any county for which a special act has established a
26 date for the election of municipal officers applicable to all
27 municipalities within its jurisdiction occurring on a date other
28 than that of the general election or on the first Tuesday after
29 the first Monday in November of an odd-numbered year shall have
30 the election date for all municipalities within its jurisdiction
31 be the third Tuesday in March. If a municipality within such a
32 county requires a runoff election for municipal office, such
33 municipality shall conduct its elections in accordance with
34 subparagraph (b)3.

35 (d) This subsection does not affect the manner in which
36 vacancies in municipal office are filled or the manner in which
37 recall elections for municipal officers are conducted.

38 (e) Notwithstanding any general law, special law, local
39



146136

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

41 And the title is amended as follows:

42 Delete line 7

43 and insert:

44 therefor; requiring counties that have established
45 certain dates for the election of municipal officers
46 through a special act to conduct municipal elections
47 on specified dates; preempting to the state the
48 authority to



341020

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2018	.	
	.	
	.	
	.	

The Committee on Community Affairs (Simmons) recommended the following:

1
2
3
4
5

Senate Amendment to Amendment (146136)

Delete line 22
and insert:
Tuesday 7 weeks before the third Tuesday in March and the

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20

Bill Number (if applicable) 1262

Amendment Barcode (if applicable) as amended

Topic elections

Name Rebecca O'Hara

Job Title _____

Address 301 S. Bronough

Phone 550 222 9684

Street Tallahassee State FL Zip 32302

Email _____

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/12/18

Bill Number (if applicable) CS/SB 1262

Topic Memorial Etch Pass

Amendment Barcode (if applicable)

Name Gil Ziff

Job Title Talkshow Lit Counsel Pres. FL League of Cities

Address 300 S. Adams St. Phone 855-851-8622

Street THC State FL Zip 32301

Email gil.ziff@talkshow.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/2018

Bill Number (if applicable) SB 1262

Topic ELECTION DATES

Amendment Barcode (if applicable)

Name MARILYN WILLS

Job Title MEMBER, LEAGUE OF WOMEN VOTERS OF FLORIDA

Address 2326 KILKENNY DRIVE WEST Phone 858 893-4104
Street

TALLAHASSEE FLORIDA 32309
City State Zip

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

Representing LEAGUE OF WOMEN VOTERS OF FLORIDA

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) CSHB 1242

Topic Electors

Amendment Barcode (if applicable)

Name Sunder & Mowatt

Job Title Mayor

Address 71 Shepherdson Drive

Phone 352-229-0444

Street Shepherdson City FL State 39449

Email m.sunder@mowatt.com

Speaking: For Against Information

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

Representing Board of Supervisors

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) CS/SB 1262

Topic Municipal Elections

Amendment Barcode (if applicable)

Name DAVID RAMONA

Job Title _____

Address 120 S. MONROE ST

Phone _____

Street

TAMPA

State FL

Zip 32301

Email

david@ramonara.com

City

State

Zip

Speaking: For Against Information

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

Representing FSASE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Ethics and Elections; and Senator Hutson

582-02941-18

20181262c1

A bill to be entitled

An act relating to election dates for municipal office; amending s. 100.3605, F.S.; requiring the governing body of a municipality to determine the dates on which initial and runoff elections for municipal office are held and providing options therefor; preempting to the state the authority to establish election dates for municipal elections; providing construction; amending s. 100.361, F.S.; requiring municipal recall elections to be held concurrently with municipal elections under certain conditions; repealing s. 101.75, F.S., relating to change of dates for cause in municipal elections; extending the terms of incumbent elected municipal officers until the next municipal election; providing an effective date.

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

Section 1. Section 100.3605, Florida Statutes, is amended to read:

100.3605 Conduct of municipal elections.—

(1) The Florida Election Code, chapters 97-106, shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. No charter or ordinance provision shall be adopted which conflicts with or exempts a municipality from any provision in the Florida Election Code that expressly applies to municipalities.

Page 1 of 4

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

582-02941-18

20181262c1

(2) (a) The governing body of a municipality shall determine if an election for municipal office is held on the same date as the general election, the first Tuesday after the first Monday in November in an odd-numbered year, or the third Tuesday in March. However, a municipality may not conduct more than one municipal general election cycle in the same calendar year.

(b) If a municipal charter or ordinance requires a runoff election for municipal office, the governing body of a municipality shall conduct its elections in one of the following formats:

1. The initial election shall be held at the primary election on the Tuesday 10 weeks before the general election, and the runoff election shall be held on the same date as the general election.

2. The initial election shall be held at an election on the Tuesday 10 weeks before the election held on the first Tuesday after the first Monday in November in an odd-numbered year, and the runoff election shall be held at an election on the first Tuesday after the first Monday in November in an odd-numbered year.

3. The initial election shall be held at an election on the Tuesday 10 weeks before the third Tuesday in March, and the runoff election shall be held at an election on the third Tuesday in March.

(c) This subsection does not affect the manner in which vacancies in municipal offices are filled or the manner in which recall elections for municipal officers are conducted.

(d) Notwithstanding any general law, special law, local law, municipal charter, or municipal ordinance, this subsection

Page 2 of 4

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

582-02941-18 20181262c1

59 provides the sole method for establishing the dates of elections
 60 for municipal office in this state. Any general law, special
 61 law, local law, municipal charter, or municipal ordinance that
 62 conflicts with this subsection is superseded to the extent of
 63 the conflict.

64 ~~(3) The governing body of a municipality may, by ordinance,~~
 65 ~~change the dates for qualifying and for the election of members~~
 66 ~~of the governing body of the municipality and provide for the~~
 67 orderly transition of office resulting from election ~~such~~ date
 68 changes.

69 Section 2. Subsection (4) of section 100.361, Florida
 70 Statutes, is amended to read:

71 100.361 Municipal recall.—

72 (4) RECALL ELECTION.—If the person designated in the
 73 petition files with the clerk, within 5 days after the last-
 74 mentioned notice, his or her written resignation, the clerk
 75 shall at once notify the governing body of that fact, and the
 76 resignation shall be irrevocable. The governing body shall then
 77 proceed to fill the vacancy according to the provisions of the
 78 appropriate law. In the absence of a resignation, the chief
 79 judge of the judicial circuit in which the municipality is
 80 located shall fix a day for holding a recall election for the
 81 removal of those not resigning. Any such election shall be held
 82 not less than 30 days or more than 60 days after the expiration
 83 of the 5-day period last-mentioned and at the same time as any
 84 other general, municipal, or special election held within the
 85 period; but if no such election is to be held within that
 86 period, the judge shall call a special recall election to be
 87 held within the period aforesaid.

Page 3 of 4

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

582-02941-18 20181262c1

88 Section 3. Section 101.75, Florida Statutes, is repealed.

89 Section 4. To provide for an orderly transition of office,
 90 the term of each incumbent elected municipal officer is extended
 91 until the next municipal election held in accordance with this
 92 act.

93 Section 5. This act shall take effect July 1, 2020.

Page 4 of 4

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

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: CS/SB 1262
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, February 20, 2018
TIME: 1:30—3:30 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	2/20/2018 ¹ Amendment 146136		2/20/2018 ² Amendment 341020			
			Lee		Simmons			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brandes						
	X	Campbell						
X		Perry						
	X	Rodriguez						
X		Simmons						
	X	Bean, VICE CHAIR						
X		Lee, CHAIR						
4	3		RCS	-	RCS	-		
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 804

INTRODUCER: Senator Passidomo

SUBJECT: Possession of Real Property

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 804 amends and modernizes real property provisions controlling ejectment, unlawful and forcible entry, and unlawful detainer actions. The bill also creates a section of statute governing the “customary use” of private property for public use.

Ejectment, unlawful and forcible entry, and unlawful detainer actions all involve a person entitled to possession of real property who is wrongfully removed but seeks to recover possession of the property. The current statutes are amended in this bill to:

- Create new definitions,
- Clarify which courts have jurisdiction,
- Modernize statutory pleading requirements, and
- Provide remedies.

A final section of the bill addresses the common law doctrine of customary use, or the general right of the public to use and access the dry sand area of a beach on private property. The bill creates a section stating that a common law claim of customary use must apply to a particular parcel and must be determined by a court. This change effectively precludes the use of local government ordinances to establish broad rights to access private property with little notice to affected property owners.

II. Present Situation:

Ejectment Actions

An ejectment action is a legal proceeding in which a person who is wrongfully ejected from real property seeks to recover possession of that property as well as damages and costs. In these actions, the plaintiff must allege that he or she has:

- Title to the land,

- Been wrongfully deprived or dispossessed, and
- Suffered damages.¹

Chapter 66, Ejectment, provides little statutory framework for ejectment actions. The little statutory framework that exists provides that the common law practice of naming fictitious parties is abolished and establishes some minor procedural, verdict, and judgment requirements. The chapter, however, does not provide for basic elements of ejectment actions such as a definition of “ejectment” or establish which trial court maintains jurisdiction or address whether presuit notice² is necessary in beginning an action. While some of these provisions are established in case law, it would be helpful to practitioners if these items were set forth in the ejectment chapter.

Forcible Entry and Unlawful Detainer Actions

Chapter 82, which addresses Forcible Entry and Unlawful Detainer, is intended to provide a peaceful and efficient process for someone to recover possession of real property that is unlawfully taken from them.

Unlawful Entry and Forcible Entry

The “unlawful entry and forcible entry” statute prohibits a person from entering any lands or tenements, except when that entry is permitted by law, and prohibits a person when entry is permitted from entering with “strong hand or with multitude of people.” The statute permits entry only in “a peaceable, easy and open manner.”³

Unlawful Entry and Unlawful Detention

The “unlawful entry and unlawful detention” statute states that no person who enters without consent into any lands or tenements “in a peaceable, easy and open manner” may “hold them afterwards against the consent of” someone who is entitled to possess them. This action does not apply to residential tenancies, which are governed by the Landlord and Tenant Act.⁴

Remedies, Summary Procedure, and Time Limit for an Action

The next section of the statutes relating to unlawful detention provides a remedy for the party who is turned out or deprived of possession by “unlawful entry or forcible entry” and states that he or she is entitled to the summary procedure⁵ for the expeditious resolution of the action within 3 years afterwards.⁶

¹ BLACK’S LAW DICTIONARY (10th ed. 2014).

² Several provisions in statute require a plaintiff to notify prospective defendants before filing a lawsuit. See, for example, ss. 70.001, 400.0233, 429.293, and 766.106, F.S.

³ Section 82.01, F.S.

⁴ Section 82.02, F.S.

⁵ Summary procedure is set forth in s. 51.01, F.S. A summary procedure is a non-jury proceeding designed to settle a matter in a relatively prompt and simple manner. BLACK’S LAW DICTIONARY (10th ed. 2014).

⁶ Section 82.03, F.S.

Title Questions

An action for forcible entry and unlawful detainer may only address the right of possession and damages. No question of title is involved in the action.

Presuit Notice

This chapter does not require presuit notice by a plaintiff. However, because the chapter is silent, it may lead to confusion as to whether presuit notice is required.

Customary Use

Florida Constitution

In Florida, the public has the right to access shorelines and beaches that are located below what is referred to as the “mean high tide line.” The State Constitution, in Article X, section 11, provides that “title to the lands under navigable waters, within the boundaries of the state . . . including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people.”⁷ This is known as the common law public trust doctrine.

State Statute

The beaches of the state include additional land beyond what is described in the public trust doctrine. The dry sands above the mean high water line may be owned privately, as recognized by statute.⁸ Additionally, the Legislature has noted in its State Comprehensive Plan, Coastal and Marine Resources, that it is a policy to “Ensure the public’s right to reasonable access to beaches.”⁹

Florida Supreme Court

The courts have recognized the public’s ability to acquire rights to the dry sand areas of privately owned sections of a beach but have not rendered many decisions in the area. In 1974, the Florida Supreme Court generally established the customary use doctrine in Florida when it held:

If the recreational use of the sandy area adjacent to the mean high tide has been ancient, reasonable, without interruption and free from dispute, such use as a matter of custom, should not be interfered with by the owner. However, the owner may make any use of his property which is consistent with such public use and not calculated to interfere with the exercise of the right of the public to enjoy the dry sand area as a recreational adjunct of the wet sand or foreshore area.¹⁰

⁷ Sea Grant Florida, the University of Florida, *Common Law Tools to Promote Beach Access*, <https://www.flseagrant.org/wateraccess/common-law-statutes/> (last visited Jan. 17, 2018).

⁸ Section 177.28, F.S.

⁹ Section 187.201(8)(b)2., F.S.

¹⁰ *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 78 (1974).

Attorney General Opinion

The Florida Attorney General issued an opinion in 2002¹¹ addressing the regulation of the dry sand portion of beaches. The City of Destin adopted a beach management ordinance to provide for the regulation of public use and conduct on the beach. The Sheriff of Okaloosa County and the mayor of Destin inquired about the regulation. The Attorney General issued three findings in its opinion:

- The City may regulate in a reasonable manner the beach within its corporate limits to protect the public health, safety, and welfare. This regulation must have a rational relation to and be reasonably designed to accomplish a purpose necessary for the protection of the public. The city may not exercise its police power in an arbitrary, capricious, or unreasonable manner. Such regulation may be accomplished regardless of the ownership of this area, with the exception of state ownership, and without regard to whether the public has been expressly or impliedly allowed to use that area of the beach by a private property owner who may hold title to the property.
- The right of a municipality to regulate and control dry sand beach property within its municipal boundaries is not dependent on the finding of the Florida Supreme Court in *City of Daytona Beach v. Tona-Rama, Inc.*
- Private property owners who hold title to dry sand areas of the beach falling within the jurisdictional limits of the City of Destin may utilize local law enforcement for purposes of reporting incidents of trespass as they occur.¹²

District Court of Appeal

The customary use doctrine articulated by the Florida Supreme Court was limited in 2007 with a 5th District Court of Appeal decision, *Trepanier v. County of Volusia*.¹³ The court noted

While some may find it preferable that proof of these elements of custom be established for the entire state by judicial fiat in order to protect the right of public access to Florida's beaches, it appears to us that the acquisition of a right to use private property by custom is intensely local and anything but theoretical. "Custom" is inherently a source of law that emanates from long-term, open, obvious, and widely-accepted and widely-exercised practice. It is accordingly impossible precisely to define the geographic area of the beach for which evidence of a specific customary use must be shown, because it will depend on the particular geography and the particular custom at issue.¹⁴

It should be noted that the court also held that a determination of customary use "requires the courts to ascertain in each case the degree of customary and ancient use the beach has been subject to"¹⁵

¹¹ Op. Att'y Gen. Fla. 2002-38 (2002).

¹² *Id.*

¹³ *Trepanier v. County of Volusia*, 965 So. 2d 276 (Fla. 5th DCA 2007).

¹⁴ *Id.* at 289.

¹⁵ *Id.* at 288 quoting *Reynolds v. County of Volusia*, 659 So. 2d 1186 (Fla. 5th DCA 1995).

Federal Court Decision

The most recent decision published on the customary use doctrine was issued by the U.S. District Court for the Northern District of Florida, in Pensacola, in November, 2017.¹⁶ The Court was asked to decide whether a Walton County customary use ordinance was enacted *ultra vires* or beyond the scope of the county's authority. In its ordinance, Walton County declared that the county's dry sand areas were subject to the customary use doctrine. Accordingly, the ordinance prohibited certain signs, ropes, fences, or chains in the dry sand portion of a beach which were designed to exclude the public from the dry sand area. Violators were subject to a \$500 fine.

In its lengthy decision, the Court held that Walton County did not act outside its authority in adopting the ordinance that recognized and regulated customary use.¹⁷ The Court did note, however, that "property owners have a right under Florida law to *de novo* as-applied judicial review and a determination of the existence of customary use rights."¹⁸ The decision was recently appealed to the United States Court of Appeals for the Eleventh Circuit in Atlanta.¹⁹

It is apparent from these opinions that private individuals and governmental entities are challenged when trying to understand the scope of the customary use doctrine when it affects private property rights.

III. Effect of Proposed Changes:

Ejectment (Section 1)

Three subsections are added to the beginning of chapter 66, F.S., to define ejectment, clarify which court has jurisdiction, and address presuit notification.

Definition

The bill adds a "right of action" provision which states that a person with a superior title to possess real property may maintain an ejectment action to recover possession of the property. This addition clarifies what an ejectment action is and reduces confusion to both lay people and practitioners as to when an ejectment action is the appropriate remedy when seeking to recover real property. The absence of a current definition may create confusion as to whether an ejectment action in chapter 82, F.S., or a landlord and tenant action in chapter 83, F.S., is proper.

Jurisdiction

Circuit courts possess exclusive original jurisdiction "in actions of ejectment"²⁰ as provided in chapter 26, F.S. The addition of this language in the ejectment chapter eliminates any confusion as to where these actions are maintained.

¹⁶ *Alford, et al., v. Walton County*, 3:16-cv-00362-MCR-CJK, Order filed Nov. 22, 2017.

¹⁷ *Id.* at 45.

¹⁸ *Id.*

¹⁹ The case was docketed for appeal on December 27, 2017, and is case 17-15741.

²⁰ Section 26.012(2)(f), F.S.

Presuit Notice

Language is added which states that a plaintiff is not required to provide any presuit notice or demand to a defendant before an action may begin. While some civil actions do require presuit notice and demands, this clarifies that ejectment actions do not. The additional language is essentially the codification of case law.

Statutory Pleading Requirements

The bill modernizes and simplifies the statutory language of existing pleading requirements for ejectment actions. However, the pleading requirements are not substantially changed by the bill.

Operation

A new “operation” subsection is added to provide that the ejectment section is “cumulative to other existing remedies and may not be construed to limit other remedies” This language or similar language is found in other statutes. According to Black’s Law Dictionary, a cumulative remedy is a remedy that is “available to a party in addition to another remedy that still remains in force.”²¹ This additional language is also consistent with case law on ejectment actions.

Forcible Entry and Unlawful Detainer (Bill Sections 2-9)***Definitions (Bill Section 2)***

The bill deletes the current definitions of “unlawful entry and forcible entry” and “unlawful entry and unlawful detention” and replaces them with modernized definitions of forcible entry, unlawful detention, and unlawful entry.

A definition of real property is added and means land or any existing permanent or temporary building or structure on the land and any attachments generally held out for the use of persons in possession of the real property. The term “real property” is then used for consistency throughout the section and replaces the term “dwelling” in the remedy for unlawful detention by a transient occupant of residential property. This change in terminology appears to allow for the use of unlawful detainer actions to regain possession of a broader array of properties.

A definition of record titleholder is supplied and means someone who holds title to real property as evidenced by an instrument recorded in the public records of the county where the real property is located.

Applicability (Bill Section 3)

A new section is added to explain when these provisions apply. They do not apply to residential tenancies in the Landlord and Tenant chapter nor do they apply to the possession of real property in the Mobile Home and Recreational Vehicle Parks chapter or the Mobile Park Lot Tenancies chapter.

²¹ BLACK’S LAW DICTIONARY (10th ed. 2014).

Remedies, Summary Procedure, and Time Limit for an Action (Bill Section 4)

The bill, consistent with existing statutes and case law, establishes that a person entitled to possession of the real property has a cause of action against someone who obtained possession by forcible entry, unlawful entry, or unlawful detention and may recover possession and damages. However, the bill reorganizes and rewords many of the related statutory requirements and makes few substantive changes. If a court determines that the defendant entered or detained the property in a willful and knowingly wrongful manner, the bill provides that a plaintiff may receive damages that are double the reasonable rental value of the property from the beginning of the wrongful entry or detention until the plaintiff receives possession of the property. This measure of damages is a restatement of existing law. In addition, the bill allows a plaintiff to recover other damages which may include, but are not limited to, damages for waste. Finally, the bill provides that actions for possession and damages may be bifurcated by the court.

The reorganized and reworded statutory provisions continue to provide for the use of the summary judicial procedures to expeditiously resolve forcible entry, unlawful entry, and unlawful detainer actions.

The bill deletes language requiring that summary procedure actions for forcible entry, unlawful entry, and unlawful detainer actions be brought within 3 years after possession has been withheld from the plaintiff.

Advancing the Cause on the Calendar (Bill Section 4)

Language is added in the bill to require a court to “advance the cause of action [for forcible entry, unlawful entry, or unlawful detention] on the calendar.” This is a new provision not found in the existing statutes, however, identical language is found in the Landlord and Tenant Act in s. 83.59, F.S., regarding an action for possession after a rental agreement is terminated and a tenant does not vacate the premises. The effect of the language may be to emphasize that courts must ensure that actions using the summary procedure are resolved expeditiously.

Service of Process (Bill Section 7)

The current statute regulating service of process provides that when a defendant cannot be found at his or her usual place of residence, a summons may be served by posting a copy of the summons in a conspicuous place on the property described in the complaint and summons. The bill provides a simplified process to provide notice by posting if personal service on the defendant cannot be obtained. The bill provides that if, after at least two attempts to obtain personal service, a defendant cannot be found in the county where the action is pending and the defendant does not have a usual place of abode in the county or there is no one 15 years old or older residing at that usual place in the county, then the sheriff must serve the summons and complaint by attaching it to a conspicuous part of the real property involved in the proceeding. At least 6 hours must elapse between the two attempts to obtain personal service.

If the plaintiff anticipates providing notice using the attachment method described above, the plaintiff must provide the clerk of the court with two additional copies of the summons and complaint and two prestamped envelopes addressed to the defendant. One of the envelopes must be addressed to the defendant’s residence, if it is known. The other envelope must be addressed to the defendant’s last known business address, if it is known. The clerk must then immediately

mail the copies of the summons and complaint by first-class mail, note in the docket that the mailing has occurred, and file a certificate in the court file noting the fact of the mailing and date. Service is effective on the date of posting or mailing, whichever is later, and at least 5 days must have elapsed after the date of service before a final judgment for removal of the defendant may be entered.²²

Effect of Judgment (Bill Section 9)

While chapter 82, F.S., currently provides that no judgment for a plaintiff or defendant bars an action of trespass for injury to property or ejectment between the parties regarding the same real property, the bill adds more language. The bill provides that a judgment is not conclusive as to the facts in any future action for ejectment or quiet title. It also states that a judgment rendered pursuant to chapter 82, F.S., may be superseded, in whole or in part, by a subsequent judgment in an action for trespass for injury to the real property, ejectment, or quiet title involving the same parties with respect to the same real property.

Sections Repealed (Bill Sections 11-14)

The bill repeals s. 82.061, F.S., relating to service of process, s. 82.071, F.S., relating to trials and evidence as to damages, and s. 82.081, F.S., relating to trial and verdict forms. The first two sections are contained in other provisions of the bill and the third section is removed because the forms are outdated.

Customary Use for the Public use of Private Property (Bill Section 10)

The bill states that a common law claim of customary use for the public use of private property must:

- Apply to a particular parcel, and
- Be determined by the court.

This language makes clear that a court, or judicial forum, is the proper place to determine a common law customary use claim and it must be done on a parcel by parcel basis.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²² This language is very similar to that found in s. 48.031, F.S., Service of process generally; service of witness subpoenas and s. 48.183, F.S., Service of process in action for possession of premises.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 66.021, 82.01, 82.02, 82.03, 82.04, 82.05, 82.091, and 82.101.

The bill redesignates section 82.045 as section 82.035 of the Florida Statutes.

This bill creates section 704.09 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 82.061, 82.071, and 82.081.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date Feb 20, 2018

Bill Number (if applicable) 804

Topic Customary Use - Bill # 804

Amendment Barcode (if applicable) _____

Name Heather Christman

Job Title Walton County - Assistant County Attorney

Address 161 E Stoss Ave

Phone 850-892-8710

City DeFuniak Springs State FL

Email chr.heather@co.walton.fl.us

Speaking: For Against Information

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

Representing Walton County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) 804

Topic CUSTOMARY USE

Amendment Barcode (if applicable) _____

Name TONY ANDERSON

Job Title WALTON CO. COMMISSIONER

Address 195 VIA LINDO

Phone 950-830-2059

Street Sate Rose Bk

Email 32459

City State Zip

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

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/28/18

Bill Number (if applicable) 804

Topic _____ Amendment Barcode (if applicable) _____

Name DAVID CULLEN

Job Title _____

Address 1674 University Parkway

Phone 941-323-2404

Street SAASPORT State FL Zip 34243

Email cullena@senate.fl.gov

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

Representing SERRA CURR HOAG

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 02/20/18

Bill Number (if applicable) SB 804

Amendment Barcode (if applicable) _____

Topic Possessions of Real Property

Name Holly Parker Cong

Job Title FL Regional Manager

Address 1229 Mitchell Ave.

Street Tallahassee City FL State 32303 Zip

Phone 850-567-3393

Email hparker@sunfinder.com

Speaking: For Against Information

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

Representing Sunfinder Foundations

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) 804

Amendment Barcode (if applicable) _____

Topic Customary Use Section

Name Jay Liles

Job Title _____

Address P.O. Box 10870

Phone 850/294-5004

Street Tallahassee State FL Zip 32314

Email j.liles@floridarecord.org

Speaking: For Against Information

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

Representing Florida Wildlife Federation

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____ Bill Number (if applicable) 864

Topic _____ Amendment Barcode (if applicable) _____

Name Pete Durbin

Job Title _____

Address 215 S. Morse Phone 998-4160

Street Tallahassee
City Tallahassee State _____ Zip 32312

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

Representing Real Property, Probate & Trust Law

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) 804

Topic Possession of Real Property Amendment Barcode (if applicable) _____

Name Gary Hunter

Job Title Attorney

Address 119 S Monroe Street

Phone 202-7500

Street Tallahassee City FL State 32301 Zip

Email garyh@hyslaw.com

Speaking: For Against Information

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

Representing Step the Back Renourishment

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) 804

Topic Possession of Real Property

Amendment Barcode (if applicable) _____

Name Kelly Mallette

Job Title _____

Address 104 W. Jefferson Street

Phone (850) 224-3427

Street Tallahassee, FL
City 32301 State Zip

Email kelly@rheadpa.com

Speaking: For Against Information

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

Representing Rosemary Beach Property Owners Association, Inc.

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/2018

Bill Number (if applicable) SR 804

Topic Property & Customer Use

Amendment Barcode (if applicable)

Name Dan Peterson

Job Title Center for Property Rights

Address 100 N Durand

Phone 407-758-2491

Street Tallahassee City FL State 32301 Zip

Email dpeterson@jamesmadison.org

Speaking: For Against Information

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

Representing James Madison Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) SB-804

Topic Customary Beach Access

Amendment Barcode (if applicable)

Name Donna R. Christie

Job Title Professor Emerita FSU College of Law

Address 3213 Del Rio Terrace

Phone 850-566-5651

City Tallahassee State FL Zip 32312

Email dchristie@law.fsu.edu

Speaking: For Against Information

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

Representing N/A

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

By Senator Passidomo

28-00413A-18

2018804__

1 A bill to be entitled
 2 An act relating to the possession of real property;
 3 amending s. 66.021, F.S.; authorizing a person with a
 4 superior right to possession of real property to
 5 recover possession by ejectment; declaring that
 6 circuit courts have exclusive jurisdiction; providing
 7 that a plaintiff is not required to provide any
 8 presuit notice or demand to a defendant; requiring
 9 that copies of instruments be attached to a complaint
 10 or answer under certain circumstances; requiring a
 11 statement to list certain details; providing for
 12 construction; amending s. 82.01, F.S.; redefining the
 13 terms "unlawful entry" and "forcible entry"; defining
 14 the terms "real property," "record titleholder," and
 15 "unlawful detention"; amending s. 82.02, F.S.;
 16 exempting possession of real property under part II of
 17 ch. 83, F.S., and under chs. 513 and 723, F.S.;
 18 amending s. 82.03, F.S.; providing that a person
 19 entitled to possession of real property has a cause of
 20 action to regain possession from another person who
 21 obtained possession of real property by forcible
 22 entry, unlawful entry, or unlawful detainer; providing
 23 that a person entitled to possession is not required
 24 to give a defendant presuit notice; requiring the
 25 court to award plaintiff extra damages if a defendant
 26 acted in a willful and knowingly wrongful manner;
 27 authorizing bifurcation of actions for possession and
 28 damages; requiring that an action be brought by
 29 summary procedure; requiring the court to advance the

Page 1 of 13

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

28-00413A-18

2018804__

30 cause on the calendar; renumbering and amending s.
 31 82.045, F.S.; conforming provisions to changes made by
 32 the act; amending s. 82.04, F.S.; requiring that the
 33 court determine the right of possession and damages;
 34 prohibiting the court from determining question of
 35 title unless necessary; amending s. 82.05, F.S.;
 36 requiring that the summons and complaint be attached
 37 to the real property after two unsuccessful attempts
 38 to serve a defendant; requiring a plaintiff to provide
 39 the clerk of the court with prestamped envelopes and
 40 additional copies of the summons and complaint if the
 41 defendant is served by attaching the summons and
 42 complaint to the real property; requiring the clerk to
 43 immediately mail copies of the summons and complaint
 44 and note the fact of mailing in the docket; specifying
 45 that service is effective on the date of posting or
 46 mailing; requiring that 5 days elapse from the date of
 47 service before the entry of a judgment; amending s.
 48 82.091, F.S.; providing requirements after a judgment
 49 is entered for the plaintiff or the defendant;
 50 amending s. 82.101, F.S.; adding quiet title to the
 51 types of future actions for which a judgment is not
 52 conclusive as to certain facts; providing that the
 53 judgment may be superseded by a subsequent judgment;
 54 creating s. 704.09, F.S.; requiring that a claim of
 55 customary use for the public use of private property
 56 be applied to a particular parcel; providing for
 57 judicial determination of claims; repealing s. 82.061,
 58 F.S., relating to service of process; repealing s.

Page 2 of 13

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

28-00413A-18

2018804__

59 82.071, F.S., relating to evidence at trial as to
60 damages; repealing s. 82.081, F.S., relating to trial
61 verdict forms; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Section 66.021, Florida Statutes, is amended to
66 read:

67 66.021 Ejectment Procedure.-

68 (1) RIGHT OF ACTION.-A person with a superior right to
69 possession of real property may maintain an action of ejectment
70 to recover possession of the property.

71 (2) JURISDICTION.-Circuit courts have exclusive
72 jurisdiction in an action of ejectment.

73 (3) NOTICE.-A plaintiff may not be required to provide any
74 presuit notice or presuit demand to a defendant as a condition
75 to maintaining an action under this section.

76 (4)(1) LANDLORD NOT A DEFENDANT.-When it appears before
77 trial that a defendant in an action of ejectment is in
78 possession as a tenant and that his or her landlord is not a
79 party, the landlord ~~must~~ shall be made a party before further
80 proceeding unless otherwise ordered by the court.

81 (5)(2) DEFENSE MAY BE LIMITED.-A defendant in an action of
82 ejectment may limit his or her defense to a part of the property
83 mentioned in the complaint, describing such part with reasonable
84 certainty.

85 (6)(3) WRIT OF POSSESSION; EXECUTION TO BE JOINT OR
86 SEVERAL.-When plaintiff recovers in an action of ejectment, he
87 or she may have one writ for possession and for damages and

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88 costs or, at his or her election if the plaintiff elects, may
89 have separate writs for possession and for damages and costs.

90 (7)(4) CHAIN OF TITLE.-The Plaintiff with his or her
91 complaint and the defendant with his or her answer must include
92 ~~shall serve~~ a statement setting forth, chronologically, the
93 chain of title upon which the party on which he or she will rely
94 at trial. Copies of each instrument identified in the statement
95 must be attached to the complaint or answer. If any part of the
96 ~~chain of title is recorded,~~ The statement must include shall set
97 ~~forth~~ the names of the grantors and the grantees, the date that
98 each instrument was recorded, and the book and page or the
99 instrument number for each recorded instrument of the record
100 thereof; if an unrecorded instrument is relied on, a copy shall
101 be attached. The court may require the original to be submitted
102 to the opposite party for inspection. If a the party relies on a
103 claim or right without color of title, the statement must shall
104 specify how and when the claim originated and the facts on which
105 the claim is based. If defendant and plaintiff claim under a
106 common source, the statement need not deraign title before the
107 common source.

108 (8)(5) TESTING SUFFICIENCY.-If either party seeks wants to
109 test the legal sufficiency of any instrument or court proceeding
110 in the chain of title of the opposite party, the party must
111 ~~shall~~ do so before trial by motion setting up his or her
112 objections with a copy of the instrument or court proceedings
113 attached. The motion must shall be disposed of before trial. If
114 either party determines that he or she will be unable to
115 maintain his or her claim by reason of the order, that party may
116 so state in the record and final judgment shall be entered for

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117 the ~~opposing~~ opposite party.

118 (9) OPERATION.—This section is cumulative to other existing
 119 remedies and may not be construed to limit other remedies that
 120 are available under the laws of this state.

121 Section 2. Section 82.01, Florida Statutes, is amended to
 122 read:

123 82.01 Definitions ~~“Unlawful entry and forcible entry”~~
 124 ~~defined.—As used in this chapter, the term:~~

125 (1) “Forcible entry” means entering into and taking
 126 possession of real property with force, in a manner that is not
 127 peaceable, easy, or open, even if such entry is authorized by a
 128 person entitled to possession of the real property and the
 129 possession is only temporary or applies only to a portion of the
 130 real property.

131 (2) “Real property” means land or any existing permanent or
 132 temporary building or structure thereon, and any attachments
 133 generally held out for the use of persons in possession of the
 134 real property.

135 (3) “Record titleholder” means a person who holds title to
 136 real property as evidenced by an instrument recorded in the
 137 public records of the county in which the real property is
 138 located.

139 (4) “Unlawful detention” means possessing real property,
 140 even if the possession is temporary or applies only to a portion
 141 of the real property, without the consent of a person entitled
 142 to possession of the real property or after the withdrawal of
 143 consent by such person.

144 (5) “Unlawful entry” means the entry into and possessing of
 145 real property, even if the possession is temporary or for a

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146 portion of the real property, when such entry is not authorized
 147 by law or consented to by a person entitled to possession of the
 148 real property ~~No person shall enter into any lands or tenements~~
 149 ~~except when entry is given by law, nor shall any person, when~~
 150 ~~entry is given by law, enter with strong hand or with multitude~~
 151 ~~of people, but only in a peaceable, easy and open manner.~~

152 Section 3. Section 82.02, Florida Statutes, is amended to
 153 read:

154 82.02 Applicability ~~“Unlawful entry and unlawful detention”~~
 155 ~~defined.—~~

156 (1) This chapter does not apply to residential tenancies
 157 under part II of chapter 83 ~~No person who enters without consent~~
 158 ~~in a peaceable, easy and open manner into any lands or tenements~~
 159 ~~shall hold them afterwards against the consent of the party~~
 160 ~~entitled to possession.~~

161 (2) This chapter does not apply to the possession of real
 162 property under chapter 513 or chapter 723 ~~This section shall not~~
 163 ~~apply with regard to residential tenancies.~~

164 Section 4. Section 82.03, Florida Statutes, is amended to
 165 read:

166 82.03 Remedies ~~Remedy for unlawful entry and forcible~~
 167 ~~entry.—~~

168 (1) A person entitled to possession of real property,
 169 including constructive possession by a record titleholder, has a
 170 cause of action against a person who obtained possession of that
 171 real property by forcible entry, unlawful entry, or unlawful
 172 detention and may recover possession and damages. The person
 173 entitled to possession is not required to notify the prospective
 174 defendant before filing the action.

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175 (2) If the court finds that the entry or detention by the
 176 defendant is willful and knowingly wrongful, the court must
 177 award the plaintiff damages equal to double the reasonable
 178 rental value of the real property from the beginning of the
 179 forcible entry, unlawful entry, or unlawful detention until
 180 possession is delivered to the plaintiff. The plaintiff may also
 181 recover other damages, including, but not limited to, damages
 182 for waste.

183 (3) Actions for possession and damages may be bifurcated.

184 (4) All actions under this chapter must be brought by
 185 summary procedure as provided in s. 51.011, and the court shall
 186 advance the cause on the calendar ~~If any person enters or has~~
 187 ~~entered into lands or tenements when entry is not given by law,~~
 188 ~~or if any person enters or has entered into any lands or~~
 189 ~~tenements with strong hand or with multitude of people, even~~
 190 ~~when entry is given by law, the party turned out or deprived of~~
 191 ~~possession by the unlawful or forcible entry, by whatever right~~
 192 ~~or title the party held possession, or whatever estate the party~~
 193 ~~held or claimed in the lands or tenements of which he or she was~~
 194 ~~so dispossessed, is entitled to the summary procedure under s.~~
 195 ~~51.011 within 3 years thereafter.~~

196 Section 5. Section 82.045, Florida Statutes, is
 197 redesignated as section 82.035, Florida Statutes, and amended to
 198 read:

199 82.035 ~~82.045~~ Remedy for unlawful detention by a transient
 200 occupant of residential property.-

201 (1) As used in this section, the term "transient occupant"
 202 means a person whose residency in real property ~~a dwelling~~
 203 intended for residential use has occurred for a brief length of

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204 time, is not pursuant to a lease, and whose occupancy was
 205 intended as transient in nature.

206 (a) Factors that establish that a person is a transient
 207 occupant include, but are not limited to:

208 1. The person does not have an ownership interest,
 209 financial interest, or leasehold interest in the property
 210 entitling him or her to occupancy of the property.

211 2. The person does not have any property utility
 212 subscriptions.

213 3. The person does not use the property address as an
 214 address of record with any governmental agency, including, but
 215 not limited to, the Department of Highway Safety and Motor
 216 Vehicles or the supervisor of elections.

217 4. The person does not receive mail at the property.

218 5. The person pays minimal or no rent for his or her stay
 219 at the property.

220 6. The person does not have a designated space of his or
 221 her own, such as a room, at the property.

222 7. The person has minimal, if any, personal belongings at
 223 the property.

224 8. The person has an apparent permanent residence
 225 elsewhere.

226 (b) Minor contributions made for the purchase of household
 227 goods, or minor contributions towards other household expenses,
 228 do not establish residency.

229 (2) A transient occupant unlawfully detains a residential
 230 property if the transient occupant remains in occupancy of the
 231 residential property after the party entitled to possession of
 232 the property has directed the transient occupant to leave.

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233 (3) Any law enforcement officer may, upon receipt of a
 234 sworn affidavit of the party entitled to possession that a
 235 person who is a transient occupant is unlawfully detaining
 236 residential property, direct a transient occupant to surrender
 237 possession of residential property. The sworn affidavit must set
 238 forth the facts, including the applicable factors listed in
 239 paragraph (1) (a), which establish that a transient occupant is
 240 unlawfully detaining residential property.

241 (a) A person who fails to comply with the direction of the
 242 law enforcement officer to surrender possession or occupancy
 243 violates s. 810.08. In any prosecution of a violation of s.
 244 810.08 related to this section, whether the defendant was
 245 properly classified as a transient occupant is not an element of
 246 the offense, the state is not required to prove that the
 247 defendant was in fact a transient occupant, and the defendant's
 248 status as a permanent resident is not an affirmative defense.

249 (b) A person wrongfully removed pursuant to this subsection
 250 has a cause of action for wrongful removal against the person
 251 who requested the removal, and may recover injunctive relief and
 252 compensatory damages. However, a wrongfully removed person does
 253 not have a cause of action against the law enforcement officer
 254 or the agency employing the law enforcement officer absent a
 255 showing of bad faith by the law enforcement officer.

256 (4) A party entitled to possession of real property a
 257 ~~dwelling~~ has a cause of action for unlawful detainer against a
 258 transient occupant pursuant to s. 82.03 ~~s. 82.04~~. The party
 259 entitled to possession is not required to notify the transient
 260 occupant before filing the action. If the court finds that the
 261 defendant is not a transient occupant but is instead a tenant of

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262 residential property governed by part II of chapter 83, the
 263 court may not dismiss the action without first allowing the
 264 plaintiff to give the transient occupant the notice required by
 265 that part and to thereafter amend the complaint to pursue
 266 eviction under that part.

267 Section 6. Section 82.04, Florida Statutes, is amended to
 268 read:

269 82.04 Questions involved in this proceeding ~~Remedy for~~
 270 ~~unlawful detention.~~ The court shall determine only the right of
 271 possession and any damages. Unless it is necessary to determine
 272 the right of possession or the record titleholder, the court may
 273 not determine the question of title.

274 ~~(1) If any person enters or has entered in a peaceable~~
 275 ~~manner into any lands or tenements when the entry is lawful and~~
 276 ~~after the expiration of the person's right continues to hold~~
 277 ~~them against the consent of the party entitled to possession,~~
 278 ~~the party so entitled to possession is entitled to the summary~~
 279 ~~procedure under s. 51.011, at any time within 3 years after the~~
 280 ~~possession has been withheld from the party against his or her~~
 281 ~~consent.~~

282 ~~(2) This section shall not apply with regard to residential~~
 283 ~~tenancies.~~

284 Section 7. Section 82.05, Florida Statutes, is amended to
 285 read:

286 82.05 Service of process Questions involved in this
 287 proceeding.

288 (1) After at least two attempts to obtain service as
 289 provided by law, if the defendant cannot be found in the county
 290 in which the action is pending and either the defendant does not

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291 have a usual place of abode in the county or there is no person
 292 15 years of age or older residing at the defendant's usual place
 293 of abode in the county, the sheriff must serve the summons and
 294 complaint by attaching it to some conspicuous part of the real
 295 property involved in the proceeding. The minimum amount of time
 296 allowed between the two attempts to obtain service is 6 hours.

297 (2) If a plaintiff causes, or anticipates causing, a
 298 defendant to be served with a summons and complaint solely by
 299 attaching them to some conspicuous part of real property
 300 involved in the proceeding, the plaintiff must provide the clerk
 301 of the court with two additional copies of the summons and the
 302 complaint and two prestamped envelopes addressed to the
 303 defendant. One envelope must be addressed to the defendant's
 304 residence, if known. The second envelope must be addressed to
 305 the defendant's last known business address, if known. The clerk
 306 of the court shall immediately mail the copies of the summons
 307 and complaint by first-class mail, note the fact of mailing in
 308 the docket, and file a certificate in the court file of the fact
 309 and date of mailing. Service is effective on the date of posting
 310 or mailing, whichever occurs later, and at least 5 days must
 311 have elapsed after the date of service before a final judgment
 312 for removal of the defendant may be entered. No question of
 313 title, but only right of possession and damages, is involved in
 314 the action.

315 Section 8. Section 82.091, Florida Statutes, is amended to
 316 read:

317 82.091 Judgment and execution.—

318 (1) If the court enters a judgment for the plaintiff, the
 319 verdict is in favor of plaintiff, the court shall enter judgment

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320 ~~that~~ plaintiff shall recover possession of the real property
 321 that he or she is entitled to and described in the complaint
 322 ~~with his or her~~ damages and costs. The ~~court,~~ and shall award a
 323 writ of possession to be executed without delay and execution
 324 for ~~the~~ plaintiff's damages and costs.

325 (2) If the court enters a judgment for the defendant, the
 326 court shall ~~verdict is for defendant, the court shall enter~~
 327 ~~judgment against plaintiff dismissing the complaint and order~~
 328 that ~~the~~ defendant recover costs.

329 Section 9. Section 82.101, Florida Statutes, is amended to
 330 read:

331 82.101 Effect of judgment.—No judgment rendered either for
 332 the plaintiff or the defendant bars any action of trespass for
 333 injury to the real property or ejection between the same
 334 parties respecting the same real property. A judgment is not
 335 conclusive as to ~~no verdict is conclusive of~~ the facts therein
 336 ~~found~~ in any future action for ~~of~~ trespass, ejection, or quiet
 337 title. A judgment rendered either for the plaintiff or the
 338 defendant pursuant to this chapter may be superseded, in whole
 339 or in part, by a subsequent judgment in an action for trespass
 340 for injury to the real property, ejection, or quiet title
 341 involving the same parties with respect to the same real
 342 property ~~or~~ ejection.

343 Section 10. Section 704.09, Florida Statutes, is created to
 344 read:

345 704.09 Judicial determination; customary use.—A common law
 346 claim of customary use for the public use of private property
 347 must apply to a particular parcel and must be determined by the
 348 court.

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- 349 Section 11. Section 82.061, Florida Statutes, is repealed.
- 350 Section 12. Section 82.071, Florida Statutes, is repealed.
- 351 Section 13. Section 82.081, Florida Statutes, is repealed.
- 352 Section 14. This act shall take effect July 1, 2018.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 804
FINAL ACTION: Favorable
MEETING DATE: Tuesday, February 20, 2018
TIME: 1:30—3:30 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brandes						
		Campbell						
X		Perry						
	X	Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
X		Lee, CHAIR						
5	1	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 582

INTRODUCER: Senator Rader

SUBJECT: Write-in Candidate Qualifying

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Ulrich</u>	<u>EE</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 582 codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*, by repealing the statute that requires a write-in candidate to reside in the district that he or she seeks to represent *at the time of qualifying*.

II. Present Situation:

In November 1998, Florida voters passed Proposition 11,¹ a comprehensive elections amendment to the Florida Constitution proposed by the Constitutional Revision Commission (CRC). Part of Proposition 11 amended Article VI of the Constitution to provide for a “universal” or “open” primary — a contest in which all eligible voters could cast a ballot regardless of party affiliation — wherein the winner of the primary election would face no general election opposition.²

In practice, this situation arises when the only candidates qualifying for an office have the same major party affiliation.

The general election ballot contains a blank line for qualified write-in candidates.³ Nonetheless, the 1998 CRC debates and discussions on Proposition 11 never addressed the issue of what impact the presence of a write-in candidate should have in a field otherwise composed entirely of candidates from one of the major parties.

¹ The amendment passed with 64.1% favorable vote, almost 2-to-1. Florida Division of Elections web site, <https://results.elections.myflorida.com/DetailRpt.Asp?ELECTIONDATE=11/3/1998&RACE=A11&PARTY=&DIST=&GRP=&DATAMODE=> (“Election Results” tab, General Election 1998, Constitutional Amendments) (last visited Feb. 15, 2018).

² Art. VI, s. 5(b), FLA. CONST.

³ Section 101.151(2)(b), F.S.

In 2000, the Florida Division of Elections published an opinion stating that the presence of a write-in candidate in an otherwise all-Republican or all-Democratic field “closed” the primary to all voters other than those registered with that particular party.⁴ (Multiple district and appellate courts have since confirmed the Division’s legal position.)⁵

In 2007, faced with write-ins having closed numerous legislative primaries since 2000, the Legislature enacted s. 99.0615, F.S. — which required write-in candidates to reside in the district they sought to represent *at the time of qualifying*.⁶

In February 2016, the Florida Supreme Court struck down the statute as unconstitutional. In *Brinkmann v. Francois*,⁷ a Broward County voter challenged the qualifying status of a write-in candidate, Tyron Francois, for Broward County Commissioner, District 2. Francois did not live in the District at the time of qualifying as required by s. 99.0615, F.S., but he did say that he intended to move there if he won the general election. All of the other candidates that qualified to run for the seat were Democrats. The *Brinkmann* court found that the statute was facially unconstitutional because the timing of its residency requirement (at the time of qualifying) for write-in candidates conflicted with the timing of the residency requirement for county commission candidates in the Constitution (at the time of election).⁸

As a result, beginning with the 2016 election cycle, any registered voter can now qualify to run as a write-in candidate in any contest in the state and close a primary where the only other qualified candidates are from the same party, ***regardless of his or her physical residence***.

III. Effect of Proposed Changes:

The bill codifies the 2016 Florida Supreme Court decision in *Brinkmann v. Francois*. It repeals the statute requiring write-in candidates to reside in the district they seek to represent *at the time of qualifying*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴ DOE Opinion 2000-06 (May 11, 2000).

⁵ *Lacasa v. Townsley*, 883 F.Supp2d 1231 (S.D. Fla 2012); see also, *Telli v. Snipes*, 98 So.3d 1284 (4th Fla DCA 2012) (write-in candidates constitute general election opposition under the constitutional open primary provision).

⁶ Ch. 2007-30, s. 56, LAWS OF FLA.

⁷ 184 So. 3d 504 (Fla. 2016).

⁸ Fla Const., Art. VIII, §1(e); see also, *Francois v. Brinkmann*, 147 So. 3d 613, 615 (Fla 4th DCA 2014), *affd.*, *Francois v. Brinkmann*, 184 S.3d 504 (Fla. 2016), citing, *State v. Grassi*, 532 So.2d 1055, 1056 (Fla. 1988) (constitutional provision regarding the residency requirement for county commissioners requires residency at the time of election).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals section 99.0615 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/2018

Bill Number (if applicable) SB 582

Topic WRITE-IN CANDIDATES

Amendment Barcode (if applicable) _____

Name MARILYN WILLS

Job Title LEAGUE OF WOMEN VOTERS OF FLORIDA MEMBER

Address 2326 RIKENNY DRIVE WEST Phone 852 893-4104
Street

City TALLAHASSEE State FL Zip 32309

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

Representing LEAGUE OF WOMEN VOTERS OF FLORIDA

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

By Senator Rader

29-00350-18

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1 A bill to be entitled
2 An act relating to write-in candidate qualifying;
3 repealing s. 99.0615, F.S., relating to write-in
4 candidate residency requirements; repealing a
5 requirement that all write-in candidates must reside
6 within the district represented by the office sought
7 at the time of qualification; providing an effective
8 date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 99.0615, Florida Statutes, is repealed.
13 Section 2. This act shall take effect upon becoming a law.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 582
FINAL ACTION: Favorable
MEETING DATE: Tuesday, February 20, 2018
TIME: 1:30—3:30 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
VA		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
X		Lee, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/CS/SB 1180

INTRODUCER: Community Affairs Committee; Ethics and Elections Committee; and Senator Steube and others

SUBJECT: County and Municipal Public Officers

DATE: February 20, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	<u>Fav/CS</u>
2.	<u>Present</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1180 requires official travel outside the state, or internationally, by county and municipal public officers to be approved by the governing body of the county or municipality at a regularly scheduled meeting prior to the travel, unless ratified for good cause at the next regularly scheduled meeting. "Good cause" requires a written explanation for why the travel authorization could not be approved in advance. The request for travel authorization must contain all anticipated travel expense details including, but not limited to, means of travel, lodging, and subsistence.

The bill requires all approved travel to be posted on the county's or municipality's website. If a municipality does not have a website, then the information must be sent to the county for it to post on its website. The travel must be posted on the website within 10 days after the date of approval and remain on the website until the end of the next calendar quarter.

The bill does not apply to the county constitutional officers established in Art. VIII, s. 1(d), Fla. Const.

II. Present Situation:

Per Diem and Travel Expenses

The Legislature has largely preempted the area of law addressing per diem and travel expenses.¹ Section 112.061, F.S., establishes the authority to incur travel expenses, and conditions and limitations thereon, reimbursement rates for time spent traveling, per diem and subsistence rates, transportation costs, and certain other authorized expenses. The statute also requires an authorization form and voucher forms. Currently, there are no statutory restrictions on reimbursement of out of state or foreign per diem and travel expenses. There is no requirement that travel or per diem and travel expenses be approved by the whole governing body at a meeting. A county or municipal officer need only file the appropriate forms in order to be reimbursed.

Lodging expenses are reimbursable on an actual cost basis. The rate of reimbursement is the single occupancy rate of the lodging.² There is no requirement that a county or municipal officer's per diem and travel expenses be reported.

Statewide Travel Management System

In Fiscal Year 2016-2017, the General Appropriations Act appropriated \$1,800,000 in recurring General Revenue funding to the Executive Office of the Governor (EOG) to acquire a Statewide Travel Management System (system). The EOG was required to undertake a competitive procurement for the system pursuant to s. 287.057, F.S. Additionally, \$2,800,000 in nonrecurring General Revenue funding was provided to executive branch state agencies and the judicial branch for their portion relating to implementation of the system.³

The system was required to be able to electronically:

- Interface with the Florida Accounting Information Resource Subsystem (FLAIR);
- Interface with the Personnel Information System (People First);
- Generate uniform travel authorization request and travel voucher forms pursuant to s. 112.061, F.S.; and
- Receive approvals for travel.

The system was also required to include search features that query travel information by specific criteria. Additionally, proviso language in the Fiscal Year 2016-2017 General Appropriations Act required EOG and the Legislature to have access to the system for purposes of generating reports on all travel completed by executive branch state agencies and the judicial branch.

The EOG directed the Department of Management Services to become the lead agency on procuring and establishing the system. In Fiscal Year 2017-2018, the General Appropriations Act

¹ This limited preemption applies to the extent that there is no specific exemption in general law, special act, or local law. If there is a conflict between s. 112.061, F.S., and a specific exemption in general law, special act, or local law, then the exemption prevails to the extent of the conflict. *See*, s. 112.061(1)(b), F.S.

² Section 106.07(6)(a)2., F.S.

³ Specific Appropriation 1965A, Ch. 2016-66, L.O.F.

appropriated an additional \$1,800,000 recurring General Revenue funding to the Department of Management Services for the operation and maintenance of the system.⁴

Senate Bill 354 amends s. 112.061, F.S., to expand the application of the Statewide Travel Management System from executive branch state agencies and the judicial branch to “all agencies and the judicial branch.” Section 112.061(2)(a), F.S., defines the term “agency or public agency” to mean any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law.

III. Effect of Proposed Changes:

The bill requires official travel outside the state, or internationally, by county and municipal public officers to be approved by the governing body of the county or municipality at a regularly scheduled meeting prior to the travel, unless ratified for good cause at the next regularly scheduled meeting.⁵ “Good cause” requires a written explanation for why the travel authorization could not be approved in advance. The request for travel authorization must contain all anticipated travel expense details including, but not limited to, means of travel, lodging, and subsistence. The bill requires all approved travel to be posted on the county’s or municipality’s website. If a municipality does not have a website, then the information must be sent to the county for it to post on its website. The travel must be posted on the website within 10 days after the date of approval and remain on the website until the end of the next calendar quarter. These requirements do not apply to the county constitutional officers established in Art. VIII, s. 1(d), Fla. Const.⁶

The bill is effective July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ Specific Appropriation 2718A, Ch. 2017-70, L.O.F.

⁵ Section 112.061(2)(c), F.S., defines a public officer as an individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

⁶ The excluded county officers are the sheriff, the tax collector, the property appraiser, the supervisor of elections, and the clerk of the circuit court.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the bill passes, county and municipal officers will need to seek approval for their out of state and international travel at a regularly scheduled meeting before traveling, unless ratified for good cause at the next regularly scheduled meeting. Additionally, counties and municipalities must post all approved travel information on their websites.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If Senate Bill 354 or similar legislation passes, the requirement in this bill for counties and municipalities to publish approved travel information on its website may be frustrated as such information would be available via the statewide travel management system.

VIII. Statutes Affected:

This bill substantially amends section 112.061 of the Florida Statutes.

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

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

CS/CS by Community Affairs on February 20, 2018:

- Limits the application of the bill to travel outside of the state and international travel. As a result, the bill no longer applies to travel within the state.

CS by Ethics and Elections on February 13, 2018:

The committee substitute differs from the original bill in that it:

- No longer requires campaign and political committee expense reports to be posted on county and municipal websites;
- No longer includes the verbiage specifically authorizing travel expenses to be incurred during the 24 hours prior to, or after, the event for which a public officer is traveling;
- No longer caps the lodging costs eligible for reimbursement at \$120 per day;

- No longer requires the travel expenses to be reported to a local ethics commission or the Florida Commission on Ethics; and
- No longer requires elected municipal officers to file a full and public disclosure of their financial interests pursuant to s. 112.3144, F.S. (they will still be required to file a statement of financial interests pursuant to s. 112.3145, F.S.).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



153576

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/20/2018	.	
	.	
	.	
	.	

The Committee on Community Affairs (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 28 - 30

and insert:

2. For county or municipal public officers requesting authorization to travel, if costs for their travel are anticipated to exceed \$500, such travel must be on the official business

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



153576

11 And the title is amended as follows:
12 Delete line 3
13 and insert:
14 officers; amending s. 112.061, F.S.; requiring that
15 certain



447520

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/20/2018	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brandes) recommended the following:

Senate Substitute for Amendment (153576) (with title amendment)

Delete lines 28 - 30
and insert:

2. For county or municipal public officers requesting authorization to travel outside of the state, or internationally, such travel must be on the official business

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



447520

11 And the title is amended as follows:

12 Delete line 3

13 and insert:

14 officers; amending s. 112.061, F.S.; requiring that
15 certain

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) CS/SB 1180

Topic Security + Personnel Public Safety Council Amendment Barcode (if applicable) _____

Name David B. Murrill

Job Title Mayor

Address 71 Westlawn Drive

Phone 352-229-0477

City Melko State FL Zip 34449

Email mayerlandmellish@smack.com

Speaking: For Against Information

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

Representing County of Duval

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/18

Bill Number (if applicable) 1180

Amendment Barcode (if applicable) _____

Topic County & Municipal Offices

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address RD 688 1757

Street Tallahassee City FL State 32201 Zip

Phone 222 9184 Email rob@ohara.com

Speaking: For Against Information

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

Representing FLA League of Cities

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Ethics and Elections; and Senators Steube
and Brandes

582-03190-18

20181180c1

1 A bill to be entitled
2 An act relating to county and municipal public
3 officers; amending s. 112.061, F.S.; requiring that
4 requests for travel authorization by county or
5 municipal public officers be approved by the governing
6 body of the county or municipality at a regularly
7 scheduled meeting; specifying requirements for such
8 requests; requiring that approved travel be posted on
9 the county's or municipality's website for a specified
10 timeframe; providing an exception for county
11 constitutional officers; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Paragraph (a) of subsection (3) of section
16 112.061, Florida Statutes, is amended to read:
17 112.061 Per diem and travel expenses of public officers,
18 employees, and authorized persons.—
19 (3) AUTHORITY TO INCUR TRAVEL EXPENSES.—
20 (a) All travel must be authorized and approved by the head
21 of the agency, or his or her designated representative, from
22 whose funds the traveler is paid. The head of the agency shall
23 not authorize or approve such a request unless:
24 1. It is accompanied by a signed statement by the
25 traveler's supervisor stating that such travel is on the
26 official business of the state and also stating the purpose of
27 such travel.
28 2. For county or municipal public officers requesting
29 authorization to travel within the state, outside of the state,

Page 1 of 2

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

582-03190-18

20181180c1

30 or internationally, such travel must be on the official business
31 of the county or municipality and must be approved by the
32 county's or municipality's governing body at a regularly
33 scheduled meeting before the officer's travel, unless ratified
34 for good cause at the next regularly scheduled meeting. Good
35 cause requires a written explanation for why the travel request
36 could not be approved in advance. A request for travel
37 authorization must include an itemized list detailing all
38 anticipated travel expenses, including, but not limited to, the
39 anticipated costs of all means of travel, lodging, and
40 subsistence. All travel approved in accordance with this
41 subparagraph must be posted on the county's or municipality's
42 website. If a municipality does not maintain a website, it must
43 request that the applicable county post the approved travel on
44 the county's website. The applicable county must comply with
45 such request. All such approved travel must be posted on the
46 applicable website as soon as practicable, but no later than 10
47 days after approval, and must remain on the website until the
48 end of the next calendar quarter. This subparagraph does not
49 apply to a county constitutional officer, as defined in s. 1(d),
50 Art. VIII of the State Constitution, who is elected by the
51 electors of the county.

52 Section 2. This act shall take effect July 1, 2018.

Page 2 of 2

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

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: CS/SB 1180
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, February 20, 2018
TIME: 1:30—3:30 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS	2/20/2018 1 Amendment 153576		2/20/2018 2 Amendment 447520		2/20/2018 3 Motion to have staff prepare technical AMs	
Yea	Nay		Steube		Brandes		Lee	
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
X		Lee, CHAIR						
7	0		-	RS	RCS	-	FAV	-
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1094

INTRODUCER: Senator Simmons

SUBJECT: Trespass on Airport Property

DATE: February 19, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1094 provides that it is a third degree felony to trespass with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified as specified in the bill. The bill defines the term “operational area of an airport.”

II. Present Situation:

Trespass upon the Operational Area of an Airport

Four incidents reported in the media provide examples of trespassing upon the operational area of an airport. In 2014, a man reportedly breached a fence at the Orlando International Airport and tried to crawl into the wheel well of a parked airplane.¹ That same year, a man reportedly scaled a fence at Tampa International Airport and went onto an active runway.² In March of 2015, a woman reportedly scaled a fence on the perimeter of the Miami-Dade International Airport.³ In June of 2017, a man reportedly entered an airfield owned by the City of Lakeland and jumped onto the wing of an airplane that was preparing to taxi down the runway.⁴

¹ “Arrest at Orlando International Airport” (September 18, 2014), cityoforlando.net, available at

<http://www.cityoforlando.net/police/arrest-at-orlando-international-airport/> (last visited on Feb. 15, 2018).

² Mike M. Ahlers, “Man Jumps Tampa airport fence, taken into custody” (May 19, 2014), CNN, available at

<http://www.cnn.com/2014/05/19/us/florida-airport-fence-jumper/index.html> (last visited on Feb. 15, 2018).

³ Peter D’Oench, “Police: Woman Arrested for Scaling Miami Airport Fence” (March 2, 2015), CBS Miami, available at

<http://miami.cbslocal.com/2015/03/02/police-woman-arrested-for-scaling-miami-airport-fence/> (last viewed on Feb. 15, 2018).

⁴ “Florida man steals van, tries to board airplane in Lakeland” (June 23, 2017), WFTS Tampa Bay, available at

<https://www.abcactionnews.com/news/region-polk/lakeland/florida-man-steals-van-tries-to-board-airplane-on-runway-in-lakeland> (last visited on Feb. 15, 2018).

Florida Trespassing Law

Florida law does not specifically punish trespassing upon the operational area of an airport,⁵ though such trespassing could be charged and punished under s. 810.09, F.S., relating to trespass on property other than a structure or conveyance. Further, s. 901.15(14), F.S., authorizes a law enforcement officer to make a warrantless arrest when there is probable cause to believe that the person has committed trespass in a secure area of an airport when signs are posted in conspicuous areas of the airport which notify that unauthorized entry into such areas constitutes a trespass and specify the methods for gaining authorized access to such areas. An arrest under this subsection may be made on or off airport premises.

Section 810.09(1)(a) and (2)(a), F.S., provides that a person commits the offense of trespass on property other than a structure or conveyance, a first degree misdemeanor,⁶ if the person, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation;⁷ or
- If the property is the unenclosed curtilage⁸ of a dwelling⁹ and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.

Section 810.09(2)(b), F.S., provides that it is a first degree misdemeanor if a person defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance.

Generally, trespass on property other than a structure or conveyance is a misdemeanor. However, such trespass is a third degree felony¹⁰ if a person is armed with a firearm or other dangerous weapon during the commission of such trespass¹¹ or if such trespass is upon specified types of property. For example, it is a third degree felony to trespass on a designated construction site,

⁵ Federal law prohibits a person from knowingly and willfully entering, in violation of specified federal security requirements, an aircraft or an airport area that serves an air carrier or foreign air carrier. 49 U.S.C. s. 46314(a). A violation is punishable by fine and imprisonment of not more than one year. 49 U.S.C. s. 46314(b)1. However, a person committing this violation with intent to evade security procedures or restrictions or with intent to commit, in the aircraft or airport area, a federal or state felony, is subject to a fine, imprisonment for not more than 10 years, or both. 42 U.S.C s. 46314(b)(2).

⁶ A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

⁷ "Cultivated land" means land which has been cleared of its natural vegetation and is presently planted with a crop, orchard, grove, pasture, or trees or is fallow land as part of a crop rotation. Section 810.011(6), F.S.

⁸ "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. Section 810.09(1)(b), F.S.

⁹ "Dwelling" means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. Section 810.011(2), F.S.

¹⁰ A third degree felony is punishable by up to five years in prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

¹¹ Section 810.09(2)(c), F.S.

commercial horticulture property, and agricultural chemical manufacturing facility.¹² The protected property must have a posted sign that contains specific language identifying the property and indicating that trespass on the property is a felony.¹³

III. Effect of Proposed Changes:

The bill amends s. 810.09, F.S., relating to trespass on property other than a structure or conveyance, to provide that it is a third degree felony¹⁴ to trespass with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway,¹⁵ taxiway,¹⁶ ramp, or apron area,¹⁷ and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the following manner:

THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND
ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY.

The bill defines the term “operational area of an airport” as any portion of an airport to which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

The bill takes effect October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² Section 810.09(2)(d), (e), and (i), F.S.

¹³ *Id.*

¹⁴ *Supra*, n. 10.

¹⁵ A “runway” is “[a] defined rectangular area on a land aerodrome prepared for the landing and take-off of aircraft.” *Runway Safety Team Handbook*, Second Ed. (unedited version) (June 2015), p. 5, International Civil Aviation Organization, available at <https://www.icao.int/safety/RunwaySafety/Documents%20and%20Toolkits/ICAO%20RST%20Handbook%202nd%20Edition%202015%20REV2.pdf> (last visited on Feb. 15, 2018).

¹⁶ A “taxiway” is “any surface area of an airport used for taxiing airplanes to and from a runway, parking apron, terminal, etc.” Definition of “taxiway,” Dictionary.com, available at <http://www.dictionary.com/browse/taxiway> (last visited on Feb. 15, 2018).

¹⁷ An “apron” or “ramp” is “[a] defined area on an airport intended to accommodate aircraft for purposes of loading or unloading passengers or cargo, refueling, parking, and maintenance.” Advisory Circular, No: 120-57A (Dec. 19, 1996), p. 2, Federal Aviation Administration, available at: https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC%20120-57A.pdf (last visited on Feb. 15, 2018).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may financially benefit airports if it reduces instances of trespassing on airport property and if there are currently costs to airports associated with responding to such trespassing.

C. Government Sector Impact:

The Criminal Justice Impact Conference has determined that the bill will have a “positive insignificant” prison bed impact (an increase of 10 or fewer prison beds).¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 810.09 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁸ Email from staff of the Legislature’s Office of Economic and Demographic Research, dated Feb. 6, 2018 (on file with the Senate Committee on Criminal Justice).

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Bill Number (if applicable) 1094

Amendment Barcode (if applicable) _____

Topic _____

Name BERRY PAUL

Job Title _____

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Printer Gordon August

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2-20-18 Bill Number (if applicable) 1094

Topic TRUCKS ON HIGHWAY PROPER Amendment Barcode (if applicable) _____

Name OSCAR ANDERSON

Job Title _____

Address 28 W. CERRITA BLVD

Street DRUMS City FL State _____ Zip _____

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

Representing STAFFORD AVIATION ANASTAS RIVY Email _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2/20/2018

Bill Number (if applicable) SB 1094

Amendment Barcode (if applicable) _____

Topic Trespass on Airport Property

Name Lisa Waters

Job Title Florida Airports Council / CEO

Address 325 John Knox Rd. Suite 1103

Street Tallahassee City FL State 32303 Zip

Phone 861-602 3624

Email lw@floridaairports.org

Speaking: For Against Information

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

Representing Florida Airports Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date 2.20.16 Bill Number (if applicable) 1894

Topic Traveling on airport property Amendment Barcode (if applicable) _____

Name Gina Evans

Job Title Director of Government Relations

Address RD Box 20251 Phone 8135750595

City Tampa State FL Zip 33602

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

Representing Tampa International Airport Email gevens@tampairport.com

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

By Senator Simmons

9-00857-18

20181094__

A bill to be entitled

An act relating to trespass on airport property; amending s. 810.09, F.S.; providing enhanced criminal penalties for a trespass upon the operational area of an airport with specified intent if specified signage is posted; defining the term "operational area of an airport"; providing an effective date.

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

Section 1. Paragraph (j) is added to subsection (2) of section 810.09, Florida Statutes, and paragraph (a) of subsection (1) of that section is republished, to read:

810.09 Trespass on property other than structure or conveyance.—

(1) (a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass,

commits the offense of trespass on property other than a structure or conveyance.

(2)

(j)1. The offender commits a felony of the third degree,

Page 1 of 2

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

9-00857-18

20181094__

punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area, and the property trespassed upon is the operational area of an airport that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED OPERATIONAL AREA OF AN AIRPORT AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

2. For purposes of this paragraph, the term "operational area of an airport" means any portion of an airport to which access by the public is prohibited by fences or appropriate signs, and includes runways, taxiways, ramps, apron areas, aircraft parking and storage areas, fuel storage areas, maintenance areas, and any other area of an airport used or intended to be used for landing, takeoff, or surface maneuvering of aircraft.

Section 2. This act shall take effect October 1, 2018.

Page 2 of 2

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

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 1094
FINAL ACTION: Favorable
MEETING DATE: Tuesday, February 20, 2018
TIME: 1:30—3:30 p.m.
PLACE: 301 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
X		Lee, CHAIR						
7	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Community Affairs Committee Judge:

Started: 2/20/2018 1:34:53 PM

Ends: 2/20/2018 3:27:23 PM

Length: 01:52:31

1:35:21 PM Meeting called to order by Chairman Lee
1:35:28 PM Roll Call by CAA Shirlyne Everette
1:35:35 PM Quorum announced
1:35:40 PM Opening comments by Senator Lee
1:35:49 PM Tab 1 - CS/SB 1262, Election Dates for Municipal Office by Senator Hutson
1:35:55 PM Senator Hutson explains the bill
1:36:19 PM Chairman Lee calls for questions on the bill
1:36:28 PM Chairman Lee states that there is a handwritten amendment
1:36:45 PM Senator Simmons explains that it is an amendment to the amendment
1:37:01 PM Chairman Lee clarifies there is a main amendment and he is the sponsor
1:37:13 PM Vice-Chair Bean takes over the chair
1:37:24 PM Senator Simons explains the handwritten amendment to the amendment
1:38:21 PM Vice-Chair Bean accepts the chair and asks for clarification on the amendment
1:38:35 PM Chairman Lee clarifies
1:39:36 PM Vice-Chair Bean moves to debate on handwritten amendment to the amendment
1:39:48 PM Vice-Chair Bean with question
1:40:03 PM Senator Simmons responds
1:41:15 PM Handwritten amendment is adopted
1:41:36 PM Senator Lee explains the main amendment-Barcode# 146136
1:42:39 PM Main amendment Barcode 146136 is adopted
1:42:46 PM Back on bill as amended
1:42:47 PM Vice-Chair Bean calls for further explanation of bill
1:43:08 PM Senator Hutson responds
1:44:08 PM Appearance cards
1:44:21 PM Drinda Merritt, Mayor, Town of Inglis waives in opposition
1:44:25 PM Rebecca O'Hara, Deputy General Counsel - Florida League of Cities speaks in opposition
1:44:37 PM Chairman Lee calls for questions
1:48:08 PM Senator Perry with questions
1:48:25 PM Ms. O'Hara responds
1:48:49 PM Senator Perry with follow-up
1:49:00 PM Ms. O'Hara responds
1:49:26 PM Senator Perry with follow-up
1:49:35 PM Ms. O'Hara responds
1:49:41 PM Vice-Chair Bean with comments
1:49:50 PM Ms. O'Hara responds
1:49:58 PM Senator Perry with follow-up
1:50:04 PM Ms. O'Hara responds
1:50:17 PM Vice-Chair Bean with comments
1:50:27 PM Marilyn Wills, League of Women Voters of Florida waives in opposition
1:50:37 PM Gil Ziffer, Tallahassee City Commission/ President Florida League of Cities waives in opposition
1:50:58 PM David Ramba, FSASE, speaks for information
1:51:43 PM Senator Perry with question
1:51:52 PM Mr. Ramba responds
1:52:33 PM Senator Hutson closes on bill
1:53:09 PM Roll call on CS/CS/SB 1262
1:53:27 PM Bill is reported favorably
1:53:42 PM Chairman Lee resumes the chair
1:53:45 PM Tab 4- CS/SB 1180, County and Municipal Public Officers by Senator Steube
1:53:59 PM Senator Steube explains bill
1:54:33 PM Chairman Lee takes up Amendment Barcode 153576 by Senator Steube
1:54:39 PM Senator Steube explains the amendment
1:54:52 PM Handwritten Substitute Amendment by Senator Brandes

1:55:14 PM Senator Brandes explains the handwritten substitute amendment
1:56:24 PM Chairman Lee comments
1:56:38 PM Senator Steube with comments
1:57:03 PM Chairman Lee with comments
1:57:22 PM Senator Steube with comments
1:57:28 PM Chairman Lee with comments
1:57:44 PM Handwritten substitute amendment is adopted
1:58:02 PM Appearance by Rebeccah O'Hara, Deputy General Counsel, Florida League of Cities
1:59:37 PM Vice-Chair Bean with question
1:59:44 PM Ms. O'Hara responds
2:00:05 PM Chairman Lee with comments
2:00:24 PM Drinda Merritt, Mayor, Town of Inglis waives in opposition
2:01:15 PM Senator Steube closes on bill
2:01:33 PM Roll call on CS/SB 1180
2:01:41 PM Bill reported favorably
2:02:03 PM Tab 3 SB 582, Write-in Candidate Qualifying by Senator Rader
2:02:09 PM Senator Rader explains the bill
2:02:33 PM Chairman Lee with question
2:02:51 PM Senator Rader responds
2:03:09 PM Chairman Lee with comments
2:03:25 PM Senator Rader with comments
2:03:56 PM Marilyn Wills, League of Women Voters waives in support
2:04:09 PM Senator Rader waives close
2:04:12 PM Roll call on SB 582
2:04:19 PM Bill reported favorably
2:04:29 PM Tab 2- SB 804 Possession of Real Property by Senator Passidomo
2:04:39 PM Senator Passidomo explains the bill
2:09:02 PM Chairman Lee with question
2:09:29 PM Senator Passidomo responds
2:10:49 PM Chairman Lee with question
2:12:14 PM Senator Passidomo responds
2:13:31 PM Chairman Lee with follow-up
2:14:14 PM Senator Passidomo responds
2:15:08 PM Chairman Lee with follow-up
2:15:14 PM Senator Passidomo responds
2:15:54 PM Appearance by Heather Christman, Walton County Assistant City Attorney in opposition
2:18:10 PM Chairman Lee with question
2:18:38 PM Ms. Christman responds
2:18:54 PM Chairman Lee with question
2:18:59 PM Ms. Christman responds
2:19:25 PM Chairman Lee with follow-up
2:20:54 PM Ms. Christman responds
2:22:07 PM Chairman Lee with question
2:23:14 PM Ms. Christman responds
2:23:21 PM Chairman Lee with follow-up
2:23:58 PM Ms. Christman responds
2:24:12 PM Senator Simmons with question
2:25:21 PM Ms. Christman responds
2:25:36 PM Senator Simmons with follow-up
2:26:40 PM Ms. Christman responds
2:27:06 PM Senator Simmons with follow-up
2:28:28 PM Ms. Christman responds
2:28:57 PM Tony Anderson, Walton County Commissioner speaks in opposition
2:32:56 PM Vice-Chair Bean with question
2:33:16 PM Mr. Anderson responds
2:33:28 PM Vice-Chair Bean with follow-up
2:33:32 PM Mr. Anderson responds
2:34:29 PM Vice-Chair Bean with follow-up
2:34:35 PM Mr. Anderson responds
2:35:13 PM Vice-Chair Bean with question
2:35:17 PM Mr. Anderson responds
2:35:40 PM Chairman Lee with question

2:35:54 PM Mr. Anderson responds
2:37:07 PM Senator Brandes with question
2:37:15 PM Mr. Anderson responds
2:38:17 PM Chairman Lee with question
2:38:36 PM Mr. Anderson responds
2:38:48 PM Chairman Lee with follow-up
2:38:57 PM Mr. Anderson responds
2:39:31 PM David Cullen Sierra Club Florida waives in opposition
2:39:48 PM Holly Parker Curry, Florida Regional Manager, Surfrider Foundation speaks against
2:41:59 PM Chairman Lee with question
2:42:24 PM Ms. Curry responds
2:42:57 PM Senator Brandes with question
2:43:52 PM Ms. Curry responds
2:44:15 PM Senator Brandes with follow-up
2:44:38 PM Ms. Curry responds
2:45:20 PM Senator Brandes with follow-up
2:45:41 PM Chairman Lee with comments
2:45:46 PM Senator Simmons with question
2:46:00 PM Ms. Curry responds
2:46:09 PM Senator Simmons with follow-up
2:46:41 PM Ms. Curry responds
2:47:16 PM Senator Simmons with follow-up
2:48:16 PM Ms. Curry responds
2:48:40 PM Senator Simmons with further question
2:48:55 PM Ms. Curry responds
2:48:58 PM Senator Simmons with follow-up
2:49:36 PM Ms. Curry responds
2:49:53 PM Senator Simmons with follow-up
2:50:13 PM Ms. Curry responds
2:50:25 PM Senator Simmons with follow-up
2:50:44 PM Senator Brandes with motion for vote time certain
2:51:01 PM Jay Liles, Florida Wildlife Federation
2:52:58 PM Vice-Chair Bean with question
2:53:08 PM Donna R. Christie, Professor Emerita, FSU College of Law speaks against
2:59:40 PM Vice-Chair Bean with question
2:59:46 PM Ms. Christie responds
3:00:54 PM Pete Dunbar, Real Property, Probate & Trust Law waives in support
3:01:08 PM Gary Hunter Attorney, Stop the Beach Renourishment, speaks in favor
3:05:38 PM Senator Simmons with question
3:06:51 PM Mr. Hunter responds
3:08:27 PM Vice-Chair Bean with question
3:08:58 PM Mr. Hunter responds
3:10:44 PM Chairman Lee with question
3:11:20 PM Mr. Hunter responds
3:11:41 PM Chairman Lee with follow-up
3:12:01 PM Mr. Hunter responds
3:12:17 PM Kelly Mallette, Rosemary Beach Property Owners Association Inc., speaks in support
3:12:23 PM Dan Peterson, James Madison Institute speaks in support
3:15:11 PM Chairman Lee comments
3:16:42 PM Senator Simmons in debate
3:17:46 PM Vice-Chair Bean in debate
3:18:32 PM Senator Passidomo closes on the bill
3:21:17 PM Roll call on SB 804
3:21:32 PM Bill reported favorably
3:21:55 PM Tab 5-SB 1094 Trespassing on Airport Property by Senator Simmons
3:22:04 PM Senator Simmons explains the bill
3:23:11 PM Gina Evans, Tampa International Airport, in support
3:23:27 PM Lisa Waters, CEO - Florida Airports Council, speaks in support
3:24:09 PM Senator Brandes with question
3:25:09 PM Ms. Waters responds
3:25:21 PM Chairman Lee with comments
3:25:32 PM Jerry Paul, Punta Gorda Airport in support

3:25:44 PM Senator Simmons closes on bill
3:26:00 PM Roll call on SB 1094
3:26:10 PM Bill reported favorably
3:26:24 PM Senator Brandes with motion to be shown voting yes on tab 3
3:26:31 PM Chairman Lee with comments
3:26:31 PM Senator Campbell moves to adjourn
3:27:15 PM Meeting adjourned