

Tab 1	CS/SB 46 by JU, Galvano ; (Similar to CS/H 06545) Relief of Ramiro Companioni, Jr., by the City of Tampa						
Tab 2	SB 48 by Gibson ; (Similar to CS/H 06523) Relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board						
Tab 3	SB 532 by Lee (CO-INTRODUCERS) Hutson, Mayfield ; (Compare to CS/H 00761) Public Records/Voters and Voter Registration						
Tab 4	CS/SB 808 by EP, Baxley ; (Similar to CS/CS/CS/H 00705) Public Records/Surplus Lands						
Tab 5	SB 1042 by Brandes (CO-INTRODUCERS) Passidomo ; (Similar to CS/H 00771) Notaries Public						
698574	D	S	RCS	GO, Brandes	Delete everything after	02/13 12:00 PM	
Tab 6	CS/SB 1650 by CF, Montford (CO-INTRODUCERS) Book ; (Similar to H 01105) Child Welfare						
301180	A	S	RCS	GO, Montford	Delete L.103 - 684:	02/13 12:01 PM	
Tab 7	CS/SB 1850 by HP, Stewart ; (Similar to CS/H 01317) Public Records/Photograph, Video, Audio Recording of an Autopsy Held by a Medical Examiner						
Tab 8	CS/SB 1880 by BI, Broxson (CO-INTRODUCERS) Mayfield ; (Similar to CS/H 01127) Public Records/Security of Data and Information Technology in Citizens Property Insurance Corporation						
286384	A	S	RCS	GO, Broxson	Delete L.89 - 90:	02/13 12:01 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Baxley, Chair
Senator Mayfield, Vice Chair

MEETING DATE: Tuesday, February 13, 2018

TIME: 10:00 a.m.—12:00 noon

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Baxley, Chair; Senator Mayfield, Vice Chair; Senators Galvano, Rader, Rouson, Stargel, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 46 Judiciary / Galvano (Similar CS/H 6545)	Relief of Ramiro Companioni, Jr., by the City of Tampa; Providing for the relief of Ramiro Companioni, Jr., by the City of Tampa; providing for an appropriation to compensate Mr. Companioni for injuries sustained as a result of the negligence of an employee of the City of Tampa, etc. SM JU 01/30/2018 Fav/CS GO 02/13/2018 Favorable RC	Favorable Yeas 5 Nays 0
2	SB 48 Gibson (Similar CS/H 6523)	Relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; Providing for the relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; providing for an appropriation to compensate Ashraf Kamel and Marguerite Dimitri for the wrongful death of their minor child, Jean A. Pierre Kamel, as a result of the negligence of the Palm Beach County School Board, etc. SM JU 01/18/2018 Favorable GO 02/13/2018 Favorable RC	Favorable Yeas 7 Nays 0
3	SB 532 Lee (Compare CS/H 761)	Public Records/Voters and Voter Registration; Providing an exemption from public records requirements for information concerning preregistered voter registration applicants who are minors; providing for future legislative review and repeal; providing a statement of public necessity, etc. EE 02/06/2018 Favorable GO 02/13/2018 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, February 13, 2018, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 808 Environmental Preservation and Conservation / Baxley (Similar CS/CS/H 705, Compare H 703, Linked S 806)	Public Records/Surplus Lands; Providing an exemption for valuations, certain records, and sales offers for sales related to surplus lands; authorizing disclosure of such records under certain circumstances; providing a statement of public necessity, etc. EP 01/16/2018 Temporarily Postponed EP 02/05/2018 Fav/CS GO 02/13/2018 Favorable RC	Favorable Yeas 5 Nays 0
5	SB 1042 Brandes (Similar CS/H 771)	Notaries Public; Revising provisions relating to use of the office of notary public; requiring electronic signatures to include access protection; providing that a person applying for a notary public commission must provide proof of identity to the Executive Office of the Governor, rather than the Department of State, upon request; specifying the manner by which an online notary public must verify the identity of a principal or a witness, etc. JU 01/30/2018 Favorable GO 02/13/2018 Fav/CS RC	Fav/CS Yeas 5 Nays 1
6	CS/SB 1650 Children, Families, and Elder Affairs / Montford (Similar H 1105)	Child Welfare; Requiring cooperation between certain parties and the court to achieve permanency for a child in a timely manner; prohibiting the Department of Children and Families from releasing the names of certain persons who have provided information during a protective investigation except under certain circumstances; requiring the court to advise the parents during an adjudicatory hearing of certain actions that are required to achieve reunification; requiring a case plan for a child receiving services from the department to include a protocol for parents to achieve reunification with the child; requiring the court to enter a written order of disposition of the child following termination of parental rights within a specified timeframe, etc. CF 01/29/2018 Fav/CS GO 02/13/2018 Fav/CS RC	Fav/CS Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Tuesday, February 13, 2018, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1850 Health Policy / Stewart (Similar CS/H 1317)	Public Records/Photograph, Video, Audio Recording of an Autopsy Held by a Medical Examiner; Providing that a legal guardian shall have access, under certain circumstances, to a photograph or video or audio recording of an autopsy held by a medical examiner; providing that a legal guardian shall be given reasonable notice of, a copy of, and reasonable notice of an opportunity to be present and heard at any hearing on a petition to view or make a copy of such photograph or recording under certain circumstances; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. HP 01/30/2018 Fav/CS GO 02/13/2018 Favorable RC	Favorable Yeas 5 Nays 0

8	CS/SB 1880 Banking and Insurance / Broxson (Similar CS/H 1127)	Public Records/Security of Data and Information Technology in Citizens Property Insurance Corporation; Providing an exemption from public records requirements for certain records held by the Citizens Property Insurance Corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; providing for future legislative review and repeal; providing a statement of public necessity, etc. BI 01/30/2018 Fav/CS GO 02/13/2018 Fav/CS RC	Fav/CS Yeas 6 Nays 0
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Secretary of Management Services			
9	Rock, Erin Marie-Geraghty ()	Pleasure of Governor	Recommend Confirm Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/25/18	SM	Unfavorable
1/31/18	JU	Fav/CS
2/12/18	GO	Favorable
	RC	

January 25, 2018

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 46** – Judiciary Committee and Senator Bill Galvano
HB 6545 – Representative David Santiago
Relief of Ramiro Companioni, Jr.

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$17,828,800.00 OF LOCAL MONEY BASED ON A JURY AWARD AGAINST THE CITY OF TAMPA TO COMPENSATE RAMIRO COMPANIONI FOR THE PERMANENT INJURIES HE SUFFERED IN A COLLISION WITH A CITY WATER DEPARTMENT TRUCK.

FINDINGS OF FACT:

Generally - The Accident

On November 22, 1996, the City of Tampa Water Department directed three employees, each driving a separate department pick-up truck, to East Hillsborough Avenue for the purpose of restoring the access to water valve boxes, which had been paved over, along that road. Three trucks were parked eastbound one behind the other in the far right lane of E. Hillsborough Ave. just before Rose Lane, which intersects from the south, and between N. 48th and 50th Streets, intersecting from the north. East Hillsborough Ave. is a six-lane thoroughfare with an additional center lane designated for left turns from both directions.

According to the drivers' depositions taken December 1, 1998, the City trucks were parked in the outside lane in the

following order at the water valve: farthest west, at the rear of the line of trucks, was a truck driven by Mr. John Allen which pulled a large arrow sign that was set up to warn oncoming cars to merge left into the inner lanes. In front of the truck pulling the sign was a truck carrying tools and supplies driven by Mr. Foster. In front of Mr. Foster's truck was the water valve, and in front of the water valve was Mr. Faustino Pierola's truck which contained asphalt for the road repair.

The trial testimony of the drivers appears to conflict with the depositions as to the order of the two trucks driven by Mr. Foster and Mr. Pierola. At the trial, Mr. Pierola stated that he was in the middle truck, although he appeared to be uncertain. Mr. Pierola stated "okay -- I took off -- I think Foster -- wait a second -- I took off, okay, everything was clear and Foster was right beside me." Mr. Foster did not testify at the trial.

Just before noon, with repairs on the water valve completed, the crew of three left for lunch and intended to turn left onto North 50th Street. Mr. Allen, the driver of the rear truck pulling the arrow sign, testified that he pulled out first into the middle lane, going around the first two trucks, and returning to the outside lane as he was going to turn into a vacant lot to take down the arrow sign. While Mr. Allen was far enough down E. Hillsborough Ave. that it appears his truck did not factor into the accident, all drivers testified that the arrow sign was still erect and flashing.

In both the deposition and at trial, Mr. Pierola stated that before he pulled out from the outside lane, he checked his mirrors, looked over his shoulder, and seeing each of the eastbound lanes clear, pulled into the middle lane, straightened, looked again and seeing that it was clear, pulled into the inside lane. Mr. Pierola stated that he was traveling up to 20 to 25 miles per hour. During this time, all witness stated that no traffic was sighted traveling east on E. Hillsborough Ave. The posted speed limit for E. Hillsborough Ave. is 45 mph.

Just after entering into the inside lane and approximately 185 feet from the water valve, Mr. Pierola heard a crash and saw yellow pieces of plastic fly about. Thinking that a barricade fell from his truck, he immediately moved to the center turn

lane and stopped within 116 feet. When he looked back, he saw a man lying in the street, bleeding profusely. When he exited his truck, he saw a motorcycle wedged underneath the back of the truck. The driver of the motorcycle was Mr. Ramiro Companioni, Jr. He suffered severe and permanent injury as a result of the accident.

Accident Details

Mr. Companioni stated that he could not recall much about the accident. In his deposition dated December 1, 1998, he stated he was travelling 40 to 45 mph on the inside lane of E. Hillsborough Ave. He did not recall much traffic. Beyond that, Mr. Companioni stated that he could vaguely recall what happened in the accident. He further stated that it would be unfair to tell what he remembered about the accident due to the tremendous medication he was under after the accident. The last thing he remembered was turning left onto Hillsborough.

According to the police report, Mr. Pierola travelled 116.5 feet from the time he was hit by the motorcycle until he came to a complete stop in the center turn lane. He travelled straight in the inside lane for approximately 54 feet before angling into the inside lane and travelled approximately 62 feet before coming to a complete stop. The police photos show scrape marks in the road made by the motorcycle being dragged under the truck which confirm Mr. Pierola travelled straight a distance in the middle lane before angling into the center turn lane. From the police report and the information provided by the City's expert, Dr. Charles Benedict, it can be determined that Mr. Pierola traveled east approximately 183 feet, during which he left his parking space and merged into the middle, then inside lanes.

Both in the depositions and at trial, each of the City drivers stated that they never saw a motorcycle on E. Hillsborough Ave. when initially pulling out or when changing lanes. Mr. Foster stated that he did see the motorcycle just as it hit the truck.

Expert Testimony

At the trial, both parties presented experts to reconstruct the accident.

Claimant's Expert: The Claimant offered Mr. Dennis Payne, an expert accident reconstruction specialist. He was a former Highway Patrolman and had attended numerous reconstruction courses at the Department of Highway Safety and Motor Vehicles, community colleges, and universities and attended other courses in conjunction with the private sector. He began reconstruction work as a private consultant in 1982. Mr. Payne stated he used Mr. Companioni's medical records, police photos of the City truck and of the accident, and an inspection of the motorcycle to reconstruct the accident.

Mr. Payne stated that the difference in speed between the truck and the motorcycle when it hit was 20 mph. He based this decision on the "way the bumper had been twisted." He "looked at the damage to the motorcycle . . . at the injury pattern, and the fact that the rider survived the collision." Mr. Payne discussed a federal government standard of a 30 mph barrier crash which is what is estimated the human body can withstand and still live. Because a motorcycle doesn't have the protections, Mr. Payne concluded that the difference in speed of travel between Mr. Companioni and the city truck was 20 miles per hour was reasonable because humans can survive that force and Mr. Companioni survived the crash. If Mr. Pierola was travelling 25 mph, then, stated Mr. Payne, Mr. Companioni was travelling 45 mph.

The police photographs show damage to the left half to the City truck's rear bumper. Mr. Payne opines that the damage is consistent with the motorcycle travelling in a straight line and the truck being at an angle when the motorcycle hit it.

City of Tampa's Expert: The City offered Dr. Charles Benedict as their expert witness. Dr. Benedict has a Bachelor's degree in mathematics with an engineering science minor from Florida State University (1963) and a Bachelors, Masters, and PhD in mechanical engineering with an emphasis on kinematics (kinematics is the study of motion of the path that something follows) and dynamics machine design (the study of the forces through acceleration or impact or whatever that cause the body or something such as the body to move in a given direction) from University of Florida (1971). Dr. Benedict is a registered engineer in Florida and Georgia (and was applying to South Carolina and Alabama). He has been a consultant since 1971. He participated in

motor dynamics training at Watkins Glenn, NY, riding numerous motorcycles, and has reconstructed motorcycle accidents for 35 years.

Dr. Benedict relied on depositions, accident reports, and photographs, and conducted a reconstruction on E. Hillsborough Ave. He stated he used the physical evidence of the accident and worked backward to determine what happened. At trial Dr. Benedict provided the following conclusions:

- Based on the reconstruction work, the time from when the trucks left their standing position to the point of impact was approximately 19 seconds.
- The motorcycle was traveling somewhere around 65 mph or faster and it was in the middle lane coming up behind the trucks.
- On E. Hillsborough Ave. there is a dip in the road where a motorcycle would not be visible nor could the rider see very far down the road. Once on the straightaway, visibility from that dip to the point of impact is 1050 feet.
- The motorcycle would have been in the dip west of where the accident occurred and would not be visible to the trucks at the time they were initially pulling out.
- Travelling the 1050 feet at 45 mph, a driver has 16 seconds to see the City trucks and react before time of impact. Travelling at 65 mph, a driver has 11 seconds.
- As the motorcycle approached the back of the trucks in the middle lane, it veered left toward the inside lane to go around the trucks at the same time that the truck in the front moved into the inside lane.
- The motorcycle was leaned over to the left as it was going around the trucks and it was also in the process of slowing down.
- Mr. Companioni thrust down on his brakes and his bike was going faster than the wheels were turning. He was veering to the left to get around the truck, but before he came back to the right, he released the rear brake causing an opposite reaction of the bike (known as "highsiding") to come back upright and throw Mr. Companioni off into the back end of the tailgate and the bumper.
- The motorcycle continued the highside rotation to come down on its right side with its wheels facing the

truck, caved in the bumper, and began sliding underneath the left side of the truck and at the same time swiveling front wheel first, to where the truck drug the motorcycle to a stop.

- The motorcycle was going 55 mph when it struck the truck, and the truck was going 20 mph. The difference in velocity was 35 mph, which was consistent with the damage to the truck.
- Had Mr. Companioni been going 40 to 45 miles per hour, he would have been able to avoid the accident completely. If he stayed in the middle lane and applied brakes to the near maximum for that motorcycle, he could have slowed down to 20 mph before he got to the truck and avoided the accident.

At the special master hearing, Dr. Benedict further explained his interpretation of the evidence.

- In a police photograph of the back tire, a striation about 20 inches long and just left of center can be observed (this measurement was confirmed by Mr. Payne). Dr. Benedict states that this is an indication of the motorcycle being in a slight left turn and the back wheel turning very slowly, not locked. Mr. Payne stated this was caused by the tow truck hauling the motorcycle onto its truck while the wheel was in gear. However, the police photograph shows the striation present when the motorcycle was under the truck.
- Photographs of the muffler exhibited striations at angles consistent with sliding wheels first on its right side. At the point where the muffler enters the engine, the area shows evidence of pivoting (as it hits and slides under the truck) and then being ground down as the motorcycle front wheel wedges under the truck. At final rest, photographs show the muffler no longer touching the ground. Photographs also show striation in the road bed consistent with the grinding of the muffler end.
- Police photographs of the road bed area show the truck and motorcycle traveling a short distance in the same forward direction, just before and as the motorcycle hits the truck, and then moving to the left into the center turn lane.
- Police photographs of the truck tailgate indicate that Mr. Companioni was thrown off his motorcycle before he hit. Marks on the tailgate appeared to be a glove

print and indent made by the helmet. Injuries to Mr. Companioni were consistent with hitting the bumper of the truck.

- Dr. Benedict refuted claims that the motorcycle struck the truck head-on as the front tire was not damaged. He also refuted the idea that the motorcycle slid down on its right side as the driver would have road rash and grinding injuries.

Injuries

Mr. Companioni suffered devastating injuries. Upon arrival at the Trauma Unit at Tampa General, it was noted the Mr. Companioni's rectum was "fileted" through the scrotum. The primary physician was Dr. Michael Albrink, a board certified trauma and general surgeon who teaches at USF Medical School. Dr. Albrink testified that, "his legs were ripped apart, like breaking a wish bone apart." He suffered multiple open fractures of the pelvis, shoulder, elbow, lumbar vertebrae, and right knee. He sustained a bowel injury and a ruptured urethra. He lost portions of his colon and suffered massive bleeding and damage to his peritoneal cavity and organs. His anus was ripped and sphincter ruined, which has resulted in a permanent colostomy. He injured the nerves to his genitals, which destroyed sexual function. Both the femoral artery and sciatic nerve were severely injured. Mr. Companioni was in an induced coma in the ICU for approximately a month. He remained in ICU and the floor at Tampa General until the end of February 1997, and then was transferred to its inpatient rehabilitation center before being released to home health care months later. He battled with numerous complications, infections, and bed sores, and has had more than twenty surgeries since sustaining his injury.

Mr. Companioni underwent a tracheostomy and has tracheal scarring, and now has frequent difficulty with swallowing. With portions of his colon missing and the intestinal damage, his diet is limited. He has had hernias in his abdomen and is at risk to develop bowel blockages. He must use a colostomy bag and wear it at all times. He has bladder spasms and incontinence. He also has frequent, excruciatingly painful kidney stones. His core muscles were ripped apart in the crash and were further injured due to the multiple surgeries, leaving his core muscles scarred, atrophied, and weakened. His four lower vertebrae and coccyx have been fused.

Mr. Companioni has suffered life-long, severely disabling injuries to his right hip and leg. His right hip is fused, so it is without motion and he has limited range of motion in his knee and his ankle. One-third of the right quadriceps has been removed. Dr. Albrink stated that he has arthritis and bone calcification in his right knee and hip joint so severe that he may someday be forever wheelchair bound. A Greenfield filter was surgically inserted to prevent deep vein blood clots. Dr. Albrink testified that “[H]e’s at risk to have problems where he could lose his leg . . . [d]ue to any number of combinations of things. Lack of innervation most of all.”

Mr. Companioni wears a right leg brace, mostly for support and stability. He has constant burning pain throughout the right hip, buttocks, and all the way down his right leg. Due to his dependence on a cane, he has developed carpal tunnel syndrome in his left wrist. His current medical team includes a primary care/general internist, and specialists in general surgery, orthopedic surgery, gastroenterology, urology, podiatry, and occasionally neurology.

Mr. Companioni’s quality of life has been catastrophically affected. He was an active, healthy man in his thirties. He was in top physical condition and served honorably in the Naval Reserve. He will never have children and meaningful female companionship is very difficult.

Although Dr. Albrink said at trial that Mr. Companioni’s resulting injuries could reduce his life expectancy, the life table provides that he has a life expectancy of almost 44 years from the date of the accident (until 2040).

Economic Damages

Mr. Companioni is totally and permanently disabled. He had been an executive chef and ice sculptor, sometimes working up to 80 hours a week. He had earned \$45,000 plus benefits while working for a year in Mexico, and was earning \$30,000 annually just before the accident. He had hopes of one day opening his own restaurant. In addition, Mr. Companioni was in the Naval Reserves, earning \$200 to \$300 per week (averaging \$13,000 annually). He has since retired from the Reserves as he was unable to continue service.

Mr. Companioni currently receives \$980 monthly in Social Security disability and is eligible for Medicare benefits. Although difficult, he has tried to continue working part-time earning an average of \$2,500 annually.

The Claimant submitted a closing statement dated August 21, 2012, pursuant to Court Order to disburse \$100,000 of recovery per Sovereign Immunity limits of liability.

Medical liens that are related to a governmental entity or have a subrogation lien interest or right and letter of protection:

Creditor	Amount due	Motion% pd
Winn-Dixie (Employer health insurance provider)	\$472,635.59	\$4,641.46
Health and Social Services	\$475.00	\$9.25
ACS Recovery Group (Medicaid)	\$0.00	\$0.00
Humana Financial Recovery Reduced balance from \$32,496.63 to benefit client	\$0.00	\$0.00
Vincent DiCarlo, M.D & Asso. (LOP 1/30/04 D.R.Stahl PA)	\$4,851.76	\$82.52
Total	\$477,962.35	\$4,733.23
Difference (amt. due - paid)	\$473,229.12	

Medical liens that are not covered under a letter of protection and for which the Claimant has a due and outstanding balance:

Creditor	Amount due	Motion% pd
Tampa General (reduced from \$21,522.29 to benefit client)	\$0.00	\$0.00
Tampa General (reduced from \$14,098.359 to benefit client)	\$0.00	\$0.00

AR Resources - Acct. #9473 (Tampa Bay surgery)	\$100.00	\$2.60
Gulf Coast Collections - TGH/#2101299110 & 2073759249	\$650.00	\$10.74
Gulf Coast Collections - USF/#12105745, 14340454, 14562834	\$187.00	\$7.83
Preferred Group of Tampa - USF Physical Group	\$3,974.34	\$66.02
Preferred Group UCH - Carrolwood/Florida Hospital	\$200.00	\$7.83
FFCC - Columbus, Inc (Place MRI)	\$114.75	\$2.60
Merchant Associates - Tower - #7591102, 7559634, 12426722	\$152.00	\$4.00
TOTAL	\$5,378.09	\$101.62
Difference	\$5,276.47	

The Claimant lists additional providers, but the closing statement indicates the balance owed them was unknown. Therefore, the remaining balance according to the closing statement is \$478,505.59. Beyond the closing statement, the claimant has not provided any further medical lien information. The record states that future medical expenses may be \$2,000 per year, and Mr. Companioni may require a hip replacement, if it is possible.

LEGAL PROCEEDINGS:

The accident occurred on November 22, 1996. A trial was held March 23 through 26, 2004 in the Circuit Court of the 13th Judicial Circuit, in and for Hillsborough County, Civil Division, before Judge Herbert Baumann, Jr. The jury found the City of Tampa 90 percent negligent, Ramiro Companioni, Jr., 10 percent negligent, and total damages of \$19,932,000. The damages were not separated into any categories.

In April 2004, the City moved for a new trial. The trial court issued a final judgment order on April 5, 2004. The City filed a motion to amend its motion for a new trial, and to alter the judgment on April 15, 2004. On May 6, 2004 the City filed its amended motion for new trial and a hearing was held October 5, 2004. The motion stated grounds relating to counsel

misconduct, jury misconduct, the verdict being against the weight of the evidence, a misperception by the jury of instructions, and the jury verdict being excessive based on undue sympathy. An order granting a new trial was issued by the court on January 6, 2005.

On March 30, 2007, the Second District Court of Appeal (Second DCA) reversed the order granting a new trial and remanded the matter to the trial court for reinstatement of the jury verdict. The trial court was to conduct further proceedings to dispose of the City's motions for remittitur, to alter or amend judgment, and other grounds raised for the new trial. On October 19, 2007, the trial court heard the issues on remand, and on January 22, 2008, issued its order denying motions for new trial and remittitur. On October 28, 2009, the Second DCA again reversed the trial court, but this time the DCA ordered the trial court to conduct a new trial.

On December 16, 2010, the Florida Supreme Court quashed the Second DCA opinion (51 So. 3d 452, Fla. 2010) and remanded it for consideration of whether the trial court abused its discretion in denying a new trial. On remand, if the Second DCA were to conclude that the City is not entitled to a new trial, then the DCA was to consider any other remaining claims not reached in its prior opinion, including the City's claim that the verdict was excessive.

On November 23, 2011, the Second DCA affirmed the trial court's order denying the City's motion for a new trial and remittitur. On August 12, 2012, the trial court issued an order granting the plaintiff's petition for equitable distribution of the proceeds to Peachtree Settlement Services, to the plaintiff, and to medical providers.

CLAIMANT'S ARGUMENTS:

The Claimant argues that on November 22, 1996, the City of Tampa, through its employee, Mr. Faustino Pierola, negligently entered into the inside lane of E. Hillsborough Avenue into the path of Mr. Ramiro Companioni, Jr. Claimant argues that Mr. Companioni was unable to stop his motorcycle in time to avoid crashing into the rear of the City's pick-up truck. Mr. Companioni suffered severe injuries that required multiple operations and continual medical attention. Mr. Companioni is permanently and severely disabled and is unable to sustain long term employment.

RESPONDENT'S POSITION: Respondent City of Tampa argues that Mr. Companioni had a record of reckless driving before and after the accident implying that he was at fault; that he has received just compensation; and that the City did not receive a fair trial.

CONCLUSIONS OF LAW: The Claimant relies on s. 316.085(2), F.S. (1996), that the City of Tampa had a duty to not enter the inside lane occupied by Mr. Companioni. That subsection states:

No vehicle shall be driven from a direct course in any lane on any highway until the driver has determined that the vehicle is not being approached or passed by any other vehicle in the lane or on the side to which the driver desires to move and that the move can be completely made with the safety and without interfering with the safe operation of any vehicle approaching from the same direction.

Mr. Pierola stated that before he pulled into the second lane, he straightened, then looked again and seeing that it was clear, pulled into the third lane. He stated he was travelling between 20 and 25 mph. If Mr. Companioni was travelling in the inside lane, and Mr. Pierola moved from the middle lane to the inside lane where he was struck by Mr. Companioni, the City would have breached its duty to safely operate a vehicle. However, it appears that the City's liability could be diminished if Mr. Companioni was not operating his vehicle safely as the statute provides: "and without interfering with the safe operation of any vehicle approaching from the same direction."

Excessive speed is not a safe operation of a vehicle. See s. 316.183, F.S. (1996). Mr. Companioni testified that he was travelling between 40 and 45 mph and knew that the speed limit for E. Hillsborough Ave. was 45 mph. His expert, Mr. Payne, testified that Mr. Companioni was travelling 45 mph because the velocity of the City truck (25 mph) plus his estimated crash impact (20 mph) equaled 45 mph. Mr. Payne's explanation of his crash impact estimate does not appear to be supported by any fact. Although Mr. Steve Aguilar, who was interviewed at the scene, stated that he saw the motorcycle just before it hit and estimated that it was travelling around 40 mph, he later testified at trial that he looked up just as he heard the crash.

Moreover, it is not clear that the accident occurred with Mr. Companioni travelling in the inside lane, even though he testified so. Dr. Benedict provided compelling testimony as to how the accident happened. If Mr. Companioni was travelling in the middle lane, the testimony explains why the drivers never saw him when they looked into their side or rear view mirrors. When the trucks moved out and into the middle lane, it appeared that E. Hillsborough Ave. was clear because Mr. Companioni was in the dip 1050 feet east. If Mr. Pierola was in the middle lane and looking in his side mirror for traffic in the inside lane, he would not have seen Mr. Companioni, as he would have been behind Mr. Foster's truck in the middle lane. Nor would Mr. Companioni have seen Mr. Pierola as he moved to the inside lane as it was probably at the same time, and at that point, too late to stop.

Section 316.185, F.S. (1996), provides in part:

The fact that the speed of a vehicle is lower than the prescribed limits shall not relieve the driver from the duty to decrease speed when . . . special hazards exist or may exist with respect to other traffic, . . . and speed shall be decreased as may be necessary . . . to avoid colliding with any . . . vehicle in compliance with legal requirements and the duty of all persons to use due care.

Evidence was presented that Mr. Companioni was not travelling at an excessive speed. Mr. Payne opined that Mr. Companioni could have been going 45 mph. However, the slower speed does not account for the damages incurred by the truck and motorcycle or the injuries suffered by Mr. Companioni.

The police report, made at the time of the accident, estimated Mr. Companioni's speed at 70 mph based upon the damage observed. City expert Dr. Benedict estimated that Mr. Companioni was travelling 65 mph, and had slowed to 55 mph at the time of impact. Dr. Benedict based his estimation on the damage to the truck, motorcycle, and Mr. Companioni's injuries. The weight of the evidence suggests that excessive speed appears to have been a factor in this accident.

Section 316.1925(1), F.S. (1996), states:

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

At trial, Mr. Companioni stated, “. . . I was going down the far left lane which is my habit. . . . I got to go over the bridge. And I may have been -- there may have been some trucks on the right-hand side. I didn't pay attention too much to them because they were two lanes over from me. At that point I didn't consider them any threat because they weren't nowhere near me and I had no intentions of going over to them. . . . So I was basically looking forward, no traffic around me, just minding my business going forward.” Finally, Mr. Companioni recalled, “. . . all I remember is trying to just brace myself because it seemed like I just stopped and that was it. . . . Just putting my hands out because I was -- I hit a wall.” It appears that Mr. Companioni was not paying attention to the circumstances of a flashing arrow sign and the City trucks moving onto the highway.

The motor vehicle statutes require that all drivers drive in a careful and prudent manner in order to avoid accidents. Each driver must act in a manner that does not create a hazard. It appears that Mr. Companioni did not exercise sufficient caution as he approached the City trucks. He saw them and chose to ignore them. Dr. Benedict's testimony showed that Mr. Companioni had ample time to assess the situation and put himself in a more defensive posture to avoid the accident, but did not.

This claim is very complicated. The transcripts of the trial reveal complex reconstruction theories confused by the questions and legal wrangling by both attorneys. There were essentially no reliable witnesses to the accident as none could testify that they at any time saw the motorcycle before impact. Mr. Companioni stated he did not remember much about the accident, and he did not trust the memories he does have because of the heavy medication he was on after the accident. The drivers of each of the City trucks said they never saw the motorcycle approaching, although Mr. Foster

stated he saw the moment of impact. Two other witnesses saw the City trucks pull away and looked up after they heard the motorcycle strike the truck, but the witnesses never actually saw the motorcycle moving down E. Hillsborough Ave. Finally, there are the injuries that are horrific. It is impressive that Mr. Companioni lived through the accident and is able to walk today. His quality of life, no matter how impressive his recovery, is one that few would want.

Legal analysis for a claim requires that the claim satisfy the elements of a negligence case: duty, breach of duty, causation, and damages.

The City has a duty to make sure the inside lane was clear before merging into it, but is not liable if the accident was caused by Mr. Companion's failure to safely operate his motorcycle. Florida law makes all drivers responsible for the safe operation of their vehicles. Based upon the evidence presented, it appears that Mr. Companioni was not driving in a safe manner considering the congestion being created by the City trucks. He had ample opportunity to assess conditions ahead and failed to modify his speed to avoid the accident.

Based upon the foregoing, I find that the City met its duty to merge safely into the next lane and by driving in a safe manner and was not the legal cause of Mr. Companion's damages. I further find that Mr. Companioni drove at an excessive speed and failed to pay attention to the traffic ahead of him. Thus, Mr. Companioni failed to meet his burden to prove that the City is liable for his injuries.

SPECIAL ISSUES:

Before and after the accident, Mr. Companioni had numerous moving traffic violations and also received many speeding tickets. Additionally, he has had other experiences as a defendant within the criminal justice system. In contrast, Mr. Pierola has no record of traffic citations.

INDEMNITY:

The City of Tampa has no commercial insurance that could be used to fund this claim bill. The City is self-insured and maintains a general liability reserve for the purpose of satisfying all City-wide lawsuits, claims, and associated costs. As of October 1, 2014, the general liability reserve balance was \$9,733,630 (unaudited). This amount is

designated for the purpose of satisfying all City-wide lawsuits and claims.

Since October 1, 2014, (the beginning of its fiscal year), the City has spent \$687,629 for settlements and expenses from the budgeted amount stated above. The City fully expects to continually satisfy additional pending City-wide claims. To the extent that the funds in the general liability reserve are insufficient to pay City-wide claims and this claim bill, the City will need to use general fund revenue which have been previously budgeted for general governmental operations.

ATTORNEYS FEES:

The bill provides that all fees and related costs are to be capped at 25 percent. The claimant's attorneys and lobbyists agree that they will follow the law of the enacted claim bill.

After the Final Judgment was upheld on appeal, attorney fees were paid on the underlying claim in accordance with the statutory cap of 25 percent pursuant to s. 768.28, F.S.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 46, be reported UNFAVORABLY.

Respectfully submitted,

Diana Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute replaces the detailed descriptions of the claimant's motor vehicle accident and resulting injuries with a more general description of the accident and a statement that the claimant and the City of Tampa have agreed to settle the claim for \$5 million. Additionally, the committee substitute waives all "lien interests relating to the treatment and care" of the claimant except the federal portions of any of those liens.

"Hightsiding" is best understood by beginning with the contrasting "lowside" crash. In a lowside crash, the bike's rear tire loses traction, or friction; the rear end begins to slide sideways; it begins to move forward at an angle to the front tire, but, due to the loss of friction, moves faster than the front tire; the bike and rider tend to lean away from the direction of the slide; if this continues, the bike falls over on its side, with the rider falling with it.

The highside begins with a lowside situation (with a loss of rear tire traction and a sideways skid), which is followed by a recovery of traction and an ejection of the rider off the top of the bike. Assume, for example, that the rider has applied the rear brake hard, with the rear tire losing traction and sliding to the rider's right, with the rear wheel moving forward faster than the front wheel and with the bike and rider leaning to the rider's left. If the rider releases the brake, the back tire regains traction and grabs the road, abruptly ending the slide of the rear tire. Momentum, however, causes the upper part of the bike to continue forward at a higher speed, and the bike not only comes upright, it continues on and is thrown onto its right side, throwing the rider in the process.

All Things (Safety Oriented) Motorcycle, *Highside Dynamics, What happens and how to prevent it*, James R. Davis, Jan. 04, 2006, http://www.msgroup.org/forums/mtt/topic.asp?TOPIC_ID=2192 .
Steve Munden, Math & Science Tutoring, Motorcycling, Skiing, & Shooting Instruction., *Traction Management for Motorcyclists- and what happens when you blow it*, <http://stevemunden.com/sides.html>



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Higher Education, *Chair*
Appropriations
Education
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR BILL GALVANO

21st District

February 1, 2018

Senator Dennis Baxley
Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Baxley:

I respectfully request that SB 46 Relief of Ramiro Companioni, Jr., by the City of Tampa be scheduled for a hearing in the Committee on Governmental Oversight and Accountability, at your earliest convenience.

If I can provide additional documentation to you on this, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Diana Caldwell
Tamra Redig

REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/13/18

Meeting Date

SB 46

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Joseph R. Salzverg ("Saul's - verg")

Job Title _____

Address 301 S. Bronough St., #600

Phone _____

Street

TLH

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing City of Tampa

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)

2/13/18

Meeting Date

46

Bill Number (if applicable)

Topic Claim Bill - Ramiro Companioni (Amendment Barcode (if applicable))

Name Lance Block

Job Title Attorney

Address 5189 Widetield Dr.

Street

Phone 850-599-1980

Tallahassee 32309

City

State

Zip

Email lance@lanceblocklaw.com

Speaking: For Against Information

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

Representing Ramiro Companioni

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

SPECIAL MASTER ON CLAIM BILLS

Location
515 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5198

DATE	COMM	ACTION
1/12/18	SM	Favorable
1/17/18	JU	Favorable
2/12/18	GO	Favorable
	RC	

January 12, 2018

The Honorable Joe Negrón
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 48** – Senator Audrey Gibson
HB 6523 – Representative Raburn
Relief of Ashraf Kamel and Marguerite Dimitri

SPECIAL MASTER'S FINAL REPORT

THIS IS AN EXCESS JUDGMENT CLAIM BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES CAUSED BY THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL. THE CLAIM WAS PREVIOUSLY CONTESTED BUT HAS BEEN SETTLED FOR \$360,000.

CURRENT STATUS:

When a prior version of this claim bill was filed, it was heard by a Senate staff attorney who served as a Senate special master. The bill sought approximately \$1.4 million from the Palm Beach County School Board. After the special master hearing, the special master issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably. The special master also recommended that the \$1.4 million sought in the claim bill be reduced to \$200,900.

For the 2018 claim bill, the parties were asked to provide the Legislature with an update on the status of the claimants and documentation of any significant developments that have

SPECIAL MASTER'S FINAL REPORT – SB 48

January 12, 2018

Page 2

occurred since the claim bill hearing. Of note in the joint response from the claimants and the respondent, the parties state that they have agreed to settle the claim for \$360,000.

The most recent special master report in this matter was prepared for SB 44 (2005). A copy of the report is attached.

Respectfully submitted,

Thomas C. Cibula
Senate Special Master

cc: Secretary of the Senate



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/1/04	SM	Fav/1 amendment

December 1, 2004

The Honorable Tom Lee
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 44 (2005)** – Senator Mandy Dawson
Relief of Ashraf Kamel and Marguerite Dimitri

SPECIAL MASTER'S FINAL REPORT

THIS IS A VIGOROUSLY CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,402,400 BASED ON A JURY VERDICT RENDERED AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE ASHRAF KAMEL AND MARGUERITE DIMITRI FOR DAMAGES SUSTAINED DUE TO THE NEGLIGENCE OF SCHOOL BOARD EMPLOYEES, WHICH RESULTED IN THE DEATH OF THEIR SON, JEAN PIERRE KAMEL.

FINDINGS OF FACT:

The Shooting

On the morning of Monday, January 27, 1997, Jean Pierre Kamel, a 13-year-old student at Conniston Middle School in West Palm Beach, arrived at school on his bike. At 8:40 a.m., while standing in front of the school on a 9-foot-wide sidewalk, he was shot to death by Tronneal Mangum, a 14-year-old classmate. The 5-foot portion of the sidewalk closest to the school was owned by the school board. The 4-foot portion of the sidewalk closest to the road was owned by the city. The two portions were visibly distinguishable. The two students were near the curb, and thus were on city property at the time of the shooting. School board personnel were near the area in question; however, the School Resource Officer who usually monitored that particular spot had just moved to the center of campus where the majority of students were at that

time. The officer's replacement was walking toward the scene and was approximately 40 feet away when the shots were fired.

Immediately after the shooting, Tronneal ran into the school. He went around bragging about what he had just done. He was arrested inside a classroom shortly thereafter. He was suspended from school for possession of a firearm on campus. He was subsequently tried as an adult and was sentenced to life without parole. Tronneal did not testify at his criminal trial. He has steadfastly refused, and still refuses to disclose where or how he obtained the handgun he used to kill Jean Pierre.

The Shooter

In 1997, Tronneal Mangum was 14 years of age, 6 feet 1 inch tall and weighed 150 pounds. He and Jean Pierre were in a seventh grade math class together. Their math teacher, who had 30 years of teaching experience, described Tronneal as a quiet, polite, yet below average student who did not cause problems in her class. She never saw Tronneal threaten or harm any student and no student had ever complained to her of threats or harassment from Tronneal. She herself never felt threatened by him. Tronneal's discipline record at school for that school year indicated several instances of disruptive behavior, with only one referral, for which he served a detention.

Events Leading Up to the Shooting

Months prior to the shooting, Jean Pierre asked that his seat in math class be moved away from Tronneal because they did not get along. The math teacher did so and afterward noted that Jean Pierre's performance in math class improved.

Jean Pierre and Tronneal had traded various items of personal property with each other; for example, a CD player for a bike. Two weeks before the shooting, Jean Pierre told the School Resource Officer that he had traded an expensive watch to Tronneal for a bike, but now wanted the watch back. The officer suggested that Jean Pierre tell his parents and talk to the school's administrators.

On the Thursday before the shooting, Tronneal kicked Jean Pierre in his prosthetic leg and was written up by a teacher. The Assistant Principal met with the two students in her office.

She noted that Tronneal had one previous detention but decided to use conflict resolution to solve the dispute. She concluded that the two boys were merely horseplaying, and gave Tronneal a detention to be served on Tuesday, January 28. All concerned agreed that Tronneal would bring the watch back to school on Monday and deliver it to one of the school's administrators from whom Jean Pierre would get it. Jean Pierre asked that his father not be notified because he didn't want his father to know that he had traded the watch.

On the Friday before the shooting, Jean Pierre told his math teacher, "Tronneal is after me." Tronneal was absent that day and the math teacher asked Jean Pierre several times if he wanted to talk to an assistant principal. Jean Pierre replied that he didn't. The math teacher did not interpret Jean Pierre's statements as indicating that he felt threatened. He was smiling when he spoke to her. He didn't seem scared or upset. She didn't report the conversation because Jean Pierre told her that the problem had been taken care of.

Jean Pierre's father, Ashraf Kamel, testified at the civil trial that his son had told him about being kicked, but had given a slightly different story about the watch; namely that Tronneal had stolen it. Jean Pierre told his father that he had been to school administration and would have his watch back on Friday. After school on Friday, Jean Pierre told his father that Tronneal was not at school that day and that he would instead get the watch on Monday. Mr. Kamel testified that he believed that the school administrators had handled the issue and thus did not go to the school to see about it.

The Victim

Jean Pierre was born without a tibia in his right leg which was amputated when he was a baby. Despite having a prosthetic leg, Jean Pierre was very athletic, and was named Swimmer of the Year in 1993 by the Boys and Girls Club.

Battle of the Experts

Claimants' expert was of the opinion that the school board employees were negligent by not preparing an incident report when Jean Pierre asked to be moved away from Tronneal in math class; for the assistant principal's use of conflict resolution rather than the school's discipline policy for what he described as an assault; and for the math teacher's failure to write a referral when Jean Pierre told her that Tronneal was

after him. Claimants' expert also testified that the shooting should have been foreseeable as there had been two previous incidents of gun possession at Conniston Middle School,¹ and that the school's security plan was lacking in that only one teacher was near the area where the shooting occurred.

Respondent's expert was of the opinion that Conniston Middle School was ahead of the security curve with a program that emphasized early intervention, looked for troubled students, and that monitored the campus. Conniston also had an armed, fully trained officer on campus when only 6 percent of schools nationally had a police officer on campus for more than 30 hours a week. He further opined that there were no warning signs that would have been predictive of homicide; that the school could not have deterred the murder; and that having an armed officer at that precise spot at the time of the shooting might have displaced the shooting until later, but would not have prevented it.

LEGAL PROCEEDINGS:

On May 21, 1999, Ashraf Kamel, on his own behalf and as personal representative of the estate of Jean Pierre Kamel, filed a wrongful death suit against the Palm Beach County School Board.

This case was tried to a jury in the Fifteenth Judicial Circuit between January 30 and February 8, 2002. The jury returned a comparative negligence verdict for a total of \$2,003,000 in damages and found the Palm Beach County School Board 80 percent responsible for the death of Jean Pierre and found Jean Pierre 20 percent responsible for his own death. Tronneal Mangum was not included on the jury verdict form; thus, the jury had no opportunity to apportion any liability to the intentional criminal tortfeasor in accordance with §768.81(4)(b), F.S., and *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997).

The school board filed Motions for Directed Verdict and/or New Trial which were denied. The school board appealed to the Fourth District Court of Appeal. That court affirmed the case per curiam on February 12, 2003.²

CLAIMANT'S MAIN ARGUMENTS:

- There is a jury verdict that was reduced to Final Judgment in the sum of \$1,602,400, based on a 20 percent comparative negligence offset. The Fourth District Court of Appeal affirmed the judgment. The Final Judgment should be given full effect by the Legislature.
- The school board had a duty to protect its students and this duty was breached when:
 - The math teacher failed to document Jean Pierre's request to have his seat moved and failed to report Jean Pierre's statement that Tronneal was after him.
 - The assistant principal failed to follow school board procedures after the kicking incident.
 - School personnel were not standing at the precise location of the shooting on the day in question.
- Prior gun possession incidents at Conniston made this shooting foreseeable.

RESPONDENT'S MAIN ARGUMENTS:

- The School Board didn't owe a duty to a student who was technically not on school grounds. This shooting took place on adjoining city property, not on school board property.
- The shooting was not foreseeable: there was no notice that Jean Pierre feared Tronneal; Tronneal was not a trouble-maker; there was no red flag in the conflict resolution process; there was no evidence that Tronneal had a gun; and there was no evidence of Tronneal's prior violent acts.
- The two prior reports of gun possession on campus were irrelevant because they did not involve these particular students, nor did they involve shootings; thus, these were not evidence of foreseeability for this shooting.

The source of funds for this claim bill is the general operating budget of the Palm Beach County School District. Payment would negatively impact the school district's ability to fund needed educational programs, particularly given the fact that the monies in the district's contingency fund were expended in order to repair damages from Hurricanes Frances and Jeanne.

CONCLUSIONS OF LAW:

Some see the Legislature's role in claim bills against government agencies as merely rubber-stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, as this one has. Others perceive the Legislature's role to review, reevaluate, and reweigh the total circumstances and the character of the public entity's liability, and to consider the factors that might not have been perceived by or introduced to the jury or court.

At the Special Master's level every claim bill, whether based on a jury verdict or not, is required to be measured anew against the four standard elements of negligence and of course, with or without a Final Judgment, the enactment of a claim bill is generally acknowledged to be completely discretionary with the Legislature.³

Liability

Element 1 -- Duty: Florida law imposes on school officials a duty to supervise students' activities while at school.⁴ This incident occurred during school hours on property that both school officials and students reasonably believed was school property.⁵ Thus, the duty element is satisfied.

Element 2 -- Breach of Duty: I find that the only breach of duty that the jury might have reasonably found concerns the incident where Jean Pierre told his math teacher that Tronneal was after him. The evidence indicates that Tronneal was not in school the day the comment was made, that Jean Pierre did not appear frightened when making the comment, and that the math teacher repeatedly offered Jean Pierre, a normally functioning 13-year-old, an opportunity to see the assistant principal, which he rejected. Given these circumstances, reasonable jurors might have found the math teacher's actions sufficient; however, reasonable jurors also might have found that the teacher should have reported Jean Pierre's comment to the school's administration or have otherwise acted upon it, particularly given that Jean Pierre had told her earlier in the year that he and Tronneal did not get along.

Further, I find that it was not a breach of duty for Assistant Principal Rigola to have employed conflict resolution rather than School Conduct Code procedures for the horseplay and watch incidents. Ms. Rigola investigated, held an informal hearing on the incident and resolved the immediate problem.

Further, she provided for notice to Tronneal's parent(s) because an adult's signature was required in the referral.

Perhaps the procedure could have required parental notification, but Ms. Rigola's failure to have done so cannot constitute negligence because such failure could not have been the proximate cause of Jean Pierre's death. Jean Pierre's father testified at the civil trial that Jean Pierre had told him that Tronneal kicked him; that Tronneal stole his watch; that Tronneal would return the watch to the school's administrators; and that they would return it to Jean Pierre. Consequently, Jean Pierre's father had notice of essentially everything that Ms. Rigola could have told him.

Finally, I find that it was not a breach of duty for the school to not have a security officer or teacher monitoring the precise location of the shooting at the time it occurred. Schools do not have a duty to supervise all movements of pupils at all times.⁶ Schools only have a duty to provide reasonable supervision of students. The evidence demonstrates that the duty was satisfied. The school had a reasonable system of monitoring the campus and the system was fully operational on the morning Jean Pierre was killed.

Element 3 -- Causation: I find the math teacher's failure to have reported or otherwise acted upon Jean Pierre's statement that Tronneal was after him could have reasonably been found by the jury to be one of several proximate causes of Jean Pierre's death.

Further, I find that the evidence of prior gun possessions is not persuasive on the foreseeability issue in this case. Neither of these prior incidents involved Jean Pierre or Tronneal. Neither incident involved discharge of a weapon. Moreover, one of the incidents involved a starter pistol, which could only be lethal in a freak accident. Notably, this shooting occurred before the Columbine shootings, which focused national attention on the possession of guns in schools.

Element 4 – Damages: The jury assessed a total of \$2,003,000 in damages: (1) \$500,000 for Mr. Kamel's past pain and suffering and \$500,000 for his future pain and suffering; (2) \$500,000 for the victims mother's past pain and suffering and \$500,000 for her future pain and suffering; and (3) \$3,000 for funeral expenses. The school board was

tagged for 80 percent. A Final Judgment was entered by the Circuit Court against the school board in the amount of \$1,602,400 on February 22, 2002.

The school board has already paid \$200,000 as follows: (a) \$50,000 for attorney's fees; (b) \$68,341.81 for costs; (c) \$35,829.10 to Mr. Kamel; and (d) \$35,829.09 to Ms. Dimitri, the victim's mother.

LEGISLATIVE HISTORY:

During the 2004 Legislative Session, Senator Dawson filed SB 38. This bill provided for the relief of Jean Pierre's parents, Ashraf Kamel and Marguerite Dimitri. It was referred to the Senate Special Master on Claim Bills, the Senate Education Committee, and the Senate Finance and Taxation Committee. The undersigned Special Master recommended that the bill be amended to direct the school board to compensate Jean Pierre's parents in the total amount of \$400,900, which is 30 percent of the total jury award minus the \$200,000 already paid by the school board to the claimants. The Senate Education Committee passed the bill favorably without amendment. The bill was withdrawn from the Senate Finance and Taxation Committee and placed on the Senate calendar where it died. The bill's companion, HB 1353, was referred to the House of Representatives Claims and Judiciary Committees, but was never considered. No further Special Master hearings have been held in this claim. The parties were provided with the opportunity to supplement the record in this case and the material received was reviewed and considered.

ATTORNEYS FEES:

The claimants' attorneys have provided documentation verifying that attorney fees are capped at 25 percent in accordance with §768.28, F.S.

GENERAL CONCLUSIONS:

As discussed above, I find that a reasonable juror could have determined: that the school board had a duty to Jean Pierre Kamel; that an employee failed to comply with that duty; that such failure was one of several causes of Jean Pierre's death; and that Jean Pierre's parents are entitled to damages as a result of their son's death.

Further, I concur with the jury's assignment of 20 percent comparative liability to Jean Pierre. Evidence demonstrated that Jean Pierre: (a) told Officer Mclsaac that he traded his watch for a bike; (b) told his father that Tronneal stole his

watch; and (c) told the assistant principal that he loaned the watch and did not want her to call his father because his father would be angry that he had given the watch away. Thus, it appears that Jean Pierre knowingly failed to notify his father and other school personnel that Tronneal was after him because he did not want to get in trouble over the watch.

Distinguishably, however, I do not find the jury's assignment of 80 percent liability for a \$2,003,000 judgment to the school to be equitable and just. The evidence of school negligence in this case was speculative. The only incident that appears at all susceptible to a negligence finding is Jean Pierre's statement to his math teacher that Tronneal was after him and given the facts surrounding that statement, as discussed above, it is difficult to contemplate what other actions the math teacher should have taken in response to the statement. The jury, however, apparently believed that the teacher should have reported or otherwise reacted to the statement and out of deference to that finding, I recommend upholding the negligence verdict; but, due to the speculative nature of the negligence, I recommend reducing the sizeable assignment of 80 percent liability, i.e., \$1,602,400 (\$2,003,000 multiplied by 80 percent), to the school. The school board's single incident of negligence, only one of several proximate causes of harm to Jean Pierre Kamel does not, in my view, support assessment of 80 percent of the total fault and damages.

In past claim bill cases that, like this case, involved injury caused by an intentional criminal tortfeasor and a Special Master recommendation to reduce the assignment of liability to an unintentional tortfeasor, the Special Master has recommended the symbolic assignment of 50 percent liability to the intentional criminal tortfeasor.⁷ I recommend following this precedent. Unequivocally, the person truly at fault for the tragedy in this case is Tronneal Mangum. The jury, however, never had the opportunity to assign any amount of liability to Tronneal.⁸ As such, I view it as the Legislature's prerogative and obligation to do so and recommend allocation of responsibility (and thus liability) as follows:

Tronneal Mangum	50%
Palm Beach County School Board	30%
Jean Pierre Kamel	20%

RECOMMENDATIONS:

I recommend that Senate Bill 44 be amended: (1) to remove "Whereas" clauses inconsistent with this report's findings and conclusions; and (2) to direct the school board to compensate Jean Pierre's parents in the total amount of \$400,900, which is 30 percent of the total jury award minus the \$200,000 already paid by the school board to the claimants.

Accordingly, I recommend that Senate Bill 44 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Kristina White
Senate Special Master

cc: Senator Mandy Dawson
Faye Blanton, Secretary of the Senate
House Claims Committee

¹ During the previous 1995-1996 school year, two gun possession incidents had occurred at Conniston. The first was on February 14, 1996, when Officer Mclsaac took a .22 caliber starter pistol away from a student on campus. The second was on May 22, 1996, when a student told Officer Mclsaac that a part-time student had brought a gun to school. In response, Officer Mclsaac called the West Palm Beach Police Department, and police then went to the student's home where, after a consensual search of the student's bedroom, they found a gun. Officer Mclsaac never saw the student bring the gun to school; instead, he only had hearsay evidence that the gun had been on school grounds. A West Palm Beach Police Report indicated that the student was arrested for possession of a gun on school grounds.

² *Palm Beach County School Bd. v. Kamel*, 840 So.2d 253 (Fla. 4th DCA 2003), rehearing denied (Mar 20, 2003).

³ *Fernandes v. Barrs*, 641 So.2d 1371, 1376 (Fla. 1st DCA 1994); *South Broward Topeekegeeyugnee Park District v. Martin*, 564 So.2d 1265, 1267 (Fla. 4th DCA 1990), review denied mem., 576 So.2d 291 (Fla. 1991).

⁴ *Rupp v. Bryant*, 417 So.2d 658, 666 (Fla. 1982).

⁵ Conniston Middle School personnel routinely patrolled the entirety of the sidewalk beginning at 8:30 a.m. See *Broward County School Board v. Ruiz*, 493 So.2d 474 (Fla. 1986) (holding that school's adoption of a system of supervision and patrols was evidence on the issue of duty to provide supervision at time and place that student was assaulted).

⁶ *Benton v. School Board of Broward County*, 386 So.2d 831 (Fla. 4th DCA 1980).

⁷ See Special Master Final Report for Senate Bill 4 at pp. 12-14, November 25, 1998 (recommending reduction of the amount of liability assigned to the Department of Health and Rehabilitative Services by a jury and recommending the assignment of 50 percent of total liability to the intentional criminal tortfeasors).

⁸ Under Florida law, actions alleging that a property owner's negligence in failing to provide adequate security resulted in an intentional criminal assault by another are governed by joint and several liability, not comparative negligence. §768.81(4)(b), F.S.; *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (1997). Thus, the jury in this case was not permitted to consider Tronneal Mangum's liability when apportioning damages. The public policy behind this law is to preclude negligent tortfeasors from reducing their liability by shifting it to another tortfeasor whose intentional criminal conduct was a foreseeable result of their negligence. The Legislature, unlike the jury, however, is not prohibited from considering the criminal's liability in a claim bill case because claim bills are purely a matter of legislative grace. As indicated in *Gamble v. Wells*, 450 So.2d 850 (Fla.1984), it is the Legislature's prerogative in a claim bill case to: determine whether to allow compensation; decide the amount of compensation; and determine the conditions to be placed on the appropriation. Accordingly, for the reasons discussed in this report, I recommend that the Legislature exercise its discretion in this case and consider reduction of the amount of school board liability. There is little evidence demonstrating that school personnel could or should have foreseen the criminal danger that Tronneal posed and thus, as a matter of public policy, it appears unjust to impose 80 percent liability for a \$2,003,000 judgment on the school.

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 Governmental Oversight and Accountability

BILL: SB 532

INTRODUCER: Senator Lee and others

SUBJECT: Public Records/Voters and Voter Registration

DATE: February 13, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	Favorable
2.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 532 makes confidential and exempt from public inspection and copying requirements all information concerning 16 and 17 year olds who preregister to vote while they are minors; once they reach the age of 18, their information will become available like any other voter registrant or voter.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill will take effect July 1, 2018, but applies retroactively to all currently pre-registered 16 and 17 year olds.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., Art. I, s. 24(a).

² *Id.*

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person and that providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., Art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹⁴ *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²³

Public Record Exemption for Voter Registration Information

Current law provides a public record exemption for certain information held by an agency²⁴ for purposes of voter registration.²⁵ Specifically, the following information is confidential and exempt from public record requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.²⁶

Voter Pre-Registration for Minors

An individual may register to vote in accordance with Florida law if he or she is at least 18 years old, a United States citizen, a legal resident of Florida, and a legal resident of the county in which he or she seeks to register.²⁷ However, individuals who are otherwise qualified to register to vote but are not yet 18 may pre-register to vote on or after the individual's 16th birthday.²⁸

Publication of Voter Information

Since 1998 when the State first began compiling all 67 counties' "official" voter registration lists into a unified statewide voter registration database,²⁹ anyone has been able to request an electronic copy of every Florida voters' non-exempt information.³⁰ The rise of the Internet has

6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST., Art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ *See supra* note 6.

²⁵ Section 97.0585, F.S.

²⁶ Section 97.0585(2), F.S.

²⁷ Section 97.041(1)(a), F.S.

²⁸ Section 97.041(1)(b), F.S.

²⁹ Ch. 97-13, ss. 39, 56, Laws of Fla. (effective January 1, 1998).

³⁰ In 2001, the Legislature sought to adopt a much more restrictive public records scheme similar to the one proposed in the original bill, in connection with a then-newly-authorized statewide voter registration database. Ch. 2001-40, s. 70-72, Laws of Fla. (codified at s. 98.0979, F.S. (2002)). Three years later, a Leon County circuit court judge struck the statute down void ab initio on procedural grounds, finding that it was adopted in a general elections bill without the requisite statement of public necessity in violation of Art. I, s. 24 of the Florida Constitution—the effect being that the statute never existed or was never on the books. *See Cable News Network, et al. v. Florida Dep't of State*, 2004 WL 5138312 (Fla. 2nd Jud. Cir. 2004)

enabled publication of this information for literally the entire world to see at little to no cost, thereby giving rise to serious personal privacy issues.

At least one web site³¹ that contains commercial or sponsored links, provides extensive details about every registered and pre-registered voter in the State — including the voter’s name, date of birth, residence address, mailing address, voter ID number, when the person registered to vote, what political party the person is affiliated with, the voter’s telephone number, e-mail address, race, precinct number, as well as other information about district races in which the person is eligible to vote. This information can be accessed by voter’s name, birth date, or address.

III. Effect of Proposed Changes:

Section 1 makes confidential and exempt from public inspection and copying requirements all information concerning 16 and 17 year olds who preregister to vote while they are minors; once they become adults, their non-exempt information will become available to the same degree as any other adult voter registrant or voter.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature.

Section 2 provides a statement of public necessity as required by the State Constitution. Information concerning preregistered 16-year-old and 17-year-old voter registration applicants could be misused if released. Minors are more vulnerable members of society, and the widespread release of information acquired through preregistration activities may be used to solicit, harass, stalk, or intimidate such individuals.

Section 3 provides that the bill will take effect July 1, 2018, but applies retroactively to all currently pre-registered 16 and 17 year olds.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c) of Article I of the Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public-records or public-meetings exemption. Therefore, this bill requires a two-thirds vote for passage.

(Final Declaratory Summary Judgment). The Legislature repealed the statute the following year. See, Ch. 2005-278, s. 55, Laws of Fla.; Ch. 2005-277, s. 77, Laws of Fla.

³¹ See <http://flvoters.com/> (last visited on February 2, 2018).

Public Necessity Statement

Section 24(c) of Article I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption.

This public necessity statement provides that disclosure of information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency could be misused to solicit, harass, stalk, or intimidate such individuals, and without such protection, a minor may be less likely to take advantage of preregistering to vote. Therefore, without such protection, a minor may be less likely to take advantage of preregistering to vote, thus hindering the effective and efficient administration of a program that otherwise encourages greater participation in the democratic process.

Breadth of Exemption

Section 24(c) of Article I of the Florida Constitution requires a public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

This bill expands the public record exemption to include all information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency. Once the minors become adults, their non-exempt information will become available as any other adult registrant or adult.

Generally, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may adversely impact commercial web sites and businesses that profit from sharing Florida voter registration data. However, since the bill only protects the information of minors before they become age-eligible to vote, the fiscal impact, if any, is unclear.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 97.0585 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Lee

20-00764-18

2018532__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 97.0585, F.S., and reenacting subsection (3), relating
 4 to a public records exemption for information
 5 regarding voters and voter registration; providing an
 6 exemption from public records requirements for
 7 information concerning preregistered voter
 8 registration applicants who are minors; providing for
 9 future legislative review and repeal; providing for
 10 retroactive application; providing a statement of
 11 public necessity; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Subsection (1) of section 97.0585, Florida
 16 Statutes, is amended, and subsection (3) of that section is
 17 reenacted, to read:
 18 97.0585 Public records exemption; information regarding
 19 voters and voter registration; confidentiality.—
 20 (1) The following information held by an agency, as defined
 21 in s. 119.011, and obtained for the purpose of voter
 22 registration is confidential and exempt from s. 119.07(1) and s.
 23 24(a), Art. I of the State Constitution and may be used only for
 24 purposes of voter registration:
 25 (a) All declinations to register to vote made pursuant to
 26 ss. 97.057 and 97.058.
 27 (b) Information relating to the place where a person
 28 registered to vote or where a person updated a voter
 29 registration.

Page 1 of 2

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

20-00764-18

2018532__

30 (c) The social security number, driver license number, and
 31 Florida identification number of a voter registration applicant
 32 or voter.
 33 (d) All information concerning preregistered voter
 34 registration applicants who are 16 or 17 years of age. This
 35 paragraph is subject to the Open Government Sunset Review Act in
 36 accordance with s. 119.15 and shall stand repealed on October 2,
 37 2023, unless reviewed and saved from repeal through reenactment
 38 by the Legislature.
 39 (3) This section applies to information held by an agency
 40 before, on, or after the effective date of this exemption.
 41 Section 2. The Legislature finds that it is a public
 42 necessity that all information concerning preregistered voter
 43 registration applicants who are 16 or 17 years of age which is
 44 held by an agency, and obtained for the purpose of voter
 45 registration, be confidential and exempt from public records
 46 requirements and be used only for purposes of voter
 47 registration. Information concerning preregistered 16-year-old
 48 and 17-year-old voter registration applicants could be misused
 49 if released. Minors are more vulnerable members of society, and
 50 the widespread release of information acquired through
 51 preregistration activities may be used to solicit, harass,
 52 stalk, or intimidate such individuals. Without such protection,
 53 a minor may be less likely to take advantage of preregistering
 54 to vote, thus hindering the effective and efficient
 55 administration of a program that otherwise encourages greater
 56 participation in the democratic process.
 57 Section 3. This act shall take effect July 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/18
Meeting Date

532
Bill Number (if applicable)

Topic PUBLIC RECORDS - VOTERS

Amendment Barcode (if applicable)

Name DAVID RAMBA

Job Title ATTORNEY

Address _____
Street

Phone 727-7087

City _____ State _____ Zip _____

Email david@rambalaw.com

Speaking: For Against Information

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

Representing FLORIDA SUPERVISORS OF ELECTIONS

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.

APPEARANCE RECORD

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

2/13/2018

Meeting Date

532

Bill Number (if applicable)

Topic Public Records / Voters & Voter Registration

Amendment Barcode (if applicable)

Name MARILYNN WILLS

Job Title LWVF member

Address 2326 KILKENNY DRIVE WEST

Phone 850 893-4104

Street

TALLAHASSEE FL 32309

Email mardynnwills@msa.com

City

State

Zip

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.

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 Governmental Oversight and Accountability

BILL: CS/SB 808

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Baxley

SUBJECT: Public Records/Surplus Lands

DATE: February 12, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Istler	Rogers	EP	Fav/CS
2.	Brown	Caldwell	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 808 provides a public records exemption for certain records related to the sale of surplus lands. Specifically, the bill designates the following information as confidential and exempt from disclosure requirements:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form, or which pertain to the valuation; and
- Written offers to purchase surplus lands.

The bill provides that the exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD.

Additionally, the bill authorizes a WMD to disclose the records before the exemption expires to potential purchasers to facilitate or expedite closure of the land sale:

- During the negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

In accordance with the Open Government Sunset Review Act, the exemption automatically repeals on October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date.

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

The bill is linked to SB 806 that revises provisions on the sale of surplus lands in water management districts, and takes effect on the same date that SB 806 or similar legislation takes effect either in the same legislative session or an extension of the session.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S.

Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

⁷ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

Valuation of state lands for sale

Pursuant to s. 253.0341(8)(a), F.S., a written valuation of land determined to be surplus by the Board of Trustees of the Internal Improvement Trust Fund (BOT) and related documents used to form the valuation or which pertain to the valuation are confidential and exempt from disclosure.²³ This exemption expires two weeks before the time that the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the BOT.²⁴

Before expiration of the exemption, however, the Division of State Lands within the Department of Environmental Protection is authorized to disclose these appraisals, valuations, or valuation information regarding the surplus land:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land to facilitate closure of the effort or process;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.²⁵

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Section 253.0341(8)(a), F.S.

²⁴ Section 253.0341(8)(a)1., F.S.

²⁵ Section 253.0341(8)(a)2., F.S.

While a public records exemption exists for written valuations of land determined to be surplus by the BOT, a similar exemption does not exist for written valuations of land determined to be surplus by a WMD.

Appraisals and written offers for lands the state is purchasing

There are public records exemptions for appraisals and written offers when the state is seeking to purchase land. When an agency of the executive branch of state government seeks to acquire real property by purchase or through the exercise of the power of eminent domain, all appraisals, other reports relating to value, and written offers and counteroffers are exempt until the execution of a valid option contract or a written offer to sell that has been conditionally accepted by the agency.²⁶ If the parties do not execute a valid option contract or the agency does not conditionally accept a written offer to sell, then the exemption expires at the conclusion of the condemnation litigation of the subject property.²⁷

Similarly, when a WMD is seeking to purchase land, all appraisal reports, offers, and counteroffers are exempt until an option contract is executed or if no option contract is executed, until 30 days before a contract of agreement for purchase is considered for approval by the governing board.²⁸

III. Effect of Proposed Changes:

The bill designates the following information as confidential and exempt from the disclosure requirements under the Public Records Act and Art. I, s. 24(a) of the Florida Constitution:

- A written valuation of land determined to be surplus by the governing board of a water management district (WMD);
- Related documents used to form or which pertain to the valuation; and
- Written offers to purchase the surplus lands.

The bill provides that the exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the WMD.

Additionally, the bill authorizes a WMD to disclose the records before the exemption expires to potential purchasers to facilitate or expedite closure of the land sale:

- During the negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.

In accordance with the Open Government Sunset Review Act, the exemption shall stand repealed on October 2, 2023, unless the Legislature review and saves the exemption from repeal before that date.

²⁶ Section 119.0711, F.S.

²⁷ *Id.*

²⁸ Section 373.139(3)(a), F.S.

As required by the Florida Constitution, the bill provides a statement of public necessity.²⁹ As justification for the exemption:

- The exemption is necessary in order to facilitate successful or expedited closure of the sale of surplus lands; and
- The public availability of the valuations, related documents, and written offers can negatively impact the ability of WMDs to negotiate with potential purchasers and potentially places WMDs at a disadvantage in attempting to maximize the return on the sale of surplus land.

The bill is linked to SB 806 that revises provisions on the sale of surplus lands in water management districts. The bill takes effect on the same date that SB 806 or similar legislation takes effect, if adopted in the same legislative session or an extension of the session.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. As the bill creates a new public record exemption, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill includes a public necessity statement and provides as justification for the exemption that without the exemption, the ability of water management districts to maximize the return on the sale of surplus lands could be compromised.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill specifically exempts written valuations of land determined to be surplus, any related documents, and written offers and provides for the expiration of such exemption upon the contract or agreement being approved, at the conclusion of negotiations or marketing efforts, or the passage of a year. Thus, the bill appears to be no broader than necessary to accomplish the public necessity for this public record exemption.

²⁹ FLA. CONST. art. I, s. 24(c).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has a negative, indeterminate fiscal impact to the water management districts (WMDs) as they will incur costs related to staff training on the new public records exemption and in redacting the information prior to the release of the record. However, these costs likely can be absorbed as part of the day-to-day responsibilities of the WMD.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.089 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on February 5, 2018:

The Committee Substitute:

- Revises the conditions upon when the exemption expires and when a WMD, at its discretion, is authorized to disclose the exempted information.
- Adds the automatic repeal of the exemption as required by the Open Government Sunset Review Act; and
- Makes conforming changes to the public necessity statement.

B. Amendments:

None.

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

By the Committee on Environmental Preservation and Conservation;
and Senator Baxley

592-02878A-18

2018808c1

A bill to be entitled

An act relating to public records; amending s. 373.089, F.S.; providing an exemption for valuations, certain records, and sales offers for sales related to surplus lands; authorizing disclosure of such records under certain circumstances; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (1) of section 373.089, Florida Statutes, is amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) Any lands, or interests or rights in lands, determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, ~~in no case shall~~ the selling price may not be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.

(a) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land are confidential and exempt from s. 119.07(1)

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and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(b) Before expiration of the exemption established in paragraph (a), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;

2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;

3. When the passage of time has made the conclusions of value invalid; or

4. When negotiations or marketing efforts concerning the land are concluded.

(c) Paragraphs (a) and (b) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 2. The Legislature finds that it is a public necessity that written valuation of land determined to be

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59 surplus pursuant to s. 373.089, Florida Statutes, related
60 documents used to form the valuation or which pertain to the
61 valuation, and written offers to purchase surplus land, be made
62 confidential and exempt from s. 119.07(1), Florida Statutes, and
63 s. 24(a), Article I of the State Constitution until 2 weeks
64 before the contract or agreement regarding the purchase,
65 exchange, or disposal of the surplus land is first considered
66 for approval by the district in order to facilitate successful
67 or expedited closure of the sale of surplus lands. The public
68 availability of such valuations, related documents, and written
69 offers can negatively impact the ability of water management
70 districts to negotiate with potential purchasers and potentially
71 places water management districts at a disadvantage in
72 attempting to maximize the return on the sale of surplus land.

73 Section 3. This act shall take effect on the same date that
74 SB 806 or similar legislation takes effect, if such legislation
75 is adopted in the same legislative session or an extension
76 thereof and becomes a law.

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 Governmental Oversight and Accountability

BILL: CS/SB 1042

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Brandes and Passidomo

SUBJECT: Notaries Public

DATE: February 15, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1042 permits a notary public to register to provide online notarizations to people both in and out-of-state using audio/video technology. A notary public seeking to provide online notarizations must still qualify, be appointed and commissioned by the Governor, and be governed by the traditional provisions set forth in chapter 117, F.S. However, the bill divides chapter 117, F.S., into two parts and creates Part II, which sets forth the requirements for those notaries who also want to register with the Governor to provide online notarizations.

The bill requires that any notary public registered for and offering online notarizations carry a one million dollar insurance policy to protect against errors and omissions and a \$25,000 bond. The bill also gives rule-making authority to the Department of State, in collaboration with the Agency for State Technology, to refine the types of “identity proofing” technology notaries public are required to use to verify a person’s identity remotely. Additionally, notaries offering online services must take the upmost care in maintaining online security, particularly over their electronic journal, electronic signature, and electronic seal.

The bill takes effect on January 1, 2019.

II. Present Situation:

Notary Publics in Florida

A notary public is a public officer under the Florida Constitution,¹ and “and an impartial agent of the State.”² “[I]n the performance of his or her duties, [a notary public] exercises a delegation of the State’s sovereign power as in attesting the genuineness of any deeds or writings in order to render them available as evidence of the facts therein contained and in administering oaths and attesting to the authenticity of signatures.”³

As a public officer, notaries public are constitutionally required to give a bond (as required by law) and swear or affirm to uphold the Constitutions of the United States and Florida.⁴ Notaries public are appointed and commissioned by the Governor to four-year terms,⁵ and are authorized under Florida law to perform six basic duties:⁶

- Administer oaths or affirmations;⁷
- Take acknowledgments;⁸
- Solemnize marriages;⁹
- Attest to photocopies;¹⁰
- Verify vehicle identification numbers (VINs);¹¹ and
- Certify the contents of a safe-deposit box.¹²

Importantly, a notary public may only exercise the foregoing duties within the physical boundaries of the State of Florida.¹³ Generally, a notary public may not charge more than \$10 per notarial act and may not charge a fee for notarizing a vote-by-mail ballot.¹⁴

¹ FLA. CONST., Art. II, s. 5(c).

² 58 AM. JUR. 2D Notaries Public § 1.

³ *Id.* (footnotes omitted). See also BLACK’S LAW DICTIONARY (10th ed. 2014) (“The notary public, or notary, is an official known in nearly all civilized countries. The office is of ancient origin. In Rome, during the republic, it existed, the title being *tabelliones forenses*, or *personae publicae*; and there are records of the appointment of notaries by the Frankish kings and the Popes as early as the ninth century. They were chiefly employed in drawing up legal documents; as scribes or scriveners they took minutes and made short drafts of writings, either of a public or a private nature. In modern times their more characteristic duty is to attest the genuineness of any deeds or writings, in order to render the same available as evidence of the facts therein contained.”) (quoting Benjamin F. Rex, *The Notaries’ Manual* § 1, at 1–2 (J.H. McMillan ed., 6th ed. 1913)).

⁴ See *supra* note 1, *supra*. See s. 117.01(3) & (7), F.S. ((3) requiring that, as part of oath, the applicant must swear he or she has read ch. 117, and knows the duties, responsibilities, limitations, and powers of a notary; (7) requiring that notary give a bond in the amount of \$7,500 in the event the notary breaches duties, both a physical and electronic copy of which is to be kept on file with the Department of State). Section 117.01(1), F.S., requires a notary to be able to read, write, and understand the English language.

⁵ Section 117.01(1), F.S.

⁶ Executive Office of the Governor, State of Florida, *Governor’s Reference Manual for Notaries Public*, p. 13 (Dec. 13, 2016).

⁷ Section 117.03, F.S.

⁸ Section 117.04, F.S.

⁹ Section 117.045, F.S.

¹⁰ Section 117.05(12)(a), F.S.

¹¹ Section 319.23(3)(a)2., F.S.

¹² Section 655.94(1), F.S.

¹³ See *supra* note 5.

¹⁴ Section 117.05(2), F.S.

A notary public may provide an electronic signature that is unique, verifiable, under the notary public's sole control, and attached to a document in a way revealing any subsequent alteration.¹⁵ When an electronic signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full name as provided in the notary public's application for commission, the words "Notary Public State of Florida," the expiration date of the notary public's commission, and the notary public's commission number.¹⁶ The seal must also be applied to all notarized paper documents using a rubber stamp containing the foregoing information.¹⁷ The rubber stamp seal must be affixed to the notarized paper document in photographically reproducible black ink. Every notary public must print, type, or stamp below his or her signature on a paper document his or her name exactly as commissioned.

Additionally, as a public officer, a notary public is held to high standards and is subject to discipline, including suspension by the Governor and removal by the Senate, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.¹⁸ A notary public is also subject to criminal penalties for certain unlawful uses of the notary public commission (such as notarizing his or her own signature),¹⁹ and liable to pay fees for certain civil infractions (such as notarizing a document when the signor is not in the notary public's presence).²⁰

Becoming a Notary Public in Florida

In order to be eligible to become a notary public in Florida, a person must:

- Be at least 18 years of age;
- Be a Florida resident or permanent resident alien with a recorded declaration of domicile;
- Maintain Florida residence throughout the appointment; and
- Be able to read, write, and understand the English language.²¹

To apply to be a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications fees.²² Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format.²³ The oath of office and notary public bond must accompany the notary public's application when filed with the Department of State.²⁴ Applicants must also provide the following as part of the application:

- Personal identification information;

¹⁵ Section 117.021(2), F.S.

¹⁶ Section 117.021(3), F.S.

¹⁷ Section 117.05(3), F.S.

¹⁸ FLA. CONST., Art. IV, s. 7.

¹⁹ Section 117.05(1), F.S. (providing violation is a third degree felony). *See also* s. 117.05(3)(d), (7), and (8), F.S.; s. 117.105, F.S.; s. 117.107(9), F.S.

²⁰ Section 117.107(9), F.S. (providing violation is a civil infraction punishable by a fine of up to \$5,000).

²¹ *See supra* note 5.

²² Section 117.01(2), F.S. (requiring \$25 application fee, \$10 commission fee, and \$4 educational surcharge, except that the commission fee is waived for veterans with a 50 percent disability).

²³ *See supra* note 6 at p. 7.

²⁴ Section 117.01(2), F.S.

- Affidavit of good character from a reference who has known the applicant for at least one year and is not a relative;
- Ten-year history of any licenses and discipline;
- Statement regarding whether the applicant has ever been convicted of a felony or had his or her civil rights restored; and
- Any other information requested by the Governor’s office to confirm eligibility.²⁵

Notary’s Duty to Confirm Identity and Physical Presence for Signing

One of the notary public’s primary duties is to verify the identity of the person who is signing a document. If the person is personally known to the notary public or provides “satisfactory evidence” by producing valid identification or witnesses or both verifying that the person is who he or she claims to be, the notary public may notarize the document.²⁶

Additionally, generally the person signing the document, as well as any witness, must be in the notary public’s physical presence at the time of presenting identification and signing.²⁷ It is the physical presence requirement that the proposed bill seeks to redefine.

Online Notarization

Because of new audio/video technologies, such as FaceTime and Skype, two or more people may be able to both see and hear one another in real time using a computer or mobile device, even though they are in different states. This means a notary public can view a person’s face, using audio/video technology, while simultaneously reviewing the person’s identification and other credentials.

One article explains how online notarization works:

The process is pretty straightforward: You upload a document to an app or website and get connected with a notary by video, on a split screen; you verify your identity by showing a government-issued photo ID, and the notary witnesses you signing your name on screen using your finger or mouse. Then, the notary adds their electronic signature and a digital version of a stamp or seal. The whole transaction is recorded and secured on the cloud in compliance with retention rules; both the signer and the notary can get copies.

Right now, even though notarization apps and sites are accessible by everyone, the participating notaries themselves are certified and based only in Virginia and Texas. Nevada will also join those states; it enacted a remote notarization law on June 9.²⁸

²⁵ *Id.*

²⁶ Section 117.05(5), F.S.

²⁷ Section 117.05(4), F.S. *See also* Effect of the Bill, Part I, *infra*, amending multiple provisions in chapter 117, F.S., to clarify that “physical presence” can include an appearance by audio/video technology.

²⁸ Lauren Silverman, *Notaries are Starting to Put Down The Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), available at <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam> (last visited Jan. 29, 2018).

Virginia was the first to pass a remote notarization law in 2012.²⁹

Commissioner of Deeds

Chapter 721, F.S., governs vacation and timeshare plans. Section 721.96, F.S., provides, in part, that the purpose of part IV, ch. 721, F.S., is to provide for the appointment of commissioners of deeds.

Section 721.97(1), F.S., provides that the Governor may appoint commissioners of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states. The term of office is 4 years. Commissioners of deeds have authority to take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located within this state; provided such instrument or writing is executed outside the United States. Such acknowledgments, proofs of execution, and oaths must be taken or made in the manner directed by the laws of this state, including but not limited to s. 117.05(4), (5)(a), and (6), F.S., and certified by a commissioner of deeds. The certification must be endorsed on or annexed to the instrument or writing aforesaid and has the same effect as if made or taken by a notary public licensed in this state.

A person seeking to be appointed as a commissioner of deeds must take an oath before a notary public in Florida or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of a commissioner of deeds.³⁰ The oath must be filed with the Department of State prior to the person being commissioned.³¹

Uniform Electronic Transaction Act

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act (act). The act applies to electronic records and signatures relating to a transaction.³² The act does not apply to transactions to the extent they are governed by:³³

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;

²⁹ *Id.* See Office of the Secretary of the Commonwealth of Virginia, Notary Commissions, *A Handbook For Virginia Notaries Publics*, available at <https://commonwealth.virginia.gov/media/9760/2017-december-15-revised-handbook.pdf> (last visited Feb. 5, 2018). See also <https://notarize.com/>, a Virginia-based online platform offering online notary services. The video on the homepage also explains how the process works. *Id.* (last visited January 29, 2018).

³⁰ Section 721.97(2), F.S. Also see International Society of Florida Commissioners of Deeds, *Reference Manual for Commissioners of Deeds For the State of Florida* (Aug. 2009), available at http://pawnotary.com/download/Manuals_and_Handbooks/Florida%20comissioner%20of%20deeds.pdf (last visited on Feb. 14, 2018).

³¹ *Id.*

³² Section 668.50(3)(a), F.S.

³³ Section 668.50(3)(b), F.S.

- The Uniform Commercial Code (UCC);³⁴ or
- The Uniform Computer Information Transaction Act.

III. Effect of Proposed Changes:

Section 1 divides ch. 117, F.S. into two parts: Part I entitled “General Provisions,” and Part II entitled “Online Notarizations.”

With the exception of the effective date,³⁵ the remaining sections of the bill can be grouped as follows: Sections 2 through 5; Sections 6 through 19; and Sections 18 through 27.

Sections 2 through 5 amend current provisions of ch. 117, F.S., which will now be Part I that contains the general provisions governing how to become a notary public and the duties and responsibilities of a notary public. The bill adds language to three of the existing provisions in Part I in order to set out some of the additional requirements a notary public must follow in order to register to do online notarizations.

The bill also provides that an online notary public must use a password or code protected electronic signature, and, presumably for security reasons, the online notary public cannot be required to use technology the online notary public has not selected (s. 117.021, F.S.). The bill requires the Department of State, in collaboration with the Agency for State Technology, to adopt rules establishing standards for tamper-evident technologies that will indicate any alteration or change to an electronic record after completion of an electronic notarial act and must publish a list of technologies that satisfy those standards and are approved for use in electronic notarizations, effective January 1, 2019. All electronic notarizations performed on or after January 1, 2019, must comply with the adopted standards and use an approved technology (s. 117.021, F.S.).

The bill provides that the notary public may supervise the making of a copy of a tangible or an electronic records or a printout of an electronic record, and attest to the trueness of the copy or of the printout, provided the document is neither a vital record in this state, another state, a territory of the U.S., or another country, nor a public record, if a copy can be made by the custodian of the public record.

The bill also sets out the criteria for a form certificate a notary public must use when notarizing a copy of a tangible or an electronic record or a printout of an electronic record (s. 117.05, F.S.), and provides that the prohibitions in s. 117.107, F.S., do not apply to electronic signatures and seals necessary to perform online notarizations.

Other changes to Part I primarily clarify that a signer of document may “personally appear” before a notary public either in person or by “audio-video communication technology,” and that an online notary public must comply with Part II, *infra* (s. 117.05, F.S.). The bill also amends the various notarial form certificates in s. 117.05, F.S., to add an option for the notary public to

³⁴ Other than s. 671.107, F.S., and chapters 672 and 680, F.S. The UCC consists of chapters 670 - 680, F.S.

³⁵ See Section 26, *infra*.

select: “The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization[.]”

Sections 6 through 19 create Part II of ch. 117, F.S., specifically governing online notary services.

The bill provides definitions of the following terms (s. 117.201, F.S.):

- “Appear before,” “before,” “appear personally before,” or “in the presence of” mean:
 - In the same physical location as another person and close enough to see, hear, communicate with, and exchange credentials with that person; or
 - In a different physical location from another person, but able to see, hear, and communicate with the person by means of audio-video communication technology;
- “Audio-video communication technology” means technology meeting the requirements of this part and of any of the rules adopted hereunder which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another;
- “Credential analysis” means a process or service meeting the requirements of this part and any rules adopted hereunder through which a third party confirms the validity of a government-issued identity credential or data thereon through review of public and proprietary data sources;
- “Error and omissions insurance” means a type of insurance that provides coverage for potential errors or omissions in or relating to the notarial act;
- “Government-issued identity credential” means any approved credential for verifying identity set forth in s. 117.05(5)(b)2, F.S.;
- “Identity proofing” means a process or service meeting the requirements of this part and of any rules adopted hereunder through which a third party confirms the identity of an individual through use of public or proprietary data sources, which may include by means of knowledge-based authentication or biometric verification;
- “Knowledge-based authentication” means a form of identity proofing based on a set of questions formulated from public and proprietary data sources for which the principal has not provided a previous answer;
- “Online notarization” means the performance of an electronic notarization by means of audio-video communication technology and which meets standards provided in this chapter and of any rules adopted hereunder;
- “Online notary public” means a notary public who has registered with the Governor’s office to perform online notarizations under this part, a civil-law notary appointed under chapter 118, F.S., or a commissioner of deeds appointed under part IV of ch. 721, F.S.;
- “Principal” means an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation from the online notary public; and
- “Remote presentation” means transmission of an image of a government-issued identity credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary’s services and to perform credential analysis through audio-video communication technology.

Except where the context requires otherwise, any term defined in the Uniform Electronic Transaction Act³⁶ has the same meaning when used in this part of the bill (s. 117.201, F.S.).

The bill clarifies in ss. 117.209, 117.225, 117.235, and 117.265, F.S., that an online notary public: must satisfy all the traditional notary public requirements of Part I; is still subject to Part I; and may perform any of the notarial acts listed in Part I online *except* online marriage rites. An online notary public may also charge a fee not to exceed \$25 *in addition to* the fees authorized by Part I (s. 117.275, F.S.). The online notary public must be physically located in Florida while performing the online notarization (s. 117.209, F.S.).

Additionally, s. 117.225, F.S., sets out the registration requirements for online notaries public. Online notaries public must:

- Satisfy qualification requirements of Part I or the qualifications for appointment as a commissioner of deeds under part IV of ch. 721, F.S.;
- Complete a live or online course covering the duties, obligations, and technology requirements for serving as an online notary public;
- Pay the online notarization application fee of \$25;
- Provide proof of bond payable to any individual harmed as a result of a breach of duty by the online notary public acting in his or her official capacity in the minimum amount of \$25,000 as specified by Department of State rule. Such bond must be approved and filed with the Department of State and executed by a surety company authorized to transact business in Florida. Compliance with this requirement satisfies the requirement of obtaining a bond under s. 117.01(7), F.S.;
- Provide proof of errors and omissions insurance policy from an insurer authorized to do business in Florida in the minimum amount of \$1 million on such terms as specified by Department of State rule as reasonably necessary to protect the public;
- Submit a signed and sworn registration to the Governor's office; and
- Identify the audio/video communication technology and identity proofing methods to be used online, which must:
 - Comply with the standards promulgated by the Department of State and the Agency for State Technology; or
 - Be consistent with the requirements of s. 117.295(2), F.S., if the Department of State and the Agency for State Technology have not yet established standards.

Section 117.215, F.S., provides that if a provision of law requires a notary public or other authorized official of this state to notarize a signature or a statement, to take an acknowledgment of an instrument, or to administer an oath or affirmation so that a document may be sworn, made under oath, or subject to penalty or perjury, an online notarization performed in accordance with the provisions of this part and any rules adopted hereunder satisfies such requirement. If a provision of law requires a signature or an act to be witnessed, compliance with the online electronic witnessing standards prescribed in s. 117.285, F.S., and any rules adopted thereunder satisfies that requirement.

The bill requires an online notary public to keep extensive records of each online notarization in a secure electronic journal, which must include all of the following (s. 117.245, F.S.):

³⁶ Section 668.50, F.S.

- The date and time of the notarization;
- The type of notarial act;
- The type, the title, or a description of the electronic record or proceeding;
- The printed name and address of each principal involved in the transaction or proceeding;
- Evidence of identity of each principal involved in the transaction or proceeding in the form of:
 - A statement that the person is personally known to the online notary public;
 - A notation of the type of identification document provided to the online notary public;
 - A copy of the government-issued identity credential provided; and
 - A copy of any other identity credential or information provided;
- An indication that the principal satisfactorily passed the identity proofing;
- An indication that the government-issued identity credential satisfied the credential analysis; and
- A recording of the audio-video communication that includes:
 - The principal and any witnesses who appeared before the notary public.
 - Confirmation of the identity of each.
 - Electronic records signed by the principal and any witnesses.
 - The notarial act was performed.
- The fee, if any, charged for the notarization.

The online notary public must take reasonable steps to (s. 117.245, F.S.):

- Ensure the integrity, security, and authenticity of online notarizations;
- Maintain a backup record of the electronic journal; and
- Protect the electronic journal, the backup record, and any other records received by the online notary public from unauthorized access or use.

The electronic journal must be maintained by the online notary public or a custodian acting on his or her behalf, for at least 10 years after the date of the notarial act. (s. 117.245, F.S.). An omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or of the electronic record notarized, but may be introduced as evidence to establish violations of this chapter; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes.

For use of electronic journal, signature, and seal, the bill requires an online notary public to (s. 117.255, F.S.):

- Take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.
- Keep his or her electronic journal, electronic signature, and electronic seal secure and under his or her sole control, which includes control in the form of access protection using passwords or codes under control of the online notary public. The online notary public may not allow another person to use or access his or her electronic journal, electronic signature, or electronic seal.
- Use his or her electronic signature only for performing online notarization.
- Attach or logically associate the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic record in a manner that is capable of

independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident.

- Immediately notify an appropriate law enforcement agency and the Governor's office of theft or vandalism of his or her electronic journal, electronic signature, or electronic seal. An online notary public shall immediately notify the Governor's office of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.
- Make electronic copies, upon request, of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings to the parties to the electronic records notarized, the title agent, settlement agent, or title insurer who engaged the online notary public with regard to a real estate transaction. The online notary public may charge a reasonable fee for making and delivering electronic copies of a given series of related electronic records. The online notary public shall disclose the amount of such fee to the requester before making the electronic copies.

Procedurally, the bill provides that an online notary public may notarize documents online for people in Florida and in other states so long as the online notary public confirms the identities of the principle signer and witnesses at the time of signing by using audio-video communication technology and processes that meet the requirements of this part and any of the rules adopted thereunder and records the entire two-way audio-video conference session; and, if out-of-state, confirms that the principle signer consents to a Florida-based notary public and consents to be governed by applicable Florida law (s. 117.265, F.S.). A principal may not act in the capacity of a witness for his or her own signature in an online notarization. An online notary public may verify identification of a principle signer or a witness as follows (s. 117.265, F.S.):

- The online notary public's personal knowledge of the person;
- The remote presentation of a government-issued identity credential by each individual;
- Credential analysis of each government-issued identity credential; and
- "Identity proofing" of each individual which meets the requirements of this part and of any rules adopted hereunder.

If the online notary public is not satisfied that a person's identity has been verified or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary public is not authorized to perform the online notarization (s. 117.265, F.S.).

The online notary public must take reasonable steps to ensure the audio-video communication technology used in the online notarization is secure from unauthorized interception (s. 117.265, F.S.).

The electronic notarial certificate must include a notation that the notarization is an online notarization. Any failure to comply with procedures set forth in s. 117.265, F.S., does not impair the validity of the notarial act or the electronic record that was notarized, but may be introduced as evidence to establish violations of ch. 117, F.S.; as an indication of possible fraud, forgery, or impersonation; or for other evidentiary purposes (s. 117.265, F.S.). This subsection may not be construed to alter the duty of an online notary public to comply with ch. 117, F.S., and any rules adopted hereunder.

The bill allows for the witnessing of an online notarization (s. 117.285, F.S.). An online notary public may supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization, as follows:

- The identity of each witness must be verified in the same manner as the identity of the principal;
- A witness may physically be present with the principal or remote from the principal provided the witness and principal are using audio-video communication technology; and
- The witness is present in either physical proximity to the principal or through audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement to the effect that the principal has signed the electronic record.

Additionally, the bill provides that the Department of State, in collaboration with the Agency for State Technology may adopt rules and standards necessary to implement the requirements of ch. 117, F.S., and such other rules and standards as may be required to facilitate the integrity, security, and reliability of online notarization, including the minimum amounts of and required terms of bonds and errors and omissions insurance to be held by an online notary public; education requirements for online notaries public; standards regarding identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology, and may publish lists of technologies that satisfy the standards and are approved for use in online notarizations (s. 117.295, F.S.).

Until the Department of State adopts applicable rules, identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology are governed by the following minimum standards (s. 117.295, F.S.):

- Identity proofing by means of knowledge-based authentication is required to have, at a minimum, the following security characteristics:
 - The principal must be presented with five or more questions with a minimum of five possible answer choices per question.
 - Each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal's social security number or other identification information, or the principal's identity and historical events records.
 - Responses to all questions must be made within a 2-minute time constraint.
 - The principal must answer a minimum of 80 percent of the questions correctly.
 - The principal may be offered one additional attempt in the event of a failed attempt.
 - During the second attempt, the principal may not be presented with questions from the prior attempt.
- Credential analysis must confirm that the credential is valid and matches the signer's claimed identity using one or more automated processes which scan the credential, including its format features, data, barcodes, or other security features.
- Tamper-evident technology requirements are deemed satisfied by use of technology that renders any subsequent change or modification to the electronic record evident
- Audio-video communication technology used in completing online notarizations must meet the following requirements:
 - The signal transmission must be secure from interception, access, or viewing by anyone other than the participants communicating.

- The technology must provide sufficient audio clarity and video resolution to enable the notary public to communicate with the principal and to confirm the identity of the principal using identification methods described in s. 117.265, F.S.

The bill provides that an online notary public is not responsible for the security of the systems used by the principal or others to access the online notarization session.

Section 117.305, F.S., provides that Part II supersedes 15 U.S.C. s. 7002, the federal Electronic Signatures in Global and National Commerce Act. This is expressly permitted by 15 U.S.C. s. 7002 when a state has adopted the Uniform Electronic Transactions Act,³⁷ which Florida did in 2000.³⁸ Section 117.305, F.S., also provides that the requirements in 15 U.S.C. s. 7001(c) concerning consumer disclosures, and the requirement of 15 U.S.C. s. 7003(b) concerning the delivery of certain legal documents are not superseded or limited.

Sections 18 through 27 make conforming or necessary collateral changes to several provisions outside of chapter 117, F.S.

Section 18 amends s. 28.222, F.S., requiring that a clerk of a circuit court to record copies of any instrument originally created and executed using an electronic signature and is certified as a true and correct paper printout by a notary public in accordance with ch. 117, F.S., if the county is not prepared to accept electronic documents for recording electronically.

Section 19 amends s. 95.231, F.S., concerning acknowledgment relating to limitations for deed or will on record for conveyance of real property.

Section 20 amends s. 689.01, F.S., related to how real estate is conveyed. The bill provides that any requirement that an instrument be signed in the presence of two subscribing witnesses is satisfied by witnesses being present and electronically signing by means of audio-video communication technology and under standards applicable to online notarization pursuant to ch. 117, F.S., and any rules adopted thereunder.

The bill provides that the act of witnessing an electronic signature is satisfied if a witness is present either in physical proximity to the principal or by audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement acknowledging that the principal has signed the electronic record. All witnesses made or taken pursuant to this subsection are validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with these requirements, as currently or previously in effect, or the laws governing notarization of instruments, including online notarization, in this state.

³⁷ See Uniform Law Commission, Acts, *Why States Should Adopt UETA*, <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UETA> (last visited Jan. 29, 2018) (“The **Uniform Electronic Transactions Act (UETA)** allows the use of electronic records and electronic signatures in any transaction, except transactions subject to the Uniform Commercial Code. The fundamental purpose of this act is to remove perceived barriers to electronic commerce. The UETA is a procedural statute. It does not mandate either electronic signatures or records, but provides a means to effectuate transactions when they are used. The primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.”).

³⁸ Section 668.50, F.S.

Section 21 amends s. 694.08, F.S., to add failure of, or absence of the acknowledgment or the certificate of acknowledgment language relating to certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgment, etc.

Section 22 amends s. 695.03, F.S., relating to acknowledgements and proof, validation of certain acknowledgments, and legalization of authentication before foreign officials in the recording of real estate conveyances. For acknowledgment or a proof of a person within the state, the bill provides that the affixing of the official seal, or the electronic equivalent authorized under s. 117.021, F.S., or any other state law, conclusively establishes that the acknowledgement was made in compliance with the laws of Florida .

Section 23 amends s. 695.04, F.S., relating to a certificate legalizing or authenticating the signature of a person executing an instrument concerning real property to allow acknowledgment via means of audio-video communication technology as set forth in s. 117.05, F.S.

Section 24 amends s. 695.05, F.S., relating to certain defects cured as to acknowledgments and witnesses in real estate conveyances. The bill makes conforming change concerning acknowledgment.

Section 25 amends s. 695.28, F.S., relating to validity of recorded electronic documents. Under s. 695.28, F.S., a document that is submitted to the clerk of court or county recorder is deemed validly recorded and acts as notice to persons for certain purposes. The bill provides that submission to the clerk of court or county recorder provides notice to all persons that the document was signed, witnessed, or notarized electronically or that witnessing or notarization may have been done outside the physical presence of the notary public or principal. Alternatively, it acts as notice that the document recorded was a certified printout of a document which one or more electronic signatures have been affixed.

The bill states that s. 695.28, F.S., does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, undue influence, minority, illegality, unconscionability, or any other basis.

Section 26: The bill has an effective date of January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Notaries who wish to provide online services must pay an additional \$25 registration fee.

B. Private Sector Impact:

The availability of online notarial services may be more convenient for those who need the services. Fees for notary services are capped by the statute.

C. Government Sector Impact:

The bill will likely add to the regulatory and record-keeping responsibilities of the Department of State and the Office of the Governor.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 9 of the bill provides an additional satisfying qualifications requirement for online notaries public to include the qualifications for appointment as a commissioner of deeds under part IV of ch. 721, F.S. Section 721.97, F.S., regarding timeshare commissioner of deeds, does not, however, provide any qualifications for this appointment by the Governor, other than taking an oath to faithfully execute and perform the duties of commissioner of deeds.

Also, some of the definitions (“audio-video communication technology,” “credential analysis,” “identity proofing,” and “online notarization”) contained in section 6 of the bill reference rules to be adopted regarding these specified definitions; this may lead to a lack of clarity and create uncertainty.

VIII. Statutes Affected:

This bill substantially amends sections 117.01, 117.021, 117.05, 117.107, 28.222, 95.231, 689.01, 694.08, 695.03, 695.04, 695.05, and 695.28 of the Florida Statutes.

This bill creates sections 117.201, 117.209, 117.215, 117.225, 117.235, 117.245, 117.255, 117.265, 117.275, 117.285, 117.295, and 117.305 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Governmental Oversight and Accountability on February 13, 2018:**

The Committee substitute:

- Requires the Department of State, instead of the Governor’s Office, to collaborate with the Agency for State Technology:
 - To adopt rules establishing standards for tamper-evident technologies that will indicate any alteration to an electronic record after completion of an electronic notarization; and
 - To publish a list of technologies that satisfy those standards and are approved for use in electronic notarizations, effective January 1, 2019. All electronic notarizations performed on or after January 1, 2019, must comply with the adopted standards and use an approved technology.
- Deletes the requirement that a person applying for a notary public commission must submit a proof of identity to the Governor’s office rather than the Secretary of State’s office;
- Authorizes a notary public to supervise the making of a copy of a tangible or an electronic records or a printout of an electronic record, and attest to the trueness of the copy or of the printout, with certain exceptions;
- Makes changes to the certificate a notary public must use in notarizing a copy of a tangible or an electronic record or a printout of an electronic record;
- Revises various definitions contained in s. 117.201, F.S.;
- Creates definitions of the terms “errors and omissions insurance” and “online notary public” in s. 117.201, F.S.;
- Adds an additional satisfying qualifications requirement for online notaries public to include the qualifications for appointment as a commissioner of deeds under part IV of ch. 721, F.S.;
- Adds a registration requirement for online notaries public to complete a live or online course covering the duties, obligations, and technology requirements for serving as an online notary public;
- Requires online notaries public to obtain bond in the minimum amount of \$25,000;
- Revises insurance requirements for online notaries public to carry error and omissions policy, instead of liability insurance, in the minimum amount of \$1 million;
- Requires the audio-video communication recording contained in the electronic journal of online notarizations to include electronic records signed by the principal and any witnesses;
- Requires the online notary public to protect the electronic journal and any other records received by the online notary public from unauthorized access or use;
- Requires electronic journal to be maintained for 10 years by either the online notary public or a custodian acting on behalf of the notary public;
- Requires an online notary public to make electronic copies, upon request, of entries in electronic journal and provide access to audio-video communication technology recordings to specified persons, including the parties to the electronic records notarized;

- Provides that a principal may not act in the capacity of a witness for his or her own signature in an online notarization;
- Requires identity proofing of each individual by the online notary public to meet the requirements of online notarization and of any rules adopted thereunder;
- Adds a provision that online notarization procedures contained in s. 117.265, F.S., may not be construed to alter the duty of an online notary public to comply with ch. 117, F.S., and any rules adopted thereunder;
- Deletes provision in s. 117.285, F.S., allowing an official of another state authorized under the laws of that state to perform online notarization of documents to supervise the witnessing of electronic records;
- Provides that the Department of State, in collaboration with the Agency for State Technology, may adopt rules on additional topics, including the minimum amounts of and required terms of bonds and errors and omissions insurance to be held by an online notary public and education requirements for online notaries public;
- Provides that until the Department of State adopts applicable rules, specified minimum standards govern identity proofing, credential analysis, unauthorized interception, remote presentation, tamper-evident technology, and audio-video communication technology;
- Revises the minimum standards requirements for credential analysis;
- Deletes certification by title agency, authorized intermediary, or other approved party in proposed revision to s. 28.222, F.S.;
- Deletes proposed revisions to s. 92.50, F.S., relating to oaths, affidavits, and acknowledgments;
- Deletes provisions in the proposed revision to s. 669.01, F.S., relating to conformance/compliance with laws of other states that authorize online notarization of instruments;
- Deletes provisions in proposed revisions to s. 695.03, F.S., regarding:
 - The definition of the term “before”; and
 - Compliance with other state laws that govern the notarization of instruments;
- Amends s. 695.03, F.S., to provide criteria for acknowledgement of a person within the state;
- Deletes proposed revisions to s. 695.28, F.S., regarding online notarization or witnessing of notarization in accordance with the laws of another state;
- Deletes proposed revisions to s. 695.09, F.S., relating to the identity of a grantor in real estate conveyances;
- Makes numerous technical changes; and
- Changes the effective date of the bill from July 1, 2018, to January 1, 2019.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2018	.	
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	.	

The Committee on Governmental Oversight and Accountability
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The Division of Law Revision and Information is
directed to:

(1) Create part I of chapter 117, Florida Statutes,
consisting of ss. 117.01-117.108, Florida Statutes, to be
entitled "General Provisions."

(2) Create part II of chapter 117, Florida Statutes,



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11 consisting of ss. 117.201-117.305, Florida Statutes, to be
12 entitled "Online Notarizations."

13 Section 2. Subsection (1) of section 117.01, Florida
14 Statutes, is amended to read:

15 117.01 Appointment, application, suspension, revocation,
16 application fee, bond, and oath.—

17 (1) The Governor may appoint as many notaries public as he
18 or she deems necessary, each of whom must ~~shall~~ be at least 18
19 years of age and a legal resident of this ~~the~~ state. A permanent
20 resident alien may apply and be appointed and shall file with
21 his or her application a recorded Declaration of Domicile. The
22 residence required for appointment must be maintained throughout
23 the term of appointment. A notary public ~~Notaries public~~ shall
24 be appointed for 4 years and may only ~~shall~~ use and exercise the
25 office of notary public if he or she is within the boundaries of
26 this state. An applicant must be able to read, write, and
27 understand the English language.

28 Section 3. Present subsections (4) and (5) of section
29 117.021, Florida Statutes, are renumbered as subsections (5) and
30 (6), respectively, a new subsection (4) and subsection (7) are
31 added to that section, and subsection (2) and present subsection
32 (5) of that section are amended, to read:

33 117.021 Electronic notarization.—

34 (2) In performing an electronic notarial act, a notary
35 public shall use an electronic signature that is:

36 (a) Unique to the notary public;

37 (b) Capable of independent verification;

38 (c) Retained under the notary public's sole control and
39 includes access protection through the use of passwords or codes



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40 under control of the notary public; and

41 (d) Attached to or logically associated with the electronic
42 document in a manner that any subsequent alteration to the
43 electronic document displays evidence of the alteration.

44 (4) A person may not require a notary public to perform a
45 notarial act with respect to an electronic record with a form of
46 technology that the notary public has not selected to use.

47 (6)-(5) The Department of State, in collaboration with the
48 Agency for State Technology, may adopt rules to ensure the
49 security, reliability, and uniformity of signatures and seals
50 authorized in this section.

51 (7) The Department of State, in collaboration with the
52 Agency for State Technology, shall adopt rules establishing
53 standards for tamper-evident technologies that will indicate any
54 alteration or change to an electronic record after completion of
55 an electronic notarial act and shall publish a list of
56 technologies that satisfy those standards and are approved for
57 use in electronic notarizations, effective January 1, 2019. All
58 electronic notarizations performed on or after January 1, 2019,
59 must comply with the adopted standards and use an approved
60 technology.

61 Section 4. Subsection (1), paragraph (a) of subsection (2),
62 subsections (4) and (5), paragraph (a) of subsection (12), and
63 subsections (13) and (14) of section 117.05, Florida Statutes,
64 are amended, and paragraph (c) is added to subsection (12) of
65 that section, to read:

66 117.05 Use of notary commission; unlawful use; notary fee;
67 seal; duties; employer liability; name change; advertising;
68 photocopies; penalties.-



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69 (1) A ~~No~~ person may not shall obtain or use a notary public
70 commission in other than his or her legal name, and it is
71 unlawful for a notary public to notarize his or her own
72 signature. Any person applying for a notary public commission
73 must submit proof of identity to the Department of State if so
74 requested. Any person who violates ~~the provisions of~~ this
75 subsection commits is guilty of a felony of the third degree,
76 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

77 (2) (a) The fee of a notary public may not exceed \$10 for
78 any one notarial act, except as provided in s. 117.045 or s.
79 117.275.

80 (4) When notarizing a signature, a notary public shall
81 complete a jurat or notarial certificate in substantially the
82 same form as those found in subsection (13). The jurat or
83 certificate of acknowledgment shall contain the following
84 elements:

85 (a) The venue stating the location of the notary public at
86 the time of the notarization in the format, "State of Florida,
87 County of"

88 (b) The type of notarial act performed, an oath or an
89 acknowledgment, evidenced by the words "sworn" or
90 "acknowledged."

91 (c) That the signer personally appeared before the notary
92 public at the time of the notarization either by physical
93 presence or by means of audio-video communication technology as
94 authorized under part II of this chapter.

95 (d) The exact date of the notarial act.

96 (e) The name of the person whose signature is being
97 notarized. It is presumed, absent such specific notation by the



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98 notary public, that notarization is to all signatures.

99 (f) The specific type of identification the notary public
100 is relying upon in identifying the signer, either based on
101 personal knowledge or satisfactory evidence specified in
102 subsection (5).

103 (g) The notary's official signature.

104 (h) The notary's name, typed, printed, or stamped below the
105 signature.

106 (i) The notary's official seal affixed below or to either
107 side of the notary's signature.

108 (5) A notary public may not notarize a signature on a
109 document unless he or she personally knows, or has satisfactory
110 evidence, that the person whose signature is to be notarized is
111 the individual who is described in and who is executing the
112 instrument. A notary public shall certify in the certificate of
113 acknowledgment or jurat the type of identification, either based
114 on personal knowledge or other form of identification, upon
115 which the notary public is relying. In the case of an online
116 notarization, the online notary public shall comply with the
117 requirements set forth in part II of this chapter.

118 (a) For purposes of this subsection, the term "personally
119 knows" means having an acquaintance, derived from association
120 with the individual, which establishes the individual's identity
121 with at least a reasonable certainty.

122 (b) For the purposes of this subsection, the term
123 "satisfactory evidence" means the absence of any information,
124 evidence, or other circumstances which would lead a reasonable
125 person to believe that the person whose signature is to be
126 notarized is not the person he or she claims to be and any one



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127 of the following:

128 1. The sworn written statement of one credible witness
129 personally known to the notary public or the sworn written
130 statement of two credible witnesses whose identities are proven
131 to the notary public upon the presentation of satisfactory
132 evidence that each of the following is true:

133 a. That the person whose signature is to be notarized is
134 the person named in the document;

135 b. That the person whose signature is to be notarized is
136 personally known to the witnesses;

137 c. That it is the reasonable belief of the witnesses that
138 the circumstances of the person whose signature is to be
139 notarized are such that it would be very difficult or impossible
140 for that person to obtain another acceptable form of
141 identification;

142 d. That it is the reasonable belief of the witnesses that
143 the person whose signature is to be notarized does not possess
144 any of the identification documents specified in subparagraph
145 2.; and

146 e. That the witnesses do not have a financial interest in
147 nor are parties to the underlying transaction; or

148 2. Reasonable reliance on the presentation to the notary
149 public of any one of the following forms of identification, if
150 the document is current or has been issued within the past 5
151 years and bears a serial or other identifying number:

152 a. A Florida identification card or driver license issued
153 by the public agency authorized to issue driver licenses;

154 b. A passport issued by the Department of State of the
155 United States;



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156 c. A passport issued by a foreign government if the
157 document is stamped by the United States Bureau of Citizenship
158 and Immigration Services;

159 d. A driver license or an identification card issued by a
160 public agency authorized to issue driver licenses in a state
161 other than Florida, a territory of the United States, or Canada
162 or Mexico;

163 e. An identification card issued by any branch of the armed
164 forces of the United States;

165 f. A veteran health identification card issued by the
166 United States Department of Veterans Affairs;

167 g. An inmate identification card issued on or after January
168 1, 1991, by the Florida Department of Corrections for an inmate
169 who is in the custody of the department;

170 h. An inmate identification card issued by the United
171 States Department of Justice, Bureau of Prisons, for an inmate
172 who is in the custody of the department;

173 i. A sworn, written statement from a sworn law enforcement
174 officer that the forms of identification for an inmate in an
175 institution of confinement were confiscated upon confinement and
176 that the person named in the document is the person whose
177 signature is to be notarized; or

178 j. An identification card issued by the United States
179 Bureau of Citizenship and Immigration Services.

180 (12) (a) A notary public may supervise the making of a copy
181 of a tangible or an electronic record or a printout of an
182 electronic record, ~~photocopy of an original document~~ and attest
183 to the trueness of the copy or of the printout, provided the
184 document is neither a vital record in this state, another state,



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185 a territory of the United States, or another country, nor a
186 public record, if a copy can be made by the custodian of the
187 public record.

188 (c) A notary public must use a certificate in substantially
189 the following form in notarizing a copy of a tangible or an
190 electronic record or a printout of an electronic record:

191
192 STATE OF FLORIDA
193 COUNTY OF

194
195 On this day of, ... (year)..., I attest that the
196 preceding or attached document is a true, exact, complete, and
197 unaltered ... (copy of a tangible or an electronic record
198 presented to me by the document's custodian)... or a
199 ... (printout made by me from an electronic record presented to
200 me by the document's custodian).... At the time of printing, no
201 security features, if any, present on the electronic record,
202 indicated that the record had been altered since execution.

203
204 ... (Signature of Notary Public - State of Florida)...
205 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

206
207 (13) The following notarial certificates are sufficient for
208 the purposes indicated, if completed with the information
209 required by this chapter. The specification of forms under this
210 subsection does not preclude the use of other forms.

211 (a) For an oath or affirmation:

212
213 STATE OF FLORIDA



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214 COUNTY OF

215

216 Sworn to (or affirmed) and subscribed before me by means of
217 [] physical presence or [] online notarization, this day of
218, ... (year) ..., by ... (name of person making
219 statement)....

220

221 ... (Signature of Notary Public - State of Florida)...

222 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

223 Personally Known OR Produced Identification

224

225 Type of Identification Produced.....

226

227 (b) For an acknowledgment in an individual capacity:

228

229 STATE OF FLORIDA

230 COUNTY OF

231

232 The foregoing instrument was acknowledged before me by means of
233 [] physical presence or [] online notarization, this day of
234, ... (year) ..., by ... (name of person acknowledging)....

235

236 ... (Signature of Notary Public - State of Florida)...

237 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

238 Personally Known OR Produced Identification

239

240 Type of Identification Produced.....

241

242 (c) For an acknowledgment in a representative capacity:



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243
244 STATE OF FLORIDA
245 COUNTY OF

246
247 The foregoing instrument was acknowledged before me by means of
248 [] physical presence or [] online notarization, this day of
249, ... (year) ..., by ... (name of person) ... as ... (type of
250 authority, . . . e.g. officer, trustee, attorney in fact) ... for
251 ... (name of party on behalf of whom instrument was executed)

252
253 ... (Signature of Notary Public - State of Florida) ...
254 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
255 Personally Known OR Produced Identification
256
257 Type of Identification Produced.....

258
259 (14) A notary public must make reasonable accommodations to
260 provide notarial services to persons with disabilities.

261 (a) A notary public may notarize the signature of a person
262 who is blind after the notary public has read the entire
263 instrument to that person.

264 (b) A notary public may notarize the signature of a person
265 who signs with a mark if:

266 1. The document signing is witnessed by two disinterested
267 persons;

268 2. The notary public prints the person's first name at the
269 beginning of the designated signature line and the person's last
270 name at the end of the designated signature line; and

271 3. The notary public prints the words "his (or her) mark"



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272 below the person's signature mark.

273 (c) The following notarial certificates are sufficient for
274 the purpose of notarizing for a person who signs with a mark:

275 1. For an oath or affirmation:

276
277 ... (First Name)... ... (Last Name)...
278 ... His (or Her) Mark...
279

280 STATE OF FLORIDA
281 COUNTY OF

282
283 Sworn to and subscribed before me by means of [] physical
284 presence or [] online notarization, this day of,
285 ...(year)..., by ...(name of person making statement)..., who
286 signed with a mark in the presence of these witnesses:

287
288 ... (Signature of Notary Public - State of Florida)...
289 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

290 Personally Known OR Produced Identification

291
292 Type of Identification Produced.....
293

294 2. For an acknowledgment in an individual capacity:

295
296 ... (First Name)... ... (Last Name)...
297 ... His (or Her) Mark...
298

299 STATE OF FLORIDA
300 COUNTY OF



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301
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The foregoing instrument was acknowledged before me by means of
[] physical appearance or [] online notarization, this day
of, ... (year) ..., by ... (name of person
acknowledging) ..., who signed with a mark in the presence of
these witnesses:

... (Signature of Notary Public - State of Florida) ...
... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
Personally Known OR Produced Identification
.....
Type of Identification Produced.....

(d) A notary public may sign the name of a person whose
signature is to be notarized when that person is physically
unable to sign or make a signature mark on a document if:

1. The person with a disability directs the notary public
to sign in his or her presence;
2. The document signing is witnessed by two disinterested
persons;
3. The notary public writes below the signature the
following statement: "Signature affixed by notary, pursuant to
s. 117.05(14), Florida Statutes," and states the circumstances
of the signing in the notarial certificate.

(e) The following notarial certificates are sufficient for
the purpose of notarizing for a person with a disability who
directs the notary public to sign his or her name:

1. For an oath or affirmation:



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330 STATE OF FLORIDA
331 COUNTY OF

332

333 Sworn to (or affirmed) before me by means of [] physical
334 presence or [] online notarization, this day of,
335 ...(year)..., by ...(name of person making statement)..., and
336 subscribed by ...(name of notary)... at the direction of ~~and in~~
337 ~~the presence of~~ ...(name of person making statement)..., and in
338 the presence of these witnesses:

339

340 ...(Signature of Notary Public - State of Florida)...
341 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
342 Personally Known OR Produced Identification
343
344 Type of Identification Produced.....

345

346 2. For an acknowledgment in an individual capacity:

347

348 STATE OF FLORIDA
349 COUNTY OF

350

351 The foregoing instrument was acknowledged before me by means of
352 [] physical presence or [] online notarization, this day of
353, ...(year)..., by ...(name of person acknowledging)...
354 and subscribed by ...(name of notary)... at the direction of ~~and~~
355 ~~in the presence of~~ ...(name of person acknowledging)..., and in
356 the presence of these witnesses:

357

358 ...(Signature of Notary Public - State of Florida)...



359 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...
360 Personally Known OR Produced Identification
361

362 Type of Identification Produced.....
363

364 Section 5. Subsections (2) and (9) of section 117.107,
365 Florida Statutes, are amended to read:

366 117.107 Prohibited acts.—

367 (2) A notary public may not sign notarial certificates
368 using a facsimile signature stamp unless the notary public has a
369 physical disability that limits or prohibits his or her ability
370 to make a written signature and unless the notary public has
371 first submitted written notice to the Department of State with
372 an exemplar of the facsimile signature stamp. This subsection
373 does not apply to or prohibit the use of an electronic signature
374 and seal by a notary public performing an electronic or online
375 notarization in accordance with this chapter.

376 (9) A notary public may not notarize a signature on a
377 document if the person whose signature is being notarized does
378 not appear before the notary public either by means of physical
379 presence or by means of audio-video communication technology as
380 authorized under part II of this chapter ~~is not in the presence~~
381 ~~of the notary public~~ at the time the signature is notarized. Any
382 notary public who violates this subsection is guilty of a civil
383 infraction, punishable by penalty not exceeding \$5,000, and such
384 violation constitutes malfeasance and misfeasance in the conduct
385 of official duties. It is no defense to the civil infraction
386 specified in this subsection that the notary public acted
387 without intent to defraud. A notary public who violates this



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388 subsection with the intent to defraud is guilty of violating s.
389 117.105.

390 Section 6. Section 117.201, Florida Statutes, is created to
391 read:

392 117.201 Definitions.—As used in this part, the term:

393 (1) "Appear before," "before," "appear personally before,"
394 or "in the presence of" mean:

395 (a) In the same physical location as another person and
396 close enough to see, hear, communicate with, and exchange
397 credentials with that person; or

398 (b) In a different physical location from another person,
399 but able to see, hear, and communicate with the person by means
400 of audio-video communication technology.

401 (2) "Audio-video communication technology" means technology
402 meeting the requirements of this part and of any rules adopted
403 hereunder which enables real-time, two-way communication using
404 electronic means in which participants are able to see, hear,
405 and communicate with one another.

406 (3) "Credential analysis" means a process or service
407 meeting the requirements of this part and of any rules adopted
408 hereunder through which a third party affirms the validity of a
409 government-issued identity credential or data thereon through
410 review of public or proprietary data sources.

411 (4) "Errors and omissions insurance" means a type of
412 insurance that provides coverage for potential errors or
413 omissions in or relating to the notarial act.

414 (5) "Government-issued identity credential" means any
415 approved credential for verifying identity under s.
416 117.05(5)(b)2.



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417 (6) "Identity proofing" means a process or service meeting
418 the requirements of this part and of any rules adopted hereunder
419 through which a third party affirms the identity of an
420 individual through use of public or proprietary data sources,
421 which may include by means of knowledge-based authentication or
422 biometric verification.

423 (7) "Knowledge-based authentication" means a form of
424 identity proofing based on a set of questions formulated from
425 public and proprietary data sources for which the principal has
426 not provided a previous answer.

427 (8) "Online notarization" means the performance of an
428 electronic notarization by means of audio-video communication
429 technology and which meets the requirements of this chapter and
430 of any rules adopted hereunder.

431 (9) "Online notary public" means a notary public who has
432 registered with the Executive Office of the Governor to perform
433 online notarizations under this part, a civil-law notary
434 appointed under chapter 118, or a commissioner of deeds
435 appointed under part IV of chapter 721.

436 (10) "Principal" means an individual whose electronic
437 signature is acknowledged, witnessed, or attested to in an
438 online notarization or who takes an oath or affirmation from the
439 online notary public.

440 (11) "Remote presentation" means transmission of an image
441 of a government-issued identity credential that is of sufficient
442 quality to enable the online notary public to identify the
443 individual seeking the notary's services and to perform
444 credential analysis through audio-video communication
445 technology.



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Except where the context otherwise requires, any term defined in s. 668.50 has the same meaning when used in this part.

Section 7. Section 117.209, Florida Statutes, is created to read:

117.209 Authority to perform online notarizations.—

(1) An online notary public may perform any of the functions authorized under part I of this chapter as an online notarization, excluding solemnizing the rites of matrimony.

(2) If a notarial act requires a principal to appear before or in the presence of the online notary public, the principal may appear before the online notary public by means of audio-video communication technology that meets the requirements of this chapter and any rules adopted by the Executive Office of the Governor under s. 117.295.

(3) An online notary public may perform a notarial act as an online notarization as authorized under this chapter, regardless of the physical location of the principal at the time of the notarial act, provided the notary public is physically located in this state while performing the online notarization.

(4) The validity of an online notarization performed by an online notary public appointed in this state shall be determined by applicable laws of this state regardless of the physical location of the principal at the time of the notarial act.

Section 8. Section 117.215, Florida Statutes, is created to read:

117.215 Relation to other laws.—

(1) If a provision of law requires a notary public or other authorized official of this state to notarize a signature or a



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475 statement, to take an acknowledgement of an instrument, or to
476 administer an oath or affirmation so that a document may be
477 sworn, made under oath, or subject to penalty of perjury, an
478 online notarization performed in accordance with the provisions
479 of this part and any rules adopted hereunder satisfies such
480 requirement.

481 (2) If a provision of law requires a signature or an act to
482 be witnessed, compliance with the online electronic witnessing
483 standards prescribed in s. 117.285 and any rules adopted
484 thereunder satisfies that requirement.

485 Section 9. Section 117.225, Florida Statutes, is created to
486 read:

487 117.225 Registration; qualifications.—A notary public may
488 apply to be registered as an online notary public with the
489 Executive Office of the Governor by:

490 (1) Satisfying the qualification requirements for
491 appointment as a notary public under part I of this chapter or
492 the qualifications for appointment as a commissioner of deeds
493 under part IV of chapter 721.

494 (2) Certifying that the notary public has completed a live
495 or online course covering the duties, obligations, and
496 technology requirements for serving as an online notary public.

497 (3) Paying an online notary public application fee in the
498 amount of \$25.

499 (4) Submitting a registration as an online notary public to
500 the Executive Office of the Governor, signed and sworn to by the
501 applicant.

502 (5) Identifying the audio-video communication technology
503 and identity proofing methods that the online notary public



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504 intends to use in performing online notarizations. If the
505 Department of State and the Agency for State Technology have
506 established standards for approval of technology pursuant to
507 this part, the technology and methods selected by the online
508 notary must be in conformance with such standards. If a form of
509 technology conforms to the standards, the Department of State
510 and the Agency for State Technology must approve the use of the
511 technology. If the Department of State and the Agency for State
512 Technology have not yet established such standards, the online
513 notary public must identify technologies that are consistent
514 with the requirements of s. 117.295(2).

515 (6) Providing evidence satisfactory to the Executive Office
516 of the Governor that the notary public has obtained a bond,
517 payable to any individual harmed as a result of a breach of duty
518 by the online notary public acting in his or her official
519 capacity, conditioned for the due discharge of the office, in
520 the minimum amount of \$25,000 and on such terms as are specified
521 by rule by the Department of State as reasonably necessary to
522 protect the public. The bond shall be approved and filed with
523 the Department of State and executed by a surety company duly
524 authorized to transact business in this state. Compliance by the
525 notary public with this requirement shall satisfy the
526 requirement of obtaining a bond under s. 117.01(7).

527 (7) Providing evidence satisfactory to the Executive Office
528 of the Governor that the notary public is covered by an errors
529 and omissions insurance policy from an insurer authorized to
530 transact business in this state, in the minimum amount of \$1
531 million and on such terms as are specified by rule by the
532 Department of State as reasonably necessary to protect the



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533 public.

534 Section 10. Section 117.235, Florida Statutes, is created
535 to read:

536 117.235 Performance of notarial acts.-

537 (1) An online notary public is subject to part I to the
538 same extent as a notary public appointed and commissioned only
539 under that part, including the provisions of s. 117.021 relating
540 to electronic notarizations.

541 (2) An online notary public may perform notarial acts as
542 provided by part I in addition to performing online
543 notarizations as authorized and pursuant to the provisions of
544 this part.

545 Section 11. Section 117.245, Florida Statutes, is created
546 to read:

547 117.245 Electronic journal of online notarizations.-

548 (1) An online notary public shall keep a secure electronic
549 journal of electronic records notarized by the online notary
550 public. For each online notarization, the electronic journal
551 entry must contain all of the following:

552 (a) The date and time of the notarization.

553 (b) The type of notarial act.

554 (c) The type, the title, or a description of the electronic
555 record or proceeding.

556 (d) The printed name and address of each principal involved
557 in the transaction or proceeding.

558 (e) Evidence of identity of each principal involved in the
559 transaction or proceeding in the form of:

560 1. A statement that the person is personally known to the
561 online notary public;



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562 2. A notation of the type of government-issued identity
563 credential provided to the online notary public;
564 3. A copy of the government-issued identity credential
565 provided; and
566 4. A copy of any other identity credential or information
567 provided.
568 (f) An indication that the principal satisfactorily passed
569 the identity proofing.
570 (g) An indication that the government-issued identity
571 credential satisfied the credential analysis.
572 (h) A recording of the audio-video communication in which:
573 1. The principal and any witnesses appeared before the
574 notary public.
575 2. The identity of each was confirmed.
576 3. Electronic records were signed by the principal and any
577 witnesses.
578 4. The notarial act was performed.
579 (i) The fee, if any, charged for the notarization.
580 (2) The online notary public shall take reasonable steps
581 to:
582 (a) Ensure the integrity, security, and authenticity of
583 online notarizations.
584 (b) Maintain a backup record of the electronic journal
585 required by subsection (1).
586 (c) Protect the electronic journal, the backup record, and
587 any other records received by the online notary public from
588 unauthorized access or use.
589 (3) The electronic journal required by subsection (1) shall
590 be maintained by the online notary public, or a custodian acting



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591 on his or her behalf, for at least 10 years after the date of
592 the notarial act.

593 (4) An omitted or incomplete entry in the electronic
594 journal does not impair the validity of the notarial act or of
595 the electronic record notarized, but may be introduced as
596 evidence to establish violations of this chapter; as an
597 indication of possible fraud, forgery, or impersonation; or for
598 other evidentiary purposes.

599 Section 12. Section 117.255, Florida Statutes, is created
600 to read:

601 117.255 Use of electronic journal, signature, and seal.—An
602 online notary public shall:

603 (1) Take reasonable steps to ensure that any registered
604 device used to create an electronic signature is current and has
605 not been revoked or terminated by the device's issuing or
606 registering authority.

607 (2) Keep his or her electronic journal, electronic
608 signature, and electronic seal secure and under his or her sole
609 control, which includes control in the form of access protection
610 using passwords or codes under control of the online notary
611 public. The online notary public may not allow another person to
612 use or access his or her electronic journal, electronic
613 signature, or electronic seal.

614 (3) Only use an electronic signature for performing online
615 notarization.

616 (4) Attach or logically associate the online notary
617 public's electronic signature and seal to the electronic
618 notarial certificate of an electronic record in a manner that is
619 capable of independent verification using tamper-evident



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620 technology that renders any subsequent change or modification to
621 the electronic record evident.

622 (5) Immediately notify an appropriate law enforcement
623 agency and the Executive Office of the Governor of theft or
624 vandalism of his or her electronic journal, electronic
625 signature, or electronic seal. An online notary public shall
626 immediately notify the Executive Office of the Governor of the
627 loss or use by another person of the online notary public's
628 electronic journal, electronic signature, or electronic seal.

629 (6) Make electronic copies, upon request, of the pertinent
630 entries in the electronic journal and provide access to the
631 related audio-video communication technology recordings to the
632 parties to the electronic records notarized, and to the title
633 agent, settlement agent, or title insurer who engaged the online
634 notary with regard to a real estate transaction. The online
635 notary public may charge a reasonable fee for making and
636 delivering electronic copies of a given series of related
637 electronic records. The online notary public shall disclose the
638 amount of such fee to the requester before making the electronic
639 copies.

640 Section 13. Section 117.265, Florida Statutes, is created
641 to read:

642 117.265 Online notarization procedures.—

643 (1) An online notary public physically located in this
644 state may perform an online notarization that meets the
645 requirements of this part regardless of whether the principal or
646 any witnesses are physically located in this state at the time
647 of the online notarization. An online notarial act performed in
648 accordance with this part is deemed to have been performed



649 within this state and is governed by the applicable laws of this
650 state.

651 (2) In performing an online notarization, an online notary
652 public shall confirm the identity of a principal at the time
653 that the signature is taken by using audio-video communication
654 technology and processes that meet the requirements of this part
655 and of any rules adopted hereunder and record the entire two-way
656 audio-video conference session between the notary public and the
657 principal and any witnesses. A principal may not act in the
658 capacity of a witness for his or her own signature in an online
659 notarization.

660 (3) In performing an online notarization of a principal not
661 located within this state, an online notary public must confirm
662 that the principal desires for the notarial act to be performed
663 by a Florida notary public and governed by the applicable laws
664 of this state.

665 (4) An online notary public shall confirm the identity of
666 the principal or any witness by:

667 (a) The online notary public's personal knowledge of each
668 such individual; or

669 (b) All of the following, as the same may be refined or
670 supplemented in rules adopted pursuant to s. 117.295:

671 1. Remote presentation of a government-issued identity
672 credential by each individual;

673 2. Credential analysis of each government-issued identity
674 credential; and

675 3. Identity proofing of each individual which meets the
676 requirements of this part and of any rules adopted hereunder.

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678 If the online notary public is unable to satisfy subparagraphs
679 (b)1.-3., or if the databases consulted for identity proofing do
680 not contain sufficient information to permit authentication, the
681 online notary public may not perform the online notarization.

682 (5) The online notary public shall take reasonable steps to
683 ensure that the audio-video communication technology used in an
684 online notarization is secure from unauthorized interception.

685 (6) The electronic notarial certificate for an online
686 notarization must include a notation that the notarization is an
687 online notarization.

688 (7) Except as expressly modified in this part, the
689 requirements of part I of this chapter apply to an online
690 notarization and an online notary public.

691 (8) Any failure to comply with the procedures set forth in
692 this section does not impair the validity of the notarial act or
693 the electronic record that was notarized, but may be introduced
694 as evidence to establish violations of this chapter; as an
695 indication of possible fraud, forgery, or impersonation; or for
696 other evidentiary purposes. This subsection may not be construed
697 to alter the duty of an online notary public to comply with this
698 chapter and any rules adopted hereunder.

699 Section 14. Section 117.275, Florida Statutes, is created
700 to read:

701 117.275 Fees for online notarization.—An online notary
702 public or the online notary public's employer may charge a fee,
703 not to exceed \$25, for performing an online notarization in
704 addition to any other fees authorized under part I of this
705 chapter. Fees for services other than the provision of notarial
706 acts are not governed by this section.



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707 Section 15. Section 117.285, Florida Statutes, is created
708 to read:

709 117.285 Witnessing of online notarization.—An online notary
710 public may supervise the witnessing of electronic records by the
711 same audio-video communication technology used for online
712 notarization, as follows:

713 (1) The identity of each witness must be verified in the
714 same manner as the identity of the principal.

715 (2) The witness may physically be present with the
716 principal or remote from the principal provided the witness and
717 principal are using audio-video communication technology.

718 (3) The witness is present in either physical proximity to
719 the principal or through audio-video communication technology at
720 the time the principal affixes the electronic signature and
721 hears the principal make a statement to the effect that the
722 principal has signed the electronic record.

723 Section 16. Section 117.295, Florida Statutes, is created
724 to read:

725 117.295 Standards for electronic and online notarization;
726 rulemaking authority.—

727 (1) The Legislature intends that the standards applicable
728 to electronic notarization under s. 117.021 and for online
729 notarization under this part reflect future improvements in
730 technology and methods of assuring the identity of principals
731 and the security of an electronic record. The Department of
732 State, in collaboration with the Agency for State Technology,
733 may adopt rules and standards necessary to implement the
734 requirements of this chapter and such other rules and standards
735 as may be required to facilitate the integrity, security, and



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736 reliability of online notarization, including the minimum
737 amounts of and required terms of bonds and errors and omissions
738 insurance to be held by an online notary public; education
739 requirements for online notaries public; standards regarding
740 identity proofing, credential analysis, unauthorized
741 interception, remote presentation, tamper-evident technology,
742 and audio-video communication technology; and may publish lists
743 of technologies that satisfy the standards and are approved for
744 use in online notarizations.

745 (2) Until the Department of State adopts applicable rules,
746 identity proofing, credential analysis, unauthorized
747 interception, remote presentation, tamper-evident technology,
748 and audio-video communication technology shall be governed by
749 the following minimum standards:

750 (a) Identity proofing by means of knowledge-based
751 authentication shall have, at a minimum, the following security
752 characteristics:

753 1. The principal must be presented with five or more
754 questions with a minimum of five possible answer choices per
755 question.

756 2. Each question must be drawn from a third-party provider
757 of public and proprietary data sources and be identifiable to
758 the principal's social security number or other identification
759 information, or the principal's identity and historical events
760 records.

761 3. Responses to all questions must be made within a 2-
762 minute time constraint.

763 4. The principal must answer a minimum of 80 percent of the
764 questions correctly.



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765 5. The principal may be offered one additional attempt in
766 the event of a failed attempt.

767 6. During the second attempt, the principal may not be
768 presented with more than three questions from the prior attempt.

769 (b) Credential analysis must confirm that the credential is
770 valid and matches the signer's claimed identity using one or
771 more automated processes which scan the credential, including
772 its format features, data, barcodes, or other security features.

773 (c) Tamper-evident technology requirements are deemed
774 satisfied by use of technology that renders any subsequent
775 change or modification to the electronic record evident.

776 (d) Audio-video communication technology used in completing
777 online notarizations must meet the following requirements:

778 1. The signal transmission must be secure from
779 interception, access, or viewing by anyone other than the
780 participants communicating.

781 2. The technology must provide sufficient audio clarity and
782 video resolution to enable the notary to communicate with the
783 principal and to confirm the identity of the principal using
784 identification methods described in s. 117.265.

785
786 An online notary public is not responsible for the security of
787 the systems used by the principal or others to access the online
788 notarization session.

789 Section 17. Section 117.305, Florida Statutes, is created
790 to read:

791 117.305 Relation to federal law.—This part supersedes the
792 Electronic Signatures in Global and National Commerce Act as
793 authorized under 15 U.S.C. s. 7002, but does not modify, limit,



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794 or supersede the requirements set forth in 15 U.S.C. s. 7001(c)
795 or authorize the electronic delivery of any order, notice, or
796 document described in 15 U.S.C. s. 7003(b).

797 Section 18. Present paragraph (h) of subsection (3) of
798 section 28.222, Florida Statutes, is redesignated as paragraph
799 (i), and a new paragraph (h) is added to that subsection, to
800 read:

801 28.222 Clerk to be county recorder.—

802 (3) The clerk of the circuit court shall record the
803 following kinds of instruments presented to him or her for
804 recording, upon payment of the service charges prescribed by
805 law:

806 (h) Copies of any instruments originally created and
807 executed using an electronic signature, as defined in s. 695.27,
808 and certified to be a true and correct paper printout by a
809 notary public in accordance with chapter 117, if the county
810 recorder is not prepared to accept electronic documents for
811 recording electronically.

812 Section 19. Subsection (1) of section 95.231, Florida
813 Statutes, is amended to read:

814 95.231 Limitations where deed or will on record.—

815 (1) Five years after the recording of an instrument
816 required to be executed in accordance with s. 689.01; 5 years
817 after the recording of a power of attorney accompanying and used
818 for an instrument required to be executed in accordance with s.
819 689.01; or 5 years after the probate of a will purporting to
820 convey real property, from which it appears that the person
821 owning the property attempted to convey, affect, or devise it,
822 the instrument, power of attorney, or will shall be held to have



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823 its purported effect to convey, affect, or devise, the title to
824 the real property of the person signing the instrument, as if
825 there had been no lack of seal or seals, witness or witnesses,
826 defect in, failure of, or absence of acknowledgment or
827 relinquishment of dower, in the absence of fraud, adverse
828 possession, or pending litigation. The instrument is admissible
829 in evidence. A power of attorney validated under this subsection
830 shall be valid only for the purpose of effectuating the
831 instrument with which it was recorded.

832 Section 20. Section 689.01, Florida Statutes, is amended to
833 read:

834 689.01 How real estate conveyed.—

835 (1) No estate or interest of freehold, or for a term of
836 more than 1 year, or any uncertain interest of, in or out of any
837 messuages, lands, tenements or hereditaments shall be created,
838 made, granted, transferred or released in any other manner than
839 by instrument in writing, signed in the presence of two
840 subscribing witnesses by the party creating, making, granting,
841 conveying, transferring or releasing such estate, interest, or
842 term of more than 1 year, or by the party's lawfully authorized
843 agent, unless by will and testament, or other testamentary
844 appointment, duly made according to law; and no estate or
845 interest, either of freehold, or of term of more than 1 year, or
846 any uncertain interest of, in, to, or out of any messuages,
847 lands, tenements or hereditaments, shall be assigned or
848 surrendered unless it be by instrument signed in the presence of
849 two subscribing witnesses by the party so assigning or
850 surrendering, or by the party's lawfully authorized agent, or by
851 the act and operation of law. No seal shall be necessary to give



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852 validity to any instrument executed in conformity with this
853 section. Corporations may execute any and all conveyances in
854 accordance with the provisions of this section or ss. 692.01 and
855 692.02.

856 (2) For purposes of this chapter:

857 (a) Any requirement that an instrument be signed in the
858 presence of two subscribing witnesses may be satisfied by
859 witnesses being present and electronically signing by means of
860 audio-video communication technology that meets the requirements
861 of part II of chapter 117 and any rules adopted thereunder.

862 (b) The act of witnessing an electronic signature is
863 satisfied if a witness is present either in physical proximity
864 to the principal or by audio-video communication technology at
865 the time the principal affixes his or her electronic signature
866 and hears the principal make a statement acknowledging that the
867 principal has signed the electronic record.

868 (3) All acts of witnessing heretofore made or taken
869 pursuant to subsection (2) are validated and, upon recording,
870 may not be denied to have provided constructive notice based on
871 any alleged failure to have strictly complied with this section,
872 as currently or previously in effect, or the laws governing
873 notarization of instruments, including online notarization, in
874 this state.

875 Section 21. Section 694.08, Florida Statutes, is amended to
876 read:

877 694.08 Certain instruments validated, notwithstanding lack
878 of seals or witnesses, or defect in acknowledgment, ~~etc.~~—

879 (1) Whenever any power of attorney has been executed and
880 delivered, or any conveyance has been executed and delivered to



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881 any grantee by the person owning the land therein described, or
882 conveying the same in an official or representative capacity,
883 and has, for a period of 7 years or more been spread upon the
884 records of the county wherein the land therein described has
885 been or was at the time situated, and one or more subsequent
886 conveyances of said land or parts thereof have been made,
887 executed, delivered and recorded by parties claiming under such
888 instrument or instruments, and such power of attorney or
889 conveyance, or the public record thereof, shows upon its face a
890 clear purpose and intent of the person executing the same to
891 authorize the conveyance of said land or to convey the said
892 land, the same shall be taken and held by all the courts of this
893 state, in the absence of any showing of fraud, adverse
894 possession, or pending litigation, to have authorized the
895 conveyance of, or to have conveyed, the fee simple title, or any
896 interest therein, of the person signing such instruments, or the
897 person in behalf of whom the same was conveyed by a person in an
898 official or representative capacity, to the land therein
899 described as effectively as if there had been no defect in,
900 failure of, or absence of the acknowledgment or the certificate
901 of acknowledgment, if acknowledged, or the relinquishment of
902 dower, and as if there had been no lack of the word "as"
903 preceding the title of the person conveying in an official or
904 representative capacity, of any seal or seals, or of any witness
905 or witnesses, and shall likewise be taken and held by all the
906 courts of this state to have been duly recorded so as to be
907 admissible in evidence;

908 (2) Provided, however, that this section shall not apply to
909 any conveyance the validity of which shall be contested or have



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910 been contested by suit commenced heretofore or within 1 year of
911 the effective date of this law.

912 Section 22. Section 695.03, Florida Statutes, is amended to
913 read:

914 695.03 Acknowledgment and proof; validation of certain
915 acknowledgments; legalization or authentication before foreign
916 officials.—To entitle any instrument concerning real property to
917 be recorded, the execution must be acknowledged by the party
918 executing it, proved by a subscribing witness to it, or
919 legalized or authenticated by a civil-law notary or notary
920 public who affixes her or his official seal, before the officers
921 and in the following form and manner ~~following~~:

922 (1) WITHIN THIS STATE.—An acknowledgment or a proof of a
923 person located ~~made within~~ this state may be made before a
924 judge, clerk, or deputy clerk of any court; a United States
925 commissioner or magistrate; or a notary public or civil-law
926 notary of this state, and the certificate of acknowledgment or
927 proof must be under the seal of the court or officer, as the
928 case may be. The affixing of the official seal, or the
929 electronic equivalent authorized under s. 117.021 or any other
930 state law, conclusively establishes that the acknowledgment or
931 proof was made in full compliance with the laws of this state.
932 ~~All affidavits and acknowledgments heretofore made or taken in~~
933 ~~this manner are hereby validated.~~

934 (2) OUT OF ~~WITHOUT THIS~~ STATE BUT WITHIN THE UNITED
935 STATES.—An acknowledgment or a proof of a person located outside
936 ~~made out~~ of this state but within the United States may be made
937 before an online notary public, a civil-law notary, ~~of this~~
938 ~~state~~ or by a commissioner of deeds appointed by the Governor of



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939 this state; a judge or clerk of any court of the United States
940 or of any state, territory, or district; a United States
941 commissioner or magistrate; or a notary public, justice of the
942 peace, master in chancery, or registrar or recorder of deeds of
943 any state, territory, or district having a seal, and the
944 certificate of acknowledgment or proof must be under the seal of
945 the court or officer, as the case may be. If the acknowledgment
946 or proof is made before a notary public who does not affix a
947 seal, it is sufficient for the notary public to type, print, or
948 write by hand on the instrument, "I am a Notary Public of the
949 State of ...(state)..., and my commission expires on
950 ...(date)...."

951 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
952 COUNTRIES.~~An If the~~ acknowledgment, an affidavit, an oath, a
953 legalization, an authentication, or a proof of a person located
954 outside the United States or is made in a foreign country, ~~it~~
955 may be made before a commissioner of deeds appointed by the
956 Governor of this state to act in such country; before a notary
957 public of such foreign country, an online notary public, or a
958 civil-law notary of this state or of such foreign country who
959 has an official seal; before an ambassador, envoy extraordinary,
960 minister plenipotentiary, minister, commissioner, charge
961 d'affaires, consul general, consul, vice consul, consular agent,
962 or other diplomatic or consular officer of the United States
963 appointed to reside in such country; or before a military or
964 naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or~~
965 ~~Articles of War of the United States~~ to perform the duties of
966 notary public, and the certificate of acknowledgment,
967 legalization, authentication, or proof must be under the seal of



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968 the officer. A certificate legalizing or authenticating the
969 signature of a person executing an instrument concerning real
970 property and to which a civil-law notary or notary public of
971 that country has affixed her or his official seal is sufficient
972 as an acknowledgment. For the purposes of this section, the term
973 "civil-law notary" means a civil-law notary as defined in
974 chapter 118 or an official of a foreign country who has an
975 official seal and who is authorized to make legal or lawful the
976 execution of any document in that jurisdiction, in which
977 jurisdiction the affixing of her or his official seal is deemed
978 proof of the execution of the document or deed in full
979 compliance with the laws of that jurisdiction.

980 (4) VALIDATION.—All affidavits, oaths, acknowledgments,
981 legalizations, authentications, or proofs made or taken in any
982 manner as set forth in subsections (1)-(3) are validated and
983 upon recording may not be denied to have provided constructive
984 notice based on any alleged failure to have strictly complied
985 with this section, as currently or previously in effect, or the
986 laws governing notarization of instruments.

987
988 ~~All affidavits, legalizations, authentications, and~~
989 ~~acknowledgments heretofore made or taken in the manner set forth~~
990 ~~above are hereby validated.~~

991 Section 23. Section 695.04, Florida Statutes, is amended to
992 read:

993 695.04 Requirements of certificate.—The certificate of the
994 officer before whom the acknowledgment or proof is taken, except
995 for a certificate legalizing or authenticating the signature of
996 a person executing an instrument concerning real property



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997 pursuant to s. 695.03(3), shall contain and set forth
998 substantially the matter required to be done or proved to make
999 such acknowledgment or proof effectual as set forth in s.
1000 117.05.

1001 Section 24. Section 695.05, Florida Statutes, is amended to
1002 read:

1003 695.05 Certain defects cured as to acknowledgments and
1004 witnesses.—All deeds, conveyances, bills of sale, mortgages or
1005 other transfers of real or personal property within the limits
1006 of this state, heretofore or hereafter made and received bona
1007 fide and upon good consideration by any corporation, and
1008 acknowledged for record by ~~before~~ some officer, stockholder or
1009 other person interested in the corporation, grantee, or
1010 mortgagee as a notary public or other officer authorized to take
1011 acknowledgments of instruments for record within this state,
1012 shall be held, deemed and taken as valid as if acknowledged by
1013 the proper notary public or other officer authorized to take
1014 acknowledgments of instruments for record in this state not so
1015 interested in said corporation, grantee or mortgagee; and said
1016 instrument whenever recorded shall be deemed notice to all
1017 persons; provided, however, that this section shall not apply to
1018 any instrument heretofore made, the validity of which shall be
1019 contested by suit commenced within 1 year of the effective date
1020 of this law.

1021 Section 25. Section 695.28, Florida Statutes, is amended to
1022 read:

1023 695.28 Validity of recorded electronic documents.—

1024 (1) A document that is otherwise entitled to be recorded
1025 and that was or is submitted to the clerk of the court or county



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1026 recorder by electronic or other means and accepted for
1027 recordation is deemed validly recorded and provides notice to
1028 all persons notwithstanding:

1029 (a) That the document was received and accepted for
1030 recordation before the Department of State adopted standards
1031 implementing s. 695.27; ~~or~~

1032 (b) Any defects in, deviations from, or the inability to
1033 demonstrate strict compliance with any statute, rule, or
1034 procedure relating to electronic signatures, electronic
1035 witnesses, electronic notarization, or online notarization, or
1036 for submitting or recording ~~to submit or record~~ an electronic
1037 document in effect at the time the electronic document was
1038 executed or was submitted for recording;

1039 (c) That the document was signed, witnessed, or notarized
1040 electronically or that witnessing or notarization may have been
1041 done outside the physical presence of the notary public or
1042 principal; or

1043 (d) That the document recorded was a certified printout of
1044 a document to which one or more electronic signatures have been
1045 affixed.

1046 (2) This section does not alter the duty of the clerk or
1047 recorder to comply with s. 28.222, s. 695.27, or any rules
1048 adopted pursuant to those sections ~~that section.~~

1049 (3) This section does not preclude a challenge to the
1050 validity or enforceability of an instrument or electronic record
1051 based upon fraud, forgery, impersonation, duress, undue
1052 influence, minority, illegality, unconscionability, or any other
1053 basis not in the nature of those matters described in subsection
1054 (1).



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1055 Section 26. This act shall take effect January 1, 2019.

1056

1057 ===== T I T L E A M E N D M E N T =====

1058 And the title is amended as follows:

1059 Delete everything before the enacting clause

1060 and insert:

1061 A bill to be entitled

1062 An act relating to notaries public; providing
1063 directives to the Division of Law Revision and
1064 Information; amending s. 117.01, F.S.; revising
1065 provisions relating to use of the office of notary
1066 public; amending s. 117.021, F.S.; requiring
1067 electronic signatures to include access protection;
1068 prohibiting a person from requiring a notary public to
1069 perform a notarial act with certain technology;
1070 requiring the Department of State, in collaboration
1071 with the Agency for State Technology, to adopt rules
1072 for certain purposes; amending s. 117.05, F.S.;
1073 revising limitations on notary fees to conform to
1074 changes made by the act; providing for inclusion of
1075 certain information in a jurat or notarial
1076 certificate; providing for compliance with online
1077 notarization requirements; providing for notarial
1078 certification of a printed electronic record; revising
1079 statutory forms for jurats and notarial
1080 certifications; amending s. 117.107, F.S.; providing
1081 applicability; revising prohibited acts; creating s.
1082 117.201, F.S.; providing definitions; creating s.
1083 117.209, F.S.; authorizing online notarizations;



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1084 providing an exception; creating s. 117.215, F.S.;

1085 specifying the application of other laws in relation

1086 to online notarizations; creating s. 117.225, F.S.;

1087 specifying registration and qualification requirements

1088 for online notaries public; creating s. 117.235, F.S.;

1089 authorizing the performance of certain notarial acts;

1090 creating s. 117.245, F.S.; requiring a notary public

1091 to keep an electronic journal of online notarizations;

1092 specifying the information that must be included for

1093 each online notarization; requiring an online notary

1094 public to take certain steps regarding the maintenance

1095 and security of the electronic journal; creating s.

1096 117.255, F.S.; specifying requirements for the use of

1097 electronic journals, signatures, and seals; requiring

1098 a notary public to provide notification of the theft,

1099 vandalism, or loss of an electronic journal,

1100 signature, or seal; authorizing an online notary

1101 public to make copies of electronic journal entries

1102 and to provide access to related recordings under

1103 certain circumstances; authorizing an online notary

1104 public to charge a fee for making and delivering such

1105 copies; creating s. 117.265, F.S.; prescribing online

1106 notarization procedures; specifying the manner by

1107 which an online notary public must verify the identity

1108 of a principal or a witness; requiring an online

1109 notary public to take certain measures as to the

1110 security of technology used; specifying that an

1111 electronic notarial certificate must identify the

1112 performance of an online notarization; specifying that



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1113 noncompliance does not impair the validity of a
1114 notarial act or the notarized electronic record;
1115 providing construction; creating s. 117.275, F.S.;
1116 providing fees for online notarizations; creating s.
1117 117.285, F.S.; specifying the manner by which an
1118 online notary public may supervise the witnessing of
1119 electronic records of online notarizations; creating
1120 s. 117.295, F.S.; providing standards for electronic
1121 and online notarizations; authorizing the Department
1122 of State, in collaboration with the Agency for State
1123 Technology, to adopt certain rules; creating s.
1124 117.305, F.S.; superseding certain provisions of
1125 federal law regulating electronic signatures; amending
1126 s. 28.222, F.S.; requiring the clerk of the circuit
1127 court to record certain instruments; amending s.
1128 95.231, F.S.; providing a limitation period for
1129 certain recorded instruments; amending s. 689.01,
1130 F.S.; providing for witnessing of documents in
1131 connection with real estate conveyances; providing for
1132 validation of certain recorded documents; amending s.
1133 694.08, F.S.; providing for validation of certain
1134 recorded documents; amending s. 695.03, F.S.;
1135 providing and revising requirements for making
1136 acknowledgments, proofs, and other documents; amending
1137 ss. 695.04 and 695.05, F.S.; conforming provisions to
1138 changes made by the act; amending s. 695.28, F.S.;
1139 providing for validity of recorded documents;
1140 conforming provisions to changes made by the act;
1141 providing an effective date.

By Senator Brandes

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1 A bill to be entitled
 2 An act relating to notaries public; providing
 3 directives to the Division of Law Revision and
 4 Information; amending s. 117.01, F.S.; revising
 5 provisions relating to use of the office of notary
 6 public; requiring a notary public who registers as an
 7 online notary public to maintain certain liability
 8 insurance; amending s. 117.021, F.S.; requiring
 9 electronic signatures to include access protection;
 10 prohibiting a person from requiring a notary public to
 11 perform a notarial act with certain technology;
 12 authorizing the Department of State, in collaboration
 13 with the Agency for State Technology, to adopt rules
 14 for certain purposes; amending s. 117.05, F.S.;
 15 providing that a person applying for a notary public
 16 commission must provide proof of identity to the
 17 Executive Office of the Governor, rather than the
 18 Department of State, upon request; revising
 19 limitations on notary fees to conform to changes made
 20 by the act; providing for inclusion of certain
 21 information in a jurat or notarial certificate;
 22 providing for compliance with online notarization
 23 requirements; providing for notarial certification of
 24 a printed electronic record; revising statutory forms
 25 for jurats and notarial certifications; amending s.
 26 117.107, F.S.; providing applicability; revising
 27 prohibited acts; creating s. 117.201, F.S.; providing
 28 definitions; creating s. 117.209, F.S.; authorizing
 29 online notarizations; providing an exception; creating

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30 s. 117.215, F.S.; specifying the application of other
 31 laws in relation to online notarizations; creating s.
 32 117.225, F.S.; providing registration and
 33 qualification requirements for online notaries public;
 34 creating s. 117.235, F.S.; authorizing the performance
 35 of certain notarial acts; creating s. 117.245, F.S.;
 36 requiring a notary public to keep an electronic
 37 journal of online notarizations; specifying the
 38 information that must be included for each online
 39 notarization; requiring an online notary public to
 40 take certain steps regarding the maintenance and
 41 security of the electronic journal; creating s.
 42 117.255, F.S.; providing requirements for the use of
 43 electronic journals, signatures, and seals; requiring
 44 a notary public to provide notification of the theft,
 45 vandalism, or loss of an electronic journal,
 46 signature, or seal; authorizing an online notary
 47 public to make copies of electronic journal entries
 48 and provide access to related recordings under certain
 49 circumstances; authorizing an online notary public to
 50 charge a fee for making and delivering such copies;
 51 creating s. 117.265, F.S.; prescribing online
 52 notarization procedures; specifying the manner by
 53 which an online notary public must verify the identity
 54 of a principal or a witness; requiring an online
 55 notary public to take certain measures as to the
 56 security of technology used; specifying that an
 57 electronic notarial certificate must identify the
 58 performance of an online notarization; specifying that

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59 noncompliance does not impair the validity of a
60 notarial act or the notarized electronic record;
61 creating s. 117.275, F.S.; providing fees for online
62 notarizations; creating s. 117.285, F.S.; authorizing
63 a notary public to supervise the witnessing of
64 electronic records of online notarizations; creating
65 s. 117.295, F.S.; providing standards for electronic
66 and online notarizations; authorizing the Executive
67 Office of the Governor, in collaboration with the
68 Agency for State Technology, to adopt certain rules;
69 creating s. 117.305, F.S.; superseding certain
70 provisions of federal law regulating electronic
71 signatures; amending s. 28.222, F.S.; requiring the
72 clerk of the circuit court to record certain
73 instruments; amending s. 92.50, F.S.; defining the
74 term "before"; amending s. 95.231, F.S.; providing a
75 limitation period for certain recorded instruments;
76 amending s. 689.01, F.S.; providing for witnessing of
77 documents in connection with real estate conveyances;
78 providing for validation of certain recorded
79 documents; amending s. 694.08, F.S.; providing for
80 validation of certain recorded documents; amending s.
81 695.03, F.S.; providing and revising requirements for
82 making acknowledgments, proofs, and other documents;
83 defining the term "before"; amending ss. 695.04,
84 695.05, and 695.09, F.S.; conforming provisions to
85 changes made by the act; amending s. 695.28, F.S.;

86 providing for validity of recorded documents;
87 conforming provisions to changes made by the act;

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88 providing an effective date.

89

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

91

92 Section 1. The Division of Law Revision and Information is
93 directed to:

94 (1) Create part I of chapter 117, Florida Statutes,
95 consisting of ss. 117.01-117.108, Florida Statutes, to be
96 entitled "General Provisions."

97 (2) Create part II of chapter 117, Florida Statutes,
98 consisting of ss. 117.201-117.305, Florida Statutes, to be
99 entitled "Online Notarizations."

100 Section 2. Subsection (1) of section 117.01, Florida
101 Statutes, is amended, and subsection (9) is added to that
102 section, to read:

103 117.01 Appointment, application, suspension, revocation,
104 application fee, bond, and oath.—

105 (1) The Governor may appoint as many notaries public as he
106 or she deems necessary, each of whom must ~~shall~~ be at least 18
107 years of age and a legal resident of this ~~the~~ state. A permanent
108 resident alien may apply and be appointed and shall file a
109 recorded declaration of domicile with his or her application a
110 ~~recorded Declaration of Domicile~~. The residence required for
111 appointment must be maintained throughout the term of
112 appointment. Notaries public are ~~shall be~~ appointed for 4 years
113 and shall use and exercise the office of notary public only
114 while the notary public is within the boundaries of this state.
115 An applicant must be able to read, write, and understand the
116 English language.

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117 (9) A notary public who registers as an online notary
 118 public with the Executive Office of the Governor must maintain a
 119 liability insurance policy providing coverage in the amount of
 120 at least \$1 million which protects errors and omissions related
 121 to online notarization.

122 Section 3. Present subsections (4) and (5) of section
 123 117.021, Florida Statutes, are renumbered as subsections (5) and
 124 (6), respectively, a new subsection (4) is added to that
 125 section, and subsection (2) and present subsection (5) of that
 126 section are amended, to read:

127 117.021 Electronic notarization.—

128 (2) In performing an electronic notarial act, a notary
 129 public shall use an electronic signature that is:

- 130 (a) Unique to the notary public;
- 131 (b) Capable of independent verification;
- 132 (c) Retained under the notary public’s sole control and
 133 includes access protection through the use of passwords or codes
 134 under control of the notary public; and

135 (d) Attached to or logically associated with the electronic
 136 document in a manner that any subsequent alteration to the
 137 electronic document displays evidence of the alteration.

138 (4) A person may not require a notary public to perform a
 139 notarial act with respect to an electronic record with a form of
 140 technology that the notary public has not selected to use.

141 (6)(5) The Department of State, in collaboration with the
 142 Agency for State Technology, may adopt rules to ensure the
 143 security, reliability, and uniformity of signatures and seals
 144 authorized in this section.

145 Section 4. Subsection (1), paragraph (a) of subsection (2),

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146 subsections (4) and (5), paragraph (a) of subsection (12), and
 147 subsections (13) and (14) of section 117.05, Florida Statutes,
 148 are amended, and paragraph (c) is added to subsection (12) of
 149 that section, to read:

150 117.05 Use of notary commission; unlawful use; notary fee;
 151 seal; duties; employer liability; name change; advertising;
 152 photocopies; penalties.—

153 (1) A ~~No~~ person may not ~~shall~~ obtain or use a notary public
 154 commission in other than his or her legal name, and it is
 155 unlawful for a notary public to notarize his or her own
 156 signature. Any person applying for a notary public commission
 157 must submit proof of identity to the Executive Office of the
 158 Governor ~~Department of State~~ if so requested. Any person who
 159 violates ~~the provisions of~~ this subsection commits is guilty of
 160 a felony of the third degree, punishable as provided in s.
 161 775.082, s. 775.083, or s. 775.084.

162 (2) (a) The fee of a notary public may not exceed \$10 for
 163 any one notarial act, except as provided in s. 117.045 or s.
 164 117.275.

165 (4) When notarizing a signature, a notary public shall
 166 complete a jurat or notarial certificate in substantially the
 167 same form as those found in subsection (13). The jurat or
 168 certificate of acknowledgment shall contain the following
 169 elements:

170 (a) The venue stating the location of the notary at the
 171 time of the notarization in the format, "State of Florida,
 172 County of"

173 (b) The type of notarial act performed, an oath or an
 174 acknowledgment, evidenced by the words "sworn" or

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175 "acknowledged."

176 (c) That the signer personally appeared before the notary
177 public at the time of the notarization either by physical
178 presence or by means of audio-video communication technology as
179 authorized under part II of this chapter.

180 (d) The exact date of the notarial act.

181 (e) The name of the person whose signature is being
182 notarized. It is presumed, absent such specific notation by the
183 notary public, that notarization is to all signatures.

184 (f) The specific type of identification the notary public
185 is relying upon in identifying the signer, either based on
186 personal knowledge or satisfactory evidence specified in
187 subsection (5).

188 (g) The notary's official signature.

189 (h) The notary's name, typed, printed, or stamped below the
190 signature.

191 (i) The notary's official seal affixed below or to either
192 side of the notary's signature.

193 (5) A notary public may not notarize a signature on a
194 document unless he or she personally knows, or has satisfactory
195 evidence, that the person whose signature is to be notarized is
196 the individual who is described in and who is executing the
197 instrument. A notary public shall certify in the certificate of
198 acknowledgment or jurat the type of identification, either based
199 on personal knowledge or other form of identification, upon
200 which the notary public is relying. In the case of an online
201 notarization, the online notary public shall comply with the
202 requirements set forth in part II of this chapter.

203 (a) For purposes of this subsection, the term "personally

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204 knows" means having an acquaintance, derived from association
205 with the individual, which establishes the individual's identity
206 with at least a reasonable certainty.

207 (b) For the purposes of this subsection, the term
208 "satisfactory evidence" means the absence of any information,
209 evidence, or other circumstances which would lead a reasonable
210 person to believe that the person whose signature is to be
211 notarized is not the person he or she claims to be and any one
212 of the following:

213 1. The sworn written statement of one credible witness
214 personally known to the notary public or the sworn written
215 statement of two credible witnesses whose identities are proven
216 to the notary public upon the presentation of satisfactory
217 evidence that each of the following is true:

218 a. That the person whose signature is to be notarized is
219 the person named in the document;

220 b. That the person whose signature is to be notarized is
221 personally known to the witnesses;

222 c. That it is the reasonable belief of the witnesses that
223 the circumstances of the person whose signature is to be
224 notarized are such that it would be very difficult or impossible
225 for that person to obtain another acceptable form of
226 identification;

227 d. That it is the reasonable belief of the witnesses that
228 the person whose signature is to be notarized does not possess
229 any of the identification documents specified in subparagraph
230 2.; and

231 e. That the witnesses do not have a financial interest in
232 nor are parties to the underlying transaction; or

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233 2. Reasonable reliance on the presentation to the notary
 234 public of any one of the following forms of identification, if
 235 the document is current or has been issued within the past 5
 236 years and bears a serial or other identifying number:

237 a. A Florida identification card or driver license issued
 238 by the public agency authorized to issue driver licenses;

239 b. A passport issued by the Department of State of the
 240 United States;

241 c. A passport issued by a foreign government if the
 242 document is stamped by the United States Bureau of Citizenship
 243 and Immigration Services;

244 d. A driver license or an identification card issued by a
 245 public agency authorized to issue driver licenses in a state
 246 other than Florida, a territory of the United States, or Canada
 247 or Mexico;

248 e. An identification card issued by any branch of the armed
 249 forces of the United States;

250 f. A veteran health identification card issued by the
 251 United States Department of Veterans Affairs;

252 g. An inmate identification card issued on or after January
 253 1, 1991, by the Florida Department of Corrections for an inmate
 254 who is in the custody of the department;

255 h. An inmate identification card issued by the United
 256 States Department of Justice, Bureau of Prisons, for an inmate
 257 who is in the custody of the department;

258 i. A sworn, written statement from a sworn law enforcement
 259 officer that the forms of identification for an inmate in an
 260 institution of confinement were confiscated upon confinement and
 261 that the person named in the document is the person whose

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262 signature is to be notarized; or

263 j. An identification card issued by the United States
 264 Bureau of Citizenship and Immigration Services.

265 (12) (a) A notary public may supervise the making of a
 266 photocopy of an original document or the duplication or printout
 267 of an electronic record and attest to the trueness of the copy,
 268 provided the document is neither a vital record in this state,
 269 another state, a territory of the United States, or another
 270 country, nor a public record, if a copy can be made by the
 271 custodian of the public record.

272 (c) A notary public must use a certificate in substantially
 273 the following form in notarizing an attested copy of an
 274 electronic document:

275

276 STATE OF FLORIDA
 277 COUNTY OF

278

279 On this ... day of, ..(year)..., I attest that the
 280 preceding or attached document is a true, exact, complete, and
 281 unaltered copy duplicated before me or printed by me from an
 282 electronic record of ...(description of electronic record)...
 283 presented to me by the document's custodian,
 284 At the time of duplication or printing, no security features, if
 285 any present on the electronic record, indicated that the record
 286 had been altered since execution.

287

288 ...(Signature of Notary Public - State of Florida)...
 289 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
 290

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291 (13) The following notarial certificates are sufficient for

292 the purposes indicated, if completed with the information

293 required by this chapter. The specification of forms under this

294 subsection does not preclude the use of other forms.

295 (a) For an oath or affirmation:

296

297 STATE OF FLORIDA

298 COUNTY OF

299

300 Sworn to (or affirmed) and subscribed before me by means of

301 [] physical presence or [] online notarization, this day of

302, ...(year)..., by ...(name of person making

303 statement)....

304

305 ...(Signature of Notary Public - State of Florida)...

306 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

307 Personally Known OR Produced Identification

308

309 Type of Identification Produced.....

310

311 (b) For an acknowledgment in an individual capacity:

312

313 STATE OF FLORIDA

314 COUNTY OF

315

316 The foregoing instrument was acknowledged before me by means of

317 [] physical presence or [] online notarization, this day of

318, ...(year)..., by ...(name of person acknowledging)....

319

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320 ...(Signature of Notary Public - State of Florida)...

321 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

322 Personally Known OR Produced Identification

323

324 Type of Identification Produced.....

325

326 (c) For an acknowledgment in a representative capacity:

327

328 STATE OF FLORIDA

329 COUNTY OF

330

331 The foregoing instrument was acknowledged before me by means of

332 [] physical presence or [] online notarization, this day of

333, ...(year)..., by ...(name of person)... as ...(type of

334 authority, . . . e.g. officer, trustee, attorney in fact)... for

335 ...(name of party on behalf of whom instrument was executed)....

336

337 ...(Signature of Notary Public - State of Florida)...

338 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

339 Personally Known OR Produced Identification

340

341 Type of Identification Produced.....

342

343 (14) A notary public must make reasonable accommodations to

344 provide notarial services to persons with disabilities.

345 (a) A notary public may notarize the signature of a person

346 who is blind after the notary public has read the entire

347 instrument to that person.

348 (b) A notary public may notarize the signature of a person

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349 who signs with a mark if:

350 1. The document signing is witnessed by two disinterested

351 persons;

352 2. The notary prints the person's first name at the

353 beginning of the designated signature line and the person's last

354 name at the end of the designated signature line; and

355 3. The notary prints the words "his (or her) mark" below

356 the person's signature mark.

357 (c) The following notarial certificates are sufficient for

358 the purpose of notarizing for a person who signs with a mark:

359 1. For an oath or affirmation:

360

361 ... (First Name)... ... (Last Name)...

362 ... His (or Her) Mark...

363

364 STATE OF FLORIDA

365 COUNTY OF

366

367 Sworn to and subscribed before me by means of [] physical

368 presence or [] online notarization, this day of,

369 ... (year)..., by ... (name of person making statement)..., who

370 signed with a mark in the presence of these witnesses:

371

372 ... (Signature of Notary Public - State of Florida)...

373 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

374 Personally Known OR Produced Identification

375

376 Type of Identification Produced.....

377

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378 2. For an acknowledgment in an individual capacity:

379

380 ... (First Name)... ... (Last Name)...

381 ... His (or Her) Mark...

382

383 STATE OF FLORIDA

384 COUNTY OF

385

386 The foregoing instrument was acknowledged before me by means of

387 [] physical appearance or [] online notarization, this day

388 of, ... (year)..., by ... (name of person

389 acknowledging)..., who signed with a mark in the presence of

390 these witnesses:

391

392 ... (Signature of Notary Public - State of Florida)...

393 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

394 Personally Known OR Produced Identification

395

396 Type of Identification Produced.....

397

398 (d) A notary public may sign the name of a person whose

399 signature is to be notarized when that person is physically

400 unable to sign or make a signature mark on a document if:

401 1. The person with a disability directs the notary to sign

402 in his or her presence;

403 2. The document signing is witnessed by two disinterested

404 persons;

405 3. The notary writes below the signature the following

406 statement: "Signature affixed by notary, pursuant to s.

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407 117.05(14), Florida Statutes," and states the circumstances of
 408 the signing in the notarial certificate.
 409 (e) The following notarial certificates are sufficient for
 410 the purpose of notarizing for a person with a disability who
 411 directs the notary to sign his or her name:
 412 1. For an oath or affirmation:
 413
 414 STATE OF FLORIDA
 415 COUNTY OF

416
 417 Sworn to (or affirmed) before me by means of [] physical
 418 presence or [] online notarization, this day of,
 419 ...(year)..., by ...(name of person making statement)..., and
 420 subscribed by ...(name of notary)... at the direction of ~~and in~~
 421 ~~the presence of~~ ...(name of person making statement)..., and in
 422 the presence of these witnesses:
 423
 424 ...(Signature of Notary Public - State of Florida)...
 425 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
 426 Personally Known OR Produced Identification
 427
 428 Type of Identification Produced.....
 429
 430 2. For an acknowledgment in an individual capacity:
 431
 432 STATE OF FLORIDA
 433 COUNTY OF

434
 435 The foregoing instrument was acknowledged before me by means of

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436 [] physical presence or [] online notarization, this day of
 437, ...(year)..., by ...(name of person acknowledging)...
 438 and subscribed by ...(name of notary)... at the direction of ~~and~~
 439 ~~in the presence of~~ ...(name of person acknowledging)..., and in
 440 the presence of these witnesses:
 441
 442 ...(Signature of Notary Public - State of Florida)...
 443 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
 444 Personally Known OR Produced Identification
 445
 446 Type of Identification Produced.....
 447
 448 Section 5. Subsections (2) and (9) of section 117.107,
 449 Florida Statutes, are amended to read:
 450 117.107 Prohibited acts.-
 451 (2) A notary public may not sign notarial certificates
 452 using a facsimile signature stamp unless the notary public has a
 453 physical disability that limits or prohibits his or her ability
 454 to make a written signature and unless the notary public has
 455 first submitted written notice to the Department of State with
 456 an exemplar of the facsimile signature stamp. This subsection
 457 does not apply to or prohibit the use of an electronic signature
 458 and seal by a notary public performing online notarizations in
 459 accordance with the requirements of this chapter.
 460 (9) A notary public may not notarize a signature on a
 461 document if the person whose signature is being notarized does
 462 not appear before the notary public either by means of physical
 463 presence or by means of audio-video communication technology as
 464 authorized under part II of this chapter is not in the presence

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465 ~~of the notary public~~ at the time the signature is notarized. Any
 466 notary public who violates this subsection is guilty of a civil
 467 infraction, punishable by penalty not exceeding \$5,000, and such
 468 violation constitutes malfeasance and misfeasance in the conduct
 469 of official duties. It is no defense to the civil infraction
 470 specified in this subsection that the notary public acted
 471 without intent to defraud. A notary public who violates this
 472 subsection with the intent to defraud is guilty of violating s.
 473 117.105.

474 Section 6. Section 117.201, Florida Statutes, is created to
 475 read:

476 117.201 Definitions.—As used in this part, the term:

477 (1) "Appear before," "before," "appear personally before,"
 478 or "in the presence of," as used in this chapter and in ss.
 479 92.50 and 695.03, means in:

480 (a) The same physical location as another person and close
 481 enough to see, hear, communicate with, and exchange credentials
 482 with that person; or

483 (b) A different physical location from another person, but
 484 able to see, hear, and communicate with the person by means of
 485 audio-video communication technology.

486 (2) "Audio-video communication technology" means technology
 487 approved by the Executive Office of the Governor or authorized
 488 in this part which enables real-time, two-way communication
 489 using electronic means in which participants are able to see,
 490 hear, and communicate with one another.

491 (3) "Credential analysis" means a process or service
 492 operating according to criteria approved by the Executive Office
 493 of the Governor or by this part through which a third party

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494 confirms the validity of a government-issued identity credential
 495 or data thereon through review of public and proprietary data
 496 sources.

497 (4) "Government-issued identity credential" means any
 498 approved credential for verifying identity set forth in s.
 499 117.05(5)(b)2.

500 (5) "Identity proofing" means a process or service
 501 operating according to criteria approved by the Executive Office
 502 of the Governor or by this part, through which a third party
 503 confirms the identity of an individual through review of public
 504 and proprietary data sources.

505 (6) "Knowledge-based authentication" means a form of
 506 identity proofing based on a set of questions formulated from
 507 public and proprietary data sources for which the principal has
 508 not provided a previous answer during the course of the identity
 509 proofing.

510 (7) "Online notarization" means the performance of an
 511 electronic notarization by means of audio-video communication
 512 technology and which meets standards provided in this chapter.

513 (8) "Online notary public" means a notary public who has
 514 registered with the Executive Office of the Governor to perform
 515 online notarizations under this part or a civil-law notary
 516 appointed under chapter 118.

517 (9) "Principal" means an individual whose electronic
 518 signature is acknowledged, witnessed, or attested to in an
 519 online notarization or who takes an oath or affirmation from the
 520 online notary public.

521 (10) "Remote presentation" means transmission of an image
 522 of a government-issued identity credential that is of sufficient

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523 quality to enable the online notary public through communication
 524 technology to identify the individual seeking the notary's
 525 services and to perform credential analysis through audio-video
 526 communication technology.

527
 528 Except where the context otherwise requires, any term defined in
 529 s. 668.50(2) has the same meaning when used in this part.

530 Section 7. Section 117.209, Florida Statutes, is created to
 531 read:

532 117.209 Authority to perform online notarizations.-

533 (1) An online notary public may perform any of the
 534 functions authorized under part I of this chapter as an online
 535 notarization, excluding solemnizing the rites of matrimony.

536 (2) If a notarial act requires a principal to appear before
 537 or in the presence of the online notary public, the principal
 538 may appear before the online notary public by means of audio-
 539 video communication technology that meets the requirements of
 540 this chapter and any rules adopted by the Executive Office of
 541 the Governor under s. 117.295.

542 (3) An online notary public may perform a notarial act as
 543 an online notarization as authorized under this chapter,
 544 regardless of the physical location of the principal at the time
 545 of the notarial act, provided the notary public is physically
 546 located in this state while performing the online notarization.

547 (4) The validity of an online notarization performed by an
 548 online notary public appointed in this state shall be determined
 549 by applicable laws of this state regardless of the physical
 550 location of the principal at the time of the notarial act.

551 Section 8. Section 117.215, Florida Statutes, is created to

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552 read:

553 117.215 Relation to other laws.-

554 (1) If a provision of law requires a signature, a
 555 statement, or an instrument to be acknowledged, sworn, affirmed,
 556 or made under oath, or is subject to penalty of perjury:

557 (a) The acknowledgement or proof may be made by any of the
 558 officials listed and in the manner described in s. 695.03.

559 (b) The requirement may be satisfied by an online
 560 notarization if made in accordance with the online notarization
 561 provisions of this part or in conformance with the laws of the
 562 notary public's appointing state.

563 (2) If a provision of law requires a signature or an act to
 564 be witnessed, compliance with the online electronic witnessing
 565 standards prescribed in s. 117.285 satisfies that requirement.

566 Section 9. Section 117.225, Florida Statutes, is created to
 567 read:

568 117.225 Registration; qualifications.-A notary public may
 569 complete registration as an online notary public with the
 570 Executive Office of the Governor by:

571 (1) Satisfying the qualification requirements for
 572 appointment as a notary public under part I of this chapter.

573 (2) Paying an online notary public application fee in the
 574 amount of \$25.

575 (3) Providing proof of a professional liability insurance
 576 policy as required under s. 117.01(9).

577 (4) Submitting a registration as an online notary public to
 578 the Executive Office of the Governor, signed and sworn to by the
 579 applicant.

580 (5) Identifying the audio-video communication technology

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 581 and identity proofing methods that the online notary public
 582 intends to use in performing online notarizations. If the
 583 Executive Office of the Governor and the Agency for State
 584 Technology has established standards for approval of technology
 585 pursuant to this part, the technology and methods selected by
 586 the online notary must be in conformance with such standards. If
 587 a form of technology conforms to the standards, the Executive
 588 Office of the Governor and the Agency for State Technology must
 589 approve the use of the technology. If the Executive Office of
 590 the Governor and the Agency for State Technology have not yet
 591 established such standards, the online notary public must
 592 identify technologies that are consistent with the requirements
 593 of s. 117.295(2).

594 Section 10. Section 117.235, Florida Statutes, is created
 595 to read:

596 117.235 Performance of notarial acts.—

597 (1) An online notary public is subject to part I to the
 598 same extent as a notary public appointed and commissioned only
 599 under that part, including the provisions of s. 117.021 relating
 600 to electronic notarizations.

601 (2) An online notary public may perform notarial acts as
 602 provided by part I in addition to performing online
 603 notarizations as authorized and pursuant to the provisions of
 604 this part.

605 Section 11. Section 117.245, Florida Statutes, is created
 606 to read:

607 117.245 Electronic journal of online notarizations.—

608 (1) An online notary public shall keep a secure electronic
 609 journal of electronic records notarized by the online notary

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 610 public. For each online notarization, the electronic journal
 611 entry must contain all of the following:
 612 (a) The date and time of the notarization.
 613 (b) The type of notarial act.
 614 (c) The type, the title, or a description of the electronic
 615 record or proceeding.
 616 (d) The printed name and address of each principal involved
 617 in the transaction or proceeding.
 618 (e) Evidence of identity of each principal involved in the
 619 transaction or proceeding in the form of:
 620 1. A statement that the person is personally known to the
 621 online notary public;
 622 2. A notation of the type of identification document
 623 provided to the online notary public;
 624 3. A copy of the government-issued identity credential
 625 provided; and
 626 4. A copy of any other identity credential or information
 627 provided.
 628 (f) An indication that the principal satisfactorily passed
 629 the identity proofing.
 630 (g) An indication that the government-issued identity
 631 credential satisfied the credential analysis.
 632 (h) A recording of the audio-video communication in which:
 633 1. The principal and any witnesses appeared before the
 634 notary public.
 635 2. The identity of each was confirmed.
 636 3. The notarial act was performed.
 637 (i) The fee, if any, charged for the notarization.
 638 (2) The online notary public shall take reasonable steps

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639 to:

640 (a) Ensure the integrity, security, and authenticity of

641 online notarizations.

642 (b) Maintain a backup record of the electronic journal

643 required by subsection (1).

644 (c) Protect the backup record from unauthorized access or

645 use.

646 (3) The electronic journal required by subsection (1) shall

647 be maintained for at least 10 years after the date of the

648 notarial act.

649 (4) An omitted or incomplete entry in the electronic

650 journal does not impair the validity of the notarial act or of

651 the electronic record notarized, but may be introduced as

652 evidence to establish violations of this chapter; as an

653 indication of possible fraud, forgery, or impersonation; or for

654 other evidentiary purposes.

655 Section 12. Section 117.255, Florida Statutes, is created

656 to read:

657 117.255 Use of electronic journal, signature, and seal.—An

658 online notary public shall:

659 (1) Take reasonable steps to ensure that any registered

660 device used to create an electronic signature is current and has

661 not been revoked or terminated by the device's issuing or

662 registering authority.

663 (2) Keep his or her electronic journal, electronic

664 signature, and electronic seal secure and under his or her sole

665 control, which includes control in the form of access protection

666 using passwords or codes under control of the online notary

667 public. The online notary public may not allow another person to

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668 use or access his or her electronic journal, electronic

669 signature, or electronic seal.

670 (3) Use his or her electronic signature only for performing

671 online notarization.

672 (4) Attach or logically associate the online notary

673 public's electronic signature and seal to the electronic

674 notarial certificate of an electronic record in a manner that is

675 capable of independent verification using tamper-evident

676 technology that renders any subsequent change or modification to

677 the electronic record evident.

678 (5) Immediately notify an appropriate law enforcement

679 agency and the Executive Office of the Governor of theft or

680 vandalism of his or her electronic journal, electronic

681 signature, or electronic seal. An online notary public shall

682 immediately notify the Executive Office of the Governor of the

683 loss or use by another person of the online notary public's

684 electronic journal, electronic signature, or electronic seal.

685 (6) Make electronic copies, upon request, of the pertinent

686 entries in the electronic journal and provide access to the

687 related audio-video communication recordings to the title agent,

688 settlement agent, or title insurer who engaged the online notary

689 with regard to a real estate transaction. The online notary

690 public may charge a reasonable fee for making and delivering

691 electronic copies of a given series of related electronic

692 records. The online notary public shall disclose the amount of

693 such fee to the requester before making the electronic copies.

694 Section 13. Section 117.265, Florida Statutes, is created

695 to read:

696 117.265 Online notarization procedures.—

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697 (1) An online notary public physically located in this
 698 state may perform an online notarization that meets the
 699 requirements of this part regardless of whether the principal or
 700 any witnesses are physically located in this state at the time
 701 of the online notarization. An online notarial act performed in
 702 accordance with this part is deemed to have been performed
 703 within this state and is governed by the applicable laws of this
 704 state.

705 (2) In performing an online notarization, an online notary
 706 public shall verify the identity of a principal at the time that
 707 the signature is taken by using audio-video communication
 708 technology and processes that meet the requirements of this part
 709 and record the entire two-way audio-video conference session
 710 between the notary public and the principal and any subscribing
 711 witnesses. A principal may not act in the capacity of a witness
 712 for the online notarization.

713 (3) In performing an online notarization of a principal not
 714 located within the state, an online notary public must confirm
 715 that the principal desires for the notarial act to be performed
 716 by a Florida notary public and governed by the applicable laws
 717 of this state.

718 (4) An online notary public shall confirm the identity of
 719 the principal or any witness by:

720 (a) The online notary public's personal knowledge of each
 721 such individual; or

722 (b) All of the following, as the same may be refined or
 723 supplemented in rules adopted pursuant to s. 117.295:

724 1. Remote presentation of a government-issued identity
 725 credential by each individual;

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726 2. Credential analysis of each government-issued identity
 727 credential; and

728 3. Identity proofing of each individual, in the form of
 729 knowledge-based authentication or another method of identity
 730 proofing that conforms to standards established by the Executive
 731 Office of the Governor.

732
 733 If the online notary public is unable to satisfy subparagraphs
 734 (b)1.-3., or if the databases consulted for identity proofing do
 735 not contain sufficient information to permit authentication, the
 736 online notary public is not authorized to perform the online
 737 notarization.

738 (5) The online notary public shall take reasonable steps to
 739 ensure that the audio-video communication technology used in an
 740 online notarization is secure from unauthorized interception.

741 (6) The electronic notarial certificate for an online
 742 notarization must include a notation that the notarization is an
 743 online notarization.

744 (7) Except as expressly modified in this part, the
 745 requirements of part I of this chapter apply to an online
 746 notarization and an online notary public.

747 (8) Any failure to comply with the procedures set forth in
 748 this section does not impair the validity of the notarial act or
 749 the electronic record that was notarized, but may be introduced
 750 as evidence to establish violations of this chapter; as an
 751 indication of possible fraud, forgery, or impersonation; or for
 752 other evidentiary purposes.

753 Section 14. Section 117.275, Florida Statutes, is created
 754 to read:

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755 117.275 Fees for online notarization.—An online notary
 756 public or the online notary public’s employer may charge a fee,
 757 not to exceed \$25, for performing an online notarization in
 758 addition to any other fees authorized under part I of this
 759 chapter. Fees for services other than the provision of notarial
 760 acts are not governed by this section.

761 Section 15. Section 117.285, Florida Statutes, is created
 762 to read:

763 117.285 Witnessing of online notarization.—An online notary
 764 public or an official of another state authorized under the laws
 765 of that state to perform online notarization of documents may
 766 supervise the witnessing of electronic records by the same
 767 audio-video communication technology used for online
 768 notarization, as follows:

769 (1) The identity of each witness must be verified in the
 770 same manner as the identity of the principal.

771 (2) A witness may physically be present with the principal
 772 or remote from the principal so long as the witness and the
 773 principal may see and hear one another in real time using audio-
 774 video communication technology.

775 (3) The witness is present in either physical proximity to
 776 the principal or through audio-video communication technology at
 777 the time the principal affixes the electronic signature and
 778 hears the principal make a statement to the effect that the
 779 principal has signed the electronic record.

780 Section 16. Section 117.295, Florida Statutes, is created
 781 to read:

782 117.295 Standards for electronic and online notarization;
 783 rulemaking authority.—

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784 (1) The Legislature intends that the standards applicable
 785 to electronic notarization under s. 117.021 and for online
 786 notarization under this part reflect future improvements in
 787 technology and methods of assuring the identity of principals
 788 and the security of an electronic record. Further, the Executive
 789 Office of the Governor, in collaboration with the Agency for
 790 State Technology, may adopt rules and standards necessary to
 791 implement the requirements of this chapter and such other rules
 792 and standards as may be required to facilitate the integrity,
 793 security, and reliability of online notarization, including
 794 standards regarding identity proofing, credential analysis,
 795 unauthorized interception, remote presentation, tamper-evident
 796 technology, and audio-video communication technology, and may
 797 publish lists of technologies that satisfy the standards and are
 798 approved for use in online notarizations.

799 (2) Identity proofing, credential analysis, unauthorized
 800 interception, remote presentation, tamper-evident technology,
 801 and audio-video communication technology shall be governed by
 802 the following minimum standards:

803 (a) Identity proofing by means of knowledge-based
 804 authentication shall have, at a minimum, the following security
 805 characteristics:

806 1. The principal must be presented with five or more
 807 questions with a minimum of five possible answer choices per
 808 question.

809 2. Each question must be drawn from a third-party provider
 810 of public and proprietary data sources and be identifiable to
 811 the principal’s social security number or other identification
 812 information, or the principal’s identity and historical events

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813 records.814 3. Responses to all questions must be made within a 2-
815 minute time constraint.816 4. The principal must answer a minimum of 80 percent of the
817 questions correctly.818 5. The principal may be offered one additional attempt in
819 the event of a failed attempt.820 6. During the second attempt, the principal may not be
821 presented with questions from the prior attempt.822 (b) Credential analysis must include:823 1. A comparison of the presented government-issued identity
824 credential and data thereon against public or proprietary data
825 sources to confirm that one or more data elements conform to the
826 asserted identity; or827 2.a. The inspection of one or more readable format features
828 to verify that they conform to those specified by the issuing
829 state or country;830 b. The reading of any bar codes contained on the credential
831 to verify that they contain data corresponding to the asserted
832 identity information of the principal; and833 c. An attempt to verify any micro-printing contained on the
834 credential.835 (c) Tamper-evident technology requirements are deemed
836 satisfied by use of technology that renders any subsequent
837 change or modification to the electronic record evident.838 (d) Audio-video communication technology used in completing
839 online notarizations must meet the following requirements:840 1. The signal transmission must be secure from interception
841 or access by anyone other than the participants communicating.

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842 2. The technology must provide sufficient audio clarity and
843 video resolution to enable the notary to communicate with the
844 principal and to confirm the identity of the principal using
845 identification methods described in s. 117.265.846 An online notary public is not responsible for the security of
847 the systems used by the principal or others to access the online
848 notarization session.849 Section 17. Section 117.305, Florida Statutes, is created
850 to read:851 117.305 Relation to federal law.—This part supersedes the
852 Electronic Signatures in Global and National Commerce Act as
853 authorized under 15 U.S.C. s. 7002, but does not modify, limit,
854 or supersede the requirements set forth in 15 U.S.C. s. 7001(c)
855 or authorize the electronic delivery of any order, notice, or
856 document described in 15 U.S.C. s. 7003(b).857 Section 18. Present paragraph (h) of subsection (3) of
858 section 28.222, Florida Statutes, is redesignated as paragraph
859 (i), and a new paragraph (h) is added to that subsection, to
860 read:861 28.222 Clerk to be county recorder.—862 (3) The clerk of the circuit court shall record the
863 following kinds of instruments presented to him or her for
864 recording, upon payment of the service charges prescribed by
865 law:866 (h) Copies of any instruments originally created and
867 executed using an electronic signature, as defined in s. 695.27,
868 and certified to be a true and correct paper printout by a
869 notary public in accordance with chapter 117 or by a title
870 notary public in accordance with chapter 117 or by a title

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871 agency, an authorized intermediary, or other approved party, if
 872 the county recorder is not prepared to accept electronic
 873 documents for recording electronically.

874 Section 19. Subsection (4) is added to section 92.50,
 875 Florida Statutes, to read:

876 92.50 Oaths, affidavits, and acknowledgments; who may take
 877 or administer; requirements.—

878 (4) DEFINITION.—As used in this section, the term “before”
 879 means:

880 (a) In the same physical location as another person and
 881 close enough to see, hear, communicate with, and exchange
 882 credentials with that person; or

883 (b) In a different physical location from another person
 884 but able to see, hear, and communicate with the person by means
 885 of audio-video communication technology.

886 Section 20. Subsection (1) of section 95.231, Florida
 887 Statutes, is amended to read:

888 95.231 Limitations where deed or will on record.—

889 (1) Five years after the recording of an instrument
 890 required to be executed in accordance with s. 689.01; 5 years
 891 after the recording of a power of attorney accompanying and used
 892 for an instrument required to be executed in accordance with s.
 893 689.01; or 5 years after the probate of a will purporting to
 894 convey real property, from which it appears that the person
 895 owning the property attempted to convey, affect, or devise it,
 896 the instrument, power of attorney, or will shall be held to have
 897 its purported effect to convey, affect, or devise, the title to
 898 the real property of the person signing the instrument, as if
 899 there had been no lack of seal or seals, witness or witnesses,

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900 defect in, failure of, or absence of acknowledgment or
 901 relinquishment of dower, in the absence of fraud, adverse
 902 possession, or pending litigation. The instrument is admissible
 903 in evidence. A power of attorney validated under this subsection
 904 shall be valid only for the purpose of effectuating the
 905 instrument with which it was recorded.

906 Section 21. Section 689.01, Florida Statutes, is amended to
 907 read:

908 689.01 How real estate conveyed.—

909 (1) No estate or interest of freehold, or for a term of
 910 more than 1 year, or any uncertain interest of, in or out of any
 911 messuages, lands, tenements or hereditaments shall be created,
 912 made, granted, transferred or released in any other manner than
 913 by instrument in writing, signed in the presence of two
 914 subscribing witnesses by the party creating, making, granting,
 915 conveying, transferring or releasing such estate, interest, or
 916 term of more than 1 year, or by the party's lawfully authorized
 917 agent, unless by will and testament, or other testamentary
 918 appointment, duly made according to law; and no estate or
 919 interest, either of freehold, or of term of more than 1 year, or
 920 any uncertain interest of, in, to, or out of any messuages,
 921 lands, tenements or hereditaments, shall be assigned or
 922 surrendered unless it be by instrument signed in the presence of
 923 two subscribing witnesses by the party so assigning or
 924 surrendering, or by the party's lawfully authorized agent, or by
 925 the act and operation of law. No seal shall be necessary to give
 926 validity to any instrument executed in conformity with this
 927 section. Corporations may execute any and all conveyances in
 928 accordance with the provisions of this section or ss. 692.01 and

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929 692.02.

930 (2) For purposes of this chapter:

931 (a) Any requirement that an instrument be signed in the
 932 presence of two subscribing witnesses may be satisfied by
 933 witnesses being present and electronically signing by means of
 934 audio-video communication technology under standards applicable
 935 to online notarization provided in chapter 117 or in conformance
 936 with the laws of other states that authorize online notarization
 937 of instruments.

938 (b) The act of witnessing an electronic signature is
 939 satisfied if a witness is present either in physical proximity
 940 to the principal or by audio-video communication technology at
 941 the time the principal affixes his or her electronic signature
 942 and hears the principal make a statement acknowledging that the
 943 principal has signed the electronic record.

944 (3) All witnesses heretofore made or taken pursuant to
 945 subsection (2) are validated and, upon recording, may not be
 946 denied to have provided constructive notice based on any alleged
 947 failure to have strictly complied with this section, as
 948 currently or previously in effect, or the laws governing
 949 notarization of instruments, including online notarization, in
 950 this state or any other state.

951 Section 22. Section 694.08, Florida Statutes, is amended to
 952 read:

953 694.08 Certain instruments validated, notwithstanding lack
 954 of seals or witnesses, or defect in acknowledgment,~~ete.-~~

955 (1) Whenever any power of attorney has been executed and
 956 delivered, or any conveyance has been executed and delivered to
 957 any grantee by the person owning the land therein described, or

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958 conveying the same in an official or representative capacity,
 959 and has, for a period of 7 years or more been spread upon the
 960 records of the county wherein the land therein described has
 961 been or was at the time situated, and one or more subsequent
 962 conveyances of said land or parts thereof have been made,
 963 executed, delivered and recorded by parties claiming under such
 964 instrument or instruments, and such power of attorney or
 965 conveyance, or the public record thereof, shows upon its face a
 966 clear purpose and intent of the person executing the same to
 967 authorize the conveyance of said land or to convey the said
 968 land, the same shall be taken and held by all the courts of this
 969 state, in the absence of any showing of fraud, adverse
 970 possession, or pending litigation, to have authorized the
 971 conveyance of, or to have conveyed, the fee simple title, or any
 972 interest therein, of the person signing such instruments, or the
 973 person in behalf of whom the same was conveyed by a person in an
 974 official or representative capacity, to the land therein
 975 described as effectively as if there had been no defect in,
 976 failure of, or absence of the acknowledgment or the certificate
 977 of acknowledgment, if acknowledged, or the relinquishment of
 978 dower, and as if there had been no lack of the word "as"
 979 preceding the title of the person conveying in an official or
 980 representative capacity, of any seal or seals, or of any witness
 981 or witnesses, and shall likewise be taken and held by all the
 982 courts of this state to have been duly recorded so as to be
 983 admissible in evidence;

984 (2) Provided, however, that this section shall not apply to
 985 any conveyance the validity of which shall be contested or have
 986 been contested by suit commenced heretofore or within 1 year of

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987 the effective date of this law.

988 Section 23. Section 695.03, Florida Statutes, is amended to
989 read:

990 695.03 Acknowledgment and proof; validation of certain
991 acknowledgments; legalization or authentication before foreign
992 officials.-

993 (1) To entitle any instrument concerning real property to
994 be recorded, the execution must be acknowledged by the party
995 executing it, proved by a subscribing witness to it, or
996 legalized or authenticated by a civil-law notary or notary
997 public who affixes her or his official seal, before the officers
998 and in the following form and manner following:

999 (a) Within this state. ~~(1) WITHIN THIS STATE.~~ An
1000 acknowledgment or a proof made within this state may be made
1001 before a judge, clerk, or deputy clerk of any court; a United
1002 States commissioner or magistrate; or a notary public or civil-
1003 law notary of this state, and the certificate of acknowledgment
1004 or proof must be under the seal of the court or officer, as the
1005 case may be. ~~All affidavits and acknowledgments heretofore made~~
1006 ~~or taken in this manner are hereby validated.~~

1007 (b) Outside of State but within the United States. ~~(2)~~
1008 ~~WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.~~ An
1009 acknowledgment or a proof of a person located outside ~~made out~~
1010 of this state but within the United States may be made before a
1011 notary public, a civil-law notary, ~~of this state~~ or by a
1012 commissioner of deeds appointed by the Governor of this state; a
1013 judge or clerk of any court of the United States or of any
1014 state, territory, or district; a United States commissioner or
1015 magistrate; or a notary public, justice of the peace, master in

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1016 chancery, or registrar or recorder of deeds of any state,
1017 territory, or district having a seal, and the certificate of
1018 acknowledgment or proof must be under the seal of the court or
1019 officer, as the case may be. If the acknowledgment or proof is
1020 made before a notary public who does not affix a seal, it is
1021 sufficient for the notary public to type, print, or write by
1022 hand on the instrument, "I am a Notary Public of the State of
1023 ...(state)..., and my commission expires on ...(date)..."

1024 (c) Within Foreign Countries. ~~(3) WITHIN FOREIGN~~
1025 ~~COUNTRIES.~~ If the acknowledgment, affidavit, oath, legalization,
1026 authentication, or proof of a person is made in a foreign
1027 country, it may be made before a commissioner of deeds appointed
1028 by the Governor of this state to act in such country; before a
1029 notary public of such foreign country or a civil-law notary of
1030 this state or of such foreign country who has an official seal;
1031 before an ambassador, envoy extraordinary, minister
1032 plenipotentiary, minister, commissioner, charge d'affaires,
1033 consul general, consul, vice consul, consular agent, or other
1034 diplomatic or consular officer of the United States appointed to
1035 reside in such country; or before a military or naval officer
1036 authorized by the Laws or Articles of War of the United States
1037 to perform the duties of notary public, and the certificate of
1038 acknowledgment, legalization, authentication, or proof must be
1039 under the seal of the officer. A certificate legalizing or
1040 authenticating the signature of a person executing an instrument
1041 concerning real property and to which a civil-law notary or
1042 notary public of that country has affixed her or his official
1043 seal is sufficient as an acknowledgment. For the purposes of
1044 this section, the term "civil-law notary" means a civil-law

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1045 notary as defined in chapter 118 or an official of a foreign
 1046 country who has an official seal and who is authorized to make
 1047 legal or lawful the execution of any document in that
 1048 jurisdiction, in which jurisdiction the affixing of her or his
 1049 official seal is deemed proof of the execution of the document
 1050 or deed in full compliance with the laws of that jurisdiction.

1051 (d) Validation.—All affidavits, oaths, acknowledgments,
 1052 legalizations, authentications, or proofs made or taken in any
 1053 manner as set forth in paragraphs (a)-(c) are validated and upon
 1054 recording may not be denied to have provided constructive notice
 1055 based on any alleged failure to have strictly complied with this
 1056 section, as currently or previously in effect, or the laws
 1057 governing notarization of instruments in chapter 117 or in the
 1058 place where such notary public or other authorized person is
 1059 commissioned or authorized to act.

1060 (2) As used in this section, the term "before" means:

1061 (a) In the same physical location as another person and
 1062 close enough to see, hear, communicate with, and exchange
 1063 credentials with that person; or

1064 (b) In a different physical location from another person
 1065 but able to see, hear, and communicate with the person by means
 1066 of audio-video communication technology.

1067 ~~All affidavits, legalizations, authentications, and~~
 1068 ~~acknowledgments heretofore made or taken in the manner set forth~~
 1069 ~~above are hereby validated.~~

1071 Section 24. Section 695.04, Florida Statutes, is amended to
 1072 read:

1073 695.04 Requirements of certificate.—The certificate of the

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1074 officer before whom the acknowledgment or proof is taken, except
 1075 for a certificate legalizing or authenticating the signature of
 1076 a person executing an instrument concerning real property
 1077 pursuant to s. 695.03(1)(c) ~~s. 695.03(3)~~, shall contain and set
 1078 forth substantially the matter required to be done or proved to
 1079 make such acknowledgment or proof effectual as set forth in s.
 1080 117.05.

1081 Section 25. Section 695.05, Florida Statutes, is amended to
 1082 read:

1083 695.05 Certain defects cured as to acknowledgments and
 1084 witnesses.—All deeds, conveyances, bills of sale, mortgages or
 1085 other transfers of real or personal property within the limits
 1086 of this state, heretofore or hereafter made and received bona
 1087 fide and upon good consideration by any corporation, and
 1088 acknowledged for record ~~by before~~ some officer, stockholder or
 1089 other person interested in the corporation, grantee, or
 1090 mortgagee as a notary public or other officer authorized to take
 1091 acknowledgments of instruments for record within this state,
 1092 shall be held, deemed and taken as valid as if acknowledged by
 1093 the proper notary public or other officer authorized to take
 1094 acknowledgments of instruments for record in this state not so
 1095 interested in said corporation, grantee or mortgagee; and said
 1096 instrument whenever recorded shall be deemed notice to all
 1097 persons; provided, however, that this section shall not apply to
 1098 any instrument heretofore made, the validity of which shall be
 1099 contested by suit commenced within 1 year of the effective date
 1100 of this law.

1101 Section 26. Section 695.09, Florida Statutes, is amended to
 1102 read:

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1103 695.09 Identity of grantor.—No acknowledgment or proof
 1104 shall be taken, except as set forth in s. 695.03(1)(c) ~~s.~~
 1105 ~~695.03(3)~~, by any officer within or without the United States
 1106 unless the officer knows, or has satisfactory proof, that the
 1107 person making the acknowledgment is the individual described in,
 1108 and who executed, such instrument or that the person offering to
 1109 make proof is one of the subscribing witnesses to such
 1110 instrument.

1111 Section 27. Section 695.28, Florida Statutes, is amended to
 1112 read:

1113 695.28 Validity of recorded electronic documents.—

1114 (1) A document that is otherwise entitled to be recorded
 1115 and that was or is submitted to the clerk of the court or county
 1116 recorder by electronic or other means and accepted for
 1117 recordation is deemed validly recorded and provides notice to
 1118 all persons notwithstanding:

1119 (a) That the document was received and accepted for
 1120 recordation before the Department of State adopted standards
 1121 implementing s. 695.27; ~~or~~

1122 (b) Any defects in, deviations from, or the inability to
 1123 demonstrate strict compliance with any statute, rule, or
 1124 procedure relating to electronic signatures, electronic
 1125 witnesses, electronic notarization, or online notarization, or
 1126 for submitting or recording to submit or record an electronic
 1127 document in effect at the time the electronic document was
 1128 executed or was submitted for recording;

1129 (c) That the document was signed, witnessed, or notarized
 1130 electronically or that witnessing or notarization may have been
 1131 done outside the physical presence of the notary public or

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1132 principal in accordance with chapter 117 or the laws of another
 1133 state regarding the notarization of documents; or

1134 (d) That the document recorded was a certified printout of
 1135 a document to which one or more electronic signatures have been
 1136 affixed.

1137 (2) This section does not alter the duty of the clerk or
 1138 recorder to comply with s. 28.222, s. 695.27, or any rules
 1139 adopted pursuant to those sections ~~that section~~.

1140 (3) This section does not preclude a challenge to the
 1141 validity or enforceability of an instrument or electronic record
 1142 based upon fraud, forgery, impersonation, duress, undue
 1143 influence, minority, illegality, unconscionability, or any other
 1144 basis not in the nature of those matters described in subsection
 1145 (1).

1146 Section 28. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley
Committee on Governmental Oversight and
Accountability

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #1042**, relating to **Notaries Public**, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/18
Meeting Date

1042
Bill Number (if applicable)

698574
Amendment Barcode (if applicable)

Topic Notaries

Name Doug Bell

Job Title _____

Address 119 S. Monroe St.
Street

Phone 205-9000

TLH FL
City State Zip

Email doug.bell@whdfirm.com

Speaking: For Against Information

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

Representing Westcor Land Title Ins Co.

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)

2-13-18
Meeting Date

SB 1042
Bill Number (if applicable)
698574
Amendment Barcode (if applicable)

Topic NOTARIES

Name NICOLE EHRBAR

Job Title VICE PRESIDENT OF PUBLIC POLICY

Address 1050 WOODMAN
Street

Phone 703-623-3743

DETROIT MI 48226
City State Zip

Email NICOLEEHRBAR@QUICKEN
LOANS.COM

Speaking: For Against Information

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

Representing QUICKEN LOANS FAMILY OF COMPANIES

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)

02/13/2018

Meeting Date

1042

Bill Number (if applicable)

Topic Notaries Public

Amendment Barcode (if applicable)

Name Warren Husband

Job Title _____

Address PO Box 10909

Phone (850 205-9000

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Attorneys Title Fund Services

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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/13/18

Meeting Date

1042

Bill Number (if applicable)

Topic REMOTE NOTARY

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title _____

Address 311 EAST PARK AVENUE
Street

Phone 224-5081

TALLAHASSEE FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FLORIDA LAND TIME ASSOCIATION

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)

2/13/18
Meeting Date

1042
Bill Number (if applicable)

Topic Notaries

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe St.
Street

Phone 205-9000

TLH FL
City State Zip

Email doug.bell@mlhfl.com

Speaking: For Against Information

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

Representing Westcor Land Title Ins. Co.

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

2-13-18

Meeting Date

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

SB 1042

Bill Number (if applicable)

IF NEEDED

Amendment Barcode (if applicable)

Topic NOTARY

Name MICHAEL CHODOS

Job Title GENERAL COUNSEL

Address 2231 Crystal Dr. #711

Street

Phone 310 480 6538

Arlington

City

VA

State

22201

Zip

Email michael@notarize.com

Speaking: For Against Information

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

Representing NOTARIZE, 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)

2/13/18

Meeting Date

1042

Bill Number (if applicable)

Topic REMOTE NOTARIES

Amendment Barcode (if applicable)

Name Trey Goldman

Job Title Legislative Counsel

Address 200 SOUTH MONROE ST.

Phone 850/224-1400

Street

TALLAHASSEE FL 32301

City

State

Zip

Email treyg@florida Realtors.org

Speaking: For Against Information

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

Representing FLORIDA REALTORS

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)

12/13/18
Meeting Date

SB 1042
Bill Number (if applicable)

Topic Notaries Public

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201
Street

Phone 850-509-8020

Tallahassee FL 32301
City State Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

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
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 Children, Families, and Elder Affairs

BILL: CS/CS/SB 1650

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families and Elder Affairs Committee; and Senator Montford

SUBJECT: Child Abuse, Abandonment, and Neglect

DATE: February 14, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</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 1650 revises child dependency law to improve coordination and communication among parties in dependency proceedings and add accountability measures to remove barriers to, and expedite permanency for abused and neglected children. Specifically, the bill:

- Revises grounds for the termination of parental rights, changes notice to parents regarding termination proceedings, expedites service referrals, and increases the frequency of hearings.
- Requires a parent to notify the parties or the court of barriers to being able to comply with a case plan task soon after discovering the barrier. Once notified of the barrier, the Department of Children and Families (department) must provide parents with strategies to overcome it.
- Requires a parent to keep updated contact information and progress on completing the tasks of a case plan.
- Requires a new caseworker to timely and diligently notify a parent with updated contact information.
- Requires the department to make service referrals sooner and increase reporting to the court on case progress; limits continuances by the court's own motion; and requires more frequent permanency hearings after the child has been in out-of-home care for 12 months but has not achieved permanency.
- Requires the court to apply certain criteria in determining whether to amend a case plan and in ruling in a permanency hearing or a judicial review hearing.

Under the bill, the term “harm” is expanded to include certain instances in which a new child is born to a family that is currently subject to an open dependency case.

The bill also clarifies that the current public records exemption that applies to reports and records in cases of child abuse or neglect, applies to instructional personnel, school administrators, and educational support employees who have provided information as collateral contacts to child protective investigators, even if the individual was not the individual reporting the alleged maltreatment to the Hotline.

II. Present Situation:

Permanency for Children in the Child Welfare System

When children are placed in out-of-home care, it is critical that child welfare agencies find safe, permanent homes for them as quickly as possible. In most circumstances, children can be reunited with their families, but in some cases children find homes with relatives, fictive kin¹, or adoptive families. Both federal and state laws provide requirements related to permanency for children.²

Many of the federal requirements related to the dependency process can be traced to the Adoption and Safe Families Act (ASFA) of 1997. The ASFA expanded the use of detailed case planning, while emphasizing the well-being of children at all critical points during the dependency case process. It further requires that states make timely decisions regarding permanency. The permanency goal is enforced primarily via a requirement that states terminate the parental rights of children who have spent 15 or more months of the past 22 months in foster care.³

Florida law requires the court to set at least one permanency goal for a child. If that goal is reunification with the child’s parent, the court may also set a second concurrent goal to provide greater options for the child. A “permanency goal” is defined as the living arrangement identified for the child to return to the family home or identified as the permanent living arrangement of the child.⁴ Permanency goals available under this chapter, listed in order of preference, are:

- Reunification;
- Adoption, if a petition for termination of parental rights has been or will be filed;
- Permanent guardianship of a dependent child;
- Permanent placement with a fit and willing relative; and
- Placement in another planned permanent living arrangement.⁵

¹ The term “fictive kin” is defined as people who are considered part of a family even though they are unrelated by blood or marriage. MOSBY’S MEDICAL DICTIONARY, 9th ed. (2009).

² U.S. Department of Health & Human Services, Administration for Children & Families, Children's Bureau, Child Welfare Information Gateway, *Achieving and Maintaining Permanency*, available at: <https://www.childwelfare.gov/topics/permanency/> (last visited Feb. 6, 2018).

³ Adoption and Safe Families Act of 1997, P. L. No. 105-89, H.R. 867, 105th Cong. (1997), available at: <https://www.congress.gov/105/plaws/publ89/PLAW-105publ89.pdf>.

⁴ Section 39.01(53), F.S.

⁵ Section 39.621(3), F.S.

The goal of maintaining and strengthening the placement with the child's parent is also an option under certain circumstances, such as when the child has been reunified with a parent but the case is still under the court's jurisdiction. The court must hold hearings at least every 12 months to assess progress towards permanency.⁶

Reasonable Efforts

Since passage of the Adoption Assistance and Child Welfare Act of 1980,⁷ federal law has required states to show, except in certain circumstances such as where the parent committed an especially egregious act, that they have made "reasonable efforts" to provide assistance and services to prevent a child's removal or to reunify a child with his or her family prior to terminating parental rights. The Adoption and Safe Families Act of 1997 does provide, however, that the child's health and safety are the primary concern when assessing the degree to which a state has to go in demonstrating reasonable efforts.⁸

Under Florida law, the department's failure to make reasonable efforts to reunify the parent and child may excuse the parent's noncompliance with the case plan, thereby invalidating noncompliance as grounds for a termination of parental rights.⁹ However, the department does not need to show reasonable efforts if the court finds that the parents have engaged in certain egregious conduct.¹⁰

Case Plans

Throughout the dependency process, the department must develop and refine a case plan with input from all parties to the dependency case which details the problems being addressed as well as the goals, tasks, services, and responsibilities required to ameliorate the concerns of the state.¹¹ The case plan follows the child from the provision of voluntary services through dependency, or termination of parental rights. Once a child is found dependent, a judge reviews the case plan, and if the judge accepts the case plan as drafted, orders the case plan to be followed.¹² Specifically, the law provides for:

- The development of a case plan and who must be involved, such as the parent, guardian ad litem, and if appropriate, the child.¹³
- What must be included in the case plan, such as descriptions of the identified problems, the permanency goal, timelines, and notice requirements.¹⁴
- The types of tasks and services that must be provided to the parents as well as the type of care that must be provided to the child. Services must be designed to improve the conditions

⁶ Section 39.621(1), F.S.

⁷ Adoption Assistance and Child Welfare Act of 1980, P. L. No. 96-272, H.R. 3434, 96th Cong. (1980), available at: <https://www.gpo.gov/fdsys/pkg/STATUTE-94/pdf/STATUTE-94-Pg500.pdf>.

⁸ Adoption and Safe Families Act of 1997, *supra* note 3.

⁹ Section 39.621(5)(c) and (8), F.S.

¹⁰ Section 39.806(2), F.S.

¹¹ Sections 39.6011 and 39.6012, F.S.

¹² Section 39.521, F.S.

¹³ Section 39.6011, F.S.

¹⁴ *Id.*

in the home, facilitate the child's safe return to the home, ensure proper care of the child, and facilitate permanency.¹⁵

When determining whether to place a child back into the home from which he or she was removed, or whether to move forward with another permanency option, the court must determine whether the circumstances that caused the out-of-home placement have been remedied to the extent that the safety, well-being, and health of the child are not endangered by an in-home placement.¹⁶ To support the permanency goal, the court continues to monitor a parent's efforts to comply with the tasks assigned in the case plan.¹⁷

Parental Responsibilities and Terminations of Parental Rights

Parents involved in the child welfare system have a number of responsibilities they must carry out in order to be reunified with their children, if permanency is a goal. A primary responsibility is to comply with the case plan. Parental lack of compliance with a case plan constitutes grounds for termination of parental rights. Specifically, noncompliance is shown if a parent fails to substantially comply for 12 months after the child's adjudication of dependency or if a child has been in care for 12 of the last 22 months, or a parent materially breaches the case plan such that noncompliance is likely before the expiration of time to comply. However, generally if noncompliance is due to the parent's lack of financial resources or the department's failure to make reasonable efforts, grounds for termination are not established.¹⁸

Section 39.6011, F.S., requires the case plan to contain a written notice that a parent's noncompliance with the case plan may lead to the termination of parental rights. This message is also delivered by the judge during the hearing on the child's placement in a shelter and¹⁹ the adjudicatory hearing.²⁰

State Specific Factors Affecting Permanency

The federal Department of Health and Human Services, through the Children's Bureau, conducts periodic Child and Family Services Reviews (CFSR) in each state. As authorized by federal law, these reviews assess state compliance with the federal requirements for child welfare systems in Title IV-B and Title IV-E of the Social Security Act. In particular, the Children's Bureau examines whether desired child outcomes are being achieved and whether the child welfare system is structured appropriately and operates effectively. Reviews are done every 4 years.

The report summarizing Florida's results from the third round of reviews was issued in late 2016. The report indicated the following related to achieving permanency:

- Despite establishing timely and appropriate permanency goals, case review results found that agencies and courts struggle to make concerted efforts to achieve identified permanency goals in a timely manner.

¹⁵ Section 39.6012(1)(b), F.S.

¹⁶ Section 39.522, F.S.

¹⁷ Section 39.621, F.S.

¹⁸ Section 39.806, F.S.

¹⁹ Section 39.402 (18), F.S.

²⁰ Section 39.507(7)(c), F.S.

- Delays in achieving reunification and guardianship goals are affected by case plans not being updated timely to reflect the current needs of the family, delays in referral for services, and any failure to engage parents.
- The agency and court do not make concerted efforts to achieve the goal of adoption timely in nearly half of applicable cases.
- Barriers affecting timely adoptions include the lack of concurrent planning when a parent's compliance level is minimal, and providing parents additional time to work on case plan goals.
- In over half of applicable cases, the agency failed to make concerted efforts to provide services, removed children without providing appropriate services, or did not monitor safety plans and engage the family in needed safety-related services.²¹

The report also concluded that there are concerns with gaps in key services, long waiting lists, insurance barriers, and an inability to tailor services to meet the cultural needs of the diverse population. Substance abuse and domestic violence are the main reasons for agency involvement. The review found that substance abuse, in particular, contributes to various safety concerns for children. Stakeholders noted that there are major gaps in services to address both substance abuse and domestic violence in the non-metro areas of the state.²²

Harm to a Child

For the purposes of ch. 39, F.S., the term “harm” to a child’s health or welfare can occur when a person inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating a physical, mental, or emotional injury to a child: the age of the child; a prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Section 39.01(30), F.S., further defines and delineates examples of harm against a child.

Confidentiality of Records

Section 39.202, F.S., makes confidential and exempt from public records disclosure all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse Florida Abuse Hotline (Hotline) and all records generated as a result of such reports²³. The name of a person who reported the alleged abuse or neglect may not be released²⁴ without the written consent of the person reporting²⁵.

Collateral Contacts

Collateral contacts in a child abuse investigation include the referral source, other family members, community professionals who have contact with the family, or people in the

²¹ U.S. Department Of Health And Human Services, Children’s Bureau, Child and Family Services Reviews, *Florida Final Report, 2016*, available at: <http://centerforchildwelfare.org/qa/CFSRTools/2016%20CFSR%20Final%20Report.pdf>.

²² *Id.*

²³ Section 36.202(1), F.S.

²⁴ Section 36.202(2), F.S.

²⁵ Section 36.202(5), F.S.

community with knowledge of the family situation. Collateral contacts may be able to provide identifying information, names, dates of birth/ages, addresses, parents' names and social security numbers, and family dynamics and relationships.

School Personnel

School personnel, particularly teachers and school nurses can be excellent sources of corroborating information to help confirm or deny allegation being considered. They are often able to provide information on children's behaviors, have insight into the child's relationship with family members, or have observed medical or psychological conditions that might be associated with the allegations of abuse or neglect.

III. Effect of Proposed Changes:

Section 1. Amends s. 39.001, F.S., relating to the purposes of the chapter, to recognize the responsibility of the parent of a child who has been placed into out-of-home care, the department and its community-based providers, and the court in achieving timely permanency for the child. It also provides that the guardian ad litem or attorney ad litem's name must be entered on all orders of the court so that a child will have the ability to contact his or her guardian ad litem, and requires parents to take action to comply with the case plan, including notifying the department and the court of barriers to case plan compliance.

Section 2. Amends s. 39.01, F.S., relating to definitions, adds to the definition of harm against a child the situation in which a new child is born into a family while an open dependency case is pending for which a parent or caregiver has been found to not have:

- Had protective capacity to safely care for the children in the home; and
- Substantially complied with the case plan toward successful reunification or conditions for return of the children.

Section 3. Amends s. 39.0136, F.S., relating to time limitations and continuances, to require the department to ensure that parents have accurate contact information for the caseworker, and that a court order granting a continuance include the new court date, consistent with the goal of expediting permanency.

Section 4. Amends s. 39.202, F.S., relating to confidentiality of reports, to clarify that the public records exemption that applies to protect the identity of persons found in reports and related records applies to instructional personnel, school administrators, and educational support employees who have provided information to child protective investigators.

Section 5. Amends s. 39.402, F.S., relating to placement in a shelter, to require the court order to specify the new court day for the continued hearing when a continuance or extension of time is granted. It also requires the court in plain language to advise the parents what is expected of them, so that reunification may occur promptly, and no longer than 1 year after the dependency process has begun. The parents must provide the attorney and the caseworker with updated contact information if their phone number, mailing address, or e-mail address changes. Parents must also notify the parties and the court of barriers to completing case plan tasks within a reasonable time after discovering the barriers.

Section 6. Amends s. 39.507, F.S., relating to adjudicator hearings and orders of adjudication, to require the parents to:

- Provide identification and location information of relatives identified as a potential placement for the child.
- Comply with the case plan so that reunification with the child happens within the shortest period of time possible.
- Update the attorney and the caseworker with contact information if a phone number, mailing address, or e-mail address changes.

Section 7. Amends s. 39.521, F.S., relating to disposition hearings and powers of disposition, to clarify current language related to the provision of copies of the case plan.

Section 8. Amends s. 39.522, F.S., relating to postdisposition change of custody, to provide that at any time before a child achieves the permanency option approved at the permanency hearing, a child may be brought before the court by the department or any additional interested person upon a filing of a motion alleging a need for a change in the conditions of protective supervision or in the placement.

Section 9. Amends s. 39.6011, F.S., relating to case plan development, to require parents to notify the parties of any barriers to completion of the case plan. It also requires the department to work with the parent to overcome any barrier to case plan completion and requires that service referrals be completed not more than 7 days after case plan approval, with exceptions.

Section 10. Amends s. 39.6012, F.S., relating to case plan tasks and services, to require the case plan to include strategies for overcoming barriers to case plan completion and to require parents to notify the parties if a new barrier is discovered. Additionally, parents must provide accurate contact information, including updates of contact information, to the department or the contracted case management agency. Parents must proactively contact the department or the contracted case management agency at least every 14 calendar days to provide information on the status of case plan task completion, barriers to completion, and plans towards reunification.

Section 11. Amends s. 39.6013, F.S., relating to case plan amendments, to require the court to consider the following in determining whether to amend the case plan:

- The length of time the case has been open;
- The level of parental involvement;
- The number of case plan tasks complied with;
- The child's type of placement and attachment; and
- The potential for successful reunification.

Section 12. Amends s. 39.621, F.S., relating to permanency determination by the court, to add as a factor for the court to consider in determining permanency at the permanency hearing whether the frequency, duration, manner, and level of engagement of the parent or legal guardian meets the case plan requirements. This language also provides that if the court determines that the child's goal is appropriate but the child will be in out-of-home care for more than 12 months before achieving permanency, in those cases where the goal is reunification or adoption, the

court shall hold permanency status hearings for the child every 60 days until the child reaches permanency or the court makes a determination that it is in the child's best interest to change the permanency goal.

Section 13. Amends s. 39.701, F.S., relating to judicial review, to provide that the court at the judicial review hearing must make written findings regarding the parent or legal guardian's compliance with the case plan and demonstrable change in parental capacity to achieve timely reunification. If concurrent planning is already being used, the department must file with the court, and serve on all parties, a motion to amend the case plan to reflect the concurrent goal as the child's primary permanency goal, document the efforts the department is taking to complete the concurrent goal, and identify any additional services needed to reach the permanency goal by a date certain. The court may allow the parties to continue to pursue a secondary goal if the court determines that is in the best interest of the child.

Section 14. Amends s. 39.806, F.S., relating to grounds for termination of parental rights, to clarify that a parent may materially breach a case plan by action or inaction.

Section 15. Amends s. 39.811, F.S., relating to powers of disposition and order of disposition, to require the court to enter a written order of disposition within 30 days after the conclusion of the hearing to terminate parental rights.

Section 16. Provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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:

Staff of contracted entities may incur additional workload related to expedited timeframes for referrals and attending the additional hearings mandated by the bill.

C. Government Sector Impact:

The bill has an indeterminate impact on the state court system due to the higher frequency of hearings regarding permanency.

The bill has an indeterminate impact on the department. To the extent expedited permanency for children results, a cost savings could be realized due to the shorter time in care. Alternatively, if a higher number of terminations of parental rights results rather than reunifications and children remain in care, costs could increase.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends ss. 39.001, 39.01, 39.0136, 39.202, 39.402, 39.507, 39.521, 39.522, 39.6011, 39.6012, 39.6013, 39.621, 39.701, 39.806, and 39.811 of the Florida Statutes.

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

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

CS/CS by Governmental Oversight and Accountability on February 13, 2018:

The CS:

- Adds to the definition of harm against a child the situation in which a new child is born into a family while an open dependency case is pending for which a parent or caregiver has been found to not have:
 - Had protective capacity to safely care for the children in the home; and
 - Substantially complied with the case plan toward successful reunification or conditions for return of the children.
- Requires a new caseworker to timely and diligently notify the parent with updated contact information.
- Requires parents to update contact information with the attorney and caseworker during various phases of the dependency process.
- Requires parents subject to a case plan to update at least every 14 calendar days the department or the contracted case management agency on progress and barriers to completing the case plan.

- Deletes language from the bill which authorized the court to deny a request for an extension of time to comply with a case plan task if the parent failed to notify the parties and the court within a reasonable time of discovering a barrier to completion of the task.
- Provides greater guidance for the court by:
 - Providing criteria for the court to consider in determining whether to amend a case plan.
 - Requiring the court in a permanency hearing to additionally determine whether the frequency, duration, manner, and level of engagement of the parent or legal guardian complies with the case plan.
 - Requiring the court in a judicial review hearing to issue specific, written findings on the parent or legal guardian's compliance with the case plan and demonstrable change in parental capacity.

CS by Children, Families, and Elder Affairs on January 29, 2018:

The CS:

- Makes a number of changes to ch. 39, relating to dependency proceedings for children, to improve coordination and communication among parties in dependency proceedings and add accountability measures to remove barriers to, and expedite permanency for, abused and neglected children.
- Revises grounds for termination of parental rights, changes notice to parents regarding these grounds, limits the continuances available, expedites service referrals, and increases the frequency of hearings.
- Adds the requirement that a parent notify the parties or the court of barriers to compliance with a case plan task soon after discovering the barrier. If a parent fails to do so, he or she cannot cite the barrier as a reason for noncompliance when the court is considering termination of his or her parental rights. Once notified of the barrier, DCF must provide parents with strategies to overcome them.
- Requires the department to make service referrals sooner and increase reporting to the court on case progress. It limits continuances by the court's own motion and requires more frequent permanency hearings after the child has been in out-of-home care for 12 months but has not achieved permanency.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2018	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Montford) recommended the following:

Senate Amendment (with title amendment)

Delete lines 103 - 684

and insert:

Section 2. Subsection (30) of section 39.01, Florida
Statutes, is amended to read:

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

(30) "Harm" to a child's health or welfare can occur when
any person:



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11 (a) Inflicts or allows to be inflicted upon the child
12 physical, mental, or emotional injury. In determining whether
13 harm has occurred, the following factors must be considered in
14 evaluating any physical, mental, or emotional injury to a child:
15 the age of the child; any prior history of injuries to the
16 child; the location of the injury on the body of the child; the
17 multiplicity of the injury; and the type of trauma inflicted.

18 Such injury includes, but is not limited to:

- 19 1. Willful acts that produce the following specific
20 injuries:
- 21 a. Sprains, dislocations, or cartilage damage.
 - 22 b. Bone or skull fractures.
 - 23 c. Brain or spinal cord damage.
 - 24 d. Intracranial hemorrhage or injury to other internal
25 organs.
 - 26 e. Asphyxiation, suffocation, or drowning.
 - 27 f. Injury resulting from the use of a deadly weapon.
 - 28 g. Burns or scalding.
 - 29 h. Cuts, lacerations, punctures, or bites.
 - 30 i. Permanent or temporary disfigurement.
 - 31 j. Permanent or temporary loss or impairment of a body part
32 or function.

33
34 As used in this subparagraph, the term "willful" refers to the
35 intent to perform an action, not to the intent to achieve a
36 result or to cause an injury.

- 37 2. Purposely giving a child poison, alcohol, drugs, or
38 other substances that substantially affect the child's behavior,
39 motor coordination, or judgment or that result in sickness or



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40 internal injury. For the purposes of this subparagraph, the term
41 "drugs" means prescription drugs not prescribed for the child or
42 not administered as prescribed, and controlled substances as
43 outlined in Schedule I or Schedule II of s. 893.03.

44 3. Leaving a child without adult supervision or arrangement
45 appropriate for the child's age or mental or physical condition,
46 so that the child is unable to care for the child's own needs or
47 another's basic needs or is unable to exercise good judgment in
48 responding to any kind of physical or emotional crisis.

49 4. Inappropriate or excessively harsh disciplinary action
50 that is likely to result in physical injury, mental injury as
51 defined in this section, or emotional injury. The significance
52 of any injury must be evaluated in light of the following
53 factors: the age of the child; any prior history of injuries to
54 the child; the location of the injury on the body of the child;
55 the multiplicity of the injury; and the type of trauma
56 inflicted. Corporal discipline may be considered excessive or
57 abusive when it results in any of the following or other similar
58 injuries:

- 59 a. Sprains, dislocations, or cartilage damage.
- 60 b. Bone or skull fractures.
- 61 c. Brain or spinal cord damage.
- 62 d. Intracranial hemorrhage or injury to other internal
63 organs.
- 64 e. Asphyxiation, suffocation, or drowning.
- 65 f. Injury resulting from the use of a deadly weapon.
- 66 g. Burns or scalding.
- 67 h. Cuts, lacerations, punctures, or bites.
- 68 i. Permanent or temporary disfigurement.



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69 j. Permanent or temporary loss or impairment of a body part
70 or function.

71 k. Significant bruises or welts.

72 (b) Commits, or allows to be committed, sexual battery, as
73 defined in chapter 794, or lewd or lascivious acts, as defined
74 in chapter 800, against the child.

75 (c) Allows, encourages, or forces the sexual exploitation
76 of a child, which includes allowing, encouraging, or forcing a
77 child to:

78 1. Solicit for or engage in prostitution; or

79 2. Engage in a sexual performance, as defined by chapter
80 827.

81 (d) Exploits a child, or allows a child to be exploited, as
82 provided in s. 450.151.

83 (e) Abandons the child. Within the context of the
84 definition of "harm," the term "abandoned the child" or
85 "abandonment of the child" means a situation in which the parent
86 or legal custodian of a child or, in the absence of a parent or
87 legal custodian, the caregiver, while being able, has made no
88 significant contribution to the child's care and maintenance or
89 has failed to establish or maintain a substantial and positive
90 relationship with the child, or both. For purposes of this
91 paragraph, "establish or maintain a substantial and positive
92 relationship" includes, but is not limited to, frequent and
93 regular contact with the child through frequent and regular
94 visitation or frequent and regular communication to or with the
95 child, and the exercise of parental rights and responsibilities.
96 Marginal efforts and incidental or token visits or
97 communications are not sufficient to establish or maintain a



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98 substantial and positive relationship with a child. The term
99 "abandoned" does not include a surrendered newborn infant as
100 described in s. 383.50, a child in need of services as defined
101 in chapter 984, or a family in need of services as defined in
102 chapter 984. The incarceration, repeated incarceration, or
103 extended incarceration of a parent, legal custodian, or
104 caregiver responsible for a child's welfare may support a
105 finding of abandonment.

106 (f) Neglects the child. Within the context of the
107 definition of "harm," the term "neglects the child" means that
108 the parent or other person responsible for the child's welfare
109 fails to supply the child with adequate food, clothing, shelter,
110 or health care, although financially able to do so or although
111 offered financial or other means to do so. However, a parent or
112 legal custodian who, by reason of the legitimate practice of
113 religious beliefs, does not provide specified medical treatment
114 for a child may not be considered abusive or neglectful for that
115 reason alone, but such an exception does not:

116 1. Eliminate the requirement that such a case be reported
117 to the department;

118 2. Prevent the department from investigating such a case;
119 or

120 3. Preclude a court from ordering, when the health of the
121 child requires it, the provision of medical services by a
122 physician, as defined in this section, or treatment by a duly
123 accredited practitioner who relies solely on spiritual means for
124 healing in accordance with the tenets and practices of a well-
125 recognized church or religious organization.

126 (g) Exposes a child to a controlled substance or alcohol.



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127 Exposure to a controlled substance or alcohol is established by:

128 1. A test, administered at birth, which indicated that the
129 child's blood, urine, or meconium contained any amount of
130 alcohol or a controlled substance or metabolites of such
131 substances, the presence of which was not the result of medical
132 treatment administered to the mother or the newborn infant; or

133 2. Evidence of extensive, abusive, and chronic use of a
134 controlled substance or alcohol by a parent when the child is
135 demonstrably adversely affected by such usage.

136

137 As used in this paragraph, the term "controlled substance" means
138 prescription drugs not prescribed for the parent or not
139 administered as prescribed and controlled substances as outlined
140 in Schedule I or Schedule II of s. 893.03.

141 (h) Uses mechanical devices, unreasonable restraints, or
142 extended periods of isolation to control a child.

143 (i) Engages in violent behavior that demonstrates a wanton
144 disregard for the presence of a child and could reasonably
145 result in serious injury to the child.

146 (j) Negligently fails to protect a child in his or her care
147 from inflicted physical, mental, or sexual injury caused by the
148 acts of another.

149 (k) Has allowed a child's sibling to die as a result of
150 abuse, abandonment, or neglect.

151 (l) Makes the child unavailable for the purpose of impeding
152 or avoiding a protective investigation unless the court
153 determines that the parent, legal custodian, or caregiver was
154 fleeing from a situation involving domestic violence.

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156 Harm to a child's health or welfare can also occur when a new
157 child is born into the family during the course of an open
158 dependency case where a parent or caregiver has been determined
159 to not have protective capacity to safely care for the children
160 in the home and has not substantially complied with the case
161 plan toward successful reunification or met conditions for
162 return of the children into the home.

163 Section 3. Section 39.0136, Florida Statutes, is amended to
164 read:

165 39.0136 Time limitations; continuances.—

166 (1) The Legislature finds that time is of the essence for
167 establishing permanency for a child in the dependency system.
168 Time limitations are a right of the child which may not be
169 waived, extended, or continued at the request of any party
170 except as provided in this section.

171 (2)(a) All parties and the court must work together to
172 ensure that permanency is achieved as soon as possible for every
173 child through timely performance of their responsibilities under
174 this chapter.

175 (b) The department shall ensure that parents have the
176 information necessary to contact their caseworker. When a new
177 caseworker is assigned to a case, the caseworker shall make a
178 timely and diligent effort to notify the parent and provide
179 updated contact information.

180 (3)~~(2)~~ The time limitations in this chapter do not include:

181 (a) Periods of delay resulting from a continuance granted
182 at the request of the child's counsel or the child's guardian ad
183 litem or, if the child is of sufficient capacity to express
184 reasonable consent, at the request or with the consent of the



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185 child. The court must consider the best interests of the child
186 when determining periods of delay under this section.

187 (b) Periods of delay resulting from a continuance granted
188 at the request of any party if the continuance is granted:

189 1. Because of an unavailability of evidence that is
190 material to the case if the requesting party has exercised due
191 diligence to obtain evidence and there are substantial grounds
192 to believe that the evidence will be available within 30 days.
193 However, if the requesting party is not prepared to proceed
194 within 30 days, any other party may move for issuance of an
195 order to show cause or the court on its own motion may impose
196 appropriate sanctions, which may include dismissal of the
197 petition.

198 2. To allow the requesting party additional time to prepare
199 the case and additional time is justified because of an
200 exceptional circumstance.

201 (c) Reasonable periods of delay necessary to accomplish
202 notice of the hearing to the child's parent or legal custodian;
203 however, the petitioner shall continue regular efforts to
204 provide notice to the parents during the periods of delay.

205 (4) ~~(3)~~ Notwithstanding subsection (3) ~~(2)~~, in order to
206 expedite permanency for a child, the total time allowed for
207 continuances or extensions of time, including continuances or
208 extensions by the court on its own motion, may not exceed 60
209 days within any 12-month period for proceedings conducted under
210 this chapter.

211 (a) A continuance or extension of time may be granted only
212 for extraordinary circumstances in which it is necessary to
213 preserve the constitutional rights of a party or if substantial



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214 evidence exists to demonstrate that without granting a
215 continuance or extension of time the child's best interests will
216 be harmed.

217 (b) An order entered under this section shall specify the
218 new date for the continued hearing or deadline.

219 (5) ~~(4)~~ Notwithstanding subsection (3) ~~(2)~~, a continuance or
220 an extension of time is limited to the number of days absolutely
221 necessary to complete a necessary task in order to preserve the
222 rights of a party or the best interests of a child.

223 Section 4. Subsections (2) and (5) of section 39.202,
224 Florida Statutes, are amended to read:

225 39.202 Confidentiality of reports and records in cases of
226 child abuse or neglect.—

227 (2) Except as provided in subsection (4), access to such
228 records, excluding the name of the reporter and the names of
229 instructional personnel as defined in s. 1012.01(2), school
230 administrators as defined in s. 1012.01(3)(c), and educational
231 support employees as described in s. 1012.01(6)(a) who have
232 provided information during a protective investigation which
233 shall be released only as provided in subsection (5), shall be
234 granted only to the following persons, officials, and agencies:

235 (a) Employees, authorized agents, or contract providers of
236 the department, the Department of Health, the Agency for Persons
237 with Disabilities, the Office of Early Learning, or county
238 agencies responsible for carrying out:

- 239 1. Child or adult protective investigations;
- 240 2. Ongoing child or adult protective services;
- 241 3. Early intervention and prevention services;
- 242 4. Healthy Start services;



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243 5. Licensure or approval of adoptive homes, foster homes,
244 child care facilities, facilities licensed under chapter 393,
245 family day care homes, providers who receive school readiness
246 funding under part VI of chapter 1002, or other homes used to
247 provide for the care and welfare of children;

248 6. Employment screening for caregivers in residential group
249 homes; or

250 7. Services for victims of domestic violence when provided
251 by certified domestic violence centers working at the
252 department's request as case consultants or with shared clients.

253

254 Also, employees or agents of the Department of Juvenile Justice
255 responsible for the provision of services to children, pursuant
256 to chapters 984 and 985.

257 (b) Criminal justice agencies of appropriate jurisdiction.

258 (c) The state attorney of the judicial circuit in which the
259 child resides or in which the alleged abuse or neglect occurred.

260 (d) The parent or legal custodian of any child who is
261 alleged to have been abused, abandoned, or neglected, and the
262 child, and their attorneys, including any attorney representing
263 a child in civil or criminal proceedings. This access must ~~shall~~
264 be made available no later than 60 days after the department
265 receives the initial report of abuse, neglect, or abandonment.
266 However, any information otherwise made confidential or exempt
267 by law may ~~shall~~ not be released pursuant to this paragraph.

268 (e) Any person alleged in the report as having caused the
269 abuse, abandonment, or neglect of a child. This access must
270 ~~shall~~ be made available no later than 60 days after the
271 department receives the initial report of abuse, abandonment, or



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272 neglect and, when the alleged perpetrator is not a parent, must
273 ~~shall~~ be limited to information involving the protective
274 investigation only and may ~~shall~~ not include any information
275 relating to subsequent dependency proceedings. However, any
276 information otherwise made confidential or exempt by law may
277 ~~shall~~ not be released pursuant to this paragraph.

278 (f) A court upon its finding that access to such records
279 may be necessary for the determination of an issue before the
280 court; however, such access must ~~shall~~ be limited to inspection
281 in camera, unless the court determines that public disclosure of
282 the information contained therein is necessary for the
283 resolution of an issue then pending before it.

284 (g) A grand jury, by subpoena, upon its determination that
285 access to such records is necessary in the conduct of its
286 official business.

287 (h) Any appropriate official of the department or the
288 Agency for Persons with Disabilities who is responsible for:

289 1. Administration or supervision of the department's
290 program for the prevention, investigation, or treatment of child
291 abuse, abandonment, or neglect, or abuse, neglect, or
292 exploitation of a vulnerable adult, when carrying out his or her
293 official function;

294 2. Taking appropriate administrative action concerning an
295 employee of the department or the agency who is alleged to have
296 perpetrated child abuse, abandonment, or neglect, or abuse,
297 neglect, or exploitation of a vulnerable adult; or

298 3. Employing and continuing employment of personnel of the
299 department or the agency.

300 (i) Any person authorized by the department who is engaged



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301 in the use of such records or information for bona fide
302 research, statistical, or audit purposes. Such individual or
303 entity shall enter into a privacy and security agreement with
304 the department and shall comply with all laws and rules
305 governing the use of such records and information for research
306 and statistical purposes. Information identifying the subjects
307 of such records or information shall be treated as confidential
308 by the researcher and may ~~shall~~ not be released in any form.

309 (j) The Division of Administrative Hearings for purposes of
310 any administrative challenge.

311 (k) Any appropriate official of an ~~a Florida~~ advocacy
312 council in this state investigating a report of known or
313 suspected child abuse, abandonment, or neglect; the Auditor
314 General or the Office of Program Policy Analysis and Government
315 Accountability for the purpose of conducting audits or
316 examinations pursuant to law; or the guardian ad litem for the
317 child.

318 (l) Employees or agents of an agency of another state that
319 has comparable jurisdiction to the jurisdiction described in
320 paragraph (a).

321 (m) The Public Employees Relations Commission for the sole
322 purpose of obtaining evidence for appeals filed pursuant to s.
323 447.207. Records may be released only after deletion of all
324 information which specifically identifies persons other than the
325 employee.

326 (n) Employees or agents of the Department of Revenue
327 responsible for child support enforcement activities.

328 (o) Any person in the event of the death of a child
329 determined to be a result of abuse, abandonment, or neglect.



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330 Information identifying the person reporting abuse, abandonment,
331 or neglect may ~~shall~~ not be released. Any information otherwise
332 made confidential or exempt by law may ~~shall~~ not be released
333 pursuant to this paragraph.

334 (p) An employee of the local school district who is
335 designated as a liaison between the school district and the
336 department pursuant to an interagency agreement required under
337 s. 39.0016 and the principal of a public school, private school,
338 or charter school where the child is a student. Information
339 contained in the records which the liaison or the principal
340 determines are necessary for a school employee to effectively
341 provide a student with educational services may be released to
342 that employee.

343 (q) An employee or agent of the Department of Education who
344 is responsible for the investigation or prosecution of
345 misconduct by a certified educator.

346 (r) Staff of a children's advocacy center that is
347 established and operated under s. 39.3035.

348 (s) A physician licensed under chapter 458 or chapter 459,
349 a psychologist licensed under chapter 490, or a mental health
350 professional licensed under chapter 491 engaged in the care or
351 treatment of the child.

352 (t) Persons with whom the department is seeking to place
353 the child or to whom placement has been granted, including
354 foster parents for whom an approved home study has been
355 conducted, the designee of a licensed residential group home
356 described in s. 39.523, an approved relative or nonrelative with
357 whom a child is placed pursuant to s. 39.402, preadoptive
358 parents for whom a favorable preliminary adoptive home study has



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359 been conducted, adoptive parents, or an adoption entity acting
360 on behalf of preadoptive or adoptive parents.

361 (5) (a) The name of any person reporting child abuse,
362 abandonment, or neglect may not be released to any person other
363 than employees of the department responsible for child
364 protective services, the central abuse hotline, law enforcement,
365 the child protection team, or the appropriate state attorney,
366 without the written consent of the person reporting. This does
367 not prohibit the subpoenaing of a person reporting child abuse,
368 abandonment, or neglect when deemed necessary by the court, the
369 state attorney, or the department, provided the fact that such
370 person made the report is not disclosed. Any person who reports
371 a case of child abuse or neglect may, at the time he or she
372 makes the report, request that the department notify him or her
373 that a child protective investigation occurred as a result of
374 the report. Any person specifically listed in s. 39.201(1) who
375 makes a report in his or her official capacity may also request
376 a written summary of the outcome of the investigation. The
377 department must ~~shall~~ mail such a notice to the reporter within
378 10 days after completing the child protective investigation.

379 (b) The names of instructional personnel as defined in s.
380 1012.01(2), school administrators as defined in s.
381 1012.01(3)(c), and educational support employees as described in
382 s. 1012.01(6)(a) who have provided information during a
383 protective investigation may not be released to any person other
384 than employees of the department responsible for child
385 protective services, the central abuse hotline, law enforcement,
386 the child protection team, or the appropriate state attorney
387 without the written consent of such personnel.



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388 Section 5. Paragraph (f) of subsection (14) and subsections
389 (15) and (18) of section 39.402, Florida Statutes, are amended
390 to read:

391 39.402 Placement in a shelter.—

392 (14) The time limitations in this section do not include:

393 (f) Continuances or extensions of time may not total more
394 than 60 days for all parties, and the court on its own motion,
395 within any 12-month period during proceedings under this
396 chapter. A continuance or extension beyond the 60 days may be
397 granted only for extraordinary circumstances necessary to
398 preserve the constitutional rights of a party or when
399 substantial evidence demonstrates that the child's best
400 interests will be affirmatively harmed without the granting of a
401 continuance or extension of time. When a continuance or
402 extension is granted, the order shall specify the new date for
403 the continued hearing or deadline.

404 (15) The department, at the conclusion of the shelter
405 hearing, shall make available to parents or legal custodians
406 seeking voluntary services, any referral information necessary
407 for participation in such identified services to allow the
408 parents to begin the services immediately. The parents' or legal
409 custodians' participation in the services shall not be
410 considered an admission or other acknowledgment of the
411 allegations in the shelter petition.

412 (18) The court shall advise the parents in plain language
413 what is expected of them to achieve reunification with their
414 child, including that:

415 (a) Parents must take action to comply with the case plan
416 so reunification with the child may occur within the shortest



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417 period of time possible, but not more than 1 year after removal
418 or adjudication of the child.

419 (b) Parents must stay in contact with their attorney and
420 their caseworker. If the parents' phone number, mailing address,
421 or e-mail address changes, the parents must provide the attorney
422 and caseworker with updated contact information.

423 (c) Parents must notify the parties and the court of
424 barriers to completing case plan tasks within a reasonable time
425 after discovering such barriers.

426 (d) If the parents fail to substantially comply with the
427 case plan, their parental rights may be terminated and that the
428 child's out-of-home placement may become permanent.

429 Section 6. Paragraph (c) of subsection (7) of section
430 39.507, Florida Statutes, is amended to read:

431 39.507 Adjudicatory hearings; orders of adjudication.—

432 (7)

433 (c) If a court adjudicates a child dependent and the child
434 is in out-of-home care, the court shall inquire of the parent or
435 parents whether the parents have relatives who might be
436 considered as a placement for the child. The parent or parents
437 shall provide the court and all parties with identification and
438 location information for such relatives. The court shall advise
439 the parents in plain language that:—

440 1. Parents must take action to comply with the case plan so
441 reunification with the child may occur within the shortest
442 period of time possible, but not more than 1 year after removal
443 or adjudication of the child.

444 2. Parents must stay in contact with their attorney and
445 their caseworker. If the parents' phone number, mailing address,



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446 or e-mail address changes, the parents must provide the attorney
447 and caseworker with updated contact information.

448 3. Parents must notify the parties and the court of
449 barriers to completing case plan tasks within a reasonable time
450 after discovering such barriers.

451 4. If the parents fail to substantially comply with the
452 case plan, their parental rights may be terminated and that the
453 child's out-of-home placement may become permanent. ~~The parent~~
454 ~~or parents shall provide to the court and all parties~~
455 ~~identification and location information of the relatives.~~

456 Section 7. Paragraph (a) of subsection (1) of section
457 39.521, Florida Statutes, is amended to read:

458 39.521 Disposition hearings; powers of disposition.—

459 (1) A disposition hearing shall be conducted by the court,
460 if the court finds that the facts alleged in the petition for
461 dependency were proven in the adjudicatory hearing, or if the
462 parents or legal custodians have consented to the finding of
463 dependency or admitted the allegations in the petition, have
464 failed to appear for the arraignment hearing after proper
465 notice, or have not been located despite a diligent search
466 having been conducted.

467 (a) A written case plan and a family functioning assessment
468 prepared by an authorized agent of the department must be
469 approved by the court. The department must file the case plan
470 and the family functioning assessment with the court, serve
471 copies ~~a copy of the case plan~~ on the parents of the child, and
472 provide copies ~~a copy of the case plan~~ to the representative of
473 the guardian ad litem program, if the program has been
474 appointed, and copies ~~a copy~~ to all other parties:



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475 1. Not less than 72 hours before the disposition hearing,
476 if the disposition hearing occurs on or after the 60th day after
477 the date the child was placed in out-of-home care. All such case
478 plans must be approved by the court.

479 2. Not less than 72 hours before the case plan acceptance
480 hearing, if the disposition hearing occurs before the 60th day
481 after the date the child was placed in out-of-home care and a
482 case plan has not been submitted pursuant to this paragraph, or
483 if the court does not approve the case plan at the disposition
484 hearing. The case plan acceptance hearing must occur within 30
485 days after the disposition hearing to review and approve the
486 case plan.

487 Section 8. Subsection (1) of section 39.522, Florida
488 Statutes, is amended to read:

489 39.522 Postdisposition change of custody.—The court may
490 change the temporary legal custody or the conditions of
491 protective supervision at a postdisposition hearing, without the
492 necessity of another adjudicatory hearing.

493 (1) At any time before a child achieves the permanency
494 placement approved at the permanency hearing, a child who has
495 been placed in the child's own home under the protective
496 supervision of an authorized agent of the department, in the
497 home of a relative, in the home of a legal custodian, or in some
498 other place may be brought before the court by the department or
499 by any other interested person, upon the filing of a motion
500 ~~petition~~ alleging a need for a change in the conditions of
501 protective supervision or the placement. If the parents or other
502 legal custodians deny the need for a change, the court shall
503 hear all parties in person or by counsel, or both. Upon the



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504 admission of a need for a change or after such hearing, the
505 court shall enter an order changing the placement, modifying the
506 conditions of protective supervision, or continuing the
507 conditions of protective supervision as ordered. The standard
508 for changing custody of the child shall be the best interest of
509 the child. When applying this standard, the court shall consider
510 the continuity of the child's placement in the same out-of-home
511 residence as a factor when determining the best interests of the
512 child. If the child is not placed in foster care, then the new
513 placement for the child must meet the home study criteria and
514 court approval pursuant to this chapter.

515 Section 9. Present subsections (4) through (8) of section
516 39.6011, Florida Statutes, are redesignated as subsections (5)
517 through (9), respectively, a new subsection (4) is added to that
518 section, and paragraph (e) of subsection (2), subsection (3),
519 and present subsection (6) of that section are amended, to read:

520 39.6011 Case plan development.—

521 (2) The case plan must be written simply and clearly in
522 English and, if English is not the principal language of the
523 child's parent, to the extent possible in the parent's principal
524 language. Each case plan must contain:

525 (e) A written notice to the parent that it is the parents'
526 responsibility to take action to comply with the case plan so
527 reunification with the child may occur within the shortest
528 period of time possible, but not more than 1 year after removal
529 or adjudication of the child; the parent must notify the parties
530 and the court of barriers to completing case plan tasks within a
531 reasonable time after discovering such barriers; failure of the
532 parent to substantially comply with the case plan may result in



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533 the termination of parental rights;~~it~~ and ~~that~~ a material breach
534 of the case plan by the parent's action or inaction may result
535 in the filing of a petition for termination of parental rights
536 sooner than the compliance period set forth in the case plan.

537 (3) The case plan must be signed by all parties, except
538 that the signature of a child may be waived if the child is not
539 of an age or capacity to participate in the case-planning
540 process. Signing the case plan constitutes an acknowledgment
541 that the case plan has been developed by the parties and that
542 they are in agreement as to the terms and conditions contained
543 in the case plan. The refusal of a parent to sign the case plan
544 does not prevent the court from accepting the case plan if the
545 case plan is otherwise acceptable to the court. Signing the case
546 plan does not constitute an admission to any allegation of
547 abuse, abandonment, or neglect and does not constitute consent
548 to a finding of dependency or termination of parental rights.

549 (4) Before signing the case plan, the department shall
550 explain the provisions of the plan to all persons involved in
551 its implementation, including, when appropriate, the child. The
552 department shall ensure that the parent has contact information
553 for all entities necessary to complete the tasks in the plan.
554 The department shall explain the strategies included in the plan
555 that the parent can use to overcome barriers to case plan
556 compliance and that if a barrier is discovered and the parties
557 are not actively working to overcome such barrier, the parent
558 must notify the parties and the court within a reasonable time
559 after discovering such barrier.

560 (7)~~(6)~~ After the case plan has been developed, the
561 department shall adhere to the following procedural



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562 requirements:

563 (a) If the parent's substantial compliance with the case
564 plan requires the department to provide services to the parents
565 or the child and the parents agree to begin compliance with the
566 case plan before the case plan's acceptance by the court, the
567 department shall make the appropriate referrals for services
568 that will allow the parents to begin the agreed-upon tasks and
569 services immediately.

570 (b) All other referrals for services shall be completed as
571 soon as possible, but not more than 7 days after the date of the
572 case plan approval, unless the case plan specifies that a task
573 may not be undertaken until another specified task has been
574 completed.

575 (c) ~~(b)~~ After the case plan has been agreed upon and signed
576 by the parties, a copy of the plan must be given immediately to
577 the parties, including the child if appropriate, and to other
578 persons as directed by the court.

579 1. A case plan must be prepared, but need not be submitted
580 to the court, for a child who will be in care no longer than 30
581 days unless that child is placed in out-of-home care a second
582 time within a 12-month period.

583 2. In each case in which a child has been placed in out-of-
584 home care, a case plan must be prepared within 60 days after the
585 department removes the child from the home and shall be
586 submitted to the court before the disposition hearing for the
587 court to review and approve.

588 3. After jurisdiction attaches, all case plans must be
589 filed with the court, and a copy provided to all the parties
590 whose whereabouts are known, not less than 3 business days



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591 before the disposition hearing. The department shall file with
592 the court, and provide copies to the parties, all case plans
593 prepared before jurisdiction of the court attached.

594 Section 10. Paragraph (b) of subsection (1) of section
595 39.6012, Florida Statutes, is amended, paragraph (d) is added to
596 subsection (1) of that section, to read:

597 39.6012 Case plan tasks; services.—

598 (1) The services to be provided to the parent and the tasks
599 that must be completed are subject to the following:

600 (b) The case plan must describe each of the tasks with
601 which the parent must comply and the services to be provided to
602 the parent, specifically addressing the identified problem,
603 including:

604 1. The type of services or treatment.

605 2. The date the department will provide each service or
606 referral for the service if the service is being provided by the
607 department or its agent.

608 3. The date by which the parent must complete each task.

609 4. The frequency of services or treatment provided. The
610 frequency of the delivery of services or treatment provided
611 shall be determined by the professionals providing the services
612 or treatment on a case-by-case basis and adjusted according to
613 their best professional judgment.

614 5. The location of the delivery of the services.

615 6. The staff of the department or service provider
616 accountable for the services or treatment.

617 7. A description of the measurable objectives, including
618 the timeframes specified for achieving the objectives of the
619 case plan and addressing the identified problem.



620 8. Strategies to overcome barriers to case plan compliance,
621 including, but not limited to, the provision of contact
622 information, information on acceptable alternative services or
623 providers, and an explanation that the parent must notify the
624 parties within a reasonable time of discovering a barrier that
625 the parties are not actively working to overcome.

626 (d) Parents must provide accurate contact information to
627 the department or the contracted case management agency and
628 update such information as appropriate. Parents must make
629 proactive contact with the department or the contracted case
630 management agency at least every 14 calendar days to provide
631 information on the status of case plan task completion, barriers
632 to completion, and plans toward reunification.

633 Section 11. Present subsection (6) of section 39.6013,
634 Florida Statutes, is redesignated as subsection (7), a new
635 subsection (6) is added to that section, and present subsection
636 (7) is amended, to read:

637 39.6013 Case plan amendments.—

638 (6) When determining whether to amend the case plan, the
639 court must consider the length of time the case has been open,
640 level of parental engagement to date, number of case plan tasks
641 complied with, child's type of placement and attachment, and
642 potential for successful reunification.

643 (8)~~(7)~~ Amendments must include service interventions that
644 are the least intrusive into the life of the parent and child,
645 must focus on clearly defined objectives, and must provide the
646 most efficient path to quick reunification or permanent
647 placement given the circumstances of the case and the child's
648 need for safe and proper care. A copy of the amended plan must



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649 be immediately given to the persons identified in s.
650 39.6011(7)(c) ~~s. 39.6011(6)(b)~~.

651 Section 12. Present subsections (7) through (10) of section
652 39.621, Florida Statutes, are redesignated as subsections (8)
653 through (11), respectively, subsection (5) and present
654 subsections (9), (10), and (11) are amended, and a new
655 subsection (7) is added to that section, to read:

656 39.621 Permanency determination by the court.—

657 (5) At the permanency hearing, the court shall determine:

658 (a) Whether the current permanency goal for the child is
659 appropriate or should be changed;

660 (b) When the child will achieve one of the permanency
661 goals; ~~and~~

662 (c) Whether the department has made reasonable efforts to
663 finalize the permanency plan currently in effect; ~~and~~—

664 (d) Whether the frequency, duration, manner, and level of
665 engagement of the parent or legal guardian's visitation with the
666 child meets the case plan requirements.

667 (7) If the court determines that the child's goal is
668 appropriate but the child will be in out-of-home care for more
669 than 12 months before achieving permanency, in those cases where
670 the goal is reunification or adoption, the court shall hold
671 permanency status hearings for the child every 60 days until the
672 child reaches permanency or the court makes a determination that
673 it is in the child's best interest to change the permanency
674 goal.

675 ~~(10)(9)~~ The case plan must list the tasks necessary to
676 finalize the permanency placement and shall be updated at the
677 permanency hearing unless the child will achieve permanency



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678 within 60 days after the hearing ~~if necessary~~. If a concurrent
679 case plan is in place, the court may choose between the
680 permanency goal options presented and shall approve the goal
681 that is in the child's best interest.

682 (11) ~~(10)~~ The permanency placement is intended to continue
683 until the child reaches the age of majority and may not be
684 disturbed absent a finding by the court that the circumstances
685 of the permanency placement are no longer in the best interest
686 of the child.

687 (a) If, after a child has achieved the permanency placement
688 approved at the permanency hearing, a parent who has not had his
689 or her parental rights terminated makes a motion for
690 reunification or increased contact with the child, the court
691 shall hold a hearing to determine whether the dependency case
692 should be reopened and whether there should be a modification of
693 the order.

694 (b) At the hearing, the parent must demonstrate that the
695 safety, well-being, and physical, mental, and emotional health
696 of the child is not endangered by the modification.

697 (c) ~~(11)~~ The court shall base its decision concerning any
698 motion by a parent for reunification or increased contact with a
699 child on the effect of the decision on the safety, well-being,
700 and physical and emotional health of the child. Factors that
701 must be considered and addressed in the findings of fact of the
702 order on the motion must include:

703 1. ~~(a)~~ The compliance or noncompliance of the parent with
704 the case plan;

705 2. ~~(b)~~ The circumstances which caused the child's dependency
706 and whether those circumstances have been resolved;



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707 ~~3.(e)~~ The stability and longevity of the child's placement;
708 ~~4.(d)~~ The preferences of the child, if the child is of
709 sufficient age and understanding to express a preference;
710 ~~5.(e)~~ The recommendation of the current custodian; and
711 ~~6.(f)~~ The recommendation of the guardian ad litem, if one
712 has been appointed.

713 Section 13. Paragraph (d) of subsection (2) of section
714 39.701, Florida Statutes, is amended to read:

715 39.701 Judicial review.—

716 (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF
717 AGE.—

718 (d) *Orders*.—

719 1. Based upon the criteria set forth in paragraph (c) and
720 the recommended order of the citizen review panel, if any, the
721 court shall determine whether or not the social service agency
722 shall initiate proceedings to have a child declared a dependent
723 child, return the child to the parent, continue the child in
724 out-of-home care for a specified period of time, or initiate
725 termination of parental rights proceedings for subsequent
726 placement in an adoptive home. Amendments to the case plan must
727 be prepared as prescribed in s. 39.6013. If the court finds that
728 the prevention or reunification efforts of the department will
729 allow the child to remain safely at home or be safely returned
730 to the home, the court shall allow the child to remain in or
731 return to the home after making a specific finding of fact that
732 the reasons for the creation of the case plan have been remedied
733 to the extent that the child's safety, well-being, and physical,
734 mental, and emotional health will not be endangered.

735 2. The court shall return the child to the custody of the



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736 parents at any time it determines that they have substantially
737 complied with the case plan, if the court is satisfied that
738 reunification will not be detrimental to the child's safety,
739 well-being, and physical, mental, and emotional health.

740 3. If, in the opinion of the court, the social service
741 agency has not complied with its obligations as specified in the
742 written case plan, the court may find the social service agency
743 in contempt, shall order the social service agency to submit its
744 plans for compliance with the agreement, and shall require the
745 social service agency to show why the child could not safely be
746 returned to the home of the parents.

747 4. If, at any judicial review, the court finds that the
748 parents have failed to substantially comply with the case plan
749 to the degree that further reunification efforts are without
750 merit and not in the best interest of the child, on its own
751 motion, the court may order the filing of a petition for
752 termination of parental rights, whether or not the time period
753 as contained in the case plan for substantial compliance has
754 expired.

755 5. Within 6 months after the date that the child was placed
756 in shelter care, the court shall conduct a judicial review
757 hearing to review the child's permanency goal as identified in
758 the case plan. At the hearing the court shall make written
759 findings regarding the parent or legal guardian's compliance
760 with the case plan and demonstrable change in parental capacity
761 to achieve timely reunification ~~likelihood of the child's~~
762 ~~reunification with the parent or legal custodian~~ within 12
763 months after the removal of the child from the home. The court
764 shall consider the frequency, duration, manner, and level of



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765 engagement of the parent or legal custodian's visitation with
766 the child in compliance with the case plan. If the court makes a
767 written

768
769 ===== T I T L E A M E N D M E N T =====

770 And the title is amended as follows:

771 Delete lines 6 - 44

772 and insert:

773 dependency proceedings; amending s. 39.01, F.S.;

774 expanding the definition of the term "harm" to

775 encompass infants born under certain circumstances;

776 amending s. 39.0136, F.S.; requiring cooperation

777 between certain parties and the court to achieve

778 permanency for a child in a timely manner; requiring

779 certain court orders to specify certain deadlines;

780 amending s. 39.202, F.S.; prohibiting the Department

781 of Children and Families from releasing the names of

782 certain persons who have provided information during a

783 protective investigation except under certain

784 circumstances; amending s. 39.402, F.S.; providing

785 that time limitations governing placement of a child

786 in a shelter do not include continuances requested by

787 the court; providing limitations on continuances;

788 providing requirements for parents to achieve

789 reunification with the child; amending s. 39.507,

790 F.S.; requiring the court to advise the parents during

791 an adjudicatory hearing of certain actions that are

792 required to achieve reunification; amending s. 39.521,

793 F.S.; requiring the department to provide copies of



794 the family functioning assessment to certain persons;
795 amending s. 39.522, F.S.; providing conditions for the
796 court to consider the continuity of the child's
797 placement in the same out-of-home residence before the
798 permanency placement is approved in a postdisposition
799 proceeding to modify custody; amending s. 39.6011,
800 F.S.; requiring a case plan for a child receiving
801 services from the department to include a protocol for
802 parents to achieve reunification with the child;
803 providing that certain action or inaction by a parent
804 may result in termination of parental rights;
805 requiring the department to provide certain
806 information to a parent before signing a case plan;
807 providing a timeframe for referral for services;
808 amending s. 39.6012, F.S.; requiring a case plan to
809 contain certain information; requiring parents or
810 legal guardians to provide certain information to the
811 department or contracted case management agency and to
812 update the information as appropriate; requiring the
813 parents or legal guardians to make proactive contact
814 with the department or contracted case management
815 agency; amending s. 39.6013, F.S.; requiring the court
816 to consider certain factors when determining whether
817 to amend a case plan; conforming a cross-reference;
818 amending s. 39.621, F.S.; requiring the court to
819 determine certain factors at a permanency hearing;
820 requiring the court to hold permanency hearings within
821 specified timeframes until permanency is determined;
822 amending s. 39.701, F.S.; revising the findings a



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823 court must make at a judicial review hearing relating
824 to a child's permanency goal; requiring the department
825 to file a

By the Committee on Children, Families, and Elder Affairs; and
Senators Montford and Book

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1 A bill to be entitled
2 An act relating to child welfare; amending s. 39.001,
3 F.S.; providing an additional purpose of ch. 39, F.S.;
4 providing for the name of a child's guardian ad litem
5 or attorney ad litem to be entered on court orders in
6 dependency proceedings; amending s. 39.0136, F.S.;
7 requiring cooperation between certain parties and the
8 court to achieve permanency for a child in a timely
9 manner; requiring certain court orders to specify
10 certain deadlines; amending s. 39.202, F.S.;
11 prohibiting the Department of Children and Families
12 from releasing the names of certain persons who have
13 provided information during a protective investigation
14 except under certain circumstances; amending s.
15 39.402, F.S.; providing that time limitations
16 governing placement of a child in a shelter do not
17 include continuances requested by the court; providing
18 limitations on continuances; providing requirements
19 for parents to achieve reunification with the child;
20 amending s. 39.507, F.S.; requiring the court to
21 advise the parents during an adjudicatory hearing of
22 certain actions that are required to achieve
23 reunification; amending s. 39.521, F.S.; requiring the
24 department to provide copies of the family functioning
25 assessment to certain persons; amending s. 39.522,
26 F.S.; providing conditions for the court to consider
27 the continuity of the child's placement in the same
28 out-of-home residence before the permanency placement
29 is approved in a postdisposition proceeding to modify

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30 custody; amending s. 39.6011, F.S.; requiring a case
31 plan for a child receiving services from the
32 department to include a protocol for parents to
33 achieve reunification with the child; providing that
34 certain action or inaction by a parent may result in
35 termination of parental rights; requiring the
36 department to provide certain information to a parent
37 before signing a case plan; providing a timeframe for
38 referral for services; amending s. 39.6012, F.S.;
39 requiring a case plan to contain certain information;
40 amending s. 39.6013, F.S.; conforming a cross-
41 reference; amending s. 39.621, F.S.; requiring the
42 court to hold permanency hearings within specified
43 timeframes until permanency is determined; amending s.
44 39.701, F.S.; requiring the department to file a
45 motion to amend a case plan when concurrent planning
46 is used, under certain circumstances; amending s.
47 39.806, F.S.; specifying that a parent or parents may
48 materially breach a case plan by action or inaction;
49 amending s. 39.811, F.S.; requiring the court to enter
50 a written order of disposition of the child following
51 termination of parental rights within a specified
52 timeframe; providing an effective date.

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

55
56 Section 1. Subsection (7) of section 39.001, Florida
57 Statutes, is amended, and paragraph (q) is added to subsection
58 (1) and paragraph (j) is added to subsection (3) of that

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59 section, to read:

60 39.001 Purposes and intent; personnel standards and
61 screening.-

62 (1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

63 (g) To recognize the responsibility of:

64 1. The parent from whose custody a child has been taken to
65 take action to comply with the case plan so reunification with
66 the child may occur within the shortest period of time possible,
67 but not more than 1 year after removal or adjudication of the
68 child.

69 2. The department and its community-based care providers to
70 make reasonable efforts to finalize a family's permanency plan,
71 including assisting parents with developing strategies to
72 overcome barriers to case plan compliance.

73 3. The court to affirmatively determine what the barriers
74 are to timely reunification, and address such barriers as
75 frequently as needed to ensure compliance with the time
76 limitations established in this chapter.

77 (3) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
78 the Legislature that the children of this state be provided with
79 the following protections:

80 (j) The ability to contact their guardian ad litem or
81 attorney ad litem, if appointed, by having that individual's
82 name entered on all orders of the court.

83 (7) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.—
84 Parents, custodians, and guardians are deemed by the state to be
85 responsible for providing their children with sufficient
86 support, guidance, and supervision. The state further recognizes
87 that the ability of parents, custodians, and guardians to

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88 fulfill those responsibilities can be greatly impaired by
89 economic, social, behavioral, emotional, and related problems.
90 It is therefore the policy of the Legislature that it is the
91 state's responsibility to ensure that factors impeding the
92 ability of caregivers to fulfill their responsibilities are
93 identified through the dependency process and that appropriate
94 recommendations and services to address those problems are
95 considered in any judicial or nonjudicial proceeding. The
96 Legislature also recognizes that time is of the essence for
97 establishing permanency for a child in the dependency system.
98 Therefore, parents must take action to comply with the case plan
99 so reunification with the child may occur within the shortest
100 period of time possible, but not more than 1 year after removal
101 or adjudication of the child, including by notifying the parties
102 and the court of barriers to case plan compliance.

103 Section 2. Section 39.0136, Florida Statutes, is amended to
104 read:

105 39.0136 Time limitations; continuances.—

106 (1) The Legislature finds that time is of the essence for
107 establishing permanency for a child in the dependency system.
108 Time limitations are a right of the child which may not be
109 waived, extended, or continued at the request of any party
110 except as provided in this section.

111 (2) (a) All parties and the court must work together to
112 ensure that permanency is achieved as soon as possible for every
113 child through timely performance of their responsibilities under
114 this chapter.

115 (b) The department shall ensure that parents have the
116 information necessary to contact their caseworker. When a new

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117 caseworker is assigned to a case, the caseworker shall make a
 118 timely and diligent effort to notify the parent and provide
 119 updated contact information.

120 ~~(3)(2)~~ The time limitations in this chapter do not include:

121 (a) Periods of delay resulting from a continuance granted
 122 at the request of the child's counsel or the child's guardian ad
 123 litem or, if the child is of sufficient capacity to express
 124 reasonable consent, at the request or with the consent of the
 125 child. The court must consider the best interests of the child
 126 when determining periods of delay under this section.

127 (b) Periods of delay resulting from a continuance granted
 128 at the request of any party if the continuance is granted:

129 1. Because of an unavailability of evidence that is
 130 material to the case if the requesting party has exercised due
 131 diligence to obtain evidence and there are substantial grounds
 132 to believe that the evidence will be available within 30 days.
 133 However, if the requesting party is not prepared to proceed
 134 within 30 days, any other party may move for issuance of an
 135 order to show cause or the court on its own motion may impose
 136 appropriate sanctions, which may include dismissal of the
 137 petition.

138 2. To allow the requesting party additional time to prepare
 139 the case and additional time is justified because of an
 140 exceptional circumstance.

141 (c) Reasonable periods of delay necessary to accomplish
 142 notice of the hearing to the child's parent or legal custodian;
 143 however, the petitioner shall continue regular efforts to
 144 provide notice to the parents during the periods of delay.

145 ~~(4)(3)~~ Notwithstanding subsection ~~(3) (2)~~, in order to

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146 expedite permanency for a child, the total time allowed for
 147 continuances or extensions of time, including continuances or
 148 extensions by the court on its own motion, may not exceed 60
 149 days within any 12-month period for proceedings conducted under
 150 this chapter.

151 (a) A continuance or extension of time may be granted only
 152 for extraordinary circumstances in which it is necessary to
 153 preserve the constitutional rights of a party or if substantial
 154 evidence exists to demonstrate that without granting a
 155 continuance or extension of time the child's best interests will
 156 be harmed.

157 (b) The court may deny a request for extension of time to
 158 achieve compliance with a case plan task if the parent failed to
 159 notify the parties and the court within a reasonable time of
 160 discovering the barrier to completion of the task.

161 (c) An order entered under this section shall specify the
 162 new date for the continued hearing or deadline.

163 ~~(5)(4)~~ Notwithstanding subsection ~~(3) (2)~~, a continuance or
 164 an extension of time is limited to the number of days absolutely
 165 necessary to complete a necessary task in order to preserve the
 166 rights of a party or the best interests of a child.

167 Section 3. Subsections (2) and (5) of section 39.202,
 168 Florida Statutes, are amended to read:

169 39.202 Confidentiality of reports and records in cases of
 170 child abuse or neglect.—

171 (2) Except as provided in subsection (4), access to such
 172 records, excluding the name of the reporter and the names of
 173 instructional personnel as defined in s. 1012.01(2), school
 174 administrators as defined in s. 1012.01(3)(c), and educational

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175 support employees as described in s. 1012.01(6)(a) who have
 176 provided information during a protective investigation which
 177 shall be released only as provided in subsection (5), shall be
 178 granted only to the following persons, officials, and agencies:
 179 (a) Employees, authorized agents, or contract providers of
 180 the department, the Department of Health, the Agency for Persons
 181 with Disabilities, the Office of Early Learning, or county
 182 agencies responsible for carrying out:

- 183 1. Child or adult protective investigations;
- 184 2. Ongoing child or adult protective services;
- 185 3. Early intervention and prevention services;
- 186 4. Healthy Start services;
- 187 5. Licensure or approval of adoptive homes, foster homes,
 188 child care facilities, facilities licensed under chapter 393,
 189 family day care homes, providers who receive school readiness
 190 funding under part VI of chapter 1002, or other homes used to
 191 provide for the care and welfare of children;
- 192 6. Employment screening for caregivers in residential group
 193 homes; or
- 194 7. Services for victims of domestic violence when provided
 195 by certified domestic violence centers working at the
 196 department's request as case consultants or with shared clients.

197 Also, employees or agents of the Department of Juvenile Justice
 198 responsible for the provision of services to children, pursuant
 199 to chapters 984 and 985.

200 (b) Criminal justice agencies of appropriate jurisdiction.
 201 (c) The state attorney of the judicial circuit in which the
 202 child resides or in which the alleged abuse or neglect occurred.
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204 (d) The parent or legal custodian of any child who is
 205 alleged to have been abused, abandoned, or neglected, and the
 206 child, and their attorneys, including any attorney representing
 207 a child in civil or criminal proceedings. This access ~~must shall~~
 208 be made available no later than 60 days after the department
 209 receives the initial report of abuse, neglect, or abandonment.
 210 However, any information otherwise made confidential or exempt
 211 by law ~~may shall~~ not be released pursuant to this paragraph.
 212 (e) Any person alleged in the report as having caused the
 213 abuse, abandonment, or neglect of a child. This access must
 214 ~~shall~~ be made available no later than 60 days after the
 215 department receives the initial report of abuse, abandonment, or
 216 neglect and, when the alleged perpetrator is not a parent, must
 217 ~~shall~~ be limited to information involving the protective
 218 investigation only and ~~may shall~~ not include any information
 219 relating to subsequent dependency proceedings. However, any
 220 information otherwise made confidential or exempt by law may
 221 ~~shall~~ not be released pursuant to this paragraph.
 222 (f) A court upon its finding that access to such records
 223 may be necessary for the determination of an issue before the
 224 court; however, such access must shall be limited to inspection
 225 in camera, unless the court determines that public disclosure of
 226 the information contained therein is necessary for the
 227 resolution of an issue then pending before it.
 228 (g) A grand jury, by subpoena, upon its determination that
 229 access to such records is necessary in the conduct of its
 230 official business.
 231 (h) Any appropriate official of the department or the
 232 Agency for Persons with Disabilities who is responsible for:

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233 1. Administration or supervision of the department's
 234 program for the prevention, investigation, or treatment of child
 235 abuse, abandonment, or neglect, or abuse, neglect, or
 236 exploitation of a vulnerable adult, when carrying out his or her
 237 official function;

238 2. Taking appropriate administrative action concerning an
 239 employee of the department or the agency who is alleged to have
 240 perpetrated child abuse, abandonment, or neglect, or abuse,
 241 neglect, or exploitation of a vulnerable adult; or

242 3. Employing and continuing employment of personnel of the
 243 department or the agency.

244 (i) Any person authorized by the department who is engaged
 245 in the use of such records or information for bona fide
 246 research, statistical, or audit purposes. Such individual or
 247 entity shall enter into a privacy and security agreement with
 248 the department and shall comply with all laws and rules
 249 governing the use of such records and information for research
 250 and statistical purposes. Information identifying the subjects
 251 of such records or information shall be treated as confidential
 252 by the researcher and may shall not be released in any form.

253 (j) The Division of Administrative Hearings for purposes of
 254 any administrative challenge.

255 (k) Any appropriate official of ~~an a Florida~~ advocacy
 256 council in this state investigating a report of known or
 257 suspected child abuse, abandonment, or neglect; the Auditor
 258 General or the Office of Program Policy Analysis and Government
 259 Accountability for the purpose of conducting audits or
 260 examinations pursuant to law; or the guardian ad litem for the
 261 child.

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262 (l) Employees or agents of an agency of another state that
 263 has comparable jurisdiction to the jurisdiction described in
 264 paragraph (a).

265 (m) The Public Employees Relations Commission for the sole
 266 purpose of obtaining evidence for appeals filed pursuant to s.
 267 447.207. Records may be released only after deletion of all
 268 information which specifically identifies persons other than the
 269 employee.

270 (n) Employees or agents of the Department of Revenue
 271 responsible for child support enforcement activities.

272 (o) Any person in the event of the death of a child
 273 determined to be a result of abuse, abandonment, or neglect.
 274 Information identifying the person reporting abuse, abandonment,
 275 or neglect may shall not be released. Any information otherwise
 276 made confidential or exempt by law may shall not be released
 277 pursuant to this paragraph.

278 (p) An employee of the local school district who is
 279 designated as a liaison between the school district and the
 280 department pursuant to an interagency agreement required under
 281 s. 39.0016 and the principal of a public school, private school,
 282 or charter school where the child is a student. Information
 283 contained in the records which the liaison or the principal
 284 determines are necessary for a school employee to effectively
 285 provide a student with educational services may be released to
 286 that employee.

287 (q) An employee or agent of the Department of Education who
 288 is responsible for the investigation or prosecution of
 289 misconduct by a certified educator.

290 (r) Staff of a children's advocacy center that is

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291 established and operated under s. 39.3035.

292 (s) A physician licensed under chapter 458 or chapter 459,
293 a psychologist licensed under chapter 490, or a mental health
294 professional licensed under chapter 491 engaged in the care or
295 treatment of the child.

296 (t) Persons with whom the department is seeking to place
297 the child or to whom placement has been granted, including
298 foster parents for whom an approved home study has been
299 conducted, the designee of a licensed residential group home
300 described in s. 39.523, an approved relative or nonrelative with
301 whom a child is placed pursuant to s. 39.402, preadoptive
302 parents for whom a favorable preliminary adoptive home study has
303 been conducted, adoptive parents, or an adoption entity acting
304 on behalf of preadoptive or adoptive parents.

305 (5) (a) The name of any person reporting child abuse,
306 abandonment, or neglect may not be released to any person other
307 than employees of the department responsible for child
308 protective services, the central abuse hotline, law enforcement,
309 the child protection team, or the appropriate state attorney,
310 without the written consent of the person reporting. This does
311 not prohibit the subpoenaing of a person reporting child abuse,
312 abandonment, or neglect when deemed necessary by the court, the
313 state attorney, or the department, provided the fact that such
314 person made the report is not disclosed. Any person who reports
315 a case of child abuse or neglect may, at the time he or she
316 makes the report, request that the department notify him or her
317 that a child protective investigation occurred as a result of
318 the report. Any person specifically listed in s. 39.201(1) who
319 makes a report in his or her official capacity may also request

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320 a written summary of the outcome of the investigation. The
321 department ~~must shall~~ mail such a notice to the reporter within
322 10 days after completing the child protective investigation.

323 (b) The names of instructional personnel as defined in s.
324 1012.01(2), school administrators as defined in s.
325 1012.01(3)(c), and educational support employees as described in
326 s. 1012.01(6)(a) who have provided information during a
327 protective investigation may not be released to any person other
328 than employees of the department responsible for child
329 protective services, the central abuse hotline, law enforcement,
330 the child protection team, or the appropriate state attorney
331 without the written consent of such personnel.

332 Section 4. Paragraph (f) of subsection (14) and subsections
333 (15) and (18) of section 39.402, Florida Statutes, are amended
334 to read:

335 39.402 Placement in a shelter.—

336 (14) The time limitations in this section do not include:

337 (f) Continuances or extensions of time may not total more
338 than 60 days for all parties, and the court on its own motion,
339 within any 12-month period during proceedings under this
340 chapter. A continuance or extension beyond the 60 days may be
341 granted only for extraordinary circumstances necessary to
342 preserve the constitutional rights of a party or when
343 substantial evidence demonstrates that the child's best
344 interests will be affirmatively harmed without the granting of a
345 continuance or extension of time. When a continuance or
346 extension is granted, the order shall specify the new date for
347 the continued hearing or deadline.

348 (15) The department, at the conclusion of the shelter

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349 hearing, shall make available to parents or legal custodians
 350 seeking voluntary services, any referral information necessary
 351 for participation in such identified services to allow the
 352 parents to begin the services immediately. The parents' or legal
 353 custodians' participation in the services shall not be
 354 considered an admission or other acknowledgment of the
 355 allegations in the shelter petition.

356 (18) The court shall advise the parents in plain language
 357 what is expected of them to achieve reunification with their
 358 child, including that:-

359 (a) Parents must take action to comply with the case plan
 360 so reunification with the child may occur within the shortest
 361 period of time possible, but not more than 1 year after removal
 362 or adjudication of the child.

363 (b) Parents must stay in contact with their attorney and
 364 their caseworker.

365 (c) Parents must notify the parties and the court of
 366 barriers to completing case plan tasks within a reasonable time
 367 after discovering such barriers.

368 (d) If the parents fail to substantially comply with the
 369 case plan, their parental rights may be terminated and that the
 370 child's out-of-home placement may become permanent.

371 Section 5. Paragraph (c) of subsection (7) of section
 372 39.507, Florida Statutes, is amended to read:

373 39.507 Adjudicatory hearings; orders of adjudication.-

374 (7)

375 (c) If a court adjudicates a child dependent and the child
 376 is in out-of-home care, the court shall inquire of the parent or
 377 parents whether the parents have relatives who might be

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378 considered as a placement for the child. The parent or parents
 379 shall provide the court and all parties with identification and
 380 location information for such relatives. The court shall advise
 381 the parents in plain language that:-

382 1. Parents must take action to comply with the case plan so
 383 reunification with the child may occur within the shortest
 384 period of time possible, but not more than 1 year after removal
 385 or adjudication of the child.

386 2. Parents must stay in contact with their attorney and
 387 their caseworker.

388 3. Parents must notify the parties and the court of
 389 barriers to completing case plan tasks within a reasonable time
 390 after discovering such barriers.

391 4. If the parents fail to substantially comply with the
 392 case plan, their parental rights may be terminated and that the
 393 child's out-of-home placement may become permanent. ~~The parent~~
 394 or parents shall provide to the court and all parties
 395 identification and location information of the relatives.

396 Section 6. Paragraph (a) of subsection (1) of section
 397 39.521, Florida Statutes, is amended to read:

398 39.521 Disposition hearings; powers of disposition.-

399 (1) A disposition hearing shall be conducted by the court,
 400 if the court finds that the facts alleged in the petition for
 401 dependency were proven in the adjudicatory hearing, or if the
 402 parents or legal custodians have consented to the finding of
 403 dependency or admitted the allegations in the petition, have
 404 failed to appear for the arraignment hearing after proper
 405 notice, or have not been located despite a diligent search
 406 having been conducted.

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407 (a) A written case plan and a family functioning assessment
 408 prepared by an authorized agent of the department must be
 409 approved by the court. The department must file the case plan
 410 and the family functioning assessment with the court, serve
 411 ~~copies a copy of the case plan~~ on the parents of the child, and
 412 provide ~~copies a copy of the case plan~~ to the representative of
 413 the guardian ad litem program, if the program has been
 414 appointed, and ~~copies a copy~~ to all other parties:

415 1. Not less than 72 hours before the disposition hearing,
 416 if the disposition hearing occurs on or after the 60th day after
 417 the date the child was placed in out-of-home care. All such case
 418 plans must be approved by the court.

419 2. Not less than 72 hours before the case plan acceptance
 420 hearing, if the disposition hearing occurs before the 60th day
 421 after the date the child was placed in out-of-home care and a
 422 case plan has not been submitted pursuant to this paragraph, or
 423 if the court does not approve the case plan at the disposition
 424 hearing. The case plan acceptance hearing must occur within 30
 425 days after the disposition hearing to review and approve the
 426 case plan.

427 Section 7. Subsection (1) of section 39.522, Florida
 428 Statutes, is amended to read:

429 39.522 Postdisposition change of custody.—The court may
 430 change the temporary legal custody or the conditions of
 431 protective supervision at a postdisposition hearing, without the
 432 necessity of another adjudicatory hearing.

433 (1) At any time before a child achieves the permanency
 434 placement approved at the permanency hearing, a child who has
 435 been placed in the child's own home under the protective

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436 supervision of an authorized agent of the department, in the
 437 home of a relative, in the home of a legal custodian, or in some
 438 other place may be brought before the court by the department or
 439 by any other interested person, upon the filing of a motion
 440 ~~petition~~ alleging a need for a change in the conditions of
 441 protective supervision or the placement. If the parents or other
 442 legal custodians deny the need for a change, the court shall
 443 hear all parties in person or by counsel, or both. Upon the
 444 admission of a need for a change or after such hearing, the
 445 court shall enter an order changing the placement, modifying the
 446 conditions of protective supervision, or continuing the
 447 conditions of protective supervision as ordered. The standard
 448 for changing custody of the child shall be the best interest of
 449 the child. When applying this standard, the court shall consider
 450 the continuity of the child's placement in the same out-of-home
 451 residence as a factor when determining the best interests of the
 452 child. If the child is not placed in foster care, then the new
 453 placement for the child must meet the home study criteria and
 454 court approval pursuant to this chapter.

455 Section 8. Present subsections (4) through (8) of section
 456 39.6011, Florida Statutes, are redesignated as subsections (5)
 457 through (9), respectively, and paragraph (e) of subsection (2),
 458 subsection (3), and present subsection (6) of that section are
 459 amended, to read:

460 39.6011 Case plan development.—

461 (2) The case plan must be written simply and clearly in
 462 English and, if English is not the principal language of the
 463 child's parent, to the extent possible in the parent's principal
 464 language. Each case plan must contain:

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465 (e) A written notice to the parent that it is the parents'
 466 responsibility to take action to comply with the case plan so
 467 reunification with the child may occur within the shortest
 468 period of time possible, but not more than 1 year after removal
 469 or adjudication of the child; the parent must notify the parties
 470 and the court of barriers to completing case plan tasks within a
 471 reasonable time after discovering such barriers; failure of the
 472 parent to substantially comply with the case plan may result in
 473 the termination of parental rights;~~7~~ and ~~that~~ a material breach
 474 of the case plan by the parent's action or inaction may result
 475 in the filing of a petition for termination of parental rights
 476 sooner than the compliance period set forth in the case plan.

477 (3) The case plan must be signed by all parties, except
 478 that the signature of a child may be waived if the child is not
 479 of an age or capacity to participate in the case-planning
 480 process. Signing the case plan constitutes an acknowledgment
 481 that the case plan has been developed by the parties and that
 482 they are in agreement as to the terms and conditions contained
 483 in the case plan. The refusal of a parent to sign the case plan
 484 does not prevent the court from accepting the case plan if the
 485 case plan is otherwise acceptable to the court. Signing the case
 486 plan does not constitute an admission to any allegation of
 487 abuse, abandonment, or neglect and does not constitute consent
 488 to a finding of dependency or termination of parental rights.

489 (4) Before signing the case plan, the department shall
 490 explain the provisions of the plan to all persons involved in
 491 its implementation, including, when appropriate, the child. The
 492 department shall ensure that the parent has contact information
 493 for all entities necessary to complete the tasks in the plan.

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494 The department shall explain the strategies included in the plan
 495 that the parent can use to overcome barriers to case plan
 496 compliance and that if a barrier is discovered and the parties
 497 are not actively working to overcome such barrier, the parent
 498 must notify the parties and the court within a reasonable time
 499 after discovering such barrier.

500 ~~(7)(6)~~ After the case plan has been developed, the
 501 department shall adhere to the following procedural
 502 requirements:

503 (a) If the parent's substantial compliance with the case
 504 plan requires the department to provide services to the parents
 505 or the child and the parents agree to begin compliance with the
 506 case plan before the case plan's acceptance by the court, the
 507 department shall make the appropriate referrals for services
 508 that will allow the parents to begin the agreed-upon tasks and
 509 services immediately.

510 (b) All other referrals for services shall be completed as
 511 soon as possible, but not more than 7 days after the date of the
 512 case plan approval, unless the case plan specifies that a task
 513 may not be undertaken until another specified task has been
 514 completed.

515 ~~(c)(b)~~ After the case plan has been agreed upon and signed
 516 by the parties, a copy of the plan must be given immediately to
 517 the parties, including the child if appropriate, and to other
 518 persons as directed by the court.

519 1. A case plan must be prepared, but need not be submitted
 520 to the court, for a child who will be in care no longer than 30
 521 days unless that child is placed in out-of-home care a second
 522 time within a 12-month period.

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523 2. In each case in which a child has been placed in out-of-
 524 home care, a case plan must be prepared within 60 days after the
 525 department removes the child from the home and shall be
 526 submitted to the court before the disposition hearing for the
 527 court to review and approve.

528 3. After jurisdiction attaches, all case plans must be
 529 filed with the court, and a copy provided to all the parties
 530 whose whereabouts are known, not less than 3 business days
 531 before the disposition hearing. The department shall file with
 532 the court, and provide copies to the parties, all case plans
 533 prepared before jurisdiction of the court attached.

534 Section 9. Paragraph (b) of subsection (1) of section
 535 39.6012, Florida Statutes, is amended, and subsection (4) is
 536 added to that section, to read:

537 39.6012 Case plan tasks; services.—

538 (1) The services to be provided to the parent and the tasks
 539 that must be completed are subject to the following:

540 (b) The case plan must describe each of the tasks with
 541 which the parent must comply and the services to be provided to
 542 the parent, specifically addressing the identified problem,
 543 including:

- 544 1. The type of services or treatment.
- 545 2. The date the department will provide each service or
 546 referral for the service if the service is being provided by the
 547 department or its agent.
- 548 3. The date by which the parent must complete each task.
- 549 4. The frequency of services or treatment provided. The
 550 frequency of the delivery of services or treatment provided
 551 shall be determined by the professionals providing the services

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552 or treatment on a case-by-case basis and adjusted according to
 553 their best professional judgment.

554 5. The location of the delivery of the services.

555 6. The staff of the department or service provider
 556 accountable for the services or treatment.

557 7. A description of the measurable objectives, including
 558 the timeframes specified for achieving the objectives of the
 559 case plan and addressing the identified problem.

560 8. Strategies to overcome barriers to case plan compliance,
 561 including, but not limited to, the provision of contact
 562 information, information on acceptable alternative services or
 563 providers, and an explanation that the parent must notify the
 564 parties within a reasonable time of discovering a barrier that
 565 the parties are not actively working to overcome.

566 Section 10. Subsection (7) of section 39.6013, Florida
 567 Statutes, is amended to read:

568 39.6013 Case plan amendments.—

569 (7) Amendments must include service interventions that are
 570 the least intrusive into the life of the parent and child, must
 571 focus on clearly defined objectives, and must provide the most
 572 efficient path to quick reunification or permanent placement
 573 given the circumstances of the case and the child's need for
 574 safe and proper care. A copy of the amended plan must be
 575 immediately given to the persons identified in s. 39.6011(7)(c)
 576 ~~s. 39.6011(6)(b)~~.

577 Section 11. Present subsections (7) through (10) of section
 578 39.621, Florida Statutes, are redesignated as subsections (8)
 579 through (11), respectively, subsection (5) and present
 580 subsections (9), (10), and (11) are amended, and a new

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581 subsection (7) is added to that section, to read:
 582 39.621 Permanency determination by the court.—
 583 (5) At the permanency hearing, the court shall determine:
 584 (a) Whether the current permanency goal for the child is
 585 appropriate or should be changed.~~+~~
 586 (b) When the child will achieve one of the permanency
 587 goals.~~+~~~~and~~
 588 (c) Whether the department has made reasonable efforts to
 589 finalize the permanency plan currently in effect.
 590 (7) If the court determines that the child's goal is
 591 appropriate but the child will be in out-of-home care for more
 592 than 12 months before achieving permanency, in those cases where
 593 the goal is reunification or adoption, the court shall hold
 594 permanency status hearings for the child every 60 days until the
 595 child reaches permanency or the court makes a determination that
 596 it is in the child's best interest to change the permanency
 597 goal.
 598 (10)(9) The case plan must list the tasks necessary to
 599 finalize the permanency placement and shall be updated at the
 600 permanency hearing unless the child will achieve permanency
 601 within 60 days after the hearing if necessary. If a concurrent
 602 case plan is in place, the court may choose between the
 603 permanency goal options presented and shall approve the goal
 604 that is in the child's best interest.
 605 (11)(10) The permanency placement is intended to continue
 606 until the child reaches the age of majority and may not be
 607 disturbed absent a finding by the court that the circumstances
 608 of the permanency placement are no longer in the best interest
 609 of the child.

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610 (a) If, after a child has achieved the permanency placement
 611 approved at the permanency hearing, a parent who has not had his
 612 or her parental rights terminated makes a motion for
 613 reunification or increased contact with the child, the court
 614 shall hold a hearing to determine whether the dependency case
 615 should be reopened and whether there should be a modification of
 616 the order.
 617 (b) At the hearing, the parent must demonstrate that the
 618 safety, well-being, and physical, mental, and emotional health
 619 of the child is not endangered by the modification.
 620 (c)(11) The court shall base its decision concerning any
 621 motion by a parent for reunification or increased contact with a
 622 child on the effect of the decision on the safety, well-being,
 623 and physical and emotional health of the child. Factors that
 624 must be considered and addressed in the findings of fact of the
 625 order on the motion must include:
 626 1.(a) The compliance or noncompliance of the parent with
 627 the case plan;
 628 2.(b) The circumstances which caused the child's dependency
 629 and whether those circumstances have been resolved;
 630 3.(c) The stability and longevity of the child's placement;
 631 4.(d) The preferences of the child, if the child is of
 632 sufficient age and understanding to express a preference;
 633 5.(e) The recommendation of the current custodian; and
 634 6.(f) The recommendation of the guardian ad litem, if one
 635 has been appointed.
 636 Section 12. Paragraph (d) of subsection (2) of section
 637 39.701, Florida Statutes, is amended to read:
 638 39.701 Judicial review.—

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639 (2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF
640 AGE.—

641 (d) *Orders*.—

642 1. Based upon the criteria set forth in paragraph (c) and
643 the recommended order of the citizen review panel, if any, the
644 court shall determine whether or not the social service agency
645 shall initiate proceedings to have a child declared a dependent
646 child, return the child to the parent, continue the child in
647 out-of-home care for a specified period of time, or initiate
648 termination of parental rights proceedings for subsequent
649 placement in an adoptive home. Amendments to the case plan must
650 be prepared as prescribed in s. 39.6013. If the court finds that
651 the prevention or reunification efforts of the department will
652 allow the child to remain safely at home or be safely returned
653 to the home, the court shall allow the child to remain in or
654 return to the home after making a specific finding of fact that
655 the reasons for the creation of the case plan have been remedied
656 to the extent that the child's safety, well-being, and physical,
657 mental, and emotional health will not be endangered.

658 2. The court shall return the child to the custody of the
659 parents at any time it determines that they have substantially
660 complied with the case plan, if the court is satisfied that
661 reunification will not be detrimental to the child's safety,
662 well-being, and physical, mental, and emotional health.

663 3. If, in the opinion of the court, the social service
664 agency has not complied with its obligations as specified in the
665 written case plan, the court may find the social service agency
666 in contempt, shall order the social service agency to submit its
667 plans for compliance with the agreement, and shall require the

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668 social service agency to show why the child could not safely be
669 returned to the home of the parents.

670 4. If, at any judicial review, the court finds that the
671 parents have failed to substantially comply with the case plan
672 to the degree that further reunification efforts are without
673 merit and not in the best interest of the child, on its own
674 motion, the court may order the filing of a petition for
675 termination of parental rights, whether or not the time period
676 as contained in the case plan for substantial compliance has
677 expired.

678 5. Within 6 months after the date that the child was placed
679 in shelter care, the court shall conduct a judicial review
680 hearing to review the child's permanency goal as identified in
681 the case plan. At the hearing the court shall make written
682 findings regarding the likelihood of the child's reunification
683 with the parent or legal custodian within 12 months after the
684 removal of the child from the home. If the court makes a written
685 finding that it is not likely that the child will be reunified
686 with the parent or legal custodian within 12 months after the
687 child was removed from the home, the department must file with
688 the court, and serve on all parties, a motion to amend the case
689 plan under s. 39.6013 and declare that it will use concurrent
690 planning for the case plan. The department must file the motion
691 within 10 business days after receiving the written finding of
692 the court. The department must attach the proposed amended case
693 plan to the motion. If concurrent planning is already being
694 used, the department must file with the court, and serve on all
695 parties, a motion to amend the case plan to reflect the
696 concurrent goal as the child's primary permanency goal, document

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697 the efforts the department is taking to complete the concurrent
 698 goal, and identify any additional services needed to reach the
 699 permanency goal by a date certain. The court may allow the
 700 parties to continue to pursue a secondary goal if the court
 701 determines that is in the best interest of the child ~~case plan~~
 702 ~~must document the efforts the department is taking to complete~~
 703 ~~the concurrent goal.~~

704 6. The court may issue a protective order in assistance, or
 705 as a condition, of any other order made under this part. In
 706 addition to the requirements included in the case plan, the
 707 protective order may set forth requirements relating to
 708 reasonable conditions of behavior to be observed for a specified
 709 period of time by a person or agency who is before the court;
 710 and the order may require any person or agency to make periodic
 711 reports to the court containing such information as the court in
 712 its discretion may prescribe.

713 Section 13. Paragraph (e) of subsection (1) of section
 714 39.806, Florida Statutes, is amended to read:

715 39.806 Grounds for termination of parental rights.—

716 (1) Grounds for the termination of parental rights may be
 717 established under any of the following circumstances:

718 (e) When a child has been adjudicated dependent, a case
 719 plan has been filed with the court, and:

720 1. The child continues to be abused, neglected, or
 721 abandoned by the parent or parents. The failure of the parent or
 722 parents to substantially comply with the case plan for a period
 723 of 12 months after an adjudication of the child as a dependent
 724 child or the child's placement into shelter care, whichever
 725 occurs first, constitutes evidence of continuing abuse, neglect,

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726 or abandonment unless the failure to substantially comply with
 727 the case plan was due to the parent's lack of financial
 728 resources or to the failure of the department to make reasonable
 729 efforts to reunify the parent and child. The 12-month period
 730 begins to run only after the child's placement into shelter care
 731 or the entry of a disposition order placing the custody of the
 732 child with the department or a person other than the parent and
 733 the court's approval of a case plan having the goal of
 734 reunification with the parent, whichever occurs first; or

735 2. The parent or parents have materially breached the case
 736 plan by their action or inaction. Time is of the essence for
 737 permanency of children in the dependency system. In order to
 738 prove the parent or parents have materially breached the case
 739 plan, the court must find by clear and convincing evidence that
 740 the parent or parents are unlikely or unable to substantially
 741 comply with the case plan before time to comply with the case
 742 plan expires.

743 3. The child has been in care for any 12 of the last 22
 744 months and the parents have not substantially complied with the
 745 case plan so as to permit reunification under s. 39.522(2)
 746 unless the failure to substantially comply with the case plan
 747 was due to the parent's lack of financial resources or to the
 748 failure of the department to make reasonable efforts to reunify
 749 the parent and child.

750 Section 14. Subsection (5) of section 39.811, Florida
 751 Statutes, is amended to read:

752 39.811 Powers of disposition; order of disposition.—

753 (5) If the court terminates parental rights, the court
 754 shall enter a written order of disposition within 30 days after

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755 conclusion of the hearing briefly stating the facts upon which
756 its decision to terminate the parental rights is made. An order
757 of termination of parental rights, whether based on parental
758 consent or after notice served as prescribed in this part,
759 permanently deprives the parents of any right to the child.

760 Section 15. This act shall take effect July 1, 2018.



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Senate Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that SB 1650 on Child Abuse, Abandonment, and Neglect be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Bill Montford".

Senator Bill Montford
Florida Senate, District 3

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/15/18
Meeting Date

1650
Bill Number (if applicable)
301180
Amendment Barcode (if applicable)

Topic CHILD WELFARE

Name ALAN ABRAMOWITZ

Job Title Director - GAL Program

Address 600 CALHOUN STREET
Street

Phone 850 - 241 - 3232

Tallahassee FL 32301
City State Zip

Email Alan.Abramowitz@gal.fl.gov

Speaking: For Against Information

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

Representing GAL PROGRAM

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)

Feb 13 2018
Meeting Date

1650
Bill Number (if applicable)

Topic Child Welfare

Amendment Barcode (if applicable)

Name Cynthia Strickland

Job Title TLC (tender loving caregivers) Association, Inc.

Address 1505 Kaylor Court NE
Street

Phone 863 412 0083

Winter Haven, FL 33881
City State Zip

Email Cyndy.Strickland@gmail.com

Speaking: For Against Information

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

Representing TLC 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
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 Governmental Oversight and Accountability

BILL: CS/SB 1850

INTRODUCER: Health Policy Committee and Senator Stewart

SUBJECT: Public Records/Photograph, Video, Audio Recording of an Autopsy Held by a Medical Examiner

DATE: February 12, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Fav/CS
2.	Brown	Caldwell	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1850 expands the public records exemption that currently makes confidential and exempt photographs and video or audio recordings of an autopsy held by a medical examiner. Under the bill, the exemption also applies to reports and related written records that personally identify the deceased person. A time limit is imposed, however, on the exemption for reports and related written records. The exemption would apply to these records for only 10 days after the medical examiner's completion of the report. Still, the records may be released during the 10-day period to the surviving spouse, or other authorized person if there is no surviving spouse.

Current law grants certain family members access to the photographs and video or audio recordings of the autopsy. The bill additionally authorizes a legal guardian to view these materials, as well as reports and related written records.

The bill provides a statement of public necessity supporting the exemption. Additionally, the bill requires an Open Government Sunset Review with a repeal date of October 2, 2023, unless the Legislature saves the exemption from repeal before that time.

A two-thirds vote of each chamber is required for passage of the bill because it expands a public records exemption.

The bill applies retroactively, and takes effect upon becoming law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁵ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁶ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁷
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁸ or
- It protects trade or business secrets.¹⁹

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

Medical Examiners Act

Part I of ch. 406, F.S., the “Medical Examiners Act (Act),”²³ creates the Medical Examiners Commission (MEC) within the Florida Department of Law Enforcement (FDLE).²⁴ The MEC is authorized to establish and oversee medical examiner districts²⁵ and adopt rules to ensure minimum and uniform standards for statewide medical examiner services.²⁶ District medical examiners are required to determine the cause of death of a decedent who died or was found dead in their district:

- If the person died:
 - Of criminal violence;
 - By accident;
 - By suicide;
 - Suddenly, when in apparent good health;
 - Unattended by a practicing physician or other recognized practitioner;
 - In any prison or penal institution;
 - In police custody;
 - In any suspicious or unusual circumstance;
 - By criminal abortion;
 - By poison;
 - By disease constituting a threat to public health; or
 - By disease, injury, or toxic agent resulting from employment.
- When a dead body is brought into the state without proper medical certification; or
- When a dead body is to be cremated, dissected, or buried at sea.²⁷

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Section 406.01, F.S.

²⁴ Section 406.02(1), F.S.

²⁵ Section 406.02(4), F.S.

²⁶ Section 406.04, F.S.

²⁷ Section 406.11(1), F.S.

The medical examiner is authorized to make or have performed any examinations, investigations, and autopsies that he or she deems necessary, or that are requested by the state attorney, for the purpose of determining the cause of death.²⁸

Section 406.135(2), F.S., makes confidential and exempt from s. 119.07(1), F.S., and Art. I, s. 24(a), of the State Constitution, any photograph or video or audio recording of an autopsy held by a medical examiner; and defines a “medical examiner” to include a:

- District medical examiner;
- Associate medical examiner;
- Substitute medical examiner;
- Any employee, deputy, or agent of a medical examiner; or
- Any other person who may obtain possession of a photograph or audio recording or video recording of an autopsy in the course of assisting a medical examiner in the performance of his or her official duties.²⁹

However, a surviving spouse may view and copy a photograph or video recording, or listen to or copy an audio recording, of the deceased spouse’s autopsy. If there is no surviving spouse, then the surviving parents may have access to such records. If there is no surviving spouse or parent, then an adult child may have access to such records.³⁰

The deceased’s surviving relative, as identified above, may designate in writing an agent to obtain the records.³¹ A local governmental entity, or a state or federal agency, in furtherance of its official duties, upon written request, may also have access, and unless otherwise required in the performance of their duties, the identity of the deceased must remain confidential and exempt.³²

Any other person desiring to copy or view confidential and exempt autopsy photographs, or video or audio recordings, must obtain a court order, based on a showing of good cause, and subject to any restrictions or stipulations the court deems appropriate.³³

A surviving spouse must be given reasonable notice and a copy of any petition filed to review or copy a photograph, video recording, or audio recording of an autopsy. If there is no surviving spouse, then notice must be given to the parents of the deceased; and if the deceased has no living parent, then notice is given to the adult children of the deceased.³⁴

In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy must be under the direct supervision of the custodian of the record or his or her designee.³⁵

²⁸ *Id.*

²⁹ Section 406.135(1), F.S.

³⁰ Section 406.135(2), F.S.

³¹ Section 406.135(3)(a), F.S.

³² Section 406.135(3)(b), F.S.

³³ Section 406.135(4)(a), F.S.

³⁴ Section 406.135(5), F.S.

³⁵ Section 406.135(4)(c), F.S.

A custodian of records who willfully and knowingly violates these provisions commits a third-degree felony.³⁶

Effect of Proposed Changes:

The bill expands the current public records exemption for photographs and video or audio recordings of an autopsy to make autopsy reports and related written records held by a medical examiner that identify a deceased person confidential and exempt from disclosure for 10 days after the report is completed.

The bill adds legal guardians to the current list of persons who have access to the records. In so doing, records may be released in this order:

- To a surviving spouse; or
- If there is no surviving spouse, to the surviving parents or legal guardians; or,
- If there is no surviving spouse, parent, or legal guardian, to an adult child.

Therefore, the public records exemption applies as follows:

- The exemption makes confidential and exempt from disclosure a photograph, a video recording, and an audio recording, except to the family members or a legal guardian of the deceased in the order delineated above.
- The exemption makes confidential and exempt from disclosure a report or a related record, except to the family members or a legal guardian of the deceased in the order delineated above, for a period of only 10 days after the medical examiner completes the report. After this time, the exemption no longer applies and a report or a related record is subject to disclosure.

As justification for the broadening of the public records exemption to reports and related records, the statement of public necessity provides that a deceased's family may unexpectedly encounter new information obtained from an autopsy report or related written record regarding the death of a loved one which is published or conveyed by word of mouth, causing the family to experience trauma, sorrow, humiliation, or emotional injury.

The bill includes an Open Government Sunset Review and provides a repeal date of October 2, 2023, unless reviewed and saved from repeal by the Legislature before that time.

As the bill expands the public records exemption, a two-thirds vote of each chamber is required for passage.

The bill applies retroactively³⁷ and takes effect upon becoming law.

³⁶ Section 406.135(6), F.S.

³⁷ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislature clearly expresses intent that the exemption is to be applied retroactively, and that it is constitutionally permissible to do so. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. *Memorial Hospital-West Volusia, Inc. v. New-Journal Corporation*, 784 So. 2d 438, 441 (Fla. 2001).

III. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:**Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for newly created or expanded public records exemptions to pass. This bill expands an existing exemption. Therefore, a two-thirds vote is required.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that autopsy reports and related written records that personally identify the deceased be confidential and exempt from public records for a period of 10 days after completion to protect a deceased's family from any unexpected encounters with new information obtained from an autopsy report or related written record regarding the death of a loved one which could cause the family to experience trauma, sorrow, humiliation, or emotional injury.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates an exemption for autopsy reports, and related written records that personally identify the deceased for ten days after the medical examiner has completed the report, and includes exceptions for the surviving spouse, or other authorized persons if there is no surviving spouse to view and copy those records during the 10-day exempt period.

The bill appears to be no broader than necessary to accomplish the public necessity for the public records exemption.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 406.135 of the Florida Statutes.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Health Policy on January 30, 2018:**

Makes the autopsy report and related written records confidential and exempt from public records law for the ten days after the medical examiner has completed the report, with exceptions for the surviving spouse, or other authorized person if there is no surviving spouse, to view and copy those records during the ten day period.

B. Amendments:

None.

By the Committee on Health Policy; and Senator Stewart

588-02613-18

20181850c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 406.135, F.S.; revising the definition of the term
 4 "medical examiner"; providing that a legal guardian
 5 shall have access, under certain circumstances, to a
 6 photograph or video or audio recording of an autopsy
 7 held by a medical examiner; providing that a legal
 8 guardian shall be given reasonable notice of, a copy
 9 of, and reasonable notice of an opportunity to be
 10 present and heard at any hearing on a petition to view
 11 or make a copy of such photograph or recording under
 12 certain circumstances; providing an exemption from
 13 public records requirements for a specified time after
 14 the medical examiner has completed the autopsy report;
 15 providing for future legislative review and repeal of
 16 the exemption; providing criminal penalties for any
 17 custodian of an autopsy report or a certain record who
 18 willfully and knowingly violates specified provisions;
 19 providing retroactive applicability; providing a
 20 statement of public necessity; providing an effective
 21 date.
 22
 23 Be It Enacted by the Legislature of the State of Florida:
 24
 25 Section 1. Subsections (1), (2), and (5) of section
 26 406.135, Florida Statutes, are amended, present subsections (6)
 27 through (8) of that section are redesignated as (7) through (9),
 28 respectively, present subsections (6) and (8) are amended, and a
 29 new subsection (6) is added to that section, to read:

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

588-02613-18

20181850c1

30 406.135 Autopsies; confidentiality of reports, related
 31 written records, photographs, and video and audio recordings;
 32 exemption.-
 33 (1) For the purpose of this section, the term "medical
 34 examiner" means any district medical examiner, associate medical
 35 examiner, or substitute medical examiner acting pursuant to this
 36 chapter, as well as any employee, deputy, or agent of a medical
 37 examiner or any other person who may obtain possession of an
 38 autopsy report or a related written record that personally
 39 identifies the deceased, or a photograph or audio or video
 40 recording of an autopsy, in the course of assisting a medical
 41 examiner in the performance of his or her official duties.
 42 (2) A photograph or video or audio recording of an autopsy
 43 held by a medical examiner is confidential and exempt from s.
 44 119.07(1) and s. 24(a), Art. I of the State Constitution, except
 45 that a surviving spouse may view and copy a photograph or video
 46 recording or listen to or copy an audio recording of the
 47 deceased spouse's autopsy. If there is no surviving spouse, ~~then~~
 48 the surviving parents or legal guardians shall have access to
 49 such records. If there is no surviving spouse, ~~or~~ parent, or
 50 legal guardian, ~~then~~ an adult child shall have access to such
 51 records.
 52 (5) A surviving spouse shall be given reasonable notice of
 53 a petition filed with the court to view or copy a photograph or
 54 video recording of an autopsy or a petition to listen to or copy
 55 an audio recording, a copy of such petition, and reasonable
 56 notice of the opportunity to be present and heard at any hearing
 57 on the matter. If there is no surviving spouse, ~~then~~ such notice
 58 must be given to the parents or legal guardians of the deceased,

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588-02613-18 20181850c1

59 and if the deceased has no surviving living parent or legal
60 guardian, then to the adult children of the deceased.

61 (6) (a) An autopsy report or a related written record that
62 personally identifies the deceased and that is held by a medical
63 examiner is confidential and exempt from s. 119.07(1) and s.
64 24(a), Art. I of the State Constitution for 10 days after the
65 medical examiner has completed the report, except that a
66 surviving spouse may view and copy the records. If there is no
67 surviving spouse, the surviving parents or legal guardians shall
68 have access to such records. If there is no surviving spouse,
69 parent, or legal guardian, an adult child shall have access to
70 such records.

71 (b) The exemption in paragraph (a) is subject to the Open
72 Government Sunset Review Act in accordance with s. 119.15 and
73 shall stand repealed on October 2, 2023, unless reviewed and
74 saved from repeal through reenactment by the Legislature.

75 (7) (a) ~~(6) (a)~~ Any custodian of an autopsy report or a
76 related written record that personally identifies the deceased,
77 or a photograph or video or audio recording of an autopsy, who
78 willfully and knowingly violates this section commits a felony
79 of the third degree, punishable as provided in s. 775.082, s.
80 775.083, or s. 775.084.

81 (b) Any person who willfully and knowingly violates a court
82 order issued pursuant to this section commits a felony of the
83 third degree, punishable as provided in s. 775.082, s. 775.083,
84 or s. 775.084.

85 ~~(9) (8)~~ This exemption applies to records held before, on,
86 or after the effective date of this act ~~shall be given~~
87 retroactive application.

Page 3 of 4

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588-02613-18 20181850c1

88 Section 2. The Legislature finds that it is a public
89 necessity that autopsy reports and related written records that
90 personally identify the deceased be made confidential and exempt
91 from the requirements of s. 119.07(1), Florida Statutes, and s.
92 24(a), Article I of the State Constitution for 10 days after the
93 medical examiner has completed the report. The Legislature finds
94 that the deceased's family may unexpectedly encounter new
95 information obtained from an autopsy report or related written
96 record regarding the death of a loved one which is published or
97 conveyed by word of mouth, causing the family to experience
98 trauma, sorrow, humiliation, or emotional injury. The
99 Legislature finds that, although access delayed is access
100 denied, the deceased's family should be given a reasonable time
101 to be notified before any highly sensitive autopsy report or
102 related written record that personally identifies the deceased
103 is released to the public. The Legislature further finds that
104 the exemption provided in this act should be given retroactive
105 application because it is remedial in nature.

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

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 6, 2018

I respectfully request that **Senate Bill #1850**, relating to Public Records Exemptions Relating to Autopsies, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 13th 2018
Meeting Date

1850
Bill Number (if applicable)

Topic Public Records/Recording of Autopsy

Amendment Barcode (if applicable)

Name Devon West

Job Title Intergovernmental Affairs Liaison

Address 115 S. Andrews Ave
Street

Phone 321-243-2270

Fort Lauderdale FL 33301
City State Zip

Email dewest@broward.org

Speaking: [] For [] Against [] Information

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

Representing BROWARD COUNTY

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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
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 Governmental Oversight and Accountability

BILL: CS/CS/SB 1880

INTRODUCER: Governmental Oversight and Accountability Committee; Banking and Insurance Committee; and Senators Broxson and Mayfield

SUBJECT: Public Records and Meetings/Security of Data and Information Technology in Citizens Property Insurance Corporation

DATE: February 14, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1880 creates a public records exemption for data and information from information technology (IT) systems owned by, under contract with, or maintained by Citizens Property Insurance Corporation (Citizens). The bill exempts from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the following data and information held by Citizens:

- Records that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches.
- Portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information and IT resources.

Such records are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, or information technology resources including those related to security of IT resources.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information.

The exemptions are similar to those currently in law for state agencies.

The exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of the bill.

The bill has an effective date of upon becoming a law and provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.² In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹³ *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

economic status or which operates in a manner that unreasonably restricts the public's access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.²⁵ The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.²⁸ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³¹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³² or
- It protects trade or business secrets.³³

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ *Id.*

²⁷ *See supra* note 11.

²⁸ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.³⁴ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.³⁵ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.³⁶

Public Record Exemptions Related to Information Technology

The Information Technology (IT) Security Act³⁷ requires the Agency for State Technology and state agencies³⁸ to meet certain requirements relating to IT security. The IT Security Act provides that the following state agency information is confidential and exempt from public record requirements:

- Risk assessments;³⁹
- Evaluations;
- External audits; and
- Other reports of a state agency's IT security program.

Portions of such documents will be confidential and exempt from public disclosure only if the disclosure of such information could facilitate unauthorized access, modification, disclosure or destruction of:

- Data or information, whether physical or virtual; or
- IT resources, including protocols for protecting those resources as well as any existing or proposed IT security systems.

This confidential and exempt information must be made available to the Auditor General, the Cybercrime Office within the Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector

³⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

³⁵ FLA. CONST., art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ Section 282.318, F.S.

³⁸ Section 282.0041(23), F.S., provides, in part, that "state agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees, or state universities. For purposes of the Information Technology Security Act, the term "state agency" also includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, and the Department of Financial Services. *See* s. 282.318(2), F.S.

³⁹ Section 282.318(5), F.S.

General.⁴⁰ In addition, the records may be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.⁴¹

The IT Security Act also provides that records held by a state agency that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt.⁴²

Such confidential and exempt records must be made available to the Auditor General, the Cybercrime Office within Department of Law Enforcement, the Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. These records may also be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.⁴³

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose mission is to provide property insurance coverage to those unable to find affordable coverage in the private market.⁴⁴ It is not a private insurance company.⁴⁵

Records and meetings held by Citizens regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open records and meetings laws. Public disclosure of this information presents a significant security risk and would reveal weaknesses within Citizens' computer networks, raising the potential for exploitation.

Because Citizens is not created within the executive branch, it is not covered by the definition of "state agency"⁴⁶ contained in the IT Security Act. Accordingly, Citizens is not subject to the exemptions from open meetings and public records laws for data and information technology systems owned, contracted, or maintained by specified state agencies.

Therefore, Citizens is vulnerable to the disclosure of information and records which, if disclosed, could potentially compromise the confidentiality, integrity, and availability of its information technology system. Such system contains highly sensitive policyholder, insurer, claims, financial, accounting and banking, personnel, and other records.⁴⁷

⁴⁰ Section 282.318(5)(b), F.S.

⁴¹ *Id.*

⁴² Section 282.318(4)(j), F.S.

⁴³ *Id.*

⁴⁴ See Citizens Property Insurance Corporation, Who We Are, available at <https://www.citizensfla.com/who-we-are> (last viewed on Feb. 8, 2018). See also s. 627.351(6)(a), F.S.

⁴⁵ Section 627.351(6)(a).1., F.S.

⁴⁶ See *supra* note 38.

⁴⁷ Section 627.351(6)(x), F.S., requires Citizens to hold the following records as confidential and exempt from disclosure under Florida's public record laws: underwriting files, claim files, certain audit files, attorney-client privileged material, certain proprietary information licensed to Citizens, employee assistance program information, information relating to the medical condition or medical status of a Citizens employee, certain information relating to contract negotiations, and certain records related to closed meetings.

III. Effect of Proposed Changes:

Section 1 creates public record and public meeting exemptions to protect data and records pertaining to the security of the Citizens information networks from disclosure. The bill provides that records held by Citizens that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt from public record requirements. In addition, portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information, and IT resources that are held by Citizens are confidential and exempt. Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
 - Information relating to the security of Citizens' technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - Physical or virtual security information that relates to Citizens' existing or proposed IT systems.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are confidential and exempt from public record requirements, unless a court, following an in-camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. In the event of such a judicial determination, only that portion of a transcript that reveals nonexempt data and information may be disclosed to a third party.

The bill requires the confidential and exempt records related to the public meeting exemption to be available to the Auditor General, the Cybercrime Office of Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The public record exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of this act.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a public necessity statement as required by the State Constitution, specifying that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

Section 3 directs the Division of Law Revision and Information to replace the phrase "effective date of this act" with the date the act becomes a law.

Section 4 provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirements

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

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates an exemption from public records and public meetings for data and information from IT systems owned by Citizens. The bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

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 creates section 627.352 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 Governmental Oversight and Accountability on February 13, 2018:

The CS makes technical changes:

- To add public meetings to the title;
- To add upon becoming a law as effective date for public records and public meetings exemptions; and
- To direct the Division of Law Revision and Information to replace the phrase “effective date of this act” with the date the act becomes a law.

CS by Banking and Insurance on January 30, 2018:

The CS makes a technical change correcting the 5 year sunset review date to October 2, 2023.

B. Amendments:

None.



286384

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/13/2018	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 89 - 90
and insert:
transcripts held by the corporation before, on, or after the
effective date of this act.

Between lines 264 and 265
insert:

Section 3. The Division of Law Revision and Information is



286384

11 directed to replace the phrase "the effective date of this act"
12 wherever it occurs in this act with the date this act becomes a
13 law.

14
15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete line 2

18 and insert:

19 An act relating to public records and public meetings;
20 creating s.

21
22 Delete line 21

23 and insert:

24 providing retroactive application; providing a
25 directive to the Division of Law Revision and
26 Information; providing an

By the Committee on Banking and Insurance; and Senator Broxson

597-02621-18

20181880c1

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 627.352, F.S.; providing an exemption from public
 4 records requirements for certain records held by the
 5 Citizens Property Insurance Corporation which identify
 6 detection, investigation, or response practices for
 7 suspected or confirmed information technology security
 8 incidents; creating an exemption from public records
 9 requirements for certain portions of risk assessments,
 10 evaluations, audits, and other reports of the
 11 corporation's information technology security program;
 12 creating an exemption from public meetings
 13 requirements for portions of public meetings which
 14 would reveal such data and information; providing an
 15 exemption from public records requirements for a
 16 specified period for the recording and transcript of a
 17 closed meeting; authorizing disclosure of confidential
 18 and exempt information to certain agencies and
 19 officers; providing for future legislative review and
 20 repeal; providing a statement of public necessity;
 21 providing retroactive application; providing an
 22 effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:

25
 26 Section 1. Section 627.352, Florida Statutes, is created to
 27 read:
 28 627.352 Security of data and information technology in
 29 Citizens Property Insurance Corporation.-

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30 (1) The following data and information from technology
 31 systems owned by, under contract with, or maintained by Citizens
 32 Property Insurance Corporation are confidential and exempt from
 33 s. 119.07(1) and s. 24(a), Art. I of the State Constitution:
 34 (a) Records held by the corporation which identify
 35 detection, investigation, or response practices for suspected or
 36 confirmed information technology security incidents, including
 37 suspected or confirmed breaches, if the disclosure of such
 38 records would facilitate unauthorized access to or unauthorized
 39 modification, disclosure, or destruction of:
 40 1. Data or information, whether physical or virtual; or
 41 2. Information technology resources, including:
 42 a. Information relating to the security of the
 43 corporation's technologies, processes, and practices designed to
 44 protect networks, computers, data processing software, and data
 45 from attack, damage, or unauthorized access; or
 46 b. Security information, whether physical or virtual, which
 47 relates to the corporation's existing or proposed information
 48 technology systems.
 49 (b) Those portions of risk assessments, evaluations,
 50 audits, and other reports of the corporation's information
 51 technology security program for its data, information, and
 52 information technology resources which are held by the
 53 corporation, if the disclosure of such records would facilitate
 54 unauthorized access to or the unauthorized modification,
 55 disclosure, or destruction of:
 56 1. Data or information, whether physical or virtual; or
 57 2. Information technology resources, which include:
 58 a. Information relating to the security of the

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59 corporation's technologies, processes, and practices designed to
 60 protect networks, computers, data processing software, and data
 61 from attack, damage, or unauthorized access; or

62 b. Security information, whether physical or virtual, which
 63 relates to the corporation's existing or proposed information
 64 technology systems.

65 (2) Those portions of a public meeting as specified in s.
 66 286.011 which would reveal data and information described in
 67 subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I
 68 of the State Constitution. No exempt portion of an exempt
 69 meeting may be off the record. All exempt portions of such a
 70 meeting must be recorded and transcribed. The recording and exempt
 71 transcript of the meeting must remain confidential and exempt
 72 from disclosure under s. 119.07(1) and s. 24(a), Art. I of the
 73 State Constitution unless a court of competent jurisdiction,
 74 following an in camera review, determines that the meeting was
 75 not restricted to the discussion of data and information made
 76 confidential and exempt by this section. In the event of such a
 77 judicial determination, only that portion of the transcript
 78 which reveals nonexempt data and information may be disclosed to
 79 a third party.

80 (3) The records and portions of public meeting recordings
 81 and transcripts described in subsection (2) must be available to
 82 the Auditor General, the Cybercrime Office of the Department of
 83 Law Enforcement, and the Office of Insurance Regulation. Such
 84 records and portions of meetings, recordings, and transcripts
 85 may be made available to a state or federal agency for security
 86 purposes or in furtherance of the agency's official duties.

87 (4) The exemptions listed in this section apply to such

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88 records or portions of public meetings, recordings, and
 89 transcripts held by the corporation before, on, or after July 1,
 90 2018.

91 (5) This section is subject to the Open Government Sunset
 92 Review Act in accordance with s. 119.15 and shall stand repealed
 93 on October 2, 2023, unless reviewed and saved from repeal
 94 through reenactment by the Legislature.

95 Section 2. (1)(a) The Legislature finds that it is a public
 96 necessity that the following data or information from technology
 97 systems owned, under contract, or maintained by the corporation
 98 be confidential and exempt from s. 119.07(1), Florida Statutes,
 99 and s. 24(a), Article I of the State Constitution:

100 1. Records held by the corporation which identify
 101 detection, investigation, or response practices for suspected or
 102 confirmed information technology security incidents, including
 103 suspected or confirmed breaches, if the disclosure of such
 104 records would facilitate unauthorized access to or unauthorized
 105 modification, disclosure, or destruction of:

106 a. Data or information, whether physical or virtual; or

107 b. Information technology resources, which include:

108 (I) Information relating to the security of the
 109 corporation's technologies, processes, and practices designed to
 110 protect networks, computers, data processing software, and data
 111 from attack, damage, or unauthorized access; or

112 (II) Security information, whether physical or virtual,
 113 which relates to the corporation's existing or proposed
 114 information technology systems.

115 2. Those portions of risk assessments, evaluations, audits,
 116 and other reports of the corporation's information technology

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117 security program for its data, information, and information
 118 technology resources which are held by the corporation, if the
 119 disclosure of such records would facilitate unauthorized access
 120 to or the unauthorized modification, disclosure, or destruction
 121 of:

122 a. Data or information, whether physical or virtual; or
 123 b. Information technology resources, which include:

124 (I) Information relating to the security of the
 125 corporation's technologies, processes, and practices designed to
 126 protect networks, computers, data processing software, and data
 127 from attack, damage, or unauthorized access; or

128 (II) Security information, whether physical or virtual,
 129 which relates to the corporation's existing or proposed
 130 information technology systems.

131 (b) The Legislature also finds that those portions of a
 132 public meeting as specified in s. 286.011, Florida Statutes,
 133 which would reveal data and information described in subsection
 134 (1) are exempt from s. 286.011, Florida Statutes, and s. 24(b),
 135 Article I of the State Constitution. The recording and
 136 transcript of the meeting must remain confidential and exempt
 137 from disclosure under s. 119.07(1), Florida Statutes, and s.
 138 24(a), Article I of the State Constitution unless a court of
 139 competent jurisdiction, following an in camera review,
 140 determines that the meeting was not restricted to the discussion
 141 of data and information made confidential and exempt by this
 142 section. In the event of such a judicial determination, only
 143 that portion of the transcript which reveals nonexempt data and
 144 information may be disclosed to a third party.

145 (c) The Legislature further finds that it is a public

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146 necessity that records held by the corporation which identify
 147 detection, investigation, or response practices for suspected or
 148 confirmed information technology security incidents, including
 149 suspected or confirmed breaches, be made confidential and exempt
 150 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 151 the State Constitution if the disclosure of such records would
 152 facilitate unauthorized access to or the unauthorized
 153 modification, disclosure, or destruction of:

154 1. Data or information, whether physical or virtual; or
 155 2. Information technology resources, which include:

156 a. Information relating to the security of the
 157 corporation's technologies, processes, and practices designed to
 158 protect networks, computers, data processing software, and data
 159 from attack, damage, or unauthorized access; or

160 b. Security information, whether physical or virtual, which
 161 relates to the corporation's existing or proposed information
 162 technology systems.

163 (d) Such records must be made confidential and exempt for
 164 the following reasons:

165 1. Records held by the corporation which identify
 166 information technology detection, investigation, or response
 167 practices for suspected or confirmed information technology
 168 security incidents or breaches are likely to be used in the
 169 investigations of the incidents or breaches. The release of such
 170 information could impede the investigation and impair the
 171 ability of reviewing entities to effectively and efficiently
 172 execute their investigative duties. In addition, the release of
 173 such information before an active investigation is completed
 174 could jeopardize the ongoing investigation.

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175 2. An investigation of an information technology security
 176 incident or breach is likely to result in the gathering of
 177 sensitive personal information, including identification numbers
 178 and personal financial and health information. Such information
 179 could be used to commit identity theft or other crimes. In
 180 addition, release of such information could subject possible
 181 victims of the security incident or breach to further harm.

182 3. Disclosure of a record, including a computer forensic
 183 analysis, or other information that would reveal weaknesses in
 184 the corporation's data security could compromise that security
 185 in the future if such information were available upon conclusion
 186 of an investigation or once an investigation ceased to be
 187 active.

188 4. Such records are likely to contain proprietary
 189 information about the security of the system at issue. The
 190 disclosure of such information could result in the
 191 identification of vulnerabilities and further breaches of that
 192 system. In addition, the release of such information could give
 193 business competitors an unfair advantage and weaken the security
 194 technology supplier supplying the proprietary information in the
 195 marketplace.

196 5. The disclosure of such records could potentially
 197 compromise the confidentiality, integrity, and availability of
 198 the corporation's data and information technology resources. It
 199 is a public necessity that this information be made confidential
 200 in order to protect the technology systems, resources, and data
 201 of the corporation. The Legislature further finds that this
 202 public records exemption be given retroactive application
 203 because it is remedial in nature.

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204 (2) (a) The Legislature also finds that it is a public
 205 necessity that portions of risk assessments, evaluations,
 206 audits, and other reports of the corporation's information
 207 technology security program for its data, information, and
 208 information technology resources which are held by the
 209 corporation be made confidential and exempt from s. 119.07(1),
 210 Florida Statutes, and s. 24(a), Article I of the State
 211 Constitution if the disclosure of such portions of records would
 212 facilitate unauthorized access to or the unauthorized
 213 modification, disclosure, or destruction of:

214 1. Data or information, whether physical or virtual; or

215 2. Information technology resources, which include:

216 a. Information relating to the security of the
 217 corporation's technologies, processes, and practices designed to
 218 protect networks, computers, data processing software, and data
 219 from attack, damage, or unauthorized access; or

220 b. Security information, whether physical or virtual, which
 221 relates to the corporation's existing or proposed information
 222 technology systems.

223 (b) The Legislature finds that it is valuable, prudent, and
 224 critical to the corporation to have an independent entity
 225 conduct a risk assessment, an audit, or an evaluation or
 226 complete a report of the corporation's information technology
 227 program or related systems. Such documents would likely include
 228 an analysis of the corporation's current information technology
 229 program or systems which could clearly identify vulnerabilities
 230 or gaps in current systems or processes and propose
 231 recommendations to remedy identified vulnerabilities.

232 (3) (a) The Legislature further finds that it is a public

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233 necessity that those portions of a public meeting which could
 234 reveal information described in this section be made exempt from
 235 s. 286.011, Florida Statutes, and s. 24(b), Article I of the
 236 State Constitution. It is a public necessity that such meetings
 237 be made exempt from the open meetings requirements in order to
 238 protect the corporation's information technology systems,
 239 resources, and data. The information disclosed during portions
 240 of meetings would clearly identify the corporation's information
 241 technology systems and its vulnerabilities. This disclosure
 242 would jeopardize the information technology security of the
 243 corporation and compromise the integrity and availability of the
 244 corporation's data and information technology resources.

245 (b) The Legislature further finds that it is a public
 246 necessity that the recording and transcript of those portions of
 247 meetings specified in paragraph (a) be made confidential and
 248 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 249 Article I of the State Constitution unless a court determines
 250 that the meeting was not restricted to the discussion of data
 251 and information made confidential and exempt by this act. It is
 252 a public necessity that the resulting recordings and transcripts
 253 be made confidential and exempt from the public records
 254 requirements in order to protect the corporation's information
 255 technology systems, resources, and data. The disclosure of such
 256 recordings and transcripts would clearly identify the
 257 corporation's information technology systems and its
 258 vulnerabilities. This disclosure would jeopardize the
 259 information technology security of the corporation and
 260 compromise the integrity and availability of the corporation's
 261 data and information technology resources.

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262 (c) The Legislature further finds that this public meeting
 263 and public records exemption must be given retroactive
 264 application because it is remedial in nature.

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

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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)

02/17/18

Meeting Date

SB1880

Bill Number (if applicable)

Topic Citizens Public Records Exemption

Amendment Barcode (if applicable)

Name Christine Ashburn

Job Title Chief, Communications, Legislative & External Affairs

Address

Phone 513.3757

Street

Tallahassee

FL

City

State

Zip

Email

Speaking: For Against Information

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

Representing Citizens Property Insurance Corporation

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.

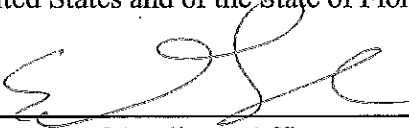
This form is part of the public record for this meeting.

CERTIFICATION

RECEIVED
17 MAY 22 AM 10:42
DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA
COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared
Erin Marie-Geraghty Rock,
who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read
the answers to the foregoing questions; (2) that the information contained in said answers is
complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the
United States and of the State of Florida.



Signature of Applicant-Affiant

Sworn to and subscribed before me this 19 day of May, 2017.



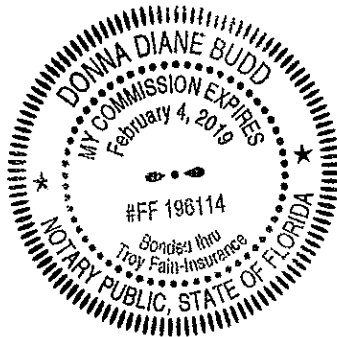
Signature of Notary Public-State of Florida

Donna Diane Budd
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 2/4/19

Personally Known OR Produced Identification

Type of Identification Produced _____



(seal)

1425

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Erin Marie-Geraghty Rock

is duly appointed

**Secretary,
Department of Management Services**

for a term beginning on the Thirty-First day of March, A.D.,
2017, to serve at the pleasure of the Governor and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Third day of May, A.D., 2017*



Ken Detzner

Secretary of State

If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11 Document



RICK SCOTT
GOVERNOR

17 APR -3 AM 10:39
DIVISIONS
SECRETARY OF STATE

March 31, 2017

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment:

Erin Rock

as Secretary of the Department of Management Services, succeeding Chad Poppell, subject to confirmation by the Senate. This appointment is effective for a term beginning March 31, 2017, and ending at the pleasure of the Governor.

Please prepare the necessary papers and mail to:

Mrs. Erin Rock

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott
Governor

RS/cr

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
17 MAY 22 AM 10:42
DIVISION OF ELECTIONS
SECRETARY OF STATE

STATE OF FLORIDA

County of Leon

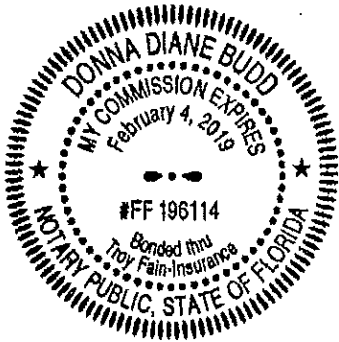
I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Secretary, Department of Management Services

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]



[Signature]
Signature

Sworn to and subscribed before me this 19 day of May, 2017

Donna Diane Budd
Signature of Officer Administering Oath or of Notary

Donna Diane Budd

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

4050 Esplanade Way

Street or Post Office Box

Tallahassee, Florida 32399

City, State, Zip Code

Erin Marie-Geraghty Rock

Print Name

[Signature]
Signature

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Erin Marie-Geraghty Rock
Secretary of Management Services

NOTICE OF HEARING

TO: Secretary Erin Marie-Geraghty Rock

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, February 13, 2018, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 10:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 8th day of February, 2018

Committee on Governmental Oversight and
Accountability



Senator Dennis Baxley
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability
Office of the Sergeant at Arms

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Erin Rock

ANSWER: "Yes"

Pursuant to §90.605(1), *Florida Statutes*: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Governmental Oversight and Accountability

DATE: February 13, 2018

THE FLORIDA SENATE

APPEARANCE RECORD

2-13-18

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

Meeting Date

Bill Number (if applicable)

Topic Senate Confirmation Hearing

Amendment Barcode (if applicable)

Name Secretary Erin Rock

Job Title Secretary

Address 4050 Esplanade Way

Phone 850.544.7924

Street

Tallahassee FL 32399

Email erin.rock@dms.

City

State

Zip

myflorida.com

Speaking: For Against Information

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

Representing Department of Management Services

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.

S-001 (10/14/14)

CourtSmart Tag Report

Room: SB 401
Caption: Senate Governmental Oversight and Accountability Committee

Case No.:

Type:
Judge:

Started: 2/13/2018 10:02:28 AM

Ends: 2/13/2018 10:50:13 AM

Length: 00:47:46

10:02:31 AM Meeting called to order
10:02:46 AM Roll Call - Quorum is present
10:02:54 AM Chair addresses members and audience
10:03:45 AM Tab 2 - by Sen. Gibson - Relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board
10:04:36 AM Questions? None. Debate? None
10:04:37 AM Sen. Gibson waives close
10:04:39 AM Roll Call on SB 48 - Favorable
10:05:02 AM Tab 6 - CS/SB 1650 - By Sen. Montford - Child Welfare
10:06:36 AM Questions? None
10:06:39 AM Amendment # 301180 by Sen. Montford
10:08:10 AM Questions on amendment? None
10:08:18 AM Appearance cards
10:08:26 AM Alan Abramwitz, GAL, waives in support
10:08:31 AM Debate? None
10:08:38 AM Sen. Montford to close on amendment
10:09:32 AM Objection to amendment? None
10:09:36 AM Amendment adopted
10:09:40 AM Back on bill as amended
10:09:45 AM Questions? None. Appearance cards?
10:09:50 AM Cynthia Strickland, TLC Association, Inc., waives in support
10:10:10 AM Debate? None
10:10:28 AM Sen. Montford waives close
10:10:31 AM Roll Call on CS/CS/SB 1650 -favorable
10:10:56 AM Chair gives personal comments regarding this bill
10:12:04 AM Tab 5 - SB 1042 by Sen Brandes, Notaries Public
10:12:49 AM Strike all amendment # 698574 by Sen. Brandes
10:13:33 AM Questions?
10:13:41 AM Sen. Rouson on amendment. Elderly person with a paid off loan signs a durable power of attorney, equity and insurance limits?
10:14:26 AM Sen. Brandes in response
10:15:00 AM Sen. Stewart - On-line Doc Stamps impact? How would out-of-state notary get payment?
10:15:10 AM Sen. Brandes in response
10:16:16 AM Sen. Stewart collections on impact fees, no interruption?
10:16:22 AM Sen. Brandes
10:16:43 AM Chair, staff input? None
10:16:47 AM Questions? None
10:16:48 AM Appearance Cards?
10:16:50 AM Doug Bell, Westcor Land Title Ins. Co., waives in support
10:16:56 AM Nicole Ehrbar, VP of Public Policy, Quicken Loans Family of Companies, speaking in support
10:21:26 AM Debate? None
10:21:34 AM Sen. Brandes waives close
10:21:42 AM Objections? None.
10:21:50 AM Back on bill as amended.
10:22:00 AM Appearance cards on bill as amended?
10:22:04 AM Warren Husband, Attorneys Title Funds Services, speaking for the bill
10:22:43 AM David Daniel, Florida Land Title Association, speaking for the bill
10:24:39 AM Doug Bell, Westcore Land Title Ins. Co., waives in support
10:24:54 AM Michael Chodos, Gen. Counsel, Notarize, Inc., waives in support
10:24:57 AM Trey Goldman, Leg. Counsel, Florida Realtors, waives in support
10:24:58 AM Kenneth Pratt, Senior VP, Gov. Affairs, Florida Bankers Association, waives in support
10:25:23 AM Debate? None.

10:25:29 AM Sen. Brandes waives close
10:25:32 AM Roll Call - CS/SB 1042 - favorable
10:26:06 AM Tab 8 - CS/SB 1880 - by Senator Broxson, Public Records/Security of Data and Information Technology in Citizens Property Insurance Corporation , presented by Sen. Mayfield (as co-introducer)
10:27:38 AM Technical amendment #286384 by Sen. Broxson
10:27:51 AM Questions on amendment? None
10:27:58 AM Appearance Cards? None
10:28:02 AM Debate? None
10:28:07 AM Sen. Mayfield waives close on amendment
10:28:12 AM Amendment is adopted
10:28:19 AM Back on bill as amended
10:28:20 AM Appearance cards on bill as amended?
10:28:28 AM Christine Ashburn, Chief, Communications, Legislative and External Affairs, Citizens Property Ins. Corp., waives in support
10:28:37 AM Debate? None
10:28:45 AM Sen. Mayfield waives close on bill as amended
10:28:47 AM Roll Call - CS/CS/SB 1880 -Favorable
10:29:33 AM Motion by Sen. Rader to be shown as voting in the affirmative on Tabs 2 (SB 48) and Tab 6 (CS/SB 1650), and also to be shown as voting No for SB 1042
10:29:42 AM Sen. Mayfield in chair
10:29:53 AM Tab 4 - CS/SB 808 by Sen. Baxley, Public Records/Surplus Lands
10:30:22 AM Questions? None
10:30:24 AM Debate? None. Appearance Cards? None
10:30:30 AM Sen. Mayfield waives close
10:30:35 AM Roll Call on CS/SB 808 - Favorable
10:30:54 AM Sen. Baxley back in Chair
10:31:11 AM Tab 7 - CS/SB 1850 by Sen. Stewart - Public Records/Photograph, Video, Audio Recording of an Autopsy Held by a Medical Examiner
10:32:09 AM Questions? None
10:32:17 AM Appearance Cards?
10:32:20 AM Devon West, Gov. Affairs Liaison, Broward County, waives in support
10:32:35 AM Debate? None
10:32:40 AM Sen. Stewart waives close
10:32:44 AM Roll call -CS/SB 1850 -favorable
10:33:16 AM Chair, comments on procedures
10:33:58 AM Tab 9 -Secretary Erin Rock appointment to the Dept. of Management Services as Secretary
10:34:02 AM Sec. Erin Rock sworn in as witness
10:34:16 AM Sec. Erin Rock to address committee
10:39:31 AM Questions? None
10:39:38 AM Appearance Cards? None
10:39:58 AM Closing remarks Sec. Erin Rock
10:40:36 AM Motion by Sen. Stewart to recommend confirmation of Erin Rock. Sen. Rader 2nds the motion to recommend confirmation of Erin Rock as Sec. of DMS
10:40:40 AM Motion adopted.
10:41:01 AM Roll call - Confirmation of Erin Rock is recommended favorable
10:41:27 AM Tab 1 - CS/SB 46 by Sen. Galvano, Relief of Ramiro Companioni, Jr., by the City of Tampa
10:42:15 AM Questions? None
10:42:19 AM Appearance Cards?
10:42:20 AM Joseph R. Salzverg, City of Tampa, waives in support
10:42:40 AM Lance Block, Attorney, Ramiro Companioni, waives in support
10:42:45 AM Debate? None
10:42:53 AM Sen. Galvano waives close
10:42:55 AM Roll Call - SB 46 - Favorable
10:43:53 AM Motion by Sen. Galvano to be shown as favorable vote on Tab 2 (SB 48), Tab 4 (SB 808) , Tab 5 (CS/SB 1042), Tab 6 (SB CS/CS/SB 1650), Tab 7 (CS/SB 1850), and Tab 8 (CS/CS/SB 1880).
10:43:59 AM Motion adopted without objection
10:44:11 AM Recording Paused
10:47:31 AM Recording Resumed
10:47:33 AM Tab 3 - SB 532 , by Sen. Lee (Sen. Mayfield presenting bill as co-introducer)
10:48:18 AM Questions? None
10:48:26 AM Appearance Cards?
10:48:31 AM David Ramba, Fla. Supervisors of Elections, waives in support

10:48:48 AM Marilyn Wills, LWVF member, waive in support
10:48:58 AM Sen. Mayfield to close
10:49:47 AM Roll Call on SB 532 - Favorable
10:50:04 AM Motion by Sen. Stewart to adjourn
10:50:07 AM Without objection, the meeting is adjourned