

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Soto, Vice Chair; Senators Bradley, Gardiner, Joyner, Latvala, Richter, Ring, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 188 Education / Hukill (Similar CS/CS/H 195, Compare S 232)	Education Data Privacy; Providing for annual notice to K-12 students and parents of rights relating to education records; providing limitations on the collection of information and the disclosure of confidential and exempt student records; revising provisions relating to the submission of student social security numbers and the assignment of student identification numbers; requiring the Department of Education to establish a process for assigning student identification numbers, etc. ED 02/04/2014 Fav/CS CJ 02/17/2014 Favorable JU 03/04/2014 JU 03/11/2014 Fav/CS	Fav/CS Yeas 9 Nays 0
2	SB 998 Hukill (Similar H 757)	Estates; Clarifying circumstances under which a burden of proof shifts in cases involving undue influence; requiring that a directive to apply certain death benefits for the payment of claims and administration expenses be specified in certain instruments; establishing which party bears the burden of proof in an action to contest the validity or revocation of a trust; requiring a specific directive for certain assets and death benefits to be used to pay estate expenses, etc. JU 03/11/2014 Fav/CS BI RC	Fav/CS Yeas 8 Nays 0
3	SB 160 Bullard (Similar H 23)	Canned or Perishable Food Distributed Free of Charge; Limiting the liability of public schools with respect to canned or perishable food donated to charitable or nonprofit organizations, etc. ED 02/04/2014 Favorable CF 03/04/2014 Favorable JU 03/11/2014 Favorable	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 11, 2014, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 440 Regulated Industries / Altman (Similar CS/CS/H 425)	Condominiums; Limiting the application of certain requirements relating to bylaws to residential condominiums and their associations and boards; exempting nonresidential condominiums from mandatory arbitration unless specifically provided for in their declarations; specifying that residential condominiums are classified as residential property; authorizing the developer to modify the plot plan as to unit or building types; extending by 1 year the time limitation for classification as a bulk assignee or bulk buyer, etc. RI 02/13/2014 Fav/CS JU 03/11/2014 Fav/CS	Fav/CS Yeas 8 Nays 0
5	CS/SB 570 Banking and Insurance / Galvano (Similar CS/CS/H 321, Compare H 471, CS/H 565, S 462, S 1260)	Title Insurance; Specifying that only a licensed and appointed agent or agency is authorized to sell title insurance; providing additional limitations on the name that a title insurance agent or agency may adopt; revising the application requirements for a title insurance agency license; limiting the remedies available for the breach of duty arising from a title insurance contract; revising the date that certain information relating to title insurance rates must be submitted to the Office of Insurance Regulation by title insurance agencies and insurers, etc. BI 02/04/2014 Fav/CS JU 03/11/2014 Fav/CS	Fav/CS Yeas 8 Nays 0
6	SB 912 Dean (Similar H 1177, Compare H 627, S 620)	Service of Process; Providing that certain individuals authorized to serve process do not commit the offense of trespass on property other than a structure or conveyance and are not subject to civil liability under certain circumstances; providing that the offense of trespass on property other than a structure or conveyance is not applicable to certain persons who are authorized to serve process under certain circumstances, etc. JU 03/11/2014 Fav/CS CJ RC	Fav/CS Yeas 8 Nays 0
7	SB 826 Joyner (Similar CS/H 405)	Trusts; Limiting the liability of excluded trustees; authorizing trusts to provide for exculpation of excluded trustees under certain circumstances, etc. JU 03/11/2014 Fav/CS BI RC	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 11, 2014, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 788 Ring (Identical H 797)	Clerks of Court; Providing for default payment plans if an individual fails to enroll in a payment plan; providing for length of payment plans; requiring an individual to file a financial affidavit with the clerk to establish a payment plan; requiring the Department of Highway Safety and Motor Vehicles to suspend an individual's driver license and place a registration stop on any vehicle owned by an individual for nonpayment; requiring a party applying for garnishment to pay a deposit to the garnishee, rather than the registry of the court; requiring the clerk to ensure that excess funds are paid according to specified priorities, etc. JU 03/11/2014 Fav/CS TR AFT AP	Fav/CS Yeas 8 Nays 0
9	SB 828 Bradley (Similar CS/H 7003)	Court System; Repealing provisions relating to a prohibition on the practice of law by a retired justice of the Supreme Court; repealing provisions relating to the appointment and duties of a Clerk of the Supreme Court; repealing provisions relating to compensation of the Marshal of the Supreme Court; excluding retired judges practicing law from the Conference of Circuit Judges of Florida; removing a requirement that circuit court judges attend and participate in such conference; revising the number of members of the Judicial Qualifications Commission to conform to requirements of the State Constitution; repealing provisions relating to an evidentiary rule regarding evidence of title to land passing from the United States, etc. JU 03/11/2014 Fav/CS CA RC	Fav/CS Yeas 8 Nays 0
10	SJR 1188 Lee	Prospective Appointment of Judicial Vacancies; Proposing amendments to the State Constitution to authorize the Governor to prospectively fill vacancies in certain judicial offices, etc. JU 03/11/2014 Fav/1 Amendment RC	Fav/1 Amendment (Yeas 5 Nays 3
Consideration of proposed committee bill:			
11	SPB 7078	Arbitration; Correcting the description of a cross-reference; providing for retroactive application, etc.	Submitted as Committee Bill Yeas 8 Nays 0

Other Related Meeting Documents

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 11, 2014, 1:30 —3:30 p.m.

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 Judiciary

BILL: CS/CS/SB 188

INTRODUCER: Judiciary Committee; Education Committee; and Senator Hukill and others

SUBJECT: Education Data Privacy

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hand</u>	<u>Klebacha</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 188 implements changes proposed by the Florida Department of Education (DOE) in its report on *Student Data Privacy Recommendations*. The bill contains provisions to make students and their parents aware of their educational privacy rights. The bill also prohibits the collection and limits the dissemination of certain types of information and requires the replacement of social security numbers with student identification numbers. The bill applies to K-12 schools and agencies that provide administrative control or direction or perform services for them. The bill:

- Specifies that students and their parents must be notified annually about their rights regarding education records;
- Clarifies existing law to authorize that attorney fees and court costs be awarded upon receipt of injunctive relief, rather than when the parent or student's rights are "vindicated";
- Prohibits certain agencies or institutions from collecting or retaining information regarding the political affiliation, voting history, religious affiliation, or biometric information of a student, parent, or sibling of a student and defines biometric information but permits a school district that used a palm scanner on a certain date to continue to use the scanner for one additional school year;
- Prohibits the disclosure of confidential and exempt education records unless the disclosure is authorized by law;
- Requires governing boards, in a public meeting, to identify which student education records the board intends to include as publicly available student directory information; and

- Requires DOE to establish a process for assigning a non-social security number as a Florida student identification number, and once DOE completes the process, a school district may not use social security numbers as student identification numbers in its management information systems.

II. Present Situation:

Privacy of Student Education Records

The privacy of student education records is established by a comprehensive system of federal and state laws. This system safeguards the privacy of student education records and ensures that the records are accessible by students and their parents at the public school district, college, university, and state levels.

The Family Educational Rights and Privacy Act (FERPA) is a federal law that applies to all educational agencies or institutions that receive program funds from the United States Department of Education (U.S. DOE).¹ Congress enacted FERPA in 1974 by using its spending power and tied the receipt of federal funds to compliance with certain access and disclosure requirements.² FERPA's purpose is two-fold: to ensure that students and parents can access the student's education records,³ and to protect their privacy rights by limiting the transferability of the student's education records without student or parent consent.⁴ Compliance with FERPA is a mandatory condition for receiving federal funds.⁵

The federal law ensures that public school districts, colleges, universities, and state educational agencies protect student or parent rights and do not disclose student education records without student or parent consent, unless authorized by FERPA.

Florida has codified FERPA in state law. Additionally, as explained in this analysis, Florida has also generally used state law to build upon and strengthen FERPA's provisions.⁶

¹ 20 U.S.C. s. 1232(g) and 34 C.F.R. s. 99.1.

² *Gonzaga University v. Doe*, 536 U.S. 273, 278 (2002).

³ The phrase "student education records," as used here, encompasses two intertwined categories of student information – "education records" and "personally identifiable information." FERPA prohibits funds from being made available under any applicable program to any educational agency or institution (i.e., any public or private agency or institution that is the recipient of funds under any applicable program) that has a policy or practice of: (1) "permitting the release of education records (or personally identifiable information contained therein...)," or (2) "releasing or providing access to, any personally identifiable information in education records..." unless otherwise permitted by FERPA. 20 U.S.C. ss. 1232g(b)(1) & (2). The term "education records" means those records, files, documents, and other materials which contain information directly related to a student, and are maintained by an educational agency or institution. 20 U.S.C. s. 1232g(a)(4) and *Owasso Independent School Dist. v. Falvo*, 534 U.S. 426 (2002) (FERPA implies that education records are institutional records kept by a single central custodian). "Personally identifiable information" is essentially information that would allow a reasonable person in the school community to identify the student with reasonable certainty. *See* 34 C.F.R. s. 99.3.

⁴ 73 Fed. Reg. 74831 (December 9, 2008). "As such, FERPA is not an open records statute or part of an open records system." *Id.*

⁵ 20 U.S.C. s. 1232g(a)(1) and 34 C.F.R. s. 99.67.

⁶ Section 1002.221, F.S. Florida law states that a student's education records, as defined in FERPA and the federal regulations issued pursuant thereto, are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, Fla. Const. *See* ss 1002.221(1) and 1006.52(1), F.S. In light of FERPA and the federal regulations and preamble issued thereto (see footnote 3), Florida's public record exemption encompasses both "education records" (i.e., institutional records) and the subset of

Parent or Student Rights

The federal law obligates school districts, colleges, universities, and state educational agencies to ensure that students or parents enjoy their rights to:

- Inspect, review, and contest the student’s educational records;⁷ and
- Authorize the disclosure of student education records by written consent.⁸

Florida law codifies FERPA into state law, further ensuring the responsibility of school districts, colleges, universities, and state educational agencies to guard these student and parent rights.⁹

However, there are differences between FERPA and state law. For example:

- The federal law requires school districts, colleges, and universities to annually notify students or parents of their rights pertaining to educational records.¹⁰ Florida law does not specifically identify how frequently the notice is to be provided to students or parents.¹¹
- The federal law allows a parent or student to file a written complaint with U.S. DOE, but does not explicitly authorize students or parents to file a lawsuit to protect their rights.¹² Florida law authorizes a student or parent to file a lawsuit seeking an injunction to protect his or her rights. Additionally, Florida law allows attorney fees and court costs to be awarded if the rights “are vindicated.”¹³

Authorized Disclosure of Student Education Records

The federal law authorizes school districts, colleges, and universities¹⁴ to disclose student education records¹⁵ without the consent of the student or parent if the disclosure meets limited conditions.¹⁶ Examples of conditions include, but are not limited to, disclosure of student education records to:

- Other school officials within the school or school district determined to have a legitimate educational interest;¹⁷
- Schools to which a student is transferring;¹⁸

“personally identifiable information” (i.e., information that identifies a student, regardless of format). *See* 20 U.S.C. s. 1232g, 34 C.F.R. part 99, and ss. 1002.221 and 1006.52, F.S.

⁷ 34 C.F.R. s. 99.5, 34 C.F.R. s. 99.10, 34 C.F.R. s. 99.12, and 34 C.F.R. ss. 99.20-99.22.

⁸ 34 C.F.R. s. 99.30.

⁹ Section 1002.22(2), F.S.

¹⁰ 20 U.S.C. s. 1232g(e) and 34 C.F.R. s. 99.7.

¹¹ Section 1002.22(2)(e), F.S.

¹² 34 C.F.R. s. 99.63 (*see* 34 C.F.R. ss. 99.60-99.67 for the enforcement procedures in general). Enforcement action may include withholding payments or terminating program eligibility. 34 C.F.R. s. 99.67(a) and *Gonzaga University v. Doe*, 536 U.S. 273, 290 (2002).

¹³ Section 1002.22(4), F.S.

¹⁴ FERPA uses the term “educational agencies or institutions,” which refers to local education agencies (i.e., school districts), elementary and secondary schools, postsecondary institutions (i.e., colleges and universities), and schools operated by the United States Department of Interior Bureau of Indian Education. 76 F.R. 75606 (December 2, 2011). The term does not generally include a state education agency (i.e., the Florida Department of Education). *Id.*

¹⁵ “Education records” means those records that are directly related to a student, and maintained by an educational agency or institution or by a party acting for the educational agency or institution. 34 C.F.R. s. 99.3.

¹⁶ 20 U.S.C. s. 1232g(b)(1) and (2) and 34 C.F.R. s. 99.30(a).

¹⁷ 20 U.S.C. s. 1232g(b)(1)(A) and 34 C.F.R. s. 99.31(a)(1)(i)(A).

¹⁸ 20 U.S.C. s. 1232g(b)(1)(B) and 34 C.F.R. s. 99.31(a)(2).

- A contractor, consultant, or other party to whom an agency has outsourced institutional services or functions;¹⁹ and
- Organizations conducting studies for, or on behalf of, school districts, colleges, or universities to: develop, validate or administer predictive tests; administer student aid programs; or improve instruction.²⁰

Florida law provides that student education records are confidential and exempt from disclosure, and may not be released without student or parent consent, except as permitted by FERPA.²¹

For each student who attends a public school in Florida, the student's education records are created by the school or school district.²² Thus, the student's education records may initially be disclosed by the school district (as authorized by FERPA and state law) to a state educational agency—which in Florida is generally the Florida Department of Education (DOE). DOE, as authorized by FERPA and state law, may “redisclose” student education records in the same manner that an initial disclosure is authorized.²³

Biometric Information

The Florida K-20 Education Code is silent on the issue of whether biometric information may be collected from students. Federal law, in contrast, permits the collection of biometric information and states that “personally identifiable information” includes a student’s “biometric record.”²⁴

Directory Information

Federal law provides that “directory information” is “information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.”²⁵ Examples of directory information are: the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, e-mail address, photograph, date and place of birth, grade level, dates of attendance, and participation in sports.²⁶ Directory information does not include a student’s social security number.²⁷

Under FERPA school districts, colleges, and universities are authorized to disclose directory information if they give public notice to students or parents of the types of student information

¹⁹ 20 U.S.C. s. 1232g(b)(1) and 34 C.F.R. s. 99.30(a)(1)(i)(B).

²⁰ 20 U.S.C. s. 1232g(b)(1)(F) and 34 C.F.R. s. 99.31(a)(6).

²¹ Section 1002.221(1), F.S.; s. 1006.52(1), F.S. Florida law defines a student’s education records “as defined” in FERPA. *Id.*

²² 76 Fed. Reg. 75606 (December 2, 2011). The definition of “student” means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records. 34 C.F.R. s. 99.3.

²³ 34 C.F.R. s. 99.33.

²⁴ 34 C.F.R. s. 99.3 provides that “*Biometric record*, as used in the definition of *personally identifiable information*, means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.”

²⁵ 34 C.F.R. s. 99.3.

²⁶ 20 U.S.C. s. 1232g(a)(5)(A) and 34 C.F.R. s. 99.3.

²⁷ 34 C.F.R. s. 99.3.

that is being designated as directory information.²⁸ Because directory information constitutes a permissible disclosure of student education records without student or parent consent,²⁹ Florida's codification of FERPA into statute also incorporates these requirements.³⁰

Social Security Numbers

Federal law does not prohibit the use of a student's social security number as a personal identifier or as a way to connect students to their records.³¹ However, according to the U.S. DOE, best practices dictate that states should limit use of student social security numbers to instances in which there is no feasible alternative.³²

Florida law requires school districts to request and use social security numbers as student identification numbers in the school district's management information system.³³

Florida Department of Education Legislative Recommendations

On September 23, 2013, after the Governor's Education Summit, Governor Scott issued Executive Order Number 13-276. The executive order directed the Commissioner of Education to "immediately conduct a student data security review" and to "make recommendations regarding any needed rule or legislative change to safeguard the privacy of our students' data...."³⁴

The Department of Education subsequently issued a report covering security initiatives, school district activities, and information technology security reviews.³⁵ The report contained various recommendations, including recommendations that the Legislature:

- Require that school districts give annual notice to students and parents of their rights regarding education records;
- Clarify that a student or parent who has received injunctive relief to enforce his or her rights may be awarded attorney fees and court costs;
- Establish limitations on the collection of student information by certain entities that are part of, or perform services for, Florida's public education system. The limitations would prohibit the collection, obtainment, or retention of: biometric information; political affiliation; voting history; religious affiliation; health information; and correspondence from community agencies or private professionals;
- Establish limitations on the disclosure of confidential and exempt student education records for entities that are part of, or perform services for, Florida's public education system, except

²⁸ 34 C.F.R. s. 99.37. This notice includes the ability to opt-out of being included in the student directory. *Id.*

²⁹ 20 U.S.C. s. 1232g(a)(5); 34 C.F.R. s. 99.31(11); 34 C.F.R. s. 99.37.

³⁰ Sections 1002.221, and 1006.52, F.S.

³¹ 76 Fed. Reg. 75611 (December 2, 2011). However, the U.S. Department of Education recognizes the importance of limiting social security number use, as FERPA prohibits schools from designating student social security numbers as directory information. 34 C.F.R. s. 99.3 and 76 Fed. Reg. s. 75611 (December 2, 2011) (referring to the definition of "directory information").

³² 76 Fed. Reg. s. 75611 (December 2, 2011).

³³ Section 1008.386, F.S. However, it appears that a student is not required to provide his or her social security number as a condition for enrollment or graduation. *Id.*

³⁴ Executive Order No. 13-276, dated September 23, 2013.

³⁵ Florida Department of Education, Student Data Privacy Recommendations, *available at* <http://www.fldoe.org/pdf/DataSecurityReport.pdf> (last viewed on February 24, 2014).

when the disclosure is authorized by state or federal law, or in response to a lawfully issued subpoena or court order;

- Require directory information to be designated in accordance with FERPA at regularly scheduled governing board meetings, and requires that the governing board consider the extent to which the disclosure would put students at risk; and
- Establish a computer generated student identifier for state and local systems to protect the confidentiality of student records.³⁶

In summary, the DOE report identifies areas where state law could be strengthened to further ensure that public school districts, colleges, universities, and state educational agencies protect student or parent rights and the privacy of student education records.

III. Effect of Proposed Changes:

This bill contains provisions to make students and their parents aware of their educational privacy rights. The bill also prohibits the collection and limits the dissemination of certain types of information and requires the replacement of social security numbers with student identification numbers. The bill applies to K-12 schools and agencies that provide administrative control or direction of, or perform services for, them.

The bill implements changes proposed by DOE in its *Student Data Privacy Recommendations*. The bill:

- Specifies that students and their parents must be notified annually about their rights regarding education records, which corresponds with the federal Family Educational Rights and Privacy Act's annual notice requirement;
- Clarifies existing law to authorize the payment of attorney fees and court costs to a parent or student who is granted injunctive relief in a suit to enforce his or her education record rights, rather than when the parent or student's rights are "vindicated";
- Prohibits educational agencies or institutions related to K-12 schools from collecting, obtaining, or retaining information regarding the political affiliation, voting history, religious affiliation, or biometric information of a student, parent, or sibling of the student but permits a school district that was using a palm scanner for identifying students for breakfast and lunch programs on March 1, 2014, to continue to use the palm scanner system through the 2014-2015 school year;
- Defines biometric information as "information collected from the electronic measurement or evaluation of any physical or behavioral characteristics that are attributable to a single person" and gives examples such as fingerprint, hand, eye, vocal, or other physical characteristics used for electronic identification;
- Prohibits the disclosure of confidential and exempt student education records to a person, public body, body politic, political subdivision, or agency of the Federal Government unless authorized by a specified law or in response to a lawfully issued subpoena or court order;
- Creates new obligations in law to require the governing board of a school district, college, or university, in a regularly scheduled public meeting, to identify which student information the governing board will designate as publicly available directory information, and to consider whether the disclosure of the identified directory information would put students at risk;

³⁶ *Id.*

- Confirms the ability of the school district, college, or university, to charge fees for providing copies of directory information in response to public records requests;
- Deletes the requirement in state law that school districts use student social security numbers as student identification numbers; and
- Requires DOE to establish a process for assigning a non-social security number as a Florida student identification number, and once DOE completes the process, a school district may not use social security numbers as student identification numbers in its management information systems.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to DOE, existing federal and state funds are adequate to provide for the development of the student identification number process.

VI. Technical Deficiencies:

Section 3 of the bill, which requires DOE to establish a process for assigning Florida student identification numbers, does not require DOE to begin or complete the process by a specific date. The Legislature might want to set a date for implementation of this provision.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.22, 1008.386, and 1011.622. This bill creates section 1002.222, 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/SB 188 by Judiciary on March 11, 2014:

The CS/CS differs from the committee substitute by permitting an exception to the biometric prohibition. If a school district used a palm scanner system for identifying students for breakfast and lunch programs on March 1, 2014, that district may continue to use the palm scanner system through the 2014-2015 school year.

CS by Education on February 4, 2014:

CS/SB 188 differs from SB 188 in that:

- SB 188 provided that school districts that wanted to collect student biometric information must: (1) create policies governing the collection and use of the biometric information; and (2) not collect biometric information on a student unless the parent chose to opt-in. CS/SB 188 reframes and expands the concepts in SB 188 to prohibit entities that are part of, or perform services for, Florida's public education system, from collecting, obtaining, and retaining the biometric information, political affiliation, voting history, and religious affiliation of a student, parent, or sibling of the student; and
- CS/SB 188 implements recommendations from the DOE Student Data Privacy report.

B. Amendments:

None.



506588

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 66 - 67
and insert:
Notwithstanding the provisions of this paragraph, a school district that used a palm scanner system for identifying students for breakfasts and lunch programs on March 1, 2014, may continue to use the palm scanner system through the 2014-2015 school year.

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



506588

12 And the title is amended as follows:
13 Delete line 11
14 and insert:
15 information"; providing an exception; authorizing
16 fees; amending s. 1008.386,
17



232956

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 118 and 119
insert:

(3) Notwithstanding the provisions of this section, a school district that used a palm scanner system for breakfast and lunch programs on March 1, 2014, may continue to use the system upon approval of the Commissioner of Education. The commissioner may approve the continued use of the system once assured that the confidential student records are adequately protected.



12
13
14
15
16
17
18
19
20
21
22
23

(4) The State Board of Education may adopt rules to

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

And the title is amended as follows:

Delete line 16

and insert:

assigning student identification numbers; authorizing
a school district to continue use of a palm scanner
system upon approval by the Commissioner of Education;
authorizing the State Board of Education to adopt
rules; amending s.

By the Committee on Education; and Senators Hukill, Negron,
Bradley, Simpson, Flores, Brandes, and Stargel

581-01636-14

2014188c1

A bill to be entitled

An act relating to education data privacy; amending s. 1002.22, F.S.; providing for annual notice to K-12 students and parents of rights relating to education records; revising provisions relating to remedy in circuit court with respect to education records and reports of students and parents; creating s. 1002.222, F.S.; providing limitations on the collection of information and the disclosure of confidential and exempt student records; defining the term "biometric information"; authorizing fees; amending s. 1008.386, F.S.; revising provisions relating to the submission of student social security numbers and the assignment of student identification numbers; requiring the Department of Education to establish a process for assigning student identification numbers; amending s. 1011.622, F.S.; conforming provisions; providing an effective date.

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

Section 1. Paragraph (e) of subsection (2) and subsection (4) of section 1002.22, Florida Statutes, are amended to read:

1002.22 Education records and reports of K-12 students; rights of parents and students; notification; penalty.—

(2) RIGHTS OF STUDENTS AND PARENTS.—The rights of students and their parents with respect to education records created, maintained, or used by public educational institutions and agencies shall be protected in accordance with the Family

Page 1 of 5

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

581-01636-14

2014188c1

Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, the implementing regulations issued pursuant thereto, and this section. In order to maintain the eligibility of public educational institutions and agencies to receive federal funds and participate in federal programs, the State Board of Education shall comply with the FERPA after the board has evaluated and determined that the FERPA is consistent with the following principles:

(e) Students and their parents shall receive annual notice of their rights with respect to education records.

(4) PENALTY.—If any official or employee of an institution refuses to comply with this section, the aggrieved parent or student has an immediate right to bring an action in circuit court to enforce his or her rights by injunction. Any aggrieved parent or student who receives injunctive relief ~~brings such action and whose rights are vindicated~~ may be awarded attorney ~~attorney's~~ fees and court costs.

Section 2. Section 1002.222, Florida Statutes, is created to read:

1002.222 Limitations on collection of information and disclosure of confidential and exempt student records.—

(1) An agency or institution as defined in s. 1002.22(1) may not:

(a) Collect, obtain, or retain information on the political affiliation, voting history, religious affiliation, or biometric information of a student or a parent or sibling of the student.

For purposes of this subsection, the term "biometric information" means information collected from the electronic measurement or evaluation of any physical or behavioral

Page 2 of 5

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

581-01636-14

2014188c1

59 characteristics that are attributable to a single person,
 60 including fingerprint characteristics, hand characteristics, eye
 61 characteristics, vocal characteristics, and any other physical
 62 characteristics used for the purpose of electronically
 63 identifying that person with a high degree of certainty.
 64 Examples of biometric information include, but are not limited
 65 to, a fingerprint or hand scan, a retina or iris scan, a voice
 66 print, or a facial geometry scan.

67 (b) Provide education records made confidential and exempt
 68 by s. 1002.221 or federal law to:

69 1. A person as defined in s. 1.01(3) except when authorized
 70 by s. 1002.221 or in response to a lawfully issued subpoena or
 71 court order;

72 2. A public body, body politic, or political subdivision as
 73 defined in s. 1.01(8) except when authorized by s. 1002.221 or
 74 in response to a lawfully issued subpoena or court order; or

75 3. An agency of the Federal Government except when
 76 authorized by s. 1002.221, required by federal law, or in
 77 response to a lawfully issued subpoena or court order.

78 (2) The governing board of an agency or institution may
 79 only designate information as directory information in
 80 accordance with 20 U.S.C. s. 1232g and applicable federal
 81 regulations. Such designation must occur at a regularly
 82 scheduled meeting of the governing board. The governing board of
 83 an agency or institution must consider whether designation of
 84 such information would put students at risk of becoming targets
 85 of marketing campaigns, the media, or criminal acts. An agency
 86 or institution may charge fees for copies of designated
 87 directory information as provided in s. 119.07(4).

581-01636-14

2014188c1

88 Section 3. Section 1008.386, Florida Statutes, is amended
 89 to read:

90 ~~1008.386 Florida Social security numbers used as student~~
 91 ~~identification numbers.-~~

92 (1) When a student enrolls in a public school in this
 93 state, the ~~Each~~ district school board shall request that ~~the~~
 94 ~~each~~ student enrolled in a public school in this state provide
 95 his or her social security number and shall indicate whether the
 96 student identification number assigned to the student is a
 97 social security number. A student satisfies this requirement by
 98 presenting his or her social security card or a copy of the card
 99 to a school enrollment official. ~~Each school district shall use~~
 100 social security numbers as student identification numbers in the
 101 management information system maintained by the school district.
 102 However, a student is not required to provide his or her social
 103 security number as a condition for enrollment or graduation. A
 104 student ~~satisfies this requirement by presenting to school~~
 105 ~~enrollment officials his or her social security card or a copy~~
 106 ~~of the card. The school district shall include the social~~
 107 ~~security number in the student's permanent records and shall~~
 108 ~~indicate if the student identification number is not a social~~
 109 ~~security number. The Commissioner of Education shall assist~~
 110 ~~provide assistance to school districts with to assure that the~~
 111 assignment of student identification numbers ~~other than social~~
 112 ~~security numbers is kept to a minimum and to avoid duplication~~
 113 of any student identification number.

114 (2) The department shall establish a process for assigning
 115 a Florida student identification number to each student in the
 116 state, at which time a school district may not use social

581-01636-14

2014188c1

117 security numbers as student identification numbers in its
118 management information systems.

119 (3) The State Board of Education may adopt rules to
120 implement this section.

121 Section 4. Section 1011.622, Florida Statutes, is amended
122 to read:

123 1011.622 Adjustments for students without a Florida common
124 student identification number identifier.—The Florida Education
125 Finance Program funding calculations, including the calculations
126 authorized in ss. 1011.62, 1011.67, 1011.68, and 1011.685, shall
127 include funding for a student only when all of the student's
128 records are reported to the Department of Education under a
129 Florida common student identification number identifier. The
130 State Board of Education may adopt rules pursuant to ss.
131 120.536(1) and 120.54 to implement this section.

132 Section 5. This act shall take effect upon becoming a law.

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 188
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/04/2014 1 Amendment 232956		3/11/2014 2 Motion to reconsider-- A232956 left pending		3/11/2014 3 Amendment 232956	
			Latvala Yea	Latvala Nay	Latvala Yea	Latvala Nay	Latvala Yea	Latvala Nay
X		Bradley						
X		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
9	0	TOTALS	PEND	-	FAV	-	-	WD
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 188
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 — 3:30 p.m.
PLACE: 110 Senate Office Building

SENATORS	3/11/2014 ⁴		3/11/2014 ⁵					
	Amendment 506588		Motion to report as Committee Substitute					
	Latvala		Soto					
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay
Bradley								
Gardiner								
Joyner								
Latvala								
Richter								
Ring								
Thrasher								
Soto, VICE CHAIR								
Lee, CHAIR								
TOTALS	FAV	-	FAV	-				
	Yea	Nay	Yea	Nay	Yea	Nay	Yea	Nay

CODES: FAV=Favorable
 UNF=Unfavorable
 -R=Reconsidered

RCS=Replaced by Committee Substitute
 RE=Replaced by Engrossed Amendment
 RS=Replaced by Substitute Amendment

TP=Temporarily Postponed
 VA=Vote After Roll Call
 VC=Vote Change After Roll Call

WD=Withdrawn
 OO=Out of Order
 AV=Abstain from Voting

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11

Meeting Date

Topic Bio metrics in Schools

Bill Number SB 188

Name AET Dunham

Amendment Barcode 506 588
(if applicable)

Job Title Director of Food Services - Pinellas Schools

(if applicable)

Address 11111 S. Belcher Road

Street

Phone _____

Largo
City

FL
State

34683
Zip

E-mail dunham.a@psps.org

Speaking: For Against Information

Representing School Food 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/14

Meeting Date

Topic Biometrics / Student Privacy

Bill Number SB 188
(if applicable)

Name Hynn Geist

Amendment Barcode 506 588
(if applicable)

Job Title Asst. Director, School Food Service
Pinellas County Schools

Address 1111 S. Belcher

Phone 727-547-7157

Street

Largo Fl. 33773

City

State

Zip

E-mail geistle@pcsb.org

Speaking: For Against Information

Representing Pinellas County School Food Service

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/
Meeting Date

Topic Biometric Scans

Bill Number 188
(if applicable)

Name STEVE SWARTZEL

Amendment Barcode 506588
(if applicable)

Job Title LEGISLATIVE CONSULTING

Address 3058 SPRING OAK AVE
Street

Phone 727-418-9012

PALM HARBOR FL 34684
City State Zip

E-mail Swartzels@gmail.com

Speaking: For Against Information

Representing PINELLAS SCHOOL DISTRICT

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)

3-11-14

Meeting Date

Topic Waive in support

Bill Number CS/SB 188

Name Ashley Spicola

Amendment Barcode _____

(if applicable)

Job Title Education Policy Chief

(if applicable)

Address The Capitol

Phone 717-9507

Street

Tallahassee

Florida

32399

City

State

Zip

E-mail ashley.spicola@laspbs.state.fl.us

Speaking: For Against Information

Representing The Governor's Office

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 11, 2014

Meeting Date

Topic Education Data Privacy

Bill Number CS for SB 188
(if applicable)

Name Walter Hamilton

Amendment Barcode _____
(if applicable)

Job Title Vice Chairman

Address 3235 Bluff Blvd.
Street

Phone (727) 938-2704

Holiday FL 34691
City *State* *Zip*

E-mail whamilton@idtp.com

Speaking: For Against Information

Representing International Biometrics & Identification 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.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/14

Meeting Date

Topic SB 188

Bill Number SB 188

Name Tanya Cooper

Amendment Barcode _____
(if applicable)

Job Title Director, Governmental Relations

Address 325 W. Gaines Street

Phone 850-245-9633

Street

Tallahassee

FL

32312

City

State

Zip

E-mail Tanya.cooper@fldoe.org

Speaking: For Against Information

Representing DOE

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 (10/20/11)

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 Judiciary

BILL: CS/SB 998

INTRODUCER: Judiciary Committee and Senator Hukill

SUBJECT: Estates

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			BI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 998 amends provisions in the Probate Code and Trust Code which were recommended by the Real Property, Probate, and Trust Law Section of the Florida Bar. Those changes:

- Clarify the effective date of legislation passed last session which renders void any part of a written instrument making gifts to a lawyer or lawyer's relatives.
- Clarify that the party who is contesting the validity of a trust or seeking to revoke a trust bears the burden of establishing the grounds of the invalidity on all issues.
- Specify that death benefits, often in the form of life insurance, which are payable to a trust, are not available to pay the expenses of administration of a settlor's estate or creditor's claims unless specific language and references are made.
- Align the antilapse provisions of the Trust Code to mirror the same provisions of the Probate Code involving outright devises of gifts to certain relatives.

Several of these provisions are designed to clarify existing law and are remedial in nature and apply retroactively while others have prospective application.

II. Present Situation:

The Florida Probate Code is found in chs. 731–735, F.S., and the Florida Trust Code is contained in ch. 736, F.S.

Gifts to Lawyers and Other Disqualified Persons

Legislation was passed during the 2013 Legislative Session¹ which, in general terms, makes void, with certain exceptions, any gift to a lawyer, or his or her relatives, from a written instrument prepared by the lawyer. The legislation contained a general effective date in the final section of the bill but did not contain any specific language stating whether the statute applied to gifts made in preexisting written instruments. This has apparently led to some confusion among attorneys who practice in this area of the law.

Will and Trust Contests

Each code provides that a will, trust, or revocation of a will or trust, is void if it is procured by fraud, duress, mistake, or undue influence.² While both codes specify grounds for a will or trust contest that challenges the validity of the document, the Probate Code, alone, specifies which party bears the burden of proof in a contest.³ There is no statute specifying who carries the burden of proof in an inter vivos trust contest.⁴

Pursuant to the statute governing will contests,⁵ the proponent of a will bears the initial burden of establishing the formal execution and attestation of the will. At that point, the burden of proof shifts to the person contesting the will to prove the grounds of the contest. Generally, under Florida law, a plaintiff or petitioner bears the burden of proof in a proceeding. It would then seem that a person contesting a trust would initially bear the burden of proof since there is no specific statute addressing the issue. However, because trusts are similar to wills in their purpose and are often referred to as substitutes for wills, courts and attorneys practicing in that area are often confused as to who bears the initial burden of proof and when that burden shifts.⁶

Death Benefits

Statutory Law

Life insurance proceeds generally pass outside of an estate and are generally exempt from administration expenses and claims of creditors as provided in s. 222.13(1), F.S. The exemption is lost, however, if the insurance proceeds are paid to the insured's estate. Section 222.13(1), F.S. states that:

whenever the insurance, by designation or otherwise, is payable to the insured or to the insured's estate or to his or her executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and

¹ Section 732.806, F.S.

² Sections 732.5165 and 736.0406, F.S.

³ Section 733.107, F.S.

⁴ Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Legislative Clarification Regarding the Burden of Proof in Trust Contests* (2014) (on file with the Senate Committee on Judiciary).

⁵ *Id.*

⁶ Unlike a will, an inter vivos trust takes effect when it is created by a settlor while the settlor is living. No court process needs to be initiated for the trust to take effect, unlike a probate proceeding for a will. Therefore, the burden is on the contestant of the trust to initiate proceedings to contest the trust's validity. Email from William Hennessey, Trust Law Committee of the Real Property Probate & Trust Law Section, The Florida Bar (March 8, 2014) (on file with the Senate Committee on Judiciary).

shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

Section 733.808, F.S., relates to death benefits and the disposition of proceeds of life insurance policies, certain benefit plans, an annuity or endowment contract, and a health or accident policy. Subsection (1) provides that death benefits of any kind, including a life insurance policy, may be payable to the trustee of a trust. If those insurance proceeds are paid to a trustee of a trust, then the proceeds are to be held and disposed of in accordance with the terms of the trust. Section 733.808(2), F.S. provides very similar rules for insurance proceeds made payable to the trustee named in a will that is admitted to probate.

Section 733.808(3), F.S., provides that if no trustee makes a proper claim to the insurance proceeds within a 6-month period after the date of death of the insured or if satisfactory evidence is furnished that there will be no trustee to receive the proceeds, the insurance company must pay the insurance proceeds to the personal representative of the person making the designation, unless otherwise provided by agreement between the insurance company and the insured.

Section 733.808(4), F.S., states that:

Death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to the beneficiaries named in the trust.

Case Law and Conflicting Interpretation

In 2012, the First District Court of Appeal issued the decision *Morey v. Everbank*⁷ interpreting ss. 222.131(1), F.S. and 733.808(1), F.S. In that case, Mr. Morey, the decedent, designated his revocable trust as the beneficiary of his life insurance policy. After his death, the trustee filed a petition requesting a determination as to whether the life insurance proceeds, which were payable to the trust, were exempt from all death obligations and therefore unavailable to the deceased settlor's estate or its creditors. The trust instrument instructed the trustee to pay the personal representative amounts that were certified by the personal representative to be required to pay Mr. Morey's "death obligations." The "death obligations" included expenses for the administration of the estate, enforceable debts, and estate taxes. The court held that the language of the trust and the structure of the trust indicated an intent and result that were the same as if the proceeds from the life insurance policy had been paid directly to the estate.

Many practitioners in this area of the law have concluded that this decision "is contrary to the generally accepted interpretations" of ss. 222.13(1) and 733.808(4), F.S.⁸ Their position is that

⁷ *Morey v. Everbank*, 93 So. 3d 482 (Fla 1st DCA 2012).

⁸ Probate and Trust Litigation Committee of the Real Property Probate & Trust Law Section of The Florida Bar, *White Paper: Proposed Revisions to Section 733.808(4) and Section 736.05053(1), Florida Statutes* (2014) (on file with the Senate Committee on Judiciary).

the generally accepted interpretation of those statutes, when read together, “is that insurance proceeds payable to a trustee of a revocable trust are entitled to the statutory exemption from the claims of creditors of the insured’s estate” regardless of any trust provisions directing the trustee to apply trust assets to cover estate administration expenses or the claims of creditors.⁹

Antilapse Provisions

Section 736.1106, F.S., is the antilapse statute for trusts. The purpose of an antilapse statute is to save certain gifts from lapsing or failing if a named recipient of a gift does not survive the decedent. Currently, the antilapse provisions of the Probate Code and the Trust Code are not consistent in the treatment of outright devises to certain people who do not survive the settlor of a trust or the testator of a testamentary trust.¹⁰ The Trust Law Committee of the Real Property, Probate, & Trust Law Section of The Florida Bar recommends that the Trust Code provisions be amended to mirror the Probate Code provision.¹¹

The Probate Code provides that if the will is silent, the share of a beneficiary who dies before the testator dies passes to his or her heirs as long as the heirs are related no more distantly than descendants of grandparents. If the descendants are not alive, the gift fails, which is a desirable result. Under the Trust Code, that is not the case.

Presently, the antilapse statute of the Trust Code saves all devises without regard to the familial relationship between the recipient and the creator of the gift.¹² This was apparently done for administrative convenience. This approach differs from the Probate Code and what was an earlier version of the Trust Code. It often results in unintended consequences and litigation under the Trust Code, which is not a desirable outcome.

III. Effect of Proposed Changes:

Gifts to Lawyers and Other Disqualified Persons – Sections 1 and 2

A new subsection (9) is added to s. 732.806, F.S., to clarify the application of a provision passed during the 2013 Legislative Session, which generally prohibits an attorney or any of the attorney’s relatives from being the beneficiary of a gift in a written instrument drafted by the attorney. The bill effectively grandfathers such gifts in written instruments preexisting the effective date of the 2013 legislation. The bill further provides that this change is intended to clarify existing law and is remedial in nature.

Will or Trusts Contests – Sections 3, 4, 7, and 8

This bill amends ss. 733.107, F.S. and 736.0207, F.S., to clarify that the party who is contesting the validity of a trust or seeking to revoke a trust, in whole or in part, bears the burden of establishing the grounds for invalidity on all issues. Because the current trust code is silent on

⁹ *Id.*, at 2.

¹⁰ Trust Law Committee of the Real Property Probate & Trust Law Section of the Florida Bar, *White Paper: Proposed Legislation Regarding Trust Antilapse and Amendment to s. 736.1106, Florida Statutes* (2013) (on file with the Senate Committee on Judiciary).

¹¹ *Id.*

¹² *Id.*

this matter, these changes may provide clarity to the courts and attorneys involved in trust disputes as to which party bears the burden of proof. Unlike a will contest, as discussed in the Present Situation, these changes place the complete burden on the contestant.

It is the position of the Real Property, Probate and Trust Law Section of The Florida Bar that this change will codify current case law and will eliminate confusion that might exist because no specific statute addresses this issue.

Section 2 of the bill provides that the changes to the burden shifting provisions in s. 733.107, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively to proceedings pending on or before the bill becomes and law and all cases that are begun on or after the effective date of this bill.

Section 6 provides that the changes made to s. 736.0207, F.S., trusts contests, apply to all cases commenced on or after the effective date of the act. The effective date of the act is “upon becoming a law.”

Death Benefits – Sections 5, 6, 9, and 10

These proposed changes are a response to the 2012 *Morey v. Everbank* decision, discussed in the Present Situation, and are intended to clarify the circumstances under which death benefits, such as life insurance, payable to a trust are exempt from any obligation to pay the expenses of the administration and obligations of the decedent’s estate.

Section 3 amends s. 733.808, F.S., to provide that a waiver of the statutory exemption, protecting death benefits from claims of creditors or the decedent’s estate, must be explicit. It clarifies that a general provision directing the trustee to pay all debts does not waive the statutory exemption from creditor claims for death benefits paid to the trustee.

Section 4, in a manner similar to section 2 above, states that the changes to s. 733.808, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the decedent’s death.

Section 7 amends s. 736.05053, F.S., and is designed to insure that a trustee, paying the expenses of administration and obligations of the settlor’s estate, cannot use the death benefits described in s. 733.808(1), (2), or (3), F.S., unless the settlor specifically waived the prohibition of the use of those benefits in accordance with s. 733.808(4), F.S. If the settlor desires to waive the exemption, there must be a specific waiver. This language establishes that a general direction to pay all of the settlor’s debts is not sufficient.

Section 8 provides that the changes made to s. 736.05053, F.S., are intended to clarify existing law, are remedial in nature, and apply retroactively without regard to the date of the settlor’s death.

Antilapse Provision – Section 11

The purpose of this section is to make the antilapse statute of the Trust code consistent with the antilapse statute of the Probate Code in the area of outright devises to persons who do not survive the settlor of a revocable trust or the testator of a testamentary trust. The bill amends the antilapse provisions of the Trust Code to cause an outright devise to a deceased beneficiary to lapse unless the beneficiary was a grandparent, or lineal descendant of a grandparent of the settlor of a revocable trust or the testator of a testamentary trust. It is the opinion of some practitioners of probate and trust law that people enter into trust arrangements thinking that a trust devise operates the same as a will. When the results under the terms of a trust are not what the individuals had hoped for litigation ensues. According to the practitioners, this change will reduce the need for future litigation.

This provision amending s. 736.1106, F.S. applies to trusts that become irrevocable after June 30, 2014.

Effective Date & Application

This act takes effect upon becoming a law and applies retroactively as provided in this section of this analysis.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Supreme Court issued a decision¹³ last year addressing the retroactive nature of statutes. The Court held that the retroactive application of a statute is constitutionally permissible if the Legislature expresses a clear intent that the law apply retroactively and the law is procedural or remedial in nature. Remedial statutes, by their nature, further a remedy or confirm rights that already exist. A procedural law “provides the means and methods for the application and enforcement of existing duties and rights.” If the retroactive provisions contained in this bill could operate to remove a vested right such as the distribution of assets in a closed estate, then the retroactive application might not be constitutional.

¹³ *Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Association, Inc.*, 127 So. 3d 1258, 1272 (Fla. 2013).

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

None.

B. Private Sector Impact:

The provisions of the bill may facilitate the distribution of a decedent's assets in the way intended by the decedent. Additionally, the clarifying changes made by the bill may reduce litigation relating to wills or trusts.

C. Government Sector Impact:

To the extent that this bill will reduce litigation, fewer resources from the state court system will be needed for litigation relating to wills and trusts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 732.806, 733.107, 733.808, 736.0207, 736.05053, and 736.1106.

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 Judiciary on March 11, 2014:

The committee substitute adds two sections to the underlying bill to clarify the application of a provision passed during the 2013 Legislative Session, which generally prohibits an attorney or any of the attorney's relatives from being the beneficiary of a gift in a written instrument drafted by the attorney.

B. Amendments:

None.



710064

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Before line 23
insert:

Section 1. Subsection (9) is added to section 732.806,
Florida Statutes, to read:

732.806 Gifts to lawyers and other disqualified persons.—
(9) This section applies only to written instruments
executed on or after October 1, 2013.

Section 2. The changes made by this act to s. 732.806, Florida
Statutes, are intended to clarify existing law and are remedial



710064

12 in nature.

13

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

15 And the title is amended as follows:

16 Delete line 2

17 and insert:

18 An act relating to estates; amending s. 732.806, F.S.;

19 providing that certain restrictions on gifts to

20 lawyers and other disqualified persons apply to

21 written instruments executed on or after a specified

22 date; providing for applicability; amending s.

23 733.107, F.S.;

By Senator Hukill

8-01029B-14

2014998__

A bill to be entitled

An act relating to estates; amending s. 733.107, F.S.; clarifying circumstances under which a burden of proof shifts in cases involving undue influence; providing for retroactive application; amending s. 733.808, F.S.; requiring that a directive to apply certain death benefits for the payment of claims and administration expenses be specified in certain instruments; providing for retroactive application; amending s. 736.0207, F.S.; establishing which party bears the burden of proof in an action to contest the validity or revocation of a trust; providing for applicability; amending s. 736.05053, F.S.; requiring a specific directive for certain assets and death benefits to be used to pay estate expenses; providing for retroactive application; amending s. 736.1106, F.S.; providing for the vesting of outright devises in certain trust documents; providing for applicability; providing an effective date.

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

Section 1. Section 733.107, Florida Statutes, is amended to read:

733.107 Burden of proof in contests; presumption of undue influence.—

(1) In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving

Page 1 of 5

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

8-01029B-14

2014998__

affidavit executed in accordance with s. 732.503 or an oath of an attesting witness executed as required in s. 733.201(2) is admissible and establishes prima facie the formal execution and attestation of the will. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.

(2) In any transaction or event to which the presumption of undue influence applies, the presumption of ~~undue influence~~ implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under ss. 90.301-90.304.

Section 2. The changes made by this act to s. 733.107, Florida Statutes, are intended to clarify existing law, are remedial in nature, and shall apply retroactively to all proceedings pending on or before this act becomes a law and all cases commenced on or after the effective date.

Section 3. Subsection (4) of section 733.808, Florida Statutes, is amended to read:

733.808 Death benefits; disposition of proceeds.—

(4) Unless the trust agreement, declaration of trust, or will expressly refers to this subsection and directs that it does not apply, death benefits payable as provided in subsection (1), subsection (2), or subsection (3), unless paid to a personal representative under the provisions of subsection (3), shall not be deemed to be part of the decedent's estate, and shall not be subject to any obligation to pay the expenses of the administration and obligations of the decedent's estate or for contribution required from a trust under s. 733.607(2) to any greater extent than if the proceeds were payable directly to

Page 2 of 5

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

8-01029B-14

2014998__

59 the beneficiaries named in the trust.

60 Section 4. The changes made by this act to s. 733.808,
 61 Florida Statutes, are intended to clarify existing law, are
 62 remedial in nature, and apply retroactively without regard to
 63 the date of the decedent's death.

64 Section 5. Section 736.0207, Florida Statutes, is amended
 65 to read:

66 736.0207 Trust contests.—

67 (1) In an action to contest the validity or revocation of
 68 all or part of a trust, the contestant has the burden of
 69 establishing the grounds for invalidity.

70 (2) An action to contest the validity of all or part of a
 71 revocable trust, or the revocation of part of a revocable trust,
 72 may not be commenced until the trust becomes irrevocable by its
 73 terms or by the settlor's death. If all of a revocable trust has
 74 been revoked, an action to contest the revocation may not be
 75 commenced until after the settlor's death. This section does not
 76 prohibit such action by the guardian of the property of an
 77 incapacitated settlor.

78 Section 6. The changes made by this act to s. 736.0207,
 79 Florida Statutes, apply to all cases commenced on or after the
 80 effective date.

81 Section 7. Subsection (1) of section 736.05053, Florida
 82 Statutes, is amended to read:

83 736.05053 Trustee's duty to pay expenses and obligations of
 84 settlor's estate.—

85 (1) A trustee of a trust described in s. 733.707(3) shall
 86 pay to the personal representative of a settlor's estate any
 87 amounts that the personal representative certifies in writing to

8-01029B-14

2014998__

88 the trustee are required to pay the expenses of the
 89 administration and obligations of the settlor's estate. Payments
 90 made by a trustee, unless otherwise provided in the trust
 91 instrument, must be charged as expenses of the trust without a
 92 contribution from anyone. The interests of all beneficiaries of
 93 such a trust are subject to the provisions of this subsection;
 94 however, the payments must be made from assets, property, or the
 95 proceeds of the assets or property that are included in the
 96 settlor's gross estate for federal estate tax purposes and may
 97 not be made from, other than assets proscribed in s. 733.707(3),
 98 or death benefits described in s. 733.808(4) unless the trust
 99 instrument expressly refers to s. 733.808(4) and directs that it
 100 does not apply that are included in the settlor's gross estate
 101 for federal estate tax purposes.

102 Section 8. The changes made by this act to s. 736.05053,
 103 Florida Statutes, are intended to clarify existing law, are
 104 remedial in nature, and apply retroactively without regard to
 105 the date of the settlor's death.

106 Section 9. Present subsection (5) of section 736.1106,
 107 Florida Statutes, is renumbered as subsection (6) and amended,
 108 and a new subsection (5) is added to that section, to read:

109 736.1106 Antilapse; survivorship with respect to future
 110 interests under terms of inter vivos and testamentary trusts;
 111 substitute takers.—

112 (5) Unless a contrary intent appears in the trust
 113 instrument, subsections (2)-(4) do not apply to an outright
 114 devise that vests upon the death of the settlor unless the
 115 beneficiary is a grandparent, or a lineal descendant of a
 116 grandparent, of the settlor or testator and the beneficiary:

8-01029B-14

2014998__

117 (a) Is dead at the time of the execution of the revocable
118 trust or will;
119 (b) Fails to survive the settlor or testator; or
120 (c) Is required by the inter vivos trust or by operation of
121 law to be treated as having predeceased the settlor or testator.
122
123 A devise in a revocable trust or a testamentary trust that is to
124 take effect at the death of the settlor or testator does not
125 vest until the death of the settlor or testator.
126 (6)-(5) Subsections (1)-(4) apply to all trusts other than
127 trusts that were irrevocable before the effective date of this
128 code. Sections 732.603, 732.604, and 737.6035, as they exist on
129 June 30, 2007, continue to apply to other trusts executed on or
130 after June 12, 2003. Subsection (5) applies to those trusts that
131 become irrevocable after June 30, 2014.
132 Section 10. This act shall take effect upon becoming a law.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 998
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/11/2014 1 Amendment 710064		3/11/2014 2 Motion to report as Committee Substitute			
			Bradley		Soto			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
8	0	TOTALS	RCS	-	FAV	-		
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/2014
Meeting Date

Topic _____

Bill Number 998
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

3.11.14

Meeting Date

Topic Estates Bill Number 998
Name Martha Edenfield Amendment Barcode _____ (if applicable)
Job Title _____ (if applicable)

Address 215 So Monroe #85 Phone 850-559-4100
Street
Tallahassee FL 32301 E-mail medenfield@deanmcard.com
City State Zip

Speaking: For Against Information Support the bill

Representing The Real Property, Probate & Trust Law Section of the Florida Bar

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 Judiciary

BILL: SB 160

INTRODUCER: Senator Bullard

SUBJECT: Canned or Perishable Food Distributed Free of Charge

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McLaughlin</u>	<u>Klebacha</u>	<u>ED</u>	<u>Favorable</u>
2.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	<u>Favorable</u>
3.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>

I. Summary:

SB 160 makes public schools exempt from civil and criminal liability for damages caused by food donated to local food banks and other charitable organizations. This bill adds public schools to the list of donors protected from civil and criminal liability if they donate food to charitable organizations and injury results from consumption of the food.

As is the case for other donors, immunity from liability does not apply under this bill if the injury resulting from the consumption of donated food is due to gross negligence, recklessness, or intentional misconduct.

II. Present Situation:

Federal School Lunch Program Act

Public schools in Florida participate in school lunch and breakfast programs subsidized by the federal government. Congress amended the School Lunch Program Act in 2011 to provide that each “school and local educational agency participating in the school lunch program under this chapter may donate any food not consumed under such program to eligible local food banks or charitable organizations.”¹ The federal School Lunch Program Act also provides immunity from criminal and civil liability to schools participating in the food donation program.²

Immunity from Liability for Food Donors

Section 768.136, F.S., provides that a donor or gleaner of canned or perishable food apparently fit for human consumption may donate the food to charity and be immune from civil and criminal liability.³ The term “donor” includes grocery stores and any place where food is

¹ 42 U.S.C. §1758(l)(1).

² 42 U.S.C. §1758(l)(3).

³ Section 768.136, F.S.

regularly prepared for sale, take-out, or delivery, including to factories, construction sites, airlines, and locations where events are catered.⁴ A “gleaner” is a person who harvests for free distribution an agricultural crop that has been donated by the owner.⁵ If the food is fit for human consumption and donated for free distribution to a bona fide charitable or nonprofit organization, the donor is not liable for an injury caused by the food unless the injury is caused by the gross negligence, recklessness, or intentional misconduct of the donor or gleaner.⁶ Likewise, a nonprofit or charitable organization which distributes donated food for free is protected from criminal and civil penalties under the same conditions. Public schools are not specifically included in the list of donors protected from liability under state law.

Standards of Fault in Negligence Cases

In any negligence case, the plaintiff needs to prove each of the elements of the cause of action which are duty, breach, causation, and damage. A plaintiff must establish that the defendant breached the duty of care required towards that particular plaintiff. On the continuum of fault, the courts generally place gross negligence in between ordinary, simple, or mere negligence, and recklessness.⁷ Gross negligence, however, does not rise to the level of an “intent to cause harm or evil motive or actual malice.”⁸ Proving that a defendant acted with a wanton or willful disregard or a malicious purpose are typically higher standards of care than gross negligence.⁹

III. Effect of Proposed Changes:

The bill adds public schools to the list of donors protected from civil and criminal liability for food they donate to charitable organizations. Absent the immunity provided by federal law and pursuant to the state’s waiver of sovereign immunity, public schools may be liable for damages of \$200,000 per person and \$300,000 per occurrence for damages caused by food donations. This bill appears to provide absolute immunity to public schools.

As is the case for other donors, immunity from liability does not apply under this bill if the injury resulting from the consumption of donated food is due to gross negligence, recklessness, or intentional misconduct. The federal School Lunch Program Act provides an exception to the immunity if an injury results from an act or omission of the person which constitutes either gross negligence or intentional misconduct.¹⁰ In contrast, under s. 768.28, F.S., sovereign immunity is not available to a governmental entity or agent acting in bad faith, with a malicious purpose, or when acting in wanton and willful disregard of human rights, safety, or property.

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

⁴ Section 768.136(1)(a), F.S.

⁵ Section 768.136(1)(b), F.S.

⁶ Section 768.136(2), F.S.

⁷ STEIN TREATISE §4:11 (2013).

⁸ *Id.*

⁹ Jens Dammann, Matthias Schundeln, *Where Are Limited Liability Companies Formed? An Empirical Analysis*, 55 J.L. & ECON. 741, 785 (Nov. 2012).

¹⁰ 42 U.S.C. §1791(3)

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Constitutional Issues:

Sovereign Immunity

The term “sovereign immunity” refers to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law.

Section 768.28, F.S., contains a broad, limited waiver of sovereign immunity applicable to the state. Under this law, officers, employees, and agents of the state are not personally liable in tort for any injury or damage suffered as a result of any act, event, or omission of action committed in the scope of employment.¹¹ However, personal liability may result from actions committed in bad faith, with a malicious purpose, or when in wanton and willful disregard of human rights, safety, or property.

The waiver of immunity places caps on recovery at \$200,000 for any one person or \$300,000 for all recovery related to one incident. A plaintiff may receive a judgment exceeding the caps, but only at the prerogative of the Legislature through the claims bill process.¹²

This bill provides an exception to the broad waiver of sovereign immunity. Therefore, the bill appears to grant absolute immunity from suit to public schools that comply with the provisions of this bill.

¹¹ Section 768.28(9)(a), F.S.

¹² Section 768.28(5), F.S.

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

None.

B. Private Sector Impact:

To the extent that public schools will increase donations of food to charitable organizations due to the immunity provided in the bill, charitable groups and organizations may have greater revenue to devote to purposes other than food provision.

C. Government Sector Impact:

This bill may encourage food donations by public schools to charitable organizations by eliminating the potential for lawsuits resulting from the donations.

The Department of Education (DOE) indicates that the DOE will incur no impact from the provisions of this bill

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 768.136 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 Bullard

39-00107-14

2014160__

1 A bill to be entitled
 2 An act relating to canned or perishable food
 3 distributed free of charge; amending s. 768.136, F.S.;
 4 revising the definition of the term "donor"; limiting
 5 the liability of public schools with respect to canned
 6 or perishable food donated to charitable or nonprofit
 7 organizations; making grammatical changes; providing
 8 an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (1) of section 768.136, Florida
 13 Statutes, is reordered and amended to read:
 14 768.136 Liability for canned or perishable food distributed
 15 free of charge.—
 16 (1) As used in this section, the term:
 17 (b)(a) "Donor" means a person, business, organization, or
 18 institution, including a public school, which owns, rents,
 19 leases, or operates:
 20 1. A ~~Any~~ building, vehicle, place, or structure, or a ~~any~~
 21 room or division in a building, vehicle, place, or structure,
 22 which ~~that~~ is maintained and operated as a place where food is
 23 regularly prepared, served, or sold for immediate consumption on
 24 or in the vicinity of the premises; or to be called for or taken
 25 out by customers; or to be delivered to factories, construction
 26 camps, airlines, locations where catered events are being held,
 27 and other similar locations for consumption at any place;
 28 2. A ~~Any~~ public location with vending machines dispensing
 29 prepared meals; or

Page 1 of 2

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

39-00107-14

2014160__

30 3. A ~~Any~~ retail grocery store.
 31 (c)(b) "Gleaner" means a person who harvests for free
 32 distribution an agricultural crop that has been donated by the
 33 owner.
 34 (a)(e) "Canned food" means any food that ~~which~~ has been
 35 commercially processed and prepared for human consumption and
 36 ~~which has been~~ commercially packaged in such a manner as to
 37 remain nonperishable without refrigeration for a reasonable
 38 length of time.
 39 (d) "Perishable food" means any food that may spoil or
 40 otherwise become unfit for human consumption because of its
 41 nature, type, or physical condition. The term "Perishable food"
 42 includes, but is not limited to, fresh or processed meats,
 43 poultry, seafood, dairy products, bakery products, eggs in the
 44 shell, fresh fruits or vegetables, and foods that have been
 45 noncommercially packaged, that have been frozen or otherwise
 46 require refrigeration to remain nonperishable for a reasonable
 47 length of time, or that have been prepared at a public food
 48 service establishment licensed under chapter 509.
 49 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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

The Florida Senate COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 160
FINAL ACTION: Favorable
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
8	0	TOTALS						
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/14
Meeting Date

Topic Canned or Perishable Food Distributed Free of Charge
Bill Number SB 160

Name Frances Gilbert (if applicable)

Job Title Executive Director Amendment Barcode (if applicable)

Address 124 Salem Court Phone 850-878-1832
Street

Tallahassee FL 32301 E-mail fgilbert@fln.schoolnutrition.org
City State Zip

Speaking: For Against Information

Representing Florida School Nutrition 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)

3/11/14

Meeting Date

Topic Canned Food Bill Number 160
(if applicable)

Name Lynn Geist Amendment Barcode _____
(if applicable)

Job Title Asst. Director School Food Service

Address Pinellas County
1111 S. Belcher Rd. Phone 727-547-7157
Street

Largo Fl. 33773 E-mail geistl@pcsb.org
City State Zip

Speaking: For Against Information

Representing Pinellas County School Food Service

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2014

Meeting Date

Topic _____

Bill Number 160
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 Judiciary

BILL: CS/CS/SB 440

INTRODUCER: Judiciary Committee; Regulated Industries Committee; and Senator Altman

SUBJECT: Condominiums

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 440 amends several provisions in s. 718.112, F.S., which specifies the provisions that must be included in the bylaws of condominiums, to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums. The bill limits the following bylaw requirements to residential condominiums:

- The time periods for associations to respond to a unit owner's written inquiries;
- The requirements for the election of board members, the use of staggered terms for members of the board, and the use of limited and general proxies;
- Prohibitions on persons who are not eligible to serve on the board of a condominium association, including co-owners of a unit in certain association, persons who have been suspended, persons who are delinquent in the payment of a monetary obligation due to the association, and persons convicted of a felony;
- The pre-election certification requirements for newly elected or appointed board members; and
- The requirement that the bylaws of the association provide for mandatory nonbinding arbitration of disputes by the Division of Florida Condominiums, Timeshares, and Mobile Homes with the Department of Business and Professional Regulation.

The bill also limits the requirement that associations initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also extends the specified date by which residential condominium associations must make the application for a building permit from the end of 2019 to January 1, 2020.

The bill also limits the following condominium laws to residential condominiums:

- Requirements that condominium boards adopt shutter specifications for each building within each condominium operated by the association;
- Requirements that condominium boards approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.
- Requirements that the alternative dispute resolution provisions in s. 718.1255, F.S., which provide for the mediation and voluntary non-binding arbitration of certain disputes, do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium;
- Limitations on the ability of the developer to modify the plot plan for phase condominiums;
- Requirements that certain information related to the development of a phase condominium be described in the original declaration of condominium or approved amendment to residential condominiums.

The bill also to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created pursuant to [ch. 718, F.S.,] which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.”¹ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.² A declaration is like a constitution in that it:

Strictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.³

A declaration “may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.”⁴ A declaration of condominium may be amended as provided in the declaration.⁵ If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.⁶ Condominiums are administered by a board of directors referred to as a “board of administration.”⁷

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁴ Section 718.104(5), F.S.

⁵ See s. 718.110(1)(a), F.S.

⁶ Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.

⁷ Section 718.103(4), F.S.

Section 718.103(8), F.S., defines the term “common elements” to mean the portions of the condominium property not included in the units.

Section 718.103(12), F.S., defines the term “condominium parcel” to mean a unit, together with the undivided share in the common elements appurtenant to the unit.

Section 718.103(19), F.S., defines the term “limited common elements” to mean those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

Section 718.103(23), F.S., defines the term “residential condominium” to mean:

a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35)[F.S.] shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404[F.S].

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) in accordance with ch. 718, F.S.

The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S. with respect to associations that are still under developer control.⁸ The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division’s jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.⁹

⁸ Section 718.501(1), F.S.

⁹ Section 718.501(1), F.S. See Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., authorizes the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

Condominium Bylaws

Section 718.112(2), F.S., specifies the provisions that must be included in the bylaws of condominium associations. In relevant part, the association's bylaws must provide that:

- The board of an associations must respond to a unit owner's written inquiry within 30 days after receipt of the inquiry;¹⁰ and
- If the board has sought advice from the division in order to respond to an inquiry from a unit owner, the board must provide a written response to the unit owner within 10 days after receipt of the advice.¹¹

Section 718.112(2)(b)2., F.S., provides for the election of members of the condominium association's board. It provides that:

- Unit owners may vote by limited or general proxy;¹²
- Unless the bylaws provide otherwise, or the staggered term of a board member does not expire at the annual meeting, the terms of board members shall at the annual meeting, and such board members may stand for re-election, unless prohibited by the bylaws;¹³
- Co-owners of a unit in associations of more than 10 units or in associations that do not include timeshare units or interests may not serve on the board at the same time;¹⁴
- A candidate for election to the board must complete the information sheet required under s. 718.112(2)(d)4.a., F.S.;
- Persons who have been suspended by the division or who are delinquent in the payment of a monetary obligation due to the association are not eligible for board membership;¹⁵
- Persons convicted of a felony are not eligible for board membership until their civil rights have been restored;¹⁶
- Members of the board must be elected by written ballot or voting machine;¹⁷ and
- Within 90 days after being elected or appointed, a newly elected or appointed board member must certify that he or she has read the declaration of condominium for all condominiums operated by the association and the association's articles of incorporation, bylaws, and current written policies. Alternatively, a newly elected or appointed board member may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.¹⁸

¹⁰ Section 718.112(2)(a)2., F.S.

¹¹ *Id.*

¹² Section 718.112(2)(b)2., F.S.

¹³ Section 718.112(2)(d)2., F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 718.112(2)(d)4., F.S.

¹⁸ Section 718.112(2)(d)4.b., F.S.

Section 718.112(2)(d)10., F.S., provides that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association.

Section 718.112(2)(d), F.S., also permits associations of 10 or fewer units to, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in their bylaws, which may be by proxy specifically delineating the different voting and election procedures.

Section 718.112(2)(k), F.S., requires that the bylaws of the association must provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S. The following types of disputes are excluded from arbitration under s. 718.1255, F.S.:

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.¹⁹

Section 718.112(2)(l), F.S., provides that the local authority having jurisdiction over the property may not require completion of retrofitting with a fire sprinkler system before the end of 2019. By December 31, 2016, an association that is not in compliance with the requirements for a fire sprinkler system and that has not voted to forego retrofitting of such a system is required to initiate an application for a building permit for the required installation with the local government having jurisdiction. In the application, the association must demonstrate that it will become compliant by December 31, 2019.

Section 718.112(2)(l)1., F.S., permits condominium associations to vote to forego retrofitting at a duly called membership meeting. Members may vote to forego retrofitting by limited proxy or by a vote personally cast. Section 718.112(2)(l)3., F.S., requires that associations report to the division the membership vote and the recording of a certificate from a licensed electrical contractor that the association is in compliance with the applicable life and safety code, as provided in s. 718.112(2)(l), F.S.

Vertical Accessibility

Section 553.509(1), F.S., provides that part II of ch. 553, F.S., the Florida Americans with Disabilities Accessibility Implementation Act, and the Americans with Disabilities Act Standards for Accessible Design do not relieve the owner of any building, structure, or facility governed by this part from the duty to provide vertical accessibility to all levels above and below the occupiable grade level. Section 553.509(2), F.S., provides that buildings, structures, and facilities must, at a minimum, comply with the Americans with Disabilities Act Standards for Accessible Design.

¹⁹ Section 718.1255(1), F.S.

Section 718.112(2)(l)4., F.S., permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

Maintenance-Hurricane Protections

Section 718.113(5), F.S., requires that condominium boards adopt shutter specifications for each building within each condominium operated by the association. The shutter specifications must include color, style, and other factors deemed relevant by the board. All of the specifications adopted by the board must comply with the applicable building code. Section 718.113(5)(a), F.S., authorizes condominium boards to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. Such installations by the board must be by a contract for products or services in accordance with s. 718.3026, F.S., and be approved by a majority of voting interests of the condominium.

Phase Condominiums

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration that has been approved by all the unit owners and unit mortgagees.

The description must include the land that may become part of the condominium and the land on which each phase is to be built, including the metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. The plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium.

The developer may modify the plot plan as to unit or building types to the extent that such changes are described in the declaration. The developer may also make nonmaterial changes in the legal description of a phase if authorized by the declaration.²⁰

Section 718.403(2)(b)-(f), F.S., provides the additional information that must be described in the original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer. Section 718.403(2)(b)-(f), F.S., provides:

(b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of

²⁰ Section 718.403(2)(a), F.S.

ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.²¹

Distressed Condominium Relief Act

The “Distressed Condominium Relief Act” in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties.

Section 718.703(1), F.S., defines the term “bulk assignee” to mean a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

Section 718.703(2), F.S., defines the term “bulk buyer” as a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in this section.

Section 718.704, F.S., provides for the assignment and assumption of developer rights.

Section 718.704, F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

²¹ Section 718.403(1), F.S.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the parcels were acquired prior to July 1, 2015. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

III. Effect of Proposed Changes:

Condominium Bylaws

The bill amends several provisions in s. 718.112, F.S., to distinguish the bylaws requirements for residential condominiums from those for commercial condominiums.

The bill limits the following bylaw requirements to residential condominiums:

- The requirement that the board give a substantive response to a unit owner's written inquiry within 30 days of receipt after the inquiry or within 10 days after receipt of the advice from the division in s. 718.112(2)(a)2., F.S.;
- The requirements for the election of board members and the use of limited and general proxies in s. 718.112(2)(b)2., F.S.;
- The requirements for the election of board members the use of staggered terms s. 718.112(2)(d)2., F.S.;
- The prohibition in s. 718.112(2)(d)2., F.S., against co-owners serving on the board at the same time;
- The prohibitions on persons who are not eligible to serve on the board in s. 718.112(2)(d)2., F.S., including persons who have been suspended by the division, persons who are delinquent in the payment of monetary obligation due to the association, and persons convicted of a felony;
- The requirement that members of the board be elected by written ballot or voting machine in s. 718.112(2)(d)4., F.S.;
- The requirement that a newly elected or appointed director certify in writing that he or she has read the association's documents within 90 days after being elected or appointed in s. 718.(2)(d)4.b., F.S.;
- The provision in s. 718.112(2)(d)10., F.S., that ch. 718, F.S., does not limit the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association; and
- The requirement in s. 718.112(2)(k), F.S., that the bylaws of the association provide for mandatory nonbinding arbitration of disputes, as provided in s. 718.1255, F.S.

The bill amends s. 718.112(2)(l), F.S., to limit the provision that requires associations to initiate an application for a building permit for the required installation of a sprinkler system by the specified date to residential condominiums. The bill also clarifies the specified date by which residential condominium associations must make the application for a building permit from "before the end of 2019" to before January 1, 2020.

The bill amends s. 718.112(2)(l)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by

s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.²²

Maintenance-Hurricane Protections

The bill amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The bill amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code (hurricane protections). The bill also amends s. 718.113(5)(d), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards, notwithstanding the any other provision in the condominium documents, from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

Alternative Dispute Resolution

The bill creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

Phase Condominiums

The bill amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums.

The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S. or 718.403(8), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

The bill reenacts s. 718.403(1), F.S., to clarify the procedure for a developer to develop a condominium in phases. During the 2013 Legislative Session, two bills providing slightly different procedures for developing a condominium were enacted by the Legislature. By reenacting the provision, the bill clarifies that the provision codified in the Florida Statutes is the appropriate version.

Distressed Condominium Relief Act

The bill amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

²² Section 552.509, F.S., relates to applicability of the requirements and exceptions of the Florida Americans with Disabilities Accessibility Implementation Act (ss. 553.501-553.513, F.S.) and the Americans with Disabilities Act Standards for Accessible Design to provide for vertical accessibility.

Effective Date

The bill takes effect July 1, 2014.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

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:

According to representatives for condominium associations and the Real Property, Probate, and Trust Law Section of The Florida Bar, commercial condominiums may incur fewer expenses by not having to comply with bylaws requirements in ch. 718, F.S. Those requirements are more relevant to residential condominiums.²³

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.112, 718.113, 718.1255, 718.403, and 718.707. This bill reenacts s. 718.403(1), F.S.

²³ Communication between committee staff of the Senate Regulated Industries Committee and the Real Property, Probate, and Trust Law Section of The Florida Bar.

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 Judiciary on March 11, 2014:

The committee substitute, by removing s. 718.1256, F.S., from the bill will continue to allow commercial condominiums to be classified as residential property for property and casualty insurance risk classification. The committee substitute also reenacts s. 718.403(1), F.S. to clarify the procedure for a developer to develop a condominium in phases.

CS by Regulated Industries on February 13, 2014:

The committee substitute (CS) revised s. 718.112(2)(a)2., F.S., to limit, to residential condominiums, the requirement that the board must respond to a unit owner's written inquiry within 30 days of receipt of the inquiry. The CS does not reference the limitation to residential condominiums in the provision that requires the board to give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division.

The CS amends s. 718.112(2)(d), F.S., to limit, to residential condominiums, the provision that permits associations of 10 or fewer units to amend their bylaws to provide different voting and election procedures than is provided in ch. 718, F.S.

The CS amends s. s. 718.112(2)(l)4., F.S., to limit, to residential condominiums, the provision that permits condominium associations to forego the retrofitting of improvements required by s. 553.509(2), F.S., upon an affirmative vote of a majority of the voting interests in the affected condominium.

The CS amends s. 718.113(5), F.S., to limit the requirement that condominium boards adopt shutter specifications for each building within each condominium operated by the association to residential condominiums. The CS also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the board's authority to install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. The bill also amends s. 718.113(5)(a), F.S., to limit, to residential condominiums, the provision that prohibits condominium boards from refusing to approve a unit owner's installation of hurricane protections that conform to the specifications adopted by the board.

The CS creates s. 718.1255(6), F.S., to provide that the alternative dispute resolution provisions in this section do not apply to nonresidential condominiums unless specifically provided for in the declaration of the nonresidential condominium.

The CS amends s. 718.1256, F.S., to provide that residential condominiums are classified as residential property for property and casualty insurance risk classification.

The CS amends s. 718.403(2)(a), F.S., to limit the ability of the developer to modify the plot plan as to unit or building types only to the extent that such changes are described in the declaration to residential condominiums. The bill creates s. 718.403(9), F.S., to limit the information that must be described, as specified in ss. 718.403(2)(b)-(f), F.S., in the original declaration of condominium or approved amendment to residential condominiums.

The CS amends s. 718.707, F.S., to extend the time period to be classified as a bulk buyer or bulk assignee from July 1, 2015 to July 1, 2016.

B. Amendments:

None.



311588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 497 - 506

and insert:

Section 4. Subsection (1) of section 718.403, Florida Statutes, is reenacted, paragraph (a) of subsection (2) of that section is amended, and subsection (9) is added to that section, to read:

718.403 Phase condominiums.—

(1) Notwithstanding the provisions of s. 718.110, a



311588

11 developer may develop a condominium in phases, if the original
12 declaration of condominium submitting the initial phase to
13 condominium ownership or an amendment to the declaration which
14 has been approved by all of the unit owners and unit mortgagees
15 provides for and describes in detail all anticipated phases; the
16 impact, if any, which the completion of subsequent phases would
17 have upon the initial phase; and the time period within which
18 all phases must be added to the condominium and comply with the
19 requirements of this section and at the end of which the right
20 to add additional phases expires.

21 (a) All phases must be added to the condominium within 7
22 years after the date of the recording of the certificate of a
23 surveyor and mapper pursuant to s. 718.104(4)(e) or the
24 recording of an instrument that transfers title to a unit in the
25 condominium which is not accompanied by a recorded assignment of
26 developer rights in favor of the grantee of such unit, whichever
27 occurs first, unless the unit owners vote to approve an
28 amendment extending the 7-year period pursuant to paragraph (b).

29 (b) An amendment to extend the 7-year period shall require
30 the approval of the owners necessary to amend the declaration of
31 condominium pursuant to s. 718.110(1)(a). An extension of the 7-
32 year period may be submitted for approval only during the last 3
33 years of the 7-year period.

34 (c) An amendment must describe the time period within which
35 all phases must be added to the condominium, and such time
36 period may not exceed 10 years from the date of the recording of
37 the certificate of a surveyor and mapper pursuant to s.
38 718.104(4)(e) or the recording of an instrument that transfers
39 title to a unit in the condominium which is not accompanied by a



311588

40 recorded assignment of developer rights in favor of the grantee
41 of such unit, whichever occurs first.

42 (d) An amendment that extends the 7-year period pursuant to
43 this section is not subject to the requirements of s.
44 718.110(4).

45
46 ===== T I T L E A M E N D M E N T =====

47 And the title is amended as follows:

48 Delete lines 12 - 14

49 and insert:

50 amending s. 718.403, F.S.; authorizing the

By the Committee on Regulated Industries; and Senator Altman

580-01792-14

2014440c1

1 A bill to be entitled
 2 An act relating to condominiums; amending s. 718.112,
 3 F.S.; limiting the application of certain requirements
 4 relating to bylaws to residential condominiums and
 5 their associations and boards; amending s. 718.113,
 6 F.S.; limiting the application of certain requirements
 7 relating to the maintenance of residential
 8 condominiums and their associations and boards;
 9 amending s. 718.1255, F.S.; exempting nonresidential
 10 condominiums from mandatory arbitration unless
 11 specifically provided for in their declarations;
 12 amending s. 718.1256, F.S.; specifying that
 13 residential condominiums are classified as residential
 14 property; amending s. 718.403, F.S.; authorizing the
 15 developer to modify the plot plan as to unit or
 16 building types; limiting the circumstances under which
 17 a plot plan may be modified as to a residential
 18 condominium; specifying the provisions relating to
 19 phase condominiums that are inapplicable to
 20 nonresidential condominiums; amending s. 718.707,
 21 F.S.; extending by 1 year the time limitation for
 22 classification as a bulk assignee or bulk buyer;
 23 providing an effective date.
 24
 25 Be It Enacted by the Legislature of the State of Florida:
 26
 27 Section 1. Paragraphs (a), (b), (d), (k), and (l) of
 28 subsection (2) of section 718.112, Florida Statutes, are amended
 29 to read:

Page 1 of 19

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

580-01792-14

2014440c1

30 718.112 Bylaws.—
 31 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 32 following and, if they do not do so, shall be deemed to include
 33 the following:
 34 (a) *Administration*.—
 35 1. The form of administration of the association shall be
 36 described indicating the title of the officers and board of
 37 administration and specifying the powers, duties, manner of
 38 selection and removal, and compensation, if any, of officers and
 39 boards. In the absence of such a provision, the board of
 40 administration shall be composed of five members, except in the
 41 case of a condominium which has five or fewer units, in which
 42 case in a not-for-profit corporation the board shall consist of
 43 not fewer than three members. In the absence of provisions to
 44 the contrary in the bylaws, the board of administration shall
 45 have a president, a secretary, and a treasurer, who shall
 46 perform the duties of such officers customarily performed by
 47 officers of corporations. Unless prohibited in the bylaws, the
 48 board of administration may appoint other officers and grant
 49 them the duties it deems appropriate. Unless otherwise provided
 50 in the bylaws, the officers shall serve without compensation and
 51 at the pleasure of the board of administration. Unless otherwise
 52 provided in the bylaws, the members of the board shall serve
 53 without compensation.
 54 2. When a unit owner of a residential condominium files a
 55 written inquiry by certified mail with the board of
 56 administration, the board shall respond in writing to the unit
 57 owner within 30 days after ~~of~~ receipt of the inquiry. The
 58 board's response shall either give a substantive response to the

Page 2 of 19

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

580-01792-14

2014440c1

59 inquirer, notify the inquirer that a legal opinion has been
 60 requested, or notify the inquirer that advice has been requested
 61 from the division. If the board requests advice from the
 62 division, the board shall, within 10 days after ~~of~~ its receipt
 63 of the advice, provide in writing a substantive response to the
 64 inquirer. If a legal opinion is requested, the board shall,
 65 within 60 days after the receipt of the inquiry, provide in
 66 writing a substantive response to the inquiry. The failure to
 67 provide a substantive response to the inquiry as provided herein
 68 precludes the board from recovering attorney ~~attorney's~~ fees and
 69 costs in any subsequent litigation, administrative proceeding,
 70 or arbitration arising out of the inquiry. The association may
 71 through its board of administration adopt reasonable rules and
 72 regulations regarding the frequency and manner of responding to
 73 unit owner inquiries, one of which may be that the association
 74 is only obligated to respond to one written inquiry per unit in
 75 any given 30-day period. In such a case, any additional inquiry
 76 or inquiries must be responded to in the subsequent 30-day
 77 period, or periods, as applicable.

78 (b) *Quorum; voting requirements; proxies.*—

79 1. Unless a lower number is provided in the bylaws, the
 80 percentage of voting interests required to constitute a quorum
 81 at a meeting of the members is a majority of the voting
 82 interests. Unless otherwise provided in this chapter or in the
 83 declaration, articles of incorporation, or bylaws, and except as
 84 provided in subparagraph (d)4., decisions shall be made by a
 85 majority of the voting interests represented at a meeting at
 86 which a quorum is present.

87 2. Except as specifically otherwise provided herein, unit

580-01792-14

2014440c1

88 owners in a residential condominium may not vote by general
 89 proxy, but may vote by limited proxies substantially conforming
 90 to a limited proxy form adopted by the division. A voting
 91 interest or consent right allocated to a unit owned by the
 92 association may not be exercised or considered for any purpose,
 93 whether for a quorum, an election, or otherwise. Limited proxies
 94 and general proxies may be used to establish a quorum. Limited
 95 proxies shall be used for votes taken to waive or reduce
 96 reserves in accordance with subparagraph (f)2.; for votes taken
 97 to waive the financial reporting requirements of s. 718.111(13);
 98 for votes taken to amend the declaration pursuant to s. 718.110;
 99 for votes taken to amend the articles of incorporation or bylaws
 100 pursuant to this section; and for any other matter for which
 101 this chapter requires or permits a vote of the unit owners.
 102 Except as provided in paragraph (d), a proxy, limited or
 103 general, may not be used in the election of board members in a
 104 residential condominium. General proxies may be used for other
 105 matters for which limited proxies are not required, and may be
 106 used in voting for nonsubstantive changes to items for which a
 107 limited proxy is required and given. Notwithstanding this
 108 subparagraph, unit owners may vote in person at unit owner
 109 meetings. This subparagraph does not limit the use of general
 110 proxies or require the use of limited proxies for any agenda
 111 item or election at any meeting of a timeshare condominium
 112 association or a nonresidential condominium association.
 113 3. A ~~Any~~ proxy given is effective only for the specific
 114 meeting for which originally given and any lawfully adjourned
 115 meetings thereof. A proxy is not valid longer than 90 days after
 116 the date of the first meeting for which it was given. Each ~~Every~~

580-01792-14 2014440c1

117 proxy is revocable at any time at the pleasure of the unit owner
118 executing it.

119 4. A member of the board of administration or a committee
120 may submit in writing his or her agreement or disagreement with
121 any action taken at a meeting that the member did not attend.
122 This agreement or disagreement may not be used as a vote for or
123 against the action taken or to create a quorum.

124 5. If any of the board or committee members meet by
125 telephone conference, those board or committee members may be
126 counted toward obtaining a quorum and may vote by telephone. A
127 telephone speaker must be used so that the conversation of those
128 members may be heard by the board or committee members attending
129 in person as well as by any unit owners present at a meeting.

130 (d) *Unit owner meetings.*-

131 1. An annual meeting of the unit owners shall be held at
132 the location provided in the association bylaws and, if the
133 bylaws are silent as to the location, the meeting shall be held
134 within 45 miles of the condominium property. However, such
135 distance requirement does not apply to an association governing
136 a timeshare condominium.

137 2. Unless the bylaws provide otherwise, a vacancy on the
138 board caused by the expiration of a director's term shall be
139 filled by electing a new board member, and the election must be
140 by secret ballot. An election is not required if the number of
141 vacancies equals or exceeds the number of candidates. For
142 purposes of this paragraph, the term "candidate" means an
143 eligible person who has timely submitted the written notice, as
144 described in sub-subparagraph 4.a., of his or her intention to
145 become a candidate. Except in a timeshare or nonresidential

580-01792-14 2014440c1

146 condominium, or if the staggered term of a board member does not
147 expire until a later annual meeting, or if all members' terms
148 would otherwise expire but there are no candidates, the terms of
149 all board members expire at the annual meeting, and such members
150 may stand for reelection unless prohibited by the bylaws. If the
151 bylaws or articles of incorporation permit terms of no more than
152 2 years, the association board members may serve 2-year terms.
153 If the number of board members whose terms expire at the annual
154 meeting equals or exceeds the number of candidates, the
155 candidates become members of the board effective upon the
156 adjournment of the annual meeting. Unless the bylaws provide
157 otherwise, any remaining vacancies shall be filled by the
158 affirmative vote of the majority of the directors making up the
159 newly constituted board even if the directors constitute less
160 than a quorum or there is only one director. In a residential
161 condominium association of more than 10 units or in a
162 residential condominium association that does not include
163 timeshare units or timeshare interests, coowners of a unit may
164 not serve as members of the board of directors at the same time
165 unless they own more than one unit or unless there are not
166 enough eligible candidates to fill the vacancies on the board at
167 the time of the vacancy. ~~A~~ ~~Any~~ unit owner in a residential
168 condominium desiring to be a candidate for board membership must
169 comply with sub-subparagraph 4.a. and must be eligible to be a
170 candidate to serve on the board of directors at the time of the
171 deadline for submitting a notice of intent to run in order to
172 have his or her name listed as a proper candidate on the ballot
173 or to serve on the board. A person who has been suspended or
174 removed by the division under this chapter, or who is delinquent

580-01792-14

2014440c1

175 in the payment of any monetary obligation due to the
 176 association, is not eligible to be a candidate for board
 177 membership and may not be listed on the ballot. A person who has
 178 been convicted of any felony in this state or in a United States
 179 District or Territorial Court, or who has been convicted of any
 180 offense in another jurisdiction which would be considered a
 181 felony if committed in this state, is not eligible for board
 182 membership unless such felon's civil rights have been restored
 183 for at least 5 years as of the date such person seeks election
 184 to the board. The validity of an action by the board is not
 185 affected if it is later determined that a board member is
 186 ineligible for board membership due to having been convicted of
 187 a felony. This subparagraph does not limit the term of a member
 188 of the board of a nonresidential condominium.

189 3. The bylaws must provide the method of calling meetings
 190 of unit owners, including annual meetings. Written notice must
 191 include an agenda, must be mailed, hand delivered, or
 192 electronically transmitted to each unit owner at least 14 days
 193 before the annual meeting, and must be posted in a conspicuous
 194 place on the condominium property at least 14 continuous days
 195 before the annual meeting. Upon notice to the unit owners, the
 196 board shall, by duly adopted rule, designate a specific location
 197 on the condominium property or association property where all
 198 notices of unit owner meetings shall be posted. This requirement
 199 does not apply if there is no condominium property or
 200 association property for posting notices. In lieu of, or in
 201 addition to, the physical posting of meeting notices, the
 202 association may, by reasonable rule, adopt a procedure for
 203 conspicuously posting and repeatedly broadcasting the notice and

Page 7 of 19

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

580-01792-14

2014440c1

204 the agenda on a closed-circuit cable television system serving
 205 the condominium association. However, if broadcast notice is
 206 used in lieu of a notice posted physically on the condominium
 207 property, the notice and agenda must be broadcast at least four
 208 times every broadcast hour of each day that a posted notice is
 209 otherwise required under this section. If broadcast notice is
 210 provided, the notice and agenda must be broadcast in a manner
 211 and for a sufficient continuous length of time so as to allow an
 212 average reader to observe the notice and read and comprehend the
 213 entire content of the notice and the agenda. Unless a unit owner
 214 waives in writing the right to receive notice of the annual
 215 meeting, such notice must be hand delivered, mailed, or
 216 electronically transmitted to each unit owner. Notice for
 217 meetings and notice for all other purposes must be mailed to
 218 each unit owner at the address last furnished to the association
 219 by the unit owner, or hand delivered to each unit owner.
 220 However, if a unit is owned by more than one person, the
 221 association must provide notice to the address that the
 222 developer identifies for that purpose and thereafter as one or
 223 more of the owners of the unit advise the association in
 224 writing, or if no address is given or the owners of the unit do
 225 not agree, to the address provided on the deed of record. An
 226 officer of the association, or the manager or other person
 227 providing notice of the association meeting, must provide an
 228 affidavit or United States Postal Service certificate of
 229 mailing, to be included in the official records of the
 230 association affirming that the notice was mailed or hand
 231 delivered in accordance with this provision.

232 4. The members of the board of a residential condominium

Page 8 of 19

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

580-01792-14

2014440c1

233 shall be elected by written ballot or voting machine. Proxies
 234 may not be used in electing the board in general elections or
 235 elections to fill vacancies caused by recall, resignation, or
 236 otherwise, unless otherwise provided in this chapter. This
 237 subparagraph does not apply to an association governing a
 238 timeshare condominium.

239 a. At least 60 days before a scheduled election, the
 240 association shall mail, deliver, or electronically transmit, by
 241 separate association mailing or included in another association
 242 mailing, delivery, or transmission, including regularly
 243 published newsletters, to each unit owner entitled to a vote, a
 244 first notice of the date of the election. A ~~Any~~ unit owner or
 245 other eligible person desiring to be a candidate for the board
 246 must give written notice of his or her intent to be a candidate
 247 to the association at least 40 days before a scheduled election.
 248 Together with the written notice and agenda as set forth in
 249 subparagraph 3., the association shall mail, deliver, or
 250 electronically transmit a second notice of the election to all
 251 unit owners entitled to vote, together with a ballot that lists
 252 all candidates. Upon request of a candidate, an information
 253 sheet, no larger than 8 1/2 inches by 11 inches, which must be
 254 furnished by the candidate at least 35 days before the election,
 255 must be included with the mailing, delivery, or transmission of
 256 the ballot, with the costs of mailing, delivery, or electronic
 257 transmission and copying to be borne by the association. The
 258 association is not liable for the contents of the information
 259 sheets prepared by the candidates. In order to reduce costs, the
 260 association may print or duplicate the information sheets on
 261 both sides of the paper. The division shall by rule establish

580-01792-14

2014440c1

262 voting procedures consistent with this sub-subparagraph,
 263 including rules establishing procedures for giving notice by
 264 electronic transmission and rules providing for the secrecy of
 265 ballots. Elections shall be decided by a plurality of ballots
 266 cast. There is no quorum requirement; however, at least 20
 267 percent of the eligible voters must cast a ballot in order to
 268 have a valid election. A unit owner may not permit any other
 269 person to vote his or her ballot, and any ballots improperly
 270 cast are invalid. A unit owner who violates this provision may
 271 be fined by the association in accordance with s. 718.303. A
 272 unit owner who needs assistance in casting the ballot for the
 273 reasons stated in s. 101.051 may obtain such assistance. The
 274 regular election must occur on the date of the annual meeting.
 275 Notwithstanding this sub-subparagraph, an election is not
 276 required unless more candidates file notices of intent to run or
 277 are nominated than board vacancies exist.

278 b. Within 90 days after being elected or appointed to the
 279 board of an association of a residential condominium, each newly
 280 elected or appointed director shall certify in writing to the
 281 secretary of the association that he or she has read the
 282 association's declaration of condominium, articles of
 283 incorporation, bylaws, and current written policies; that he or
 284 she will work to uphold such documents and policies to the best
 285 of his or her ability; and that he or she will faithfully
 286 discharge his or her fiduciary responsibility to the
 287 association's members. In lieu of this written certification,
 288 within 90 days after being elected or appointed to the board,
 289 the newly elected or appointed director may submit a certificate
 290 of having satisfactorily completed the educational curriculum

580-01792-14

2014440c1

291 administered by a division-approved condominium education
 292 provider within 1 year before or 90 days after the date of
 293 election or appointment. The written certification or
 294 educational certificate is valid and does not have to be
 295 resubmitted as long as the director serves on the board without
 296 interruption. A director of an association of a residential
 297 condominium who fails to timely file the written certification
 298 or educational certificate is suspended from service on the
 299 board until he or she complies with this sub-subparagraph. The
 300 board may temporarily fill the vacancy during the period of
 301 suspension. The secretary shall cause the association to retain
 302 a director's written certification or educational certificate
 303 for inspection by the members for 5 years after a director's
 304 election or the duration of the director's uninterrupted tenure,
 305 whichever is longer. Failure to have such written certification
 306 or educational certificate on file does not affect the validity
 307 of any board action.

308 c. Any challenge to the election process must be commenced
 309 within 60 days after the election results are announced.

310 5. Any approval by unit owners called for by this chapter
 311 or the applicable declaration or bylaws, including, but not
 312 limited to, the approval requirement in s. 718.111(8), must be
 313 made at a duly noticed meeting of unit owners and is subject to
 314 all requirements of this chapter or the applicable condominium
 315 documents relating to unit owner decisionmaking, except that
 316 unit owners may take action by written agreement, without
 317 meetings, on matters for which action by written agreement
 318 without meetings is expressly allowed by the applicable bylaws
 319 or declaration or any law that provides for such action.

Page 11 of 19

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

580-01792-14

2014440c1

320 6. Unit owners may waive notice of specific meetings if
 321 allowed by the applicable bylaws or declaration or any law. If
 322 authorized by the bylaws, notice of meetings of the board of
 323 administration, unit owner meetings, except unit owner meetings
 324 called to recall board members under paragraph (j), and
 325 committee meetings may be given by electronic transmission to
 326 unit owners who consent to receive notice by electronic
 327 transmission.

328 7. Unit owners have the right to participate in meetings of
 329 unit owners with reference to all designated agenda items.
 330 However, the association may adopt reasonable rules governing
 331 the frequency, duration, and manner of unit owner participation.

332 8. A unit owner may tape record or videotape a meeting of
 333 the unit owners subject to reasonable rules adopted by the
 334 division.

335 9. Unless otherwise provided in the bylaws, any vacancy
 336 occurring on the board before the expiration of a term may be
 337 filled by the affirmative vote of the majority of the remaining
 338 directors, even if the remaining directors constitute less than
 339 a quorum, or by the sole remaining director. In the alternative,
 340 a board may hold an election to fill the vacancy, in which case
 341 the election procedures must conform to sub-subparagraph 4.a.
 342 unless the association governs 10 units or fewer and has opted
 343 out of the statutory election process, in which case the bylaws
 344 of the association control. Unless otherwise provided in the
 345 bylaws, a board member appointed or elected under this section
 346 shall fill the vacancy for the unexpired term of the seat being
 347 filled. Filling vacancies created by recall is governed by
 348 paragraph (j) and rules adopted by the division.

Page 12 of 19

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

580-01792-14

2014440c1

349 10. This chapter does not limit the use of general or
 350 limited proxies, require the use of general or limited proxies,
 351 or require the use of a written ballot or voting machine for any
 352 agenda item or election at any meeting of a timeshare
 353 condominium association or nonresidential condominium
 354 association.

356 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 357 association of 10 or fewer units may, by affirmative vote of a
 358 majority of the total voting interests, provide for different
 359 voting and election procedures in its bylaws, which may be by a
 360 proxy specifically delineating the different voting and election
 361 procedures. The different voting and election procedures may
 362 provide for elections to be conducted by limited or general
 363 proxy.

364 (k) *Arbitration*.—There shall be a provision for mandatory
 365 nonbinding arbitration as provided for in s. 718.1255 for any
 366 residential condominium.

367 (l) *Certificate of compliance*.—A provision that a
 368 certificate of compliance from a licensed electrical contractor
 369 or electrician may be accepted by the association's board as
 370 evidence of compliance of the condominium units with the
 371 applicable fire and life safety code must be included.
 372 Notwithstanding chapter 633 or of any other code, statute,
 373 ordinance, administrative rule, or regulation, or any
 374 interpretation of the foregoing, an association, residential
 375 condominium, or unit owner is not obligated to retrofit the
 376 common elements, association property, or units of a residential
 377 condominium with a fire sprinkler system in a building that has

580-01792-14

2014440c1

378 been certified for occupancy by the applicable governmental
 379 entity if the unit owners have voted to forego such retrofitting
 380 by the affirmative vote of a majority of all voting interests in
 381 the affected condominium. The local authority having
 382 jurisdiction may not require completion of retrofitting with a
 383 fire sprinkler system before January 1, 2020 ~~the end of 2019~~. By
 384 December 31, 2016, a residential condominium ~~an~~ association that
 385 is not in compliance with the requirements for a fire sprinkler
 386 system and has not voted to forego retrofitting of such a system
 387 must initiate an application for a building permit for the
 388 required installation with the local government having
 389 jurisdiction demonstrating that the association will become
 390 compliant by December 31, 2019.

391 1. A vote to forego retrofitting may be obtained by limited
 392 proxy or by a ballot personally cast at a duly called membership
 393 meeting, or by execution of a written consent by the member, and
 394 is effective upon recording a certificate attesting to such vote
 395 in the public records of the county where the condominium is
 396 located. The association shall mail or hand deliver to each unit
 397 owner written notice at least 14 days before the membership
 398 meeting in which the vote to forego retrofitting of the required
 399 fire sprinkler system is to take place. Within 30 days after the
 400 association's opt-out vote, notice of the results of the opt-out
 401 vote must be mailed or hand delivered to all unit owners.
 402 Evidence of compliance with this notice requirement must be made
 403 by affidavit executed by the person providing the notice and
 404 filed among the official records of the association. After
 405 notice is provided to each owner, a copy must be provided by the
 406 current owner to a new owner before closing and by a unit owner

580-01792-14

2014440c1

407 to a renter before signing a lease.

408 2. If there has been a previous vote to forego
409 retrofitting, a vote to require retrofitting may be obtained at
410 a special meeting of the unit owners called by a petition of at
411 least 10 percent of the voting interests. Such a vote may only
412 be called once every 3 years. Notice shall be provided as
413 required for any regularly called meeting of the unit owners,
414 and must state the purpose of the meeting. Electronic
415 transmission may not be used to provide notice of a meeting
416 called in whole or in part for this purpose.

417 3. As part of the information collected annually from
418 condominiums, the division shall require condominium
419 associations to report the membership vote and recording of a
420 certificate under this subsection and, if retrofitting has been
421 undertaken, the per-unit cost of such work. The division shall
422 annually report to the Division of State Fire Marshal of the
423 Department of Financial Services the number of condominiums that
424 have elected to forego retrofitting.

425 4. Notwithstanding s. 553.509, a residential ~~an~~ association
426 may not be obligated to, and may forego the retrofitting of, any
427 improvements required by s. 553.509(2) upon an affirmative vote
428 of a majority of the voting interests in the affected
429 condominium.

430 Section 2. Subsection (5) of section 718.113, Florida
431 Statutes, is amended to read:

432 718.113 Maintenance; limitation upon improvement; display
433 of flag; hurricane shutters and protection; display of religious
434 decorations.—

435 (5) Each board of administration of a residential

Page 15 of 19

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

580-01792-14

2014440c1

436 condominium shall adopt hurricane shutter specifications for
437 each building within each condominium operated by the
438 association which shall include color, style, and other factors
439 deemed relevant by the board. All specifications adopted by the
440 board must comply with the applicable building code.

441 (a) The board may, subject to s. 718.3026 and the approval
442 of a majority of voting interests of the residential
443 condominium, install hurricane shutters, impact glass, code-
444 compliant windows or doors, or other types of code-compliant
445 hurricane protection that comply with or exceed the applicable
446 building code. However, a vote of the owners is not required if
447 the maintenance, repair, and replacement of hurricane shutters,
448 impact glass, code-compliant windows or doors, or other types of
449 code-compliant hurricane protection are the responsibility of
450 the association pursuant to the declaration of condominium. If
451 hurricane protection or laminated glass or window film
452 architecturally designed to function as hurricane protection
453 that complies with or exceeds the current applicable building
454 code has been previously installed, the board may not install
455 hurricane shutters, impact glass, code-compliant windows or
456 doors, or other types of code-compliant hurricane protection
457 except upon approval by a majority vote of the voting interests.

458 (b) The association is responsible for the maintenance,
459 repair, and replacement of the hurricane shutters, impact glass,
460 code-compliant windows or doors, or other types of code-
461 compliant hurricane protection authorized by this subsection if
462 such property is the responsibility of the association pursuant
463 to the declaration of condominium. If the hurricane shutters,
464 impact glass, code-compliant windows or doors, or other types of

Page 16 of 19

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

580-01792-14 2014440c1

465 code-compliant hurricane protection are the responsibility of
 466 the unit owners pursuant to the declaration of condominium, the
 467 maintenance, repair, and replacement of such items are the
 468 responsibility of the unit owner.

469 (c) The board may operate shutters, impact glass, code-
 470 compliant windows or doors, or other types of code-compliant
 471 hurricane protection installed pursuant to this subsection
 472 without permission of the unit owners only if such operation is
 473 necessary to preserve and protect the condominium property and
 474 association property. The installation, replacement, operation,
 475 repair, and maintenance of such shutters, impact glass, code-
 476 compliant windows or doors, or other types of code-compliant
 477 hurricane protection in accordance with the procedures set forth
 478 in this paragraph are not a material alteration to the common
 479 elements or association property within the meaning of this
 480 section.

481 (d) Notwithstanding any other provision in the residential
 482 condominium documents, if approval is required by the documents,
 483 a board may not refuse to approve the installation or
 484 replacement of hurricane shutters, impact glass, code-compliant
 485 windows or doors, or other types of code-compliant hurricane
 486 protection by a unit owner conforming to the specifications
 487 adopted by the board.

488 Section 3. Subsection (6) is added to section 718.1255,
 489 Florida Statutes, to read:

490 718.1255 Alternative dispute resolution; voluntary
 491 mediation; mandatory nonbinding arbitration; legislative
 492 findings.—

493 (6) APPLICABILITY.—This section does not apply to a

580-01792-14 2014440c1

494 nonresidential condominium unless otherwise specifically
 495 provided for in the declaration of the nonresidential
 496 condominium.

497 Section 4. Section 718.1256, Florida Statutes, is amended
 498 to read:

499 718.1256 Condominiums as residential property.—For the
 500 purpose of property and casualty insurance risk classification,
 501 residential condominiums shall be classed as residential
 502 property.

503 Section 5. Paragraph (a) of subsection (2) of section
 504 718.403, Florida Statutes, is amended and subsection (9) is
 505 added to that section, to read:

506 718.403 Phase condominiums.—

507 (2) The original declaration of condominium, or an
 508 amendment to the declaration, which amendment has been approved
 509 by all unit owners and unit mortgagees and the developer, shall
 510 describe:

511 (a) The land which may become part of the condominium and
 512 the land on which each phase is to be built. The descriptions
 513 shall include metes and bounds or other legal descriptions of
 514 the land for each phase, plot plans, and surveys. Plot plans,
 515 attached as an exhibit, must show the approximate location of
 516 all existing and proposed buildings and improvements that may
 517 ultimately be contained within the condominium. The plot plan
 518 may be modified by the developer as to unit or building types
 519 but, in a residential condominium, only to the extent that such
 520 changes are described in the declaration. If provided in the
 521 declaration, the developer may make nonmaterial changes in the
 522 legal description of a phase.

580-01792-14

2014440c1

523 (9) Paragraphs (2)(b)-(f) and subsection (8) do not apply
524 to nonresidential condominiums.

525 Section 6. Section 718.707, Florida Statutes, is amended to
526 read:

527 718.707 Time limitation for classification as bulk assignee
528 or bulk buyer.—A person acquiring condominium parcels may not be
529 classified as a bulk assignee or bulk buyer unless the
530 condominium parcels were acquired on or after July 1, 2010, but
531 before July 1, 2016 ~~2015~~. The date of such acquisition shall be
532 determined by the date of recording a deed or other instrument
533 of conveyance for such parcels in the public records of the
534 county in which the condominium is located, or by the date of
535 issuing a certificate of title in a foreclosure proceeding with
536 respect to such condominium parcels.

537 Section 7. This act shall take effect July 1, 2014.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 440
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/11/2014 1 Amendment 311588		3/11/2014 2 Motion to report as Committee Substitute			
			Latvala	Soto				
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
8	0		RCS	-	FAV	-		
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-14

Meeting Date

Topic _____

Bill Number 440
(if applicable)

Name Peter Dumber

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe St

Phone 999-4100

Street

Tallahassee Fl 32301

E-mail pdumber@deanmead.com

City

State

Zip

Speaking: For Against Information

Representing Real Property Section - Florida Bar

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 (10/20/11)

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 Judiciary

BILL: CS/CS/SB 570

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Galvano

SUBJECT: Title Insurance

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 570 changes the unearned premium reserve requirement for title insurers holding \$50 million or more in surplus to policyholders. Those title insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, with certain adjustments. Title insurers having less than \$50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per \$1,000 of net retained liability).

This bill creates a schedule for the release of the unearned premium reserve over 20 years for companies with more than \$50 million in surplus, as follows: 35 percent of the initial sum during the year following the year the premium was written or assumed, 15 percent during each year of the next succeeding 2 years, 10 percent during the next succeeding year, 3 percent during each of the next succeeding 3 years, 2 percent during each of the next succeeding 3 years, and 1 percent during each of the next succeeding 10 years.

This bill allows a title insurer organized under the laws of another state which transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state. That reserve is released according to the requirements of law in effect in the former state at the time of domicile. The release of reserve based on premium written after the insurer moves to Florida is governed by Florida law.

The bill also responds to a recent Florida Supreme Court decision by providing that only contract remedies are available for the breach of a duty that arises solely from the terms of a contract of

title insurance or other instrument, relating to real estate closings, issued and approved by the Office of Insurance Regulation.

This bill provides that title insurance agency and agent applications created by the Department of Financial Services need not be on a printed form. This change allows the use of online applications. Current law allows an applicant for licensure as a title insurance agent to substitute work experience in the title insurance business for classroom instruction. This bill provides that the work experience must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. This bill provides that the naming requirements do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming requirements are effective October 1, 2014.

This bill removes the requirement that a title insurance agency deposit securities with the Department of Financial Services having a market value of \$35,000 or a bond in the same amount at the time of application for licensure. This requirement is no longer necessary because a title insurance agency must obtain a surety bond of at least \$35,000 payable to the title insurer. This bill provides that a title insurance agent must be licensed and appointed in order to sell title insurance.

This bill changes from March 31 to May 31, the date which title insurers and agencies must report information required by the Office of Insurance Regulation for the analysis of title insurance premium rates.

II. Present Situation:

Title Insurance

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance serves to indemnify the insured against financial loss caused by defects in title arising out of events that occurred before the date of the policy.²

Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (“Department”) while title insurance companies are licensed and regulated by the Office of Insurance Regulation.

¹ See s. 624.608, F.S.

² See *Lawyers Title Insurance Co. v. Novastar Mortgage, Inc.*, 862 So. 2d 793,797 (Fla. 4th DCA 2004).

Title Insurance Reserve Requirements

Insurance companies must maintain cash or liquid assets on hand to pay claims and satisfy other liabilities. These are called reserves. A title insurer must maintain two types of reserves. First, a title insurer must maintain reserves sufficient to pay all of its unpaid losses.³ In addition, a title insurer must maintain a guaranty fund or unearned premium reserve to be used for reinsurance in the event the insurer becomes insolvent.⁴

Section 625.111, F.S., provides that the unearned premium reserve must consist of at least the sum of:

- A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums. For domestic title insurers subject to this section, such amounts must be calculated in accordance with provisions of law of this state in effect at the time the associated premiums were written or assumed and as amended prior to July 1, 1999.
- A total amount equal to 30 cents for each \$1,000 of net retained liability⁵ for policies written or title liability assumed in reinsurance on or after July 1, 1999.
- An additional amount, if deemed necessary by a qualified actuary.

Title Insurance Unearned Premium Reserve Requirements in Other States

According to the Office of Insurance Regulation (OIR), Florida “has one of the highest statutory premium reserve requirements of all the states in which major title insurers are domiciled.”⁶ As examples, the OIR cited:

California	4.5% of premium and fees
Florida	\$.30 per \$1,000 of net retained liability
Minnesota	6.5% of premium and fees
Nebraska	\$.17 per \$1,000 of net retained liability
Texas	\$.185 per \$1,000 of net retained liability. ⁷

Releasing Unearned Premium Reserve

In 1999, the Legislature changed the law to require a domestic title insurer to release the reserve over a period of 20 years.⁸ Section 625.111, F.S., set the following schedule for release of reserves:

For policies written before July 1, 1999, an insurer shall release:

- 30 percent of the initial aggregate sum during 1999

³ See ss. 625.041, 625.111, F.S.

⁴ See s. 625.111, F.S.

⁵ “Net retained liability” means the “total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.” s. 625.11(4)(a), F.S.

⁶ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) (on file with the Senate Committee on Banking and Insurance).

⁷ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) at p. 2 (on file with the Senate Committee on Banking and Insurance).

⁸ See Chapter 99-336, Laws of Florida.

- 15 percent during calendar year 2000
- 10 percent during each of calendar years 2001 and 2002
- 5 percent during each of calendar years 2003 and 2004
- 3 percent during each of calendar years 2005 and 2006
- 2 percent during each of calendar years 2007-2013
- 1 percent during each of calendar years 2014-2018

For policies written after July 1, 1999, an insurer shall release:

- 30 percent of the initial sum during calendar year next succeeding the year the premium was written
- 15 percent during the next succeeding year
- 10 percent during each of the next succeeding 2 years
- 5 percent during each of the next succeeding 2 years
- 3 percent during each of the next succeeding 2 years
- 2 percent during each of the next succeeding 7 years
- 1 percent during each of the next succeeding 5 years

Title Insurance and the Economic Loss Rule

The economic loss rule is a “judicially created doctrine that sets forth circumstances under which a tort action is prohibited if the only damages suffered are economic losses.”⁹ Parties to a contract are generally prohibited from recovering damages in tort for matters arising from the contract.¹⁰ The Florida Supreme Court has explained:

Underlying [the economic loss] rule is the assumption that the parties to a contract have allocated the economic risks of nonperformance through the bargaining process. A party to a contract who attempts to circumvent the contractual agreement by making a claim for economic loss in tort is, in effect, seeking to obtain a better bargain than originally made. Thus, when the parties are in privity, contract principles are generally more appropriate for determining remedies for consequential damages that the parties have, or could have, addressed through their contractual agreement. Accordingly, courts have held that a tort action is barred where a defendant has not committed a breach of duty apart from a breach of contract.¹¹

In *Tiara Condominium Association v. Marsh & McClennan*, the Florida Supreme Court held that the economic loss rule does not bar an insured’s suit against an insurance broker where the parties are in contractual privity and the damages are solely economic.¹² The court further held that the economic loss rule is limited to products liability cases.¹³ In limiting the economic loss

⁹ *Tiara Condominium Association v. Marsh & McClennan*, 110 So. 3d 399, 401 (Fla. 2013).

¹⁰ *Id.* at 402.

¹¹ *Indemnity Ins. Co. of North America v. American Aviation, Inc.*, 891 So. 2d 532, 536-537 (Fla. 2004) (internal citations omitted).

¹² *Tiara Condominium Association*, 399 So. 3d at 402.

¹³ *Tiara Condominium Association*, 399 So. 3d at 402.

rule to product liability cases, the court explained that it had long “expressed its desire” to return the economic loss rule to its intended purpose of limiting actions in product liability cases.¹⁴

Prior to *Tiara Condominium*, Florida followed a majority view that title insurers owe no duty to the insured.¹⁵ A leading case on the applicability of the economic loss rule and the title insurance industry was *Chicago Title Insurance Co. v. Commonwealth Forest Investments, Inc.*¹⁶ In that case, the court found that “the economic loss rule protects these contractual expectations, including the important expectation that a title insurer’s risk will be limited to the dollar amount shown on the face of the policy.”¹⁷ The court concluded that the negligence action against the title insurer was barred by the economic loss rule and the unambiguous language of the policy which precluded an independent tort action for negligence.¹⁸

Licensing and Appointment of Title Insurance Agents

A person may not act as a title insurance agent until the person is licensed by the Department.¹⁹ Once a person obtains a license, the person must be authorized or appointed by a title insurer to transact insurance on behalf of the insurer.²⁰ In order to obtain a license, an applicant must complete a 40-hour classroom course in title insurance or have had 12 months of experience in responsible title insurance duties while working as a substantially full-time employee of a title agency, title agent, title insurer, or an attorney who conducts real estate closings and issues title insurance policies but is exempt from licensure.²² An applicant must also qualify to take and pass a required examination.²³

Naming of Title Insurance Agencies

Florida law generally prohibits an insurance agency name from being deceptive or misleading. Section 626.8413, F.S., provides that a title insurance agent shall not adopt a name which contains the words “title insurance,” “title guaranty,” or “title guarantee” unless such words are followed by the word “agent” or “agency.” The restrictions on names make clear to a purchaser that title insurance is being purchased from an agent or agency rather than directly from a title insurer. The naming requirements in s. 626.8413, F.S., do not apply to a title insurer acting as an agent for another title insurer.

¹⁴ *Tiara Condominium Association*, 399 So. 3d at 407.

¹⁵ See e.g., *MacDonald v. Old Republic Nat. Title Ins. Co.*, 882 F.Supp.2d 236, 244 (D.Mass. 2012).

¹⁶ *Chicago Title Ins. Co. v. Commonwealth Forest Inv. Inc.*, 494 F.Supp.2d 1332, (M.D. Fla. 2007).

¹⁷ *Chicago Title Ins. Co.*, 494 F.Supp.2d at 1337.

¹⁸ *Chicago Title Ins. Co.*, 494 F.Supp.2d at 1337-38.

¹⁹ See s. 626.8417, F.S.

²⁰ Title insurers and attorneys admitted to practice law in Florida and in good standing with The Florida Bar are exempt from the licensing and appointment requirements. See s. 626.8417(4)(a), F.S.

²¹ See s. 626.841(1), Florida Statutes, defining “title insurance agent” as one appointed by a title insurer to issue policies on its behalf.

²² See s. 626.8417(3)(a), F.S.

²³ See s. 626.8417(3)(b), F.S.

Bond Requirement

Section 626.8418(2), F.S., requires an applicant for licensure as a title insurance agency to deposit security with the Department of at least \$35,000 or post a surety bond payable to the Department of at least \$35,000 for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. Section 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least \$35,000 payable to the title insurer appointing the agency. The bond must be for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer.

Reports to the Office of Insurance Regulation

Title insurance agencies and title insurers are required to submit information including revenue, loss, and expense data to the Office of Insurance Regulation (OIR) on March 31 of the year after the reporting year.²⁴ The Office of Insurance Regulation uses the information to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry.²⁵

III. Effect of Proposed Changes:

Title Insurance Reserve Requirements (Sections 1 & 2)

This bill provides that a title insurer must reserve the amount necessary to pay all of its known unpaid losses and claims incurred on or before the date of the financial statement, together with the expenses of adjustment or settlement. This requirement is in addition to the reserves required under s. 625.111, F.S. This bill removes references to unreported claims – claims where the loss has occurred but has not been reported – as a liability to be charged against a title insurers assets because unreported claims are accounted for in title insurance by the unearned premium reserve.²⁶

This bill creates a new unearned premium reserve requirement for title insurers holding \$50 million or more in surplus as to policyholders. Those insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the OIR. Title insurers having less than \$50 million in surplus as to policyholders must continue to record unearned premium reserve in accordance with current law (30 cents per \$1,000 of net retained liability).

The effect of this change will reduce the unearned premium reserve requirement for title insurers having more than \$50 million in surplus. This change will not have an immediate effect because there are no title insurers with \$50 million in surplus domiciled in Florida.²⁷ According to the OIR, reducing the statutory premium reserve requirement for larger title insurers could

²⁴ See s. 627.782(8), F.S.

²⁵ *Id.*

²⁶ See Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 10, 2014) (on file with staff of Senate Judiciary Committee) at p. 2.

²⁷ *Id.* at 3.

encourage foreign title insurers to re-domesticate to Florida.²⁸ Nationwide, seven title insurers have a surplus in excess of \$50 million.²⁹ The two Florida insurers placed in the rehabilitation since 2008 had less than \$50 million in surplus prior to the entry of the rehabilitation orders.³⁰ A third Florida insurer ceased writing new policies when its surplus dropped from \$27 million to \$6 million.³¹

The bill does not remove the requirement that title insurers having a surplus of \$50 million or more also reserve 30 cents for each \$1,000 of net retained liability.³²

Releasing Unearned Premium Reserve (Section 2)

This bill creates a schedule for the release of unearned premium reserve for companies with more than \$50 million in surplus. This bill provides that the unearned premium for policies written or title liability assumed during a particular calendar year shall be released from reserve as follows:

The insurer shall release 35 percent of the initial sum during the year following the year the premium was written or assumed, with one quarter of that amount being released on March 31, June 30, September 30, and December 31 of such year.

Thereafter, this bill provides that the insurer shall release, on the same quarterly basis:

- 15 percent during each year of the next succeeding 2 years
- 10 percent during the next succeeding year
- 3 percent during each of the next succeeding 3 years
- 2 percent during each of the next succeeding 3 years
- 1 percent during each of the next succeeding 10 years

Reserve Requirement When a Title Insurer Moves to Florida (Section 2)

Currently, no title insurers are domiciled in Florida. If a title insurer moves to the state, it must immediately comply with Florida's reserve requirements. This bill allows a title insurer organized under the laws of another state that transfers its domicile to Florida to have an unearned premium reserve as required by the laws of the title insurer's former state of domicile. The reserve is released according to the requirements of law in effect in the former state at the time of domicile.

This bill requires that, for new business written after the effective date of the transfer of domicile to Florida, the domestic title insurer shall add to and set aside in the statutory or unearned premium reserve the appropriate amount as determined by the company's surplus.

²⁸ *Id.*

²⁹ *Demotech Performance of Title Insurance Companies 2013* at p. 253.

³⁰ See <http://www.myfloridacfo.com/Division/Receiver/Companies/KEL/default.htm#UxD1zfldUeE> and http://www.myfloridacfo.com/Division/Receiver/Companies/National_Title/default.htm#UxD2BPldUeF (last visited February 28, 2014).

³¹ See <http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=0&refnum=14608> (last visited February 28, 2014).

³² Requiring insurers with a surplus of more than \$50 million to have both a reserve of additional 6.5 percent of premium and a reserve of 30 cents per \$1,000 of net retained liability appears to be a drafting error. See Section VI of this analysis.

Bulk Reserves (Section 2)

This bill provides that a domestic title insurer is not required to record a separate bulk reserve. “Bulk reserve” means provision for subsequent development on known claims. This bill further provides that if a separate bulk reserve is recorded, the statutory premium reserve must be reduced by the amount recorded for such bulk reserve.

The Economic Loss Rule (Section 11)

This bill responds to the 2013 decision of the Florida Supreme Court *Tiara Condominium Association v. Marsh & McClennan*, by providing that only contract remedies are available for breach of a duty which arises solely from the terms of a contract of title insurance or an instrument, such as closing protection letter, issued pursuant to s. 627.786(3), F.S.

Licensing and Appointment of Title Insurance Agents (Sections 5 and 7)

This bill amends s. 626.8412, F.S., to provide that a title insurance agent must be licensed by the Department of Financial Services and appointed by a title insurer in order to sell title insurance.

This bill provides that the Department’s license application need not be on a printed form. This change allows the Department to use online applications. This bill specifies that the 12 months of experience in responsible title insurance duties required as an alternative to classroom instruction must be under the supervision of a licensed title insurance agent, a title insurer, or an attorney.

Naming of Title Insurance Agencies (Section 6)

This bill applies the same naming requirements applicable to title insurance agents to title insurance agencies. It provides that a title insurance agent or agency may not adopt a name which contains the words “title insurance,” “title company,” “title guaranty,” or “title guarantee” unless such words are followed by the word “agent” or “agency.” This bill provides that the naming restrictions do not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance and both are acting under the names designated on such certificates. The changes to the naming requirements are effective October 1, 2014.

Bond Requirement (Sections 8 and 9)

The bill removes the requirement that a title insurance agency deposit with the Department securities having a market value of \$35,000 or a bond in the same amount at the time of application for licensure for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with an appointing insurer. This requirement is no longer necessary because s. 626.8419(1)(c), F.S., requires a title insurance agency to obtain a surety bond of at least \$35,000 payable to the title insurer.

Technical Changes

Sections 10 and 13 of this bill removes obsolete language relating to binders and guarantees of title. Those terms are no longer used.

Section 12 changes the date which title insurers and title insurance agencies must report required revenue, loss, and expense data to the Office of the Insurance Regulation from March 31 to May 31.

Other technical changes which clarify existing law, without changing its meaning, are made throughout the bill.

Effective Date (Section 14)

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Limiting liability to contract remedies could benefit insurers by making remedies for breach of contract more predictable.

According to the Office of Insurance Regulation, this bill may encourage foreign title insurers to re-domesticate to Florida which may increase business opportunities.³³ Concerns have been expressed that the “two tier” reserve system created by the bill may disadvantage smaller title insurers. First, there is concern that lenders could use \$50

³³ Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 20, 2014) (on file with staff of Senate Judiciary Committee).

million as a benchmark for acceptable surplus. Finally, there is concern that smaller title insurers would be at a disadvantage when offering reissue rates to consumers.³⁴

C. **Government Sector Impact:**

According to the Office of Insurance Regulation, this bill may encourage foreign title insurers to re-domesticate to Florida which could increase tax and fee revenues to state and local governments.³⁵

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 625.041, 625.111, 624.407, 624.408, 626.8412, 626.8413, 626.8417, 626.8418, 626.8419, 626.8437, 627.778, 627.782, and 627.7845.

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 Judiciary on March 11, 2014:

The committee substitute adds to the underlying bill the substance of CS/SB 758, which relates to title insurance reserves.

CS by Banking and Insurance on February 4, 2014:

The CS provides that only contract remedies are available for a breach of duty arising from the terms of an instrument issued pursuant to s. 627.786(3), F.S., and changes the date which title insurers and title insurance agencies must report information to the Office of Insurance Regulation from March 31 to May 31.

B. **Amendments:**

None.

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

³⁴ Discussion points provided by representatives at Westcor Land Title Insurance Company (on file with the staff of the Senate Banking and Insurance Committee).

³⁵ Office of Insurance Regulation, *SB 758 2014 Agency Legislative Bill Analysis* (February 20, 2014) (on file with staff of Senate Judiciary Committee).



624016

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment (with title amendment)

Before line 29

insert:

Section 1. Section 625.041, Florida Statutes, is amended to read:

625.041 Liabilities, in general.—In any determination of the financial condition of an insurer, liabilities to be charged against its assets ~~shall~~ include:

(1) The amount, estimated in accordance ~~consistent~~ with the ~~provisions of~~ this code, necessary to pay all of its unpaid



624016

12 losses and claims incurred on or before ~~prior to~~ the date of
13 statement, whether reported or unreported, together with the
14 expenses of adjustment or settlement thereof.

15 (2) With respect to title insurance, the amount, estimated
16 in accordance with this code, necessary to pay all of its known
17 unpaid losses and claims incurred on or before the date of
18 statement, together with the expenses of adjustment or
19 settlement thereof. This requirement is in addition to the
20 reserves required under s. 625.111.

21 (3)~~(2)~~ With respect ~~reference~~ to life and health insurance
22 and annuity contracts:

23 (a) The amount of reserves on life insurance policies and
24 annuity contracts in force, valued according to the tables of
25 mortality, rates of interest, and methods adopted pursuant to
26 this code which are applicable thereto.

27 (b) Reserves for disability benefits, for both active and
28 disabled lives.

29 (c) Reserves for accidental death benefits.

30 (d) Any additional reserves that may be required by the
31 office in accordance ~~consistent~~ with practice formulated or
32 approved by the National Association of Insurance Commissioners
33 or its successor organization, on account of such insurance,
34 including contract and premium deficiency reserves.

35 (4)~~(3)~~ With respect ~~reference~~ to insurance other than that
36 specified in subsections (2) and (3) ~~subsection (2), and other~~
37 ~~than title insurance~~, the amount of reserves equal to the
38 unearned portions of the gross premiums charged on policies in
39 force, computed in accordance with this part.

40 (5)~~(4)~~ Taxes, expenses, and other obligations due or



624016

41 accrued at the date of the statement.

42 ~~(6)~~ ~~(5)~~ An ~~Any~~ insurer in this state which ~~that~~ writes
43 workers' compensation insurance shall accrue a liability on its
44 financial statements for all Special Disability Trust Fund
45 assessments that are due within the current calendar year. ~~In~~
46 ~~addition,~~ Those insurers shall also disclose in the notes to the
47 financial statements required to be filed pursuant to s. 624.424
48 an estimate of future Special Disability Trust Fund assessments,
49 if the assessments are likely to occur and can be estimated with
50 reasonable certainty.

51 Section 2. Section 625.111, Florida Statutes, is amended to
52 read:

53 625.111 Title insurance reserve.—In addition to an adequate
54 reserve as to outstanding losses relating to known claims, as
55 required under s. 625.041, a domestic title insurer shall
56 establish, segregate, and maintain a guaranty fund or unearned
57 premium reserve as provided in this section. The sums ~~required~~
58 ~~under this section~~ to be reserved for unearned premiums on title
59 guarantees and policies ~~at all times and for all purposes~~ shall
60 be considered and constitute unearned portions of the original
61 premiums and shall be charged as a reserve liability of the ~~such~~
62 insurer in determining its financial condition. ~~While~~ Such ~~sums~~
63 ~~are so~~ reserved funds, ~~they~~ shall be withdrawn from the use of
64 the insurer for its general purposes, impressed with a trust in
65 favor of the holders of title guarantees and policies, and held
66 available for reinsurance of the title guarantees and policies
67 in the event of the insolvency of the insurer. ~~Nothing contained~~
68 ~~in~~ This section does not ~~shall~~ preclude the ~~such~~ insurer from
69 investing such reserve in investments authorized by law, ~~for~~



624016

70 ~~such an insurer~~ and the income from such investments ~~invested~~
71 ~~reserve~~ shall be included in the general income of the insurer
72 and may ~~to~~ be used by such insurer for any lawful purpose.

73 (1) For an unearned premium ~~reserves~~ established on
74 or after July 1, 1999, such ~~unearned premium~~ reserve must be in
75 ~~shall consist of not less than~~ an amount at least equal to the
76 sum of the amounts specified in paragraphs (a), (b), and (d) for
77 title insurers holding less than \$50 million in surplus as to
78 policyholders as of the previous year end, and the sum of the
79 amounts specified in paragraphs (c) and (d) for title insurers
80 holding \$50 million or more in surplus as to policyholders as of
81 the previous year end:

82 (a) A reserve with respect to unearned premiums for
83 policies written or title liability assumed in reinsurance
84 before July 1, 1999, equal to the reserve established on June
85 30, 1999, for those unearned premiums with such reserve being
86 subsequently released as provided in subsection (2). For
87 domestic title insurers subject to this section, such amounts
88 shall be calculated in accordance with ~~provisions of law of this~~
89 state law in effect at the time the associated premiums were
90 written or assumed and as amended before ~~prior to~~ July 1, 1999.

91 (b) A total amount equal to 30 cents for each \$1,000 of net
92 retained liability for policies written or title liability
93 assumed in reinsurance on or after July 1, 1999, with such
94 reserve being subsequently released as provided in subsection
95 (2). For the purpose of calculating this reserve, the total of
96 the net retained liability for all simultaneous issue policies
97 covering a single risk shall be equal to the liability for the
98 policy with the highest limit covering that single risk, net of



624016

99 any liability ceded in reinsurance.

100 (c) On or after January 1, 2014, for title insurers holding
101 \$50 million or more in surplus as to policyholders as of the
102 previous year end, a minimum of 6.5 percent of the total of the
103 following:

104 1. Direct premiums written; and

105 2. Premiums for reinsurance assumed, plus other income,
106 less premiums for reinsurance ceded as displayed in Schedule P
107 of the title insurer's most recent annual statement filed with
108 the office with such reserve being subsequently released as
109 provided in subsection (2). Title insurers with less than \$50
110 million in surplus as to policyholders must continue to record
111 unearned premium reserve in accordance with paragraph (b).

112 (d) ~~(e)~~ An additional amount, if deemed necessary by a
113 qualified actuary, ~~to which shall~~ be subsequently released as
114 provided in subsection (2). Using financial results as of
115 December 31 of each year, all domestic title insurers shall
116 obtain a Statement of Actuarial Opinion from a qualified actuary
117 regarding the insurer's loss and loss adjustment expense
118 reserves, including reserves for known claims, ~~adverse~~
119 ~~development on known claims,~~ incurred but not reported claims,
120 and unallocated loss adjustment expenses. The actuarial opinion
121 ~~must shall~~ conform to the annual statement instructions for
122 title insurers adopted by the National Association of Insurance
123 Commissioners and ~~shall~~ include the actuary's professional
124 opinion of the insurer's reserves as of the date of the annual
125 statement. If the amount of the reserve stated in the opinion
126 and displayed in Schedule P of the annual statement for that
127 reporting date is greater than the sum of the known claim



624016

128 reserve and unearned premium reserve as calculated under this
129 section, as of the same reporting date and including any
130 previous actuarial provisions added at earlier dates, the
131 insurer shall add to the insurer's unearned premium reserve an
132 actuarial amount equal to the reserve shown in the actuarial
133 opinion, minus the known claim reserve and the unearned premium
134 reserve, as of the current reporting date and calculated in
135 accordance with this section, but not ~~in no event~~ calculated as
136 of any date before ~~prior to~~ December 31, 1999. The comparison
137 shall be made using that line on Schedule P displaying the Total
138 Net Loss and Loss Adjustment Expense which is comprised of the
139 Known Claim Reserve, and any associated Adverse Development
140 Reserve, the reserve for Incurred But Not Reported Losses, and
141 Unallocated Loss Adjustment Expenses.

142 (2) ~~(a)~~ With respect to reserves ~~the reserve~~ established in
143 accordance with:

144 (a) Paragraph (1) (a), the domestic title insurer shall
145 release the reserve over the subsequent ~~a period of 20~~
146 ~~subsequent~~ years as provided in this paragraph. The insurer
147 shall release 30 percent of the initial aggregate sum during
148 1999, with one quarter of that amount being released on March
149 31, June 30, September 30, and December 31, 1999, with the March
150 31 and June 30 releases to be retroactive and reflected on the
151 September 30 financial statements. Thereafter, the insurer shall
152 release, on the same quarterly basis as specified for reserves
153 released during 1999, a percentage of the initial aggregate sum
154 as follows: 15 percent during calendar year 2000, 10 percent
155 during each of calendar years 2001 and 2002, 5 percent during
156 each of calendar years 2003 and 2004, 3 percent during each of



624016

157 calendar years 2005 and 2006, 2 percent during each of calendar
158 years 2007-2013, and 1 percent during each of calendar years
159 2014-2018.

160 ~~(b) With respect to reserves established in accordance with~~
161 Paragraph (1)(b), the unearned premium for policies written or
162 title liability assumed during a particular calendar year shall
163 be earned, and released from reserve, over the subsequent a
164 ~~period of 20 subsequent~~ years as provided in this paragraph. The
165 insurer shall release 30 percent of the initial sum during the
166 year following ~~next succeeding~~ the year the premium was written
167 or assumed, with one quarter of that amount being released on
168 March 31, June 30, September 30, and December 31 of such year.
169 Thereafter, the insurer shall release, on the same quarterly
170 basis as specified for reserves released during the year
171 following ~~first succeeding~~ the year the premium was written or
172 assumed, a percentage of the initial sum as follows: 15 percent
173 during the next succeeding year, 10 percent during each of the
174 next succeeding 2 years, 5 percent during each of the next
175 succeeding 2 years, 3 percent during each of the next succeeding
176 2 years, 2 percent during each of the next succeeding 7 years,
177 and 1 percent during each of the next succeeding 5 years.

178 ~~(c) With respect to reserves established in accordance with~~
179 Paragraph (1)(c), the unearned premium for policies written or
180 title liability assumed during a particular calendar year shall
181 be earned, and released from reserve, over the subsequent 20
182 years at an amortization rate not to exceed the formula in this
183 paragraph. The insurer shall release 35 percent of the initial
184 sum during the year following the year the premium was written
185 or assumed, with one quarter of that amount being released on



624016

186 March 31, June 30, September 30, and December 31 of such year.
187 Thereafter, the insurer shall release, on the same quarterly
188 basis as specified for reserve released during the year
189 following the year the premium was written or assumed, a
190 percentage of the initial sum as follows: 15 percent during each
191 year of the next succeeding 2 years, 10 percent during the next
192 succeeding year, 3 percent during each of the next succeeding 3
193 years, 2 percent during each of the next succeeding 3 years, and
194 1 percent during each of the next succeeding 10 years.

195 (d) Paragraph (1)(d), any additional amount established in
196 any calendar year shall be released in the years subsequent to
197 its establishment as provided in paragraph (c) ~~(b)~~, with the
198 timing and percentage of releases being in all respects
199 identical to those of unearned premium reserves that are
200 calculated as provided in paragraph (c) ~~(b)~~ and established with
201 regard to premiums written or liability assumed in reinsurance
202 in the same year as the year in which any additional amount was
203 originally established.

204 (3) If a title insurer that is organized under the laws of
205 another state transfers its domicile to this state, the
206 statutory or unearned premium reserve shall be the amount
207 required by the laws of the title insurer's former state of
208 domicile as of the date of transfer of domicile and shall be
209 released from reserve according to the requirements of law in
210 effect in the former state at the time of domicile. On or after
211 January 1, 2014, for new business written after the effective
212 date of the transfer of domicile to this state, the domestic
213 title insurer shall add to and set aside in the statutory or
214 unearned premium reserve such amount as provided in paragraph



624016

215 (1) (c) .

216 (4) ~~(3)~~ At any reporting date, the amount of the required
217 releases of existing unearned premium reserves under subsection
218 (2) shall be calculated and deducted from the total unearned
219 premium reserve before any additional amount is established for
220 the current calendar year in accordance with ~~the provisions of~~
221 paragraph (1) (d) ~~(1) (e)~~.

222 (5) A domestic title insurer is not required to record a
223 separate bulk reserve. However, if a separate bulk reserve is
224 recorded, the statutory premium reserve must be reduced by the
225 amount recorded for such bulk reserve.

226 (6) ~~(4)~~ As used in this section, the term:

227 (a) "Bulk reserve" means provision for subsequent
228 development on known claims.

229 (b) ~~(a)~~ "Net retained liability" means the total liability
230 retained by a title insurer for a single risk, after taking into
231 account the deduction for ceded liability, if any.

232 (c) ~~(b)~~ "Qualified actuary" means a person who is, as
233 detailed in the National Association of Insurance Commissioners'
234 Annual Statement Instructions:

235 1. A member in good standing of the Casualty Actuarial
236 Society;

237 2. A member in good standing of the American Academy of
238 Actuaries who has been approved as qualified for signing
239 casualty loss reserve opinions by the Casualty Practice Council
240 of the American Academy of Actuaries; or

241 3. A person who otherwise has competency in loss reserve
242 evaluation as demonstrated to the satisfaction of the insurance
243 regulatory official of the domiciliary state. In such case, at



624016

244 least 90 days before ~~prior to the~~ filing of its annual
245 statement, the insurer must request ~~approval~~ that the person be
246 deemed qualified and that request must be approved or denied.
247 The request must include the National Association of Insurance
248 Commissioners' Biographical Form and a list of all loss reserve
249 opinions issued in the last 3 years by this person.

250 (d) ~~(e)~~ "Single risk" means the insured amount of a ~~any~~
251 title insurance policy, except that where two or more title
252 insurance policies are issued simultaneously covering different
253 estates in the same real property, "single risk" means the sum
254 of the insured amounts of all such ~~title insurance~~ policies. A
255 ~~Any~~ title insurance policy insuring a mortgage interest, a claim
256 payment under which reduces the insured amount of a fee or
257 leasehold title insurance policy, shall be excluded in computing
258 the amount of a single risk to the extent that the insured
259 amount of the mortgage title insurance policy does not exceed
260 the insured amount of the fee or leasehold title insurance
261 policy.

262 Section 3. Subsection (5) of section 624.407, Florida
263 Statutes, is amended to read:

264 624.407 Surplus required; new insurers.—

265 (5) For the purposes of this section, liabilities do not
266 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.
267 For purposes of computing minimum surplus as to policyholders
268 pursuant to s. 625.305(1), liabilities include liabilities
269 required under s. 625.041(5) ~~s. 625.041(4)~~.

270 Section 4. Subsection (2) of section 624.408, Florida
271 Statutes, is amended to read:

272 624.408 Surplus required; current insurers.—



624016

273 (2) For purposes of this section, liabilities do not
274 include liabilities required under s. 625.041(5) ~~s. 625.041(4)~~.
275 For purposes of computing minimum surplus as to policyholders
276 pursuant to s. 625.305(1), liabilities include liabilities
277 required under s. 625.041(5) ~~s. 625.041(4)~~.

278

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

280 And the title is amended as follows:

281 Delete line 2

282 and insert:

283 An act relating to title insurance; amending s.
284 625.041, F.S.; specifying that a title insurer is
285 liable for all of its unpaid losses and claims;
286 amending s. 625.111, F.S.; revising and specifying the
287 reserves certain title insurers must set aside;
288 specifying how such reserves will be released;
289 specifying which state law governs the amount of the
290 reserve when a title insurer transfers its domicile to
291 this state; defining "bulk reserve"; amending ss.
292 624.407 and 624.408, F.S.; conforming cross-
293 references; amending s.

By the Committee on Banking and Insurance; and Senator Galvano

597-01640-14

2014570c1

1 A bill to be entitled
 2 An act relating to title insurance; amending s.
 3 626.8412, F.S.; specifying that only a licensed and
 4 appointed agent or agency is authorized to sell title
 5 insurance; amending s. 626.8413, F.S.; providing
 6 additional limitations on the name that a title
 7 insurance agent or agency may adopt; providing
 8 applicability; amending s. 626.8417, F.S.; conforming
 9 provisions to changes made by the act; amending s.
 10 626.8418, F.S.; revising the application requirements
 11 for a title insurance agency license; deleting certain
 12 bonding requirements and procedures; amending s.
 13 626.8419, F.S.; conforming provisions to changes made
 14 by the act; amending s. 626.8437, F.S.; revising terms
 15 relating to grounds for actions against a licensee or
 16 appointee; amending s. 627.778, F.S.; limiting the
 17 remedies available for the breach of duty arising from
 18 a title insurance contract; amending s. 627.782, F.S.;
 19 revising the date that certain information relating to
 20 title insurance rates must be submitted to the Office
 21 of Insurance Regulation by title insurance agencies
 22 and insurers; amending s. 627.7845, F.S.; revising
 23 terms relating to determination of insurability and
 24 preservation of evidence of title search and
 25 examination; providing effective dates.

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

28
 29 Section 1. Paragraph (a) of subsection (1) of section

Page 1 of 9

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

597-01640-14

2014570c1

30 626.8412, Florida Statutes, is amended to read:
 31 626.8412 License and appointments required.-
 32 (1) Except as otherwise provided in this part:
 33 (a) Title insurance may be sold only by a licensed and
 34 appointed title insurance agent employed by a licensed and
 35 appointed title insurance agency or employed by a title insurer.
 36 Section 2. Effective October 1, 2014, section 626.8413,
 37 Florida Statutes, is amended to read:
 38 626.8413 Title insurance agents; certain names prohibited.-
 39 After October 1, 2014 ~~1985~~, a title insurance agent or title
 40 insurance agency may as defined in s. 626.841 shall not adopt a
 41 name that ~~which~~ contains the words "title insurance," "title
 42 company," "title guaranty," or "title guarantee;" unless such
 43 words are followed by the word "agent" or "agency" in the same
 44 size and type as the words preceding it ~~them~~. This section does
 45 not apply to a title insurer acting as an agent for another
 46 title insurer if both insurers hold active certificates of
 47 authority to transact title insurance business in this state and
 48 if both insurers are acting under the names designated on such
 49 certificates.
 50 Section 3. Section 626.8417, Florida Statutes, is amended
 51 to read:
 52 626.8417 Title insurance agent licensure; exemptions.-
 53 (1) A person may not act as a title insurance agent ~~as~~
 54 ~~defined in s. 626.841~~ until a valid title insurance agent's
 55 license has been issued to that person by the department.
 56 (2) An application for license as a title insurance agent
 57 shall be filed with the department on ~~printed~~ forms furnished by
 58 the department.

Page 2 of 9

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

597-01640-14

2014570c1

59 (3) The department ~~may shall~~ not grant or issue a license
 60 as a title insurance agent to ~~an any~~ individual who is found by
 61 ~~the department~~ ~~it~~ to be untrustworthy or incompetent, who does
 62 not meet the qualifications for examination specified in s.
 63 626.8414, or who does not meet the following qualifications:

64 (a) Within the 4 years immediately preceding the date of
 65 the application for license, the applicant must have completed a
 66 40-hour classroom course in title insurance, 3 hours of which
 67 ~~are shall be~~ on the subject matter of ethics, as approved by the
 68 department, or must have had at least 12 months of experience in
 69 responsible title insurance duties under the supervision of a
 70 licensed title insurance agent, title insurer, or attorney while
 71 working in the title insurance business as a substantially full-
 72 time, bona fide employee of a title insurance agency, title
 73 insurance agent, title insurer, or attorney who conducts real
 74 estate closing transactions and issues title insurance policies
 75 but who is exempt from licensure under subsection (4) ~~pursuant~~
 76 ~~to paragraph (4)(a)~~. If an applicant's qualifications are based
 77 upon the periods of employment at responsible title insurance
 78 duties, the applicant must submit, with the license application
 79 ~~for license on a form prescribed by the department, an the~~
 80 affidavit of the applicant and of the employer affirming setting
 81 ~~forth~~ the period of such employment, that the employment was
 82 substantially full time, and giving a brief abstract of the
 83 nature of the duties performed by the applicant.

84 (b) The applicant must have passed any examination for
 85 licensure required under s. 626.221.

86 (4)~~(a)~~ Title insurers or attorneys duly admitted to
 87 practice law in this state and in good standing with The Florida

597-01640-14

2014570c1

88 Bar are exempt from the provisions of this chapter relating with
 89 ~~regard~~ to title insurance licensing and appointment
 90 requirements.

91 ~~(5)(b)~~ An insurer may designate a corporate officer of the
 92 insurer to occasionally issue and countersign binders,
 93 commitments, and policies of title insurance ~~policies, or~~
 94 ~~guarantees of title~~. ~~The A~~ designated officer is exempt from the
 95 provisions of this chapter relating with regard to title
 96 insurance licensing and appointment requirements while the
 97 officer is acting within the scope of the designation.

98 ~~(6)(e)~~ If an attorney owns ~~or attorneys own~~ a corporation
 99 or other legal entity that which is doing business as a title
 100 insurance agency, other than an entity engaged in the active
 101 practice of law, the agency must be licensed and appointed as a
 102 title insurance agent.

103 Section 4. Section 626.8418, Florida Statutes, is amended
 104 to read:

105 626.8418 Application for title insurance agency license.—
 106 ~~Before Prior to~~ doing business in this state as a title
 107 insurance agency, ~~a title insurance agency must meet all of the~~
 108 ~~following requirements:~~

109 ~~(1)~~ the applicant must file with the department an
 110 application for a license as a title insurance agency, on
 111 ~~printed~~ forms furnished by the department, which that includes
 112 all of the following:

113 ~~(1)(a)~~ The name of each majority owner, partner, officer,
 114 and director of the title insurance agency.

115 ~~(2)(b)~~ The residence address of each person required to be
 116 listed under subsection (1) ~~paragraph (a)~~.

597-01640-14

2014570c1

117 ~~(3)(e)~~ The name of the title insurance agency and its
 118 principal business address.

119 ~~(4)(d)~~ The location of each title insurance agency office
 120 and the name under which each agency office conducts or will
 121 conduct business.

122 ~~(5)(e)~~ The name of each title insurance agent to be in
 123 full-time charge of a title insurance an agency office and
 124 specification of which office.

125 ~~(6)(f)~~ Such additional information as the department
 126 requires by rule to ascertain the trustworthiness and competence
 127 of persons required to be listed on the application and to
 128 ascertain that such persons meet the requirements of this code.

129 ~~(2)~~ The applicant must have deposited with the department
 130 securities of the type eligible for deposit under s. 625.52 and
 131 having at all times a market value of not less than \$35,000. In
 132 place of such deposit, the title insurance agency may post a
 133 surety bond of like amount payable to the department for the
 134 benefit of any appointing insurer damaged by a violation by the
 135 title insurance agency of its contract with the appointing
 136 insurer. If a properly documented claim is timely filed with the
 137 department by a damaged title insurer, the department may remit
 138 an appropriate amount of the deposit or the proceeds that are
 139 received from the surety in payment of the claim. The required
 140 deposit or bond must be made by the title insurance agency, and
 141 a title insurer may not provide the deposit or bond directly or
 142 indirectly on behalf of the title insurance agency. The deposit
 143 or bond must secure the performance by the title insurance
 144 agency of its duties and responsibilities under the issuing
 145 agency contracts with each title insurer for which it is

Page 5 of 9

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

597-01640-14

2014570c1

146 appointed. The agency may exchange or substitute other
 147 securities of like quality and value for securities on deposit,
 148 may receive the interest and other income accruing on such
 149 securities, and may inspect the deposit at all reasonable times.
 150 ~~Such deposit or bond must remain unimpaired as long as the title~~
 151 ~~insurance agency continues in business in this state and until 1~~
 152 ~~year after termination of all title insurance agency~~
 153 ~~appointments held by the title insurance agency. The title~~
 154 ~~insurance agency is entitled to the return of the deposit or~~
 155 ~~bond together with accrued interest after such year has passed,~~
 156 ~~if no claim has been made against the deposit or bond. If a~~
 157 ~~surety bond is unavailable generally, the department may adopt~~
 158 ~~rules for alternative methods to comply with this subsection.~~
 159 With respect to such alternative methods for compliance, the
 160 department must be guided by the past business performance and
 161 good reputation and character of the proposed title insurance
 162 agency. A surety bond is deemed to be unavailable generally if
 163 the prevailing annual premium exceeds 25 percent of the
 164 principal amount of the bond.

165 Section 5. Paragraphs (a) through (c) of subsection (1) of
 166 section 626.8419, Florida Statutes, are amended to read:

167 626.8419 Appointment of title insurance agency.—

168 (1) The title insurer engaging or employing the title
 169 insurance agency must file with the department, on forms
 170 furnished by the department, an application certifying that the
 171 proposed title insurance agency meets all of the following
 172 requirements:

173 (a) The title insurance agency ~~has~~ must have obtained a
 174 fidelity bond in an amount of at least, ~~not less than~~ \$50,000,

Page 6 of 9

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

597-01640-14

2014570c1

175 acceptable to the insurer appointing the agency. If a fidelity
176 bond is unavailable generally, the department ~~shall~~ ~~must~~ adopt
177 rules for alternative methods to comply with this paragraph.

178 (b) The title insurance agency must have obtained errors
179 and omissions insurance in an amount acceptable to the insurer
180 appointing the agency. The amount of the coverage must be at
181 least ~~may not be less than~~ \$250,000 per claim and an aggregate
182 limit with a deductible no greater than \$10,000. If errors and
183 omissions insurance is unavailable generally, the department
184 shall ~~must~~ adopt rules for alternative methods that ~~to~~ comply
185 with this paragraph.

186 (c) ~~Notwithstanding s. 626.8418(2),~~ The title insurance
187 agency must have obtained a surety bond in an amount of at least
188 ~~not less than~~ \$35,000 made payable to the title insurer or title
189 insurers appointing the agency. The surety bond must be for the
190 benefit of any appointing title insurer damaged by a violation
191 by the title insurance agency of its contract with the
192 appointing title insurer. If the surety bond is payable to
193 multiple title insurers, the surety bond must provide that each
194 title insurer is to be notified if in the event a claim is made
195 upon the surety bond or the bond is terminated.

196 Section 6. Subsections (3) and (4) of section 626.8437,
197 Florida Statutes, are amended to read:

198 626.8437 Grounds for denial, suspension, revocation, or
199 refusal to renew license or appointment.—The department shall
200 deny, suspend, revoke, or refuse to renew or continue the
201 license or appointment of any title insurance agent or agency,
202 and it shall suspend or revoke the eligibility to hold a license
203 or appointment of such person, if it finds that as to the

Page 7 of 9

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

597-01640-14

2014570c1

204 applicant, licensee, appointee, or any principal thereof, any
205 one or more of the following grounds exist:

206 (3) Willful misrepresentation of any title insurance
207 policy, ~~guarantee of title, binder,~~ or commitment, or willful
208 deception with regard to ~~any~~ such policy, ~~guarantee, binder,~~ or
209 commitment, done ~~either~~ in person or by any form of
210 dissemination of information or advertising.

211 (4) Demonstrated lack of fitness or trustworthiness to
212 represent a title insurer in the issuance of its commitments or
213 ~~binders,~~ policies of title insurance, ~~or guarantees of title.~~

214 Section 7. Subsection (3) is added to section 627.778,
215 Florida Statutes, to read:

216 627.778 Limit of risk.—

217 (3) Only contract remedies are available for the breach of
218 a duty which arises solely from the terms of a contract of title
219 insurance or an instrument issued pursuant to s. 627.786(3).

220 Section 8. Subsection (8) of section 627.782, Florida
221 Statutes, is amended to read:

222 627.782 Adoption of rates.—

223 (8) Each title insurance agency and insurer licensed to do
224 business in this state and each insurer's direct or retail
225 business in this state shall maintain and submit information,
226 including revenue, loss, and expense data, as the office
227 determines necessary to assist in the analysis of title
228 insurance premium rates, title search costs, and the condition
229 of the title insurance industry in this state. Such ~~This~~
230 information shall ~~must~~ be transmitted to the office annually by
231 May ~~March~~ 31 of the year after the reporting year. The
232 commission shall adopt rules relating to ~~regarding~~ the

Page 8 of 9

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

597-01640-14

2014570c1

233 collection and analysis of the data from the title insurance
234 industry.

235 Section 9. Subsection (2) of section 627.7845, Florida
236 Statutes, is amended to read:

237 627.7845 Determination of insurability required;
238 preservation of evidence of title search and examination.—

239 (2) The title insurer shall cause the evidence of the
240 determination of insurability and the reasonable title search or
241 search of the records of a Uniform Commercial Code filing office
242 to be preserved and retained in its files or in the files of its
243 title insurance agent or agency for at least ~~a period of not~~
244 ~~less than~~ 7 years after the title insurance commitment or, title
245 insurance policy, ~~or guarantee of title~~ was issued. The title
246 insurer or its agent or agency must produce the evidence
247 required to be maintained under ~~by~~ this subsection at its
248 offices upon the demand of the office. Instead of retaining the
249 original evidence, the title insurer or its ~~the title insurance~~
250 agent or agency may, in the regular course of business,
251 establish a system under which all or part of the evidence is
252 recorded, copied, or reproduced by any photographic,
253 photostatic, microfilm, microcard, miniature photographic, or
254 other process that ~~which~~ accurately reproduces or forms a
255 durable medium for reproducing the original.

256 Section 10. Except as otherwise expressly provided in this
257 act, this act shall take effect July 1, 2014.

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: CS/SB 570
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/11/2014 1 Amendment 624016 Lee		3/11/2014 2 Motion to report as Committee Substitute Soto		Yea	Nay
Yea	Nay		Yea	Nay	Yea	Nay		
X			Bradley					
		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
8	0	TOTALS	RCS	-	FAV	-	Yea	Nay
Yea	Nay		Yea	Nay	Yea	Nay		

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/14

Meeting Date

Topic Title Insurance

Name Greg Black

Job Title _____

Address 215 S. Monroe Street, Suite 505

Street

Tallahassee

City

FL

State

32312

Zip

Bill Number 570

(if applicable)

Amendment Barcode 624016

(if applicable)

Phone 850-205-9000

E-mail greg.black@metzlaw.com

Speaking: For Against Information

Representing Attorney's Title Fund Services, 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)

3-11-14

Meeting Date

Topic TITLE INSURANCE

Bill Number 570

Name MONTE STEYENS

Amendment Barcode 624016
(if applicable)

Job Title DEPUTY CHIEF OF STAFF

(if applicable)

Address 200 E. GAINES ST

Phone 413-5005

Street

TALLY FL 32399

City

State

Zip

E-mail Monte.Steyens@Flor.com

Speaking: For Against Information

Representing OIR

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)

3.11.14
Meeting Date

Topic Statutory Premium Reserve

Bill Number 570

Name Nick Larossi

Amendment Barcode 624016
(if applicable)

Job Title Lobbyist

Address 101 E. Collier # 502

Phone 222.9075

Tallahassee
City State Zip

E-mail niarossi@cap

Speaking: For Against Information

nick.larossi@cap

Representing Old Republic Natural Title

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.11.14

Meeting Date

Topic ELR

Bill Number 570
(if applicable)

Name Nick Arrossi

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 101 E. Colley Ave
Street Tallahassee
City State Zip

Phone 222.9075

E-mail niarossi@capitolconsult.com

Speaking: For Against Information

Representing Old Republic Nat'l Title

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)

31 / 1 / 2019

Meeting Date

Topic _____ Bill Number 570
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 Judiciary

BILL: CS/SB 912

INTRODUCER: Committee on Judiciary and Senator Dean

SUBJECT: Service of Process

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CJ	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 provides that a process server, either as appointed by the sheriff or the court, does not commit the criminal act of trespass and is immune from civil liability when the process server needs to enter property other than a structure or conveyance to serve process, provided that the process server does not open a closed gate or door or cross any fences.

The bill authorizes a process server to post a criminal witness subpoena for witnesses to appear for a deposition if the process server has attempted but failed to serve the subpoena one time, rather than the three times required in current law.

II. Present Situation:

Service of Process

Process servers deliver summons, subpoenas and other forms of process in civil actions.¹ The sheriff is responsible for serving as process server for the initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses. However, Florida law authorizes two options to the sheriff serving as process server. The sheriff may establish an approved list of

¹ Section 48.011, F.S.

special process servers.² Alternatively, the chief judge of each judicial circuit may establish an approved list of persons.³

Process Servers Selected by the Sheriff

A person applying as a special process server must:

- Be at least 18 years old;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation, including a criminal history check;
- Provide a certificate of good conduct that specifies that the applicant has no pending criminal case or any record of a felony conviction or misdemeanor involving moral turpitude or dishonesty within the last 5 years;
- Take an examination testing the applicant's knowledge of laws and rules on service of process; and
- Take an oath that the applicant will honestly, diligently, and faithfully exercise the duties of a special process server.⁴

The sheriff issues each special process server an identification card with an identification number, printed name, signature and photograph, and expiration date.⁵

The sheriff is authorized to revoke an appointment at any time that the sheriff determines a special process server is not fully and properly discharging the duties as a special process server.⁶ Every special process server appointed is subject to annual recertification and reappointment by the sheriff.⁷

Process Servers Selected by the Chief Judge

The chief judge of each judicial circuit may establish an approved list of certified process servers. The chief judge may add to the list persons who have met the same requirements as that provided for sheriff appointments of special process servers.⁸

Each person whose name has been added to the approved list is subject to annual recertification and reappointment by the chief judge.⁹

Rule 1.070, Florida Rules of Civil Procedure, authorizes service of process to be made by an officer authorized in law to serve process, or through court appointment of any competent person provided that the person does not have an interest in the civil action.¹⁰

² Section 48.021(1), F.S.

³ Section 48.27, F.S.

⁴ Section 48.021(2)(b), F.S.

⁵ Section 48.021(2)(d), F.S.

⁶ Section 48.021(2)(e), F.S.

⁷ Section 48.021(2)(a), F.S.

⁸ Section 48.27(1), F.S.

⁹ *Id.*

¹⁰ FLA. R. CIV. PROC. 1.070(b); Rule 3.030, FLA. R. CRIM. PROC., requires service of every pleading subsequent to an initial indictment or information on which a defendant is to be tried unless the court orders otherwise.

Service of Process Procedure

Service of process is made by delivering a copy of to the person to be served with a copy of the legal complaint, petition, or other initial pleading or paper, or by leaving copies at his or her residence with any resident who is at least 15 years old.¹¹ If an employer is contacted by a person authorized to make service of process, the employer must allow the person to serve an employee in a designated private area.¹² A server may make substitute service on the spouse of the person to be served anywhere in the county, unless the underlying cause of action is an adversary proceeding between the spouses.¹³

Gated residential communities must grant unannounced entry into the community, including common areas and elements, to a person who is attempting to serve process.¹⁴

Few appellate cases exist nationally in which an appellate court has considered whether a process server was trespassing. However, in a 2012 opinion from the Florida Fourth District Court of Appeal, the court stated in dicta that a process server serving process is not trespassing.¹⁵

A criminal witness subpoena may be posted by a process server at the witness's residence if the process server has attempted, but failed, three times to serve the subpoena at different times of day or night or on different dates.¹⁶

Trespass

A person commits trespass on property other than a structure or conveyance if the person willfully enters upon, or remains in any property other than the actual structure or conveyance:

- After notice against entering or remaining is given, either through actual communication to the offender or by posting, fencing, or cultivation;¹⁷ or
- If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense other than the offense of trespass.¹⁸

The term unenclosed curtilage refers to the unenclosed land or grounds and outbuildings directly and immediately adjacent to and connected with the dwelling and necessary, convenient, and regularly used in connection with the dwelling.¹⁹

Trespass on property other than a structure or conveyance is a first degree misdemeanor, punishable by up to a year in jail and a \$1,000 fine.²⁰ However, if the person is armed with a

¹¹ Section 48.031(1)(a), F.S.

¹² Section 48.031(1)(b), F.S.

¹³ Section 48.031(2)(a), F.S.

¹⁴ Section 48.031(7), F.S.

¹⁵ *Garrido v. State*, 97 So. 2d 291, 298 (Fla. 4th DCA 2012).

¹⁶ Section 48.031(3)(b), F.S.

¹⁷ The term "cultivated land" is land cleared of its natural vegetation and presently planted with a crop, orchard, grove, pasture, or trees or fallow land as part of a crop rotation. Section 810.011(6), F.S.

¹⁸ Section 810.09 (1)(a), F.S.

¹⁹ Section 810.09(1)(b), F.S.

²⁰ Sections 810.09(2)(a), 775.082, and 775.083, F.S.

firearm or other dangerous weapon during the time of the trespass, he or she commits a third degree felony, punishable by up to 5 years in prison and a \$5,000 fine.²¹

Immunity from Liability

The term “sovereign immunity” refers to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of governments unless immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law.

Section 768.28, F.S., contains a broad, limited waiver of sovereign immunity applicable to the state. Under this law, officers, employees, and agents of the state are not personally liable in tort for any injury or damage suffered as a result of any act, event, or omission of action committed in the scope of employment.²² However, personal liability may result from actions committed in bad faith, with a malicious purpose, or when in wanton and willful disregard of human rights, safety, or property.

The waiver of immunity places caps on recovery at \$200,000 for any one person or \$300,000 for all recovery related to one incident. A plaintiff may receive a judgment exceeding the caps, but only at the prerogative of the Legislature through the claims bill process.²³

III. Effect of Proposed Changes:

CS/SB 912 provides that persons who serve as process servers, either as appointed by the sheriff or the court do not commit the criminal act of trespass of property other than a structure or conveyance when they need to enter property to serve process. However, the person may not open a closed gate or door or cross any fences.

The bill also grants process servers civil immunity as the result of entering property to serve process, provided that the process server does not open a closed gate or door or cross over any fences. A court would consider a sheriff serving process to be an agent of the state. With respect to sheriffs, this bill provides an exception to the broad waiver of sovereign immunity in the statutes. Therefore, the bill appears to grant absolute immunity from suit to sheriffs who comply with the provisions of this bill.

Absolute immunity is also granted to private process servers.

The bill authorizes a process server to post criminal witness subpoenas for witnesses to appear in a deposition if the process server has attempted but failed to serve the subpoena one time, rather than the three times required in current law.

²¹ Section 810.09(2)(c), F.S.

²² Section 768.28(9)(a), F.S.

²³ Section 768.28(5), F.S.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

More private individuals may apply for and serve as process servers as they will not be deterred by concern by a criminal charge of trespass or civil liability. The bill, by clarifying the authority of process servers to enter property, may facilitate the delivery of process to the intended recipients.

C. Government Sector Impact:

This bill may reduce costs for sheriffs, to the extent that sheriffs incur litigation costs in civil liability actions. The bill, by clarifying the authority of process servers to enter property, may protect process servers from improper arrests by law enforcement officers.

Costs of service of process may be reduced by permitting the posting of criminal witness subpoenas for depositions if the process server is unable to serve the subpoena one time, rather than the current three times required in law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.031 and 810.09.

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 Judiciary on March 11, 2014:

The committee substitute:

- Provides that process servers are immune from civil liability and the criminal charge of trespass only if the process server does not open a closed gate or door or cross any fences.
- Authorizes a process server of a criminal witness subpoena for a deposition to post the subpoena if the process server attempted but failed to serve the subpoena one time.

B. Amendments:

None.



173804

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (1) and (3) of section 48.031,
Florida Statutes, are amended to read:

48.031 Service of process generally; service of witness
subpoenas.—

(1) (a) Service of original process is made by delivering a
copy of it to the person to be served with a copy of the
complaint, petition, or other initial pleading or paper or by



173804

12 leaving the copies at his or her usual place of abode with any
13 person residing therein who is 15 years of age or older and
14 informing the person of their contents. A minor ~~Minors~~ who is
15 ~~are~~ or has ~~have~~ been married is ~~shall be~~ served as provided in
16 this section.

17 (b) An individual authorized to serve process pursuant to
18 this chapter; Rule 3.030, Florida Rules of Criminal Procedure;
19 or Rule 1.070, Florida Rules of Civil Procedure does not commit
20 the offense of trespass on property other than a structure or
21 conveyance under s. 810.09 and is not subject to civil liability
22 if his or her entrance onto such property is necessary to serve
23 process and the process server does not open a closed gate or
24 door or cross over any fences.

25 (c) ~~(b)~~ An employer ~~Employers~~, when contacted by an
26 individual authorized to serve ~~make service of~~ process, shall
27 allow ~~permit~~ the authorized individual to serve an employee ~~make~~
28 ~~service on employees~~ in a private area designated by the
29 employer.

30 (3) (a) The service of process of witness subpoenas, whether
31 in criminal cases or civil actions, shall be made as provided in
32 subsection (1). However, service of a subpoena on a witness in a
33 criminal traffic case, a misdemeanor case, or a second degree or
34 third degree felony may be made by United States mail directed
35 to the witness at the last known address, and the service must
36 be mailed at least 7 days before ~~prior to~~ the date of the
37 witness's required appearance. Failure of a witness to appear in
38 response to a subpoena served by United States mail that is not
39 certified may not be grounds for finding the witness in contempt
40 of court.



173804

41 (b) A criminal witness subpoena commanding the witness to
42 appear for a court appearance may be posted by a person
43 authorized to serve process at the witness's residence if three
44 attempts to serve the subpoena, made at different times of the
45 day or night on different dates, have failed. A criminal witness
46 subpoena commanding the witness to appear for a deposition may
47 be posted at the witness's residence by a person authorized to
48 serve process if one attempt to serve the subpoena has failed.
49 The subpoena must be posted at least 5 days before ~~prior to~~ the
50 date of the witness's required appearance.

51 Section 2. Subsection (4) is added to section 810.09,
52 Florida Statutes, to read:

53 810.09 Trespass on property other than structure or
54 conveyance.—

55 (4) This section does not apply to a person who is
56 authorized to serve process pursuant to chapter 48; Rule 3.030,
57 Florida Rules of Criminal Procedure; or Rule 1.070, Florida
58 Rules of Civil Procedure if his or her entrance onto such
59 property is necessary to serve process and the process server
60 does not open a closed gate or door or cross over any fences.

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

62
63 ===== T I T L E A M E N D M E N T =====

64 And the title is amended as follows:

65 Delete everything before the enacting clause
66 and insert:

67 A bill to be entitled
68 An act relating to service of process; amending s.
69 48.031, F.S.; providing that certain individuals



173804

70 authorized to serve process do not commit the offense
71 of trespass on property other than a structure or
72 conveyance and are not subject to civil liability
73 under certain circumstances; allowing the posting of a
74 criminal witness subpoena under specified
75 circumstances; amending s. 810.09, F.S.; providing
76 that the offense of trespass on property other than a
77 structure or conveyance is not applicable to certain
78 persons who are authorized to serve process under
79 certain circumstances; providing an effective date.

By Senator Dean

5-00551-14

2014912__

1 A bill to be entitled
 2 An act relating to service of process; amending s.
 3 48.031, F.S.; providing that certain individuals
 4 authorized to serve process do not commit the offense
 5 of trespass on property other than a structure or
 6 conveyance and are not subject to civil liability
 7 under certain circumstances; amending s. 810.09, F.S.;
 8 providing that the offense of trespass on property
 9 other than a structure or conveyance is not applicable
 10 to certain persons who are authorized to serve process
 11 under certain circumstances; providing an effective
 12 date.

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

16 Section 1. Subsection (1) of section 48.031, Florida
 17 Statutes, is amended to read:

18 48.031 Service of process generally; service of witness
 19 subpoenas.—

20 (1) (a) Service of original process is made by delivering a
 21 copy of it to the person to be served with a copy of the
 22 complaint, petition, or other initial pleading or paper or by
 23 leaving the copies at his or her usual place of abode with any
 24 person residing therein who is 15 years of age or older and
 25 informing the person of their contents. A minor ~~Minors~~ who is
 26 ~~are~~ or has ~~have~~ been married is ~~shall be~~ served as provided in
 27 this section.

28 (b) An individual authorized to serve process pursuant to
 29 this chapter; Rule 3.030, Florida Rules of Criminal Procedure;

Page 1 of 2

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

5-00551-14

2014912__

30 or Rule 1.070, Florida Rules of Civil Procedure does not commit
 31 the offense of trespass on property other than a structure or
 32 conveyance under s. 810.09 and is not subject to civil liability
 33 if his or her entrance onto such property is necessary to serve
 34 process.

35 ~~(c) (b) An employer~~ Employers, when contacted by an
 36 individual authorized to ~~serve~~ make service of process, shall
 37 ~~allow~~ permit the authorized individual to ~~serve an employee~~ make
 38 ~~service on employees~~ in a private area designated by the
 39 employer.

40 Section 2. Subsection (4) is added to section 810.09,
 41 Florida Statutes, to read:

42 810.09 Trespass on property other than structure or
 43 conveyance.—

44 (4) This section does not apply to a person who is
 45 authorized to serve process pursuant to chapter 48; Rule 3.030,
 46 Florida Rules of Criminal Procedure; or Rule 1.070, Florida
 47 Rules of Civil Procedure if his or her entrance onto such
 48 property is necessary to serve process.

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

Page 2 of 2

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

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Judiciary
ITEM: SB 912
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/11/2014 1 Amendment 173804		3/11/2014 2 Motion to report as Committee Substitute		Yea	Nay
			Bradley	Soto	Yea	Nay		
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley						
		Gardiner						
X		Joyner						
X		Latvala						
X		Richter						
X		Ring						
X		Thrasher						
X		Soto, VICE CHAIR						
X		Lee, CHAIR						
8	0		FAV	-	FAV	-		
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 11, 2014

Meeting Date

Topic Service of Process

Name Honorable Nancy Daniels

Job Title Public Defender, 2nd Circuit

Address 301 South Monroe Street

Street

Tallahassee

City

Florida

State

32301

Zip

Bill Number 912

Amendment Barcode 173804

(if applicable)

(if applicable)

Phone 850-606-1000

E-mail nancy.daniels@flpd2.com

Speaking: For Against Information

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/14
Meeting Date

Topic Service of Process

Bill Number SB 912
(if applicable)

Name Mike Compton

Amendment Barcode _____
(if applicable)

Job Title Legislative Chair

Address 108 E. Jefferson St
Street

Phone _____

Tallahassee FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing Florida Association Professional Process

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)

March 11, 2014

Meeting Date

Topic Service of Process

Bill Number 912
(if applicable)

Name Honorable Nancy Daniels

Amendment Barcode _____
(if applicable)

Job Title Public Defender, 2nd Circuit

Address 301 South Monroe Street

Phone 850-606-1000

Street

Tallahassee

Florida

32301

E-mail nancy.daniels@flpd2.com

City

State

Zip

Speaking: For Against Information

Representing Florida Public Defender 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.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

31 11/2018

Meeting Date

Topic _____

Bill Number 912
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 Judiciary

BILL: CS/SB 826

INTRODUCER: Judiciary Committee and Senator Joyner

SUBJECT: Trusts

DATE: March 13, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.			BI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 826 limits the liability of excluded trustees for consequences from acting in compliance with a directive from a directing cotrustee. Under existing law, the excluded trustee may be liable for complying with a directive by the directing cotrustee, if an excluded trustee has actual knowledge of the willful misconduct of the directing cotrustee. Under the bill, an excluded trustee is not liable for complying with a directive by a directing cotrustee unless the excluded trustee's conduct constitutes willful misconduct.

Similarly, under existing s. 736.0808(2), F.S., if a revocable trust authorizes a person other than the settlor to direct the actions of a trustee, the trustee must act in accordance with the directions unless the directions are manifestly contrary to the trust or the trustee knows that the directions are a serious breach of a fiduciary duty. Under the bill, the statute doesn't apply if the person directing a trustee is another trustee.

II. Present Situation:

“A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.”¹ A trust involves

¹ 55A FLA. JUR.2D *Trusts* § 1. See also, s. 731.201(38), F.S., “trust” means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

three interest holders²: the settlor or grantor who establishes the trust;³ the trustee who holds legal title to the property held in the benefit of the beneficiary;⁴ and lastly, the beneficiary who has an equitable interest in property held subject to the trust.⁵

A trustee has a fiduciary duty to the beneficiary for proper administration of trust assets and is liable for any breach of that duty.⁶ Cotrustees are generally jointly and severably liable to the beneficiary for any breach of trust, without special trust terms changing their duties or liabilities.⁷ Clauses in a trust exonerating a trustee from liability are called exculpatory terms.⁸ Exculpatory terms in a trust document providing for the release of a trustee who breaches his or her fiduciary duties may be unenforceable.⁹

Frequently, a trust will contain assets for which one of multiple trustees wishes to have no responsibility. In such case, the settlor may designate the trustee as the “excluded trustee” required to follow the direction of the directing trustee who is given sole authority to give direction over the subject trust property at issue.¹⁰ Cotrustees are governed by the trust document and s. 736.0703(9), F.S. Section 736.0703(9), F.S., provides that:

If the terms of a trust instrument provide for the appointment of more than one trustee but confer upon one or more of the trustees, to the exclusion of the others, the power to direct or prevent specified actions of the trustees, the excluded trustees shall act in accordance with the exercise of the power. *Except in cases of willful misconduct on the part of the trustee with the authority to direct or prevent actions of the trustees of which the excluded trustee has actual knowledge, an excluded trustee is not liable, individually or as a fiduciary, for any consequence that results from compliance with the exercise of the power, regardless of the information available to the excluded trustees.* The excluded trustees are relieved of any obligation to review, inquire, investigate, or make recommendations or evaluations with respect to the exercise of the power. The trustee or trustees having the power to direct or prevent actions of the trustees shall be liable to the beneficiaries with respect to the exercise of the power as if the excluded trustees were not in office and shall have the exclusive obligation to account to and to defend any action brought by the beneficiaries with respect to the exercise of the power (emphasis added).

² 55A FLA. JUR.2D *Trusts* § 1.

³ A “settlor” is one “who makes a settlement of the property; esp.[ecially], one who sets up a trust.” BLACK’S LAW DICTIONARY (9th ed. 2009).

⁴ A “trustee” is “one who stands in a fiduciary or confidential relation to another; esp.[ecially], one who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary.” BLACK’S LAW DICTIONARY (9th ed. 2009).

⁵ A “beneficiary” is a person for whose benefit property is held in trust. BLACK’S LAW DICTIONARY (9th ed. 2009).

⁶ See s. 736.1011, F.S.

⁷ 55A FLA. JUR.2D *Trusts* § 155.

⁸ See ss. 736.1011, and 736.0105(2)(u), F.S.

⁹ Section 736.1011, F.S.

¹⁰ 12 FLA. PRAC., ESTATE Planning § 17:50.

There have been complaints that the directed trust statute, s 736.0703(9), F.S., does not provide sufficient level of protection to excluded trustees.¹¹ The excluded trustee to protect itself from potential liability still has to oversee, monitor, and intervene in the actions of a directed cotrustee to avoid liability. As a result, trustees have been reluctant to accept appointments where the trustees are subject to the directions of another trustee (the directing trustee).¹²

Section 736.0703(9), F.S. provides that the excluded trustee is protected from liability when following the instructions of the directing trustee unless the excluded trustee has “actual knowledge of willful misconduct” on the part of the directing trustee.

III. Effect of Proposed Changes:

The bill amends s. 736.0703(9), F.S., to limit the liability of an excluded trustee for misconduct under certain circumstances. Under the bill, the excluded trustee is not liable, individually or as a fiduciary, except in cases of willful misconduct for any consequence that results from compliance with exercise of power by the directing cotrustee. Under existing law, the excluded trustee may be liable for complying with a directive by the directing cotrustee, if an excluded trustee has actual knowledge of the willful misconduct of the directing cotrustee.

Similarly, under existing s. 736.0808(2), F.S., if a revocable trust authorizes a person other than the settlor of to direct the actions of a trustee, the trustee must act in accordance with the directions unless the directions are manifestly contrary to the trust or the trustee knows that the directions are a serious breach of a fiduciary duty. Under the bill, the statute doesn't apply if the person directing a trustee is another trustee.

The bill takes effect on July 1 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ Communication between committee staff of the Senate Judiciary Committee and the Trust Law Committee of the Real Property, Probate, and Trust Law Section of The Florida Bar.

¹² *Id.*

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

None.

B. Private Sector Impact:

By limiting the liability of excluded trustees, institutions and individuals may be more willing to serve as an excluded trustee.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 736.0703.

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 Judiciary on March 11, 2014:

The committee substitute revises the way an excluded trustee's liability is limited for consequences resulting from compliance with the directions of a directing trustee.

B. Amendments:

None.



923688

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Joyner) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (9) of section 736.0703, Florida
Statutes, is amended to read:

736.0703 Cotrustees.—

(9) If the terms of a trust ~~instrument~~ provide for the
appointment of more than one trustee but confer upon one or more
of the trustees, to the exclusion of the others, the power to
direct or prevent specified actions of the trustees, the



923688

12 excluded trustees shall act in accordance with the exercise of
13 the power. Except in cases of willful misconduct on the part of
14 the excluded trustee ~~with the authority to direct or prevent~~
15 ~~actions of the trustees of which the excluded trustee has actual~~
16 ~~knowledge~~, an excluded trustee is not liable, individually or as
17 a fiduciary, for any consequence that results from compliance
18 with the exercise of the power, ~~regardless of the information~~
19 ~~available to the excluded trustees.~~ An The excluded trustee does
20 not have a duty or an ~~trustees are relieved of any~~ obligation to
21 review, inquire, investigate, or make recommendations or
22 evaluations with respect to the exercise of the power. The
23 trustee or trustees having the power to direct or prevent
24 actions of the excluded trustees shall be liable to the
25 beneficiaries with respect to the exercise of the power as if
26 the excluded trustees were not in office and shall have the
27 exclusive obligation to account to and to defend any action
28 brought by the beneficiaries with respect to the exercise of the
29 power. The provisions of s. 736.0808(2) do not apply if the
30 person entrusted with the power to direct the actions of the
31 excluded trustee is also a cotrustee.

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

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

35 And the title is amended as follows:

36 Delete everything before the enacting clause
37 and insert:

38 A bill to be entitled
39 An act relating to trusts; amending s. 736.0703, F.S.;
40 limiting the liability of excluded trustees; providing



923688

41 that certain powers to direct the actions of a trustee
42 are not applicable under certain circumstances;
43 providing an effective date.

By Senator Joyner

19-00646-14

2014826__

1 A bill to be entitled
 2 An act relating to trusts; amending ss. 736.0703 and
 3 736.1011, F.S.; limiting the liability of excluded
 4 trustees; providing an exception; authorizing trusts
 5 to provide for exculpation of excluded trustees under
 6 certain circumstances; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Subsection (9) of section 736.0703, Florida
 11 Statutes, is amended to read:
 12 736.0703 Cotrustees.—
 13 (9) If the terms of a trust ~~instrument~~ provide for the
 14 appointment of more than one trustee but confer upon one or more
 15 of the trustees, to the exclusion of the others, the power to
 16 direct or prevent specified actions of the trustees, the
 17 excluded trustees shall act in accordance with the exercise of
 18 the power. ~~Except in cases of willful misconduct on the part of~~
 19 ~~the trustee with the authority to direct or prevent actions of~~
 20 ~~the trustees of which the excluded trustee has actual knowledge,~~
 21 An excluded trustee is not liable, individually or as a
 22 fiduciary, for any consequence that results from compliance with
 23 the exercise of the power, regardless of the information
 24 available to the excluded trustee, unless with respect to the
 25 exercise of such power the excluded trustee has actual knowledge
 26 of willful misconduct by the trustee entrusted with the power to
 27 direct or prevent actions of the excluded trustees. To the
 28 extent provided by terms of the trust, an excluded trustee may
 29 be exculpated from that liability even if the excluded trustee

Page 1 of 2

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

19-00646-14

2014826__

30 has actual knowledge of willful misconduct by the trustee
 31 entrusted with the power to direct or prevent actions of the
 32 excluded trustees. An excluded trustee has no duty or ~~trustees.~~
 33 ~~The excluded trustees are relieved of any obligation to review,~~
 34 inquire, investigate, or make recommendations or evaluations
 35 with respect to the exercise of the power. The trustee entrusted
 36 with ~~or trustees having~~ the power to direct or prevent actions
 37 of the ~~excluded~~ trustees shall be liable to the beneficiaries
 38 with respect to the exercise of the power as if the excluded
 39 trustees were not in office and shall have the exclusive
 40 obligation to account to and to defend any action brought by the
 41 beneficiaries with respect to the exercise of the power. ~~This~~
 42 subsection does not exculpate an excluded trustee from liability
 43 arising from his or her willful misconduct.
 44 Section 2. Subsection (3) is added to section 736.1011,
 45 Florida Statutes, to read:
 46 736.1011 Exculpation of trustee.—
 47 (3) This section does not apply to terms of a trust which
 48 exculpate an excluded trustee from liability for any consequence
 49 that results from compliance with the exercise of a power
 50 described in s. 736.0703(9).
 51 Section 3. This act shall take effect July 1, 2014.

Page 2 of 2

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

**The Florida Senate
COMMITTEE VOTE RECORD**

COMMITTEE: Judiciary
ITEM: SB 826
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, March 11, 2014
TIME: 1:30 —3:30 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/11/2014 1 Amendment 923688		3/11/2014 2 Motion to report as Committee Substitute		3/11/2014 3 Motion to vote "YEA" after Roll Call	
			Joyner	Soto	Richter			
Yea	Nay		Yea	Nay	Yea	Nay	Yea	Nay
X		Bradley					X	
		Gardiner						
X		Joyner					X	
X		Latvala					X	
VA		Richter					VA	
X		Ring					X	
X		Thrasher					X	
X		Soto, VICE CHAIR					X	
X		Lee, CHAIR					X	
8	0		RCS	-	FAV	-	FAV	-
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/14
Meeting Date

Topic Trusts

Bill Number 826
(if applicable)

Name Kenneth Pratt

Amendment Barcode _____
(if applicable)

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201
Street

Phone 850-224-2265

Tallahassee FL 32301
City State Zip

E-mail kpratt@floridabankers.com

Speaking: For Against Information

Representing Florida Bankers Association - Trust Division

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/1/11/2014

Meeting Date

Topic _____

Bill Number 826
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 Judiciary

BILL: CS/SB 788

INTRODUCER: Committee on Judiciary and Senator Ring

SUBJECT: Clerks of Court

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>TR</u>	_____
3.	_____	_____	<u>AFT</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 788 revises the procedures by which clerks of courts:

- Pay jurors.
- Process deposits for a garnishee's attorney fees.
- Conduct tax certificate and tax deed sales.

This bill revises law relating to tax certificates, tax deeds, and the sale of property at public auction. The bill expands the opportunity for the public to purchase tax certificates that would otherwise be issued to the county, and allows property owners to redeem certificates on property after the property is placed on the list of lands available for sale. This bill specifies that the certificateholder who applied for a tax deed must pay for the costs of resale of a tax deed whose sale is cancelled. The payment must be made within 15 days after the clerk provides notice.

Current law requires the clerk to enter land on the list of lands available for taxes if there are no bidders at public sale of a tax deed based on a county-held certificate. This bill additionally requires the clerk to enter land on the list of lands available for taxes if there are no bidders on a tax deed based on an individually held certificate. The bill also requires the clerk to enter the land on the list if the certificateholder fails to timely pay costs of resale or fails to pay amounts due for issuance of a tax deed within 15 days after the date of sale. The bill deletes the requirement that the clerk notify all other persons holding certificates that the property is available. In current law, the clerk must notify owners of contiguous property if the county does

not elect purchase of the property in the first 90-day period. The bill removes the notice requirement.

Current law provides that if the proceeds of a tax deed sale exceed the amount of the sale and governmental liens, the former property owner and other lienholders must be notified of the excess funds. The bill provides that this notice complies with the notice required by laws regulating holders of unclaimed property. Also, the bill provides that the excess proceeds are presumed payable or distributable on the date the notice is sent. The bill provides greater detail about how clerks must handle competing liens and authorizes the clerk to act as an interpleader if lienholders have potentially conflicting claims. The clerk will then be eligible for reasonable fees and costs relating to the interpleader action.

In a writ of garnishment action, persons owed a debt may sue and receive judgment against the person who owes the debt. The garnishee, or the bailee of property, is entitled to a \$100 deposit for attorney's fees from the party applying for the writ. The bill provides for direct payment of the deposit from the party applying for garnishment to the garnishee, rather than deposit into the court registry.

II. Present Situation:

Juror and Witness Compensation and Payments

Jurors may be compensated for their service in certain instances.¹ Juries may also receive meals and lodging.² Witnesses testifying in a court case may also be paid for their services.³ The clerks are responsible for disbursing payments to jurors and witnesses, and may do so by cash or warrant.⁴

Writs of Garnishment

Persons who have sued to recover a debt and received a judgment have the right to a writ of garnishment against the person who owes the debt.⁵ The garnishee is the "person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment."⁶ Before issuing the writ, the party applying for the writ must deposit \$100 in the registry of the court. The clerk will disburse the \$100 to the garnishee upon demand at any time after the writ is served for payment or partial payment of the garnishee's attorney fees. When the \$100 is deposited, the clerk must collect the deposit and the statutory fee of three percent (\$3.00), authorized in law as a service charge for the clerk.⁷

¹ Section 40.24, F.S., provides that jurors who are not regularly employed or who do not continue to receive regular wages while serving as a juror are entitled to receive \$15 per day for the first 3 days of service and \$30 for each day thereafter. Section 40.24(3)(a) and (b), F.S.

² Section 40.26, F.S.

³ Section 40.32(1), F.S.

⁴ Section 40.32(3), F.S.

⁵ Section 77.01, F.S.

⁶ BLACK'S LAW DICTIONARY (9th ed. 2009).

⁷ Sections 77.28 and 28.24(10)(a)1., F.S.

Tax Certificates, Tax Deeds, and Sale at Public Auction

Tax Lien Certificates

Tax lien certificates are issued by counties against a specific parcel of real property for unpaid delinquent real property taxes, non-ad valorem assessments, special assessments, interest, and related costs and charges.⁸ A tax certificate is a lien against the real property which can lead to public sale of the property.

When a tax certificate is redeemed (paid by the property owner), the certificateholder will receive the amount of his or her investment (the tax certificate face amount) plus the interest accrued up to the date of redemption. A tax certificate can be redeemed any time before a tax deed is issued or the property is placed on the list of lands available for sale either by redeeming a tax certificate from the investor or by purchasing a county-held tax certificate. The person redeeming or purchasing the tax certificate is required to pay the face amount of the certificate, plus costs and charges and all interest due, which is either the interest rate due on the certificate or a 5 percent mandatory minimum interest, whichever is greater.⁹ The tax collector then pays the certificate owner the amount received by the tax collector, less the redemption fee.¹⁰

A tax certificate having a value of less than \$250 in delinquent taxes on property that has been granted a homestead exemption for the year in which the delinquent taxes were assessed may not be sold at public auction.¹¹ Instead, the tax collector must issue the tax certificate to the county at the maximum rate of interest allowed. The county may not sell the county-held tax certificate for these tax certificates that are valued under \$250, nor can the county apply for a tax deed.¹²

Tax Deeds

After 2 years have passed since of the year the tax certificate is issued as of April 1, and provided that the certificate is not cancelled, the certificateholder may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located.¹³ A certificateholder can apply to obtain a tax deed by paying the tax collector all amounts required for redemption or purchase of all other outstanding tax certificates, and interest, omitted taxes plus interest, delinquent taxes plus interest, and current taxes due.¹⁴

Sale at Public Auction

When property is sold by the clerk of court at a public auction, the certificateholder has the right to bid. If the property is homestead property, in addition to inclusion of delinquent taxes in the bid, the certificateholder must include in the minimum bid an amount equal to one-half of the assessed value of the homestead property.¹⁵ The high bidder must post a nonrefundable deposit of 5 percent of the bid or \$200, whichever is greater, to be applied to the sale price at the time of

⁸ Section 197.102(1)(f), F.S.

⁹ Section 197.472, F.S.

¹⁰ *Id.*

¹¹ Section 197.432(4), F.S.

¹² Sections 197.432(4), 197.4725, and 197.502(3), F.S.

¹³ Section 197.502(1), F.S.

¹⁴ Section 197.502(2), F.S.

¹⁵ Section 197.542(1), F.S.

full payment.¹⁶ If full payment of the final bid is not made when due, the clerk cancels all bids, immediately readvertises the sale to be held within 30 days, and pays all costs of the sale from the deposit.¹⁷ Any remaining funds must be applied toward the opening bid.¹⁸

If no one bids at a public sale on a county-held certificate, the clerk must enter the land on a list of “lands available for taxes” and must immediately notify the county commission and all other certificateholders that the property is available.¹⁹ During the first 90 days after the property is listed, the county may purchase the land for the bid. If the country does not, the county must notify each legal titleholder of the property contiguous to the property available for taxes during the 90-day period.

If the property is purchased by someone other than the certificateholder and in a higher amount than the statutory bid, the excess is paid over and disbursed by the clerk in priority order to lienholders and the former property owner as set out in s. 197.582(2), F.S.²⁰ The clerk must notify by mail all persons having an interest in any balance of undisbursed funds.²¹

Suspension of Driving Privileges for a Failure to Pay Financial Obligations

Upon receipt of notice from the clerk of court that a person has failed to satisfy a financial obligation owed for a qualifying criminal offense, the Department of Highway Safety and Motor Vehicles must suspend the person’s driver’s license. The DHSMV also must suspend a person’s license and motor vehicle registration if the person fails to pay child support for any case other than a Title IV-D case.²²

III. Effect of Proposed Changes:

CS/SB 788 revises the procedures by which clerks of courts:

- Pay jurors.
- Process deposits for a garnishee’s attorney fees.
- Conduct tax certificate and tax deed sales.

Juror and Witness Compensation

Current law authorizes the clerk of court to pay jurors and witnesses by cash or warrant. This bill allows the clerk the option of making payment by check, which is already current practice.²³

¹⁶ Section 197.542(2), F.S.

¹⁷ Section 197.542(1) and (2), F.S.

¹⁸ *Id.*

¹⁹ Section 197.502(7), F.S.

²⁰ Section 197.582, F.S.

²¹ *Id.*

²² Title IV-D cases are ones in which the Department of Children and Family Services enforces child support owed by filing an action in circuit court. Section 409.2563(1)(f), F.S.

²³ Phone conversation with Randy Long, Clerks of Court (March 7, 2014).

Writ of Garnishment

Current law requires the party applying for the writ to deposit \$100 with the court registry for the payment of the garnishee's attorney fees. This bill requires direct payment of the deposit from the party applying for the writ to the garnishee. As such, the clerk will not need to transfer the funds to the garnishee.

Sale of Tax Certificates

In current law, a tax certificate valued at less than \$250 in delinquent taxes on property that has been granted a homestead exemption for the year in which the delinquent taxes were assessed may not be sold at public auction.²⁴ Instead, the tax collector must issue the tax certificate to the county at the maximum rate of interest allowed, which is 18 percent. Under the bill, if all the outstanding tax certificates plus interest and the current certificate represent a value of \$250 or more, the current certificate will be offered for public sale. In current law, the county must not sell the county-held tax certificate issued to the county which has a value of less than \$250, nor can the county apply for a tax deed on the certificates.²⁵ The bill clarifies that a county may not apply for a tax deed on a certificate held by the county if, in the year the county issued the most recent tax certificate, the value of the certificate and outstanding certificates and interest were valued at less than \$250 and the property was homestead property.

Redemption of Tax Certificates

Current law authorizes a certificateholder to redeem a certificate at any time after issuance and before a tax deed is issued or the property is placed on the list of lands available for sale. This bill allows property owners to redeem certificates after the property is placed on the list.

Tax Deeds

Although current law provides a list of costs required to be paid by any certificateholder other than a county, current law does not specify who is responsible for the costs of reselling tax certificates or when payment is due. This bill additionally requires the certificateholder to pay costs of resale, if applicable within 15 days from notice by the clerk, or the clerk will enter the land on the list of lands available for taxes.

Current law requires the clerk to enter land on the list of lands available for taxes if there are no bidders at public sale on county-held certificates. This bill additionally requires the clerk to enter land on the list of lands available for taxes if there are not bidders on individually-held certificates and the certificateholder fails to timely pay costs of resale or fails to pay amounts due for issuance of a tax deed within 15 days after the sale.

Sale at Public Auction

Currently, when property is sold by the clerk of court at a public auction, the certificateholder has the right to bid. If the property is homestead property, in addition to including delinquent

²⁴ Section 197.432(4), F.S.

²⁵ Sections 197.432(4), 197.4725, and 197.502(3), F.S.

taxes in the bid, the certificateholder must include in the minimum bid on property in a tax deed sale an amount equal to one-half of the assessed value of the homestead property.²⁶ In this instance, under the bill, the certificateholder must pay to the clerk moneys to cover the one-half value of the homestead within 15 days after the sale. The bill further provides that if the certificateholder fails to make full payment when due, the clerk considers the sale canceled, and the clerk must enter the land on a list entitled “lands available for taxes.”²⁷ Under the bill, if at the subsequent sale no one bids at the tax deed sale and the certificateholder fails to pay the monies due within 15 days after the sale, the clerk may not readvertise the sale and must instead place the property on a list entitled “lands available for taxes.”

Disbursement of Proceeds of Sale

Current law provides that if the proceeds of a tax deed sale exceed the amount of the sale and government liens, the former property owner and other lienholders must be notified of the excess funds. The bill provides that this notice complies with the notice required by laws regulating holders of unclaimed property. Also, the bill provides that the excess proceeds are presumed payable or distributable on the date the notice is sent. Therefore, the clerks will only have to provide one notice.

Also, excess proceeds are presumed payable or distributable on the date the notice is sent. The bill provides greater detail about how a clerk must handle competing liens and authorizes the clerk to initiate an interpleader action in the event of potentially conflicting claims on the funds. The clerk will then be eligible for reasonable fees and costs relating to the interpleader action.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁶ Section 197.542(1), F.S.

²⁷ Section 197.542(1) and (2), F.S.

B. Private Sector Impact:

This bill requires the certificateholder who applies for a tax deed to pay the costs of resale within 15 days from notice by the clerk, or the clerk will enter the land on the list of lands available for taxes.

C. Government Sector Impact:

The Department of Revenue (DOR) indicates that there will be no fiscal impact to the DOR from the provisions of this bill.²⁸

To the extent that this bill provides greater clarity and efficiency in the tax sales certificates and deeds process, the clerks of court may have reduced costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, s. 40.32(3)(a) and (b), F.S., require jurors and witnesses receiving compensation for their service to sign the payroll prior to receipt of cash or warrant. The Legislature may wish to consider whether the same requirement should apply to persons paid by check.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.246, 40.32, 77.28, 197.432, 197.472, 197.502, 197.542, 197.582, and 322.245.

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 Judiciary on March 11, 2014:**

The committee substitute:

- Deletes the requirement that a person obligated to pay court-related costs pay in full in 90 days if the person fails to elect a payment plan or if the clerk rejects the person's payment plan;
- Removes the authority of the clerk to notify the Department of Highway Safety and Motor Vehicles to suspend a person's motor vehicle registration if the person failed to pay court-related obligations;
- Deletes a requirement that the clerk notify persons holding certificates if there are no bidders at the public sale and the clerk enters the land on a list of land available for taxes;

²⁸ Department of Revenue, *2014 Legislative Bill Analysis (SB 788)* (on file with the Senate Judiciary Committee).

- Deletes a requirement that the clerk notify contiguous property owners of property available for taxes within 90 days if the county elects not to purchase property in the first 90 day period of listing the property; and
- Authorizes rather than requires clerks to initiate interpleader actions.

B. Amendments:

None.

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



255082

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 40.32, Florida
Statutes, is amended to read:

40.32 Clerks to disburse money; payments to jurors and
witnesses.—

(3) Jurors and witnesses shall be paid by the clerk of the
court ~~either~~ in cash, by check, or by warrant within 20 days
after completion of jury service or ~~of~~ completion of service as



255082

12 a witness.

13 (a) ~~If Whenever~~ the clerk of the court pays a juror or
14 witness by cash, the juror or witness shall sign the payroll in
15 the presence of the clerk, a deputy clerk, or some other person
16 designated by the clerk.

17 (b) ~~If Whenever~~ the clerk pays a juror or witness by
18 warrant, he or she shall endorse on the payroll opposite the
19 juror's or witness's name the words "Paid by warrant," giving
20 the number and date of the warrant.

21 Section 2. Section 77.27, Florida Statutes, is amended to
22 read:

23 77.27 No appeal until fees are paid.—If the writ is
24 dismissed or plaintiff fails to sustain his or her claim, an ~~no~~
25 appeal from the judgment is not ~~shall be~~ permitted until the
26 attorney ~~attorney's~~ fee provided in s. 77.28 has been paid ~~into~~
27 court.

28 Section 3. Section 77.28, Florida Statutes, is amended to
29 read:

30 77.28 Garnishment; attorney ~~attorney's~~ fees, costs,
31 expenses; deposit required.—Before issuance of any writ of
32 garnishment, the party applying for it shall pay ~~deposit~~ \$100 ~~in~~
33 ~~the registry of the court which shall be paid~~ to the garnishee
34 on the garnishee's demand at any time after the service of the
35 writ for the payment or part payment of his or her attorney
36 ~~attorney's~~ fee which the garnishee expends or agrees to expend
37 in obtaining representation in response to the writ. ~~At the time~~
38 ~~of deposit, the clerk shall collect the statutory fee provided~~
39 ~~by s. 28.24(10) in addition to the \$100 deposited into the~~
40 ~~registry of the court.~~ On rendering final judgment, the court



255082

41 shall determine the garnishee's costs and expenses, including a
42 reasonable attorney ~~attorney's~~ fee, and in the event of a
43 judgment in favor of the plaintiff, the amount is ~~shall be~~
44 subject to offset by the garnishee against the defendant whose
45 property or debt owing is being garnished. In addition, the
46 court shall tax the garnishee's costs and expenses as costs. The
47 plaintiff may recover in this manner the sum advanced by him or
48 her ~~plaintiff and paid into registry of court~~, and, if the
49 amount allowed by the court is greater than the amount paid ~~of~~
50 ~~the deposit~~, together with any offset, judgment for the
51 garnishee shall be entered against the party against whom the
52 costs are taxed for the deficiency.

53 Section 4. Subsection (4) of section 197.432, Florida
54 Statutes, is amended to read:

55 197.432 Sale of tax certificates for unpaid taxes.—

56 (4) A tax certificate representing less than \$250 in
57 delinquent taxes on property that has been granted a homestead
58 exemption for the year in which the delinquent taxes were
59 assessed may not be sold at public auction or by electronic sale
60 as provided in subsection (1) but must be issued by the tax
61 collector to the county at the maximum rate of interest allowed.
62 ~~The provisions of s. 197.4725 or s. 197.502(3) may not be~~
63 ~~invoked if the homestead exemption is granted to the person who~~
64 ~~received the homestead exemption for the year in which the tax~~
65 ~~certificate was issued.~~ However, if all of the outstanding such
66 tax certificates and accrued interest and the current tax
67 certificate represent an amount of \$250 or more, the current tax
68 certificate must be offered for sale pursuant to subsection (1).
69 A county that acquires a tax certificate pursuant to this



255082

70 subsection may not sell the tax certificate pursuant to s.
71 197.4725 s. 197.502(3) shall be used to determine whether the
72 county must apply for a tax deed.

73 Section 5. Subsection (1) of section 197.472, Florida
74 Statutes, is amended to read:

75 197.472 Redemption of tax certificates.—

76 (1) A Any person may redeem a tax certificate at any time
77 after the certificate is issued and before a tax deed is issued
78 unless full payment for a tax deed is made to the clerk of the
79 court, including documentary stamps and recording fees or the
80 property is placed on the list of lands available for sale. The
81 person redeeming a tax certificate shall pay the tax collector
82 the face amount plus all interest, costs, and charges.

83 Section 6. Subsections (2), (3), and (7) of section
84 197.502, Florida Statutes, are amended to read:

85 197.502 Application for obtaining tax deed by holder of tax
86 sale certificate; fees.—

87 (2) A certificateholder, other than the county, who makes
88 application for a tax deed shall pay the tax collector at the
89 time of application all amounts required for redemption or
90 purchase of all other outstanding tax certificates, plus
91 interest, any omitted taxes, plus interest, any delinquent
92 taxes, plus interest, and current taxes, if due, covering the
93 property. In addition, the certificateholder shall pay the costs
94 of resale, if applicable, and failure to pay such costs within
95 15 days after notice from the clerk shall result in the clerk's
96 entering the land on a list entitled "lands available for
97 taxes."

98 (3) The county in which the property described in the



255082

99 certificate is located shall apply for a tax deed on all county-
100 held certificates on property valued at \$5,000 or more on the
101 property appraiser's most recent assessment roll, except
102 deferred payment tax certificates, and may apply for tax deeds
103 on certificates on property valued at less than \$5,000 on the
104 property appraiser's most recent assessment roll. The
105 application shall be made 2 years after April 1 of the year of
106 issuance of the certificates or as soon thereafter as is
107 reasonable. Upon application, the county shall deposit with the
108 tax collector all applicable costs and fees as provided in
109 subsection (1), but may not deposit any money to cover the
110 redemption of other outstanding certificates covering the
111 property. However, a county may not apply for a tax deed on a
112 certificate held by the county if, in the year for which the
113 most recent tax certificate was issued to the county, the value
114 of that tax certificate and the outstanding tax certificates and
115 accrued interest represented an amount of less than \$250 and the
116 homestead exemption was granted to a person who received the
117 exemption for that year.

118 (7) On county-held or individually held certificates for
119 which there are no bidders at the public sale and for which the
120 certificateholder fails to timely pay costs of resale or fails
121 to pay the amounts due for issuance of a tax deed within 15 days
122 after the sale, the clerk shall enter the land on a list
123 entitled "lands available for taxes" and shall immediately
124 notify the county commission ~~and all other persons holding~~
125 ~~certificates against the property~~ that the property is
126 available. During the first 90 days after the property is placed
127 on the list, the county may purchase the land for the opening



255082

128 bid or may waive its rights to purchase the property.
129 Thereafter, any person, the county, or any other governmental
130 unit may purchase the property from the clerk, without further
131 notice or advertising, for the opening bid, except that if the
132 county or other governmental unit is the purchaser for its own
133 use, the board of county commissioners may cancel omitted years'
134 taxes, as provided under s. 197.447. ~~If the county does not~~
135 ~~elect to purchase the property, the county must notify each~~
136 ~~legal titleholder of property contiguous to the property~~
137 ~~available for taxes, as provided in paragraph (4)(h), before~~
138 ~~expiration of the 90-day period.~~ Interest on the opening bid
139 continues to accrue through the month of sale as prescribed by
140 s. 197.542.

141 Section 7. Subsections (1) and (3) of section 197.542,
142 Florida Statutes, are amended to read:

143 197.542 Sale at public auction.—

144 (1) Real property advertised for sale to the highest bidder
145 as a result of an application filed under s. 197.502 shall be
146 sold at public auction by the clerk of the circuit court, or his
147 or her deputy, of the county where the property is located on
148 the date, at the time, and at the location as set forth in the
149 published notice, which must be during the regular hours the
150 clerk's office is open. The amount required to redeem the tax
151 certificate, plus the amounts paid by the holder to the clerk in
152 charges for costs of sale, redemption of other tax certificates
153 on the same property, and all other costs to the applicant for
154 tax deed, plus interest at the rate of 1.5 percent per month for
155 the period running from the month after the date of application
156 for the deed through the month of sale and costs incurred for



255082

157 the service of notice provided for in s. 197.522(2), shall be
158 the bid of the certificateholder for the property. If tax
159 certificates exist or if delinquent taxes accrued subsequent to
160 the filing of the tax deed application, the amount required to
161 redeem such tax certificates or pay such delinquent taxes must
162 be included in the minimum bid. However, if the land to be sold
163 is assessed on the latest tax roll as homestead property, the
164 bid of the certificateholder must be increased to include an
165 amount equal to one-half of the assessed value of the homestead
166 property as required by s. 197.502. If there are no higher bids,
167 the property shall be struck off and sold to the
168 certificateholder, who shall pay to the clerk any amounts
169 included in the minimum bid, the documentary stamp tax, the and
170 recording fees, and, if the property is homestead property, the
171 moneys to cover the one-half value of the homestead within 15
172 days after the sale due. Upon payment, a tax deed shall be
173 issued and recorded by the clerk. If the certificateholder fails
174 to make full payment when due, the clerk shall enter the land on
175 a list entitled "lands available for taxes."

176 (3) If the sale is canceled for any reason, or the buyer
177 fails to make full payment within the time required, the clerk
178 shall ~~immediately~~ readvertise the sale ~~to be held~~ within 30 days
179 after the buyer's nonpayment or, if canceled, within 30 days
180 after the clerk receives the costs of resale. The sale shall be
181 held within 30 days after readvertising ~~after the date the sale~~
182 ~~was canceled.~~ Only one advertisement is necessary. The amount of
183 the opening bid shall be increased by the cost of advertising,
184 additional clerk's fees as provided for in s. 28.24(21), and
185 interest as provided for in subsection (1). If, at the



255082

186 subsequent sale, there are no bidders at the tax deed sale and
187 the certificateholder fails to pay the moneys due within 15 days
188 after the sale, the clerk may not readvertise the sale and shall
189 place the property on a list entitled "lands available for
190 taxes." ~~This process must be repeated until the property is sold~~
191 ~~and the clerk receives full payment or the clerk does not~~
192 ~~receive any bids other than the bid of the certificateholder.~~
193 The clerk must receive full payment before the issuance of the
194 tax deed.

195 Section 8. Subsection (2) of section 197.582, Florida
196 Statutes, is amended, and subsection (3) is added to that
197 section, to read:

198 197.582 Disbursement of proceeds of sale.-

199 (2) If the property is purchased for an amount in excess of
200 the statutory bid of the certificateholder, the excess must be
201 paid over and disbursed by the clerk. If the property purchased
202 is homestead property and the statutory bid includes an amount
203 equal to at least one-half of the assessed value of the
204 homestead, that amount must be treated as excess and distributed
205 in the same manner. The clerk shall distribute the excess to the
206 governmental units for the payment of any lien of record held by
207 a governmental unit against the property, including any tax
208 certificates not incorporated in the tax deed application and
209 omitted taxes, if any. If the excess is not sufficient to pay
210 all of such liens in full, the excess shall be paid to each
211 governmental unit pro rata. If, after all liens of governmental
212 units are paid in full, there remains a balance of undistributed
213 funds, the balance shall be retained by the clerk for the
214 benefit of persons described in s. 197.522(1)(a), except those



255082

215 persons described in s. 197.502(4)(h), as their interests may
216 appear. The clerk shall mail notices to such persons notifying
217 them of the funds held for their benefit. Such notice
218 constitutes compliance with the requirements of s. 717.117(4).
219 Any service charges, at the rate prescribed in s. 28.24(10), and
220 costs of mailing notices shall be paid out of the excess balance
221 held by the clerk. Excess proceeds shall be held and disbursed
222 in the same manner as unclaimed redemption moneys in s. 197.473.
223 For purposes of identifying unclaimed property pursuant to s.
224 717.113, excess proceeds shall be presumed payable or
225 distributable on the date the notice is sent. If excess proceeds
226 are not sufficient to cover the service charges and mailing
227 costs, the clerk shall receive the total amount of excess
228 proceeds as a service charge.

229 (3) If unresolved claims against the property exist on the
230 date the property is purchased, the clerk shall ensure that the
231 excess funds are paid according to the priorities of the claims.
232 If a lien appears to be entitled to priority and the lienholder
233 has not made a claim against the excess funds, payment may not
234 be made on any lien that is junior in priority. If potentially
235 conflicting claims to the funds exist, the clerk may initiate an
236 interpleader action against the lienholders involved, and the
237 court shall determine the proper distribution of the
238 interpleaded funds. The clerk may move the court for an award of
239 reasonable fees and costs from the interpleaded funds.

240 Section 9. This act shall take effect July 1, 2014.

241
242 ===== T I T L E A M E N D M E N T =====

243 And the title is amended as follows:



255082

244 Delete everything before the enacting clause
245 and insert:

246 A bill to be entitled
247 An act relating to clerks of court; amending s. 40.32,
248 F.S.; authorizing jurors and witnesses to be paid by
249 check; amending s. 77.27, F.S.; conforming a provision
250 to changes made by the act; amending s. 77.28, F.S.;
251 requiring a party applying for garnishment to pay a
252 deposit to the garnishee, rather than in the registry
253 of the court; deleting a provision that requires the
254 clerk to collect a specified fee; amending s. 197.432,
255 F.S.; providing requirements for the sale of tax
256 certificates; amending s. 197.472, F.S.; revising
257 requirements for the redemption of tax certificates;
258 amending s. 197.502, F.S.; requiring the
259 certificateholder to pay costs of resale within 15
260 days under certain circumstances; providing
261 circumstances under which land shall be placed on a
262 specified list; prohibiting a county from applying for
263 a tax deed under certain circumstances; deleting a
264 provision relating to a notification procedure;
265 amending s. 197.542, F.S.; requiring the
266 certificateholder to pay a specified amount of the
267 assessed value of the homestead under certain
268 circumstances; providing circumstances under which
269 land shall be placed on a specified list; amending s.
270 197.582, F.S.; clarifying notice requirements;
271 providing for excess proceeds relating to unclaimed
272 property; requiring the clerk to ensure that excess



255082

273 funds are paid according to specified priorities;
274 providing for interpleader actions and the award of
275 reasonable fees and costs; providing an effective
276 date.

By Senator Ring

29-01063-14

2014788__

1 A bill to be entitled
 2 An act relating to clerks of court; amending s.
 3 28.246, F.S.; providing for default payment plans if
 4 an individual fails to enroll in a payment plan;
 5 providing for length of payment plans; requiring an
 6 individual to file a financial affidavit with the
 7 clerk to establish a payment plan; requiring the
 8 Department of Highway Safety and Motor Vehicles to
 9 suspend an individual's driver license and place a
 10 registration stop on any vehicle owned by an
 11 individual for nonpayment; amending s. 40.32, F.S.;
 12 authorizing jurors and witnesses to be paid by check;
 13 amending s. 77.28, F.S.; requiring a party applying
 14 for garnishment to pay a deposit to the garnishee,
 15 rather than the registry of the court; amending s.
 16 197.432, F.S.; providing that tax certificates on
 17 homesteads may be purchased from the county; amending
 18 s. 197.472, F.S.; deleting a provision relating to the
 19 redemption of tax certificates to conform to changes
 20 made by the act; amending s. 197.502, F.S.; requiring
 21 the certificateholder to pay costs of resale within 15
 22 days if applicable; providing circumstances under
 23 which land shall be placed on a specified list;
 24 amending s. 197.542, F.S.; requiring the
 25 certificateholder to pay a specified amount of the
 26 assessed value of the homestead under certain
 27 circumstances; providing circumstances under which
 28 land shall be placed on a specified list; amending s.
 29 197.582, F.S.; clarifying notice requirements;

Page 1 of 11

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

29-01063-14

2014788__

30 providing for excess proceeds relating to unclaimed
 31 property; requiring the clerk to ensure that excess
 32 funds are paid according to specified priorities;
 33 amending s. 322.245, F.S.; authorizing the suspension
 34 of vehicle registration for nonpayment of financial
 35 obligations; providing an effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:
 38

39 Section 1. Subsection (4) of section 28.246, Florida
 40 Statutes, is amended to read:

41 28.246 Payment of court-related fines or other monetary
 42 penalties, fees, charges, and costs; partial payments;
 43 distribution of funds.—

44 (4) The clerk of the circuit court shall accept partial
 45 payments for court-related fees, service charges, costs, and
 46 fines in accordance with the terms of an established payment
 47 plan. If an individual fails to enroll in a payment plan, the
 48 individual is deemed to have entered into a default payment plan
 49 with full payment due no later than 90 days after the date on
 50 which the individual is ordered to pay any fees, service
 51 charges, costs, or fines or is sent notice of the amount due.
 52 (a) Except as provided in paragraph (c), an individual
 53 seeking to defer payment of fees, service charges, costs, or
 54 fines imposed by operation of law or order of the court under
 55 any provision of general law shall apply to the clerk for
 56 enrollment in a payment plan within 30 days after the date on
 57 which the individual receives notice of the amount due. The
 58 individual shall include in the application a financial

Page 2 of 11

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

29-01063-14

2014788__

59 affidavit reflecting the individual's ability to pay and a
 60 proposed payment plan that is up to 24 months in length. The
 61 clerk shall agree to the proposed payment plan within 10 days
 62 after receiving the plan unless it fails to provide for full
 63 payment of all amounts due.

64 (b) If an individual fails to comply with the terms of a
 65 payment plan, the clerk shall notify the Department of Highway
 66 Safety and Motor Vehicles and the individual of such failure
 67 within 30 days after such failure. Upon receipt of such notice,
 68 the department shall immediately suspend the individual's driver
 69 license and place a registration stop on any vehicle owned by
 70 the individual pursuant to s. 322.245.

71 (c) The clerk shall enter into a payment plan with an
 72 individual who the court determines is indigent for costs. A
 73 monthly payment amount, calculated based upon all fees and all
 74 anticipated costs, is presumed to correspond to the person's
 75 ability to pay if the amount does not exceed 2 percent of the
 76 person's annual net income, as defined in s. 27.52(1), divided
 77 by 12.

78 (d) The court may review the reasonableness of any the
 79 payment plan.

80 Section 2. Subsection (3) of section 40.32, Florida
 81 Statutes, is amended to read:

82 40.32 Clerks to disburse money; payments to jurors and
 83 witnesses.—

84 (3) Jurors and witnesses shall be paid by the clerk of the
 85 court ~~either~~ in cash, by check, or by warrant within 20 days
 86 after completion of jury service or of completion of service as
 87 a witness.

29-01063-14

2014788__

88 (a) ~~If whenever~~ the clerk of the court pays a juror or
 89 witness by cash, the juror or witness shall sign the payroll in
 90 the presence of the clerk, a deputy clerk, or some other person
 91 designated by the clerk.

92 (b) ~~If whenever~~ the clerk pays a juror or witness by
 93 warrant, he or she shall endorse on the payroll opposite the
 94 juror's or witness's name the words "Paid by warrant," giving
 95 the number and date of the warrant.

96 Section 3. Section 77.28, Florida Statutes, is amended to
 97 read:

98 77.28 Garnishment; attorney attorney's fees, costs,
 99 expenses; deposit required.—Before issuance of any writ of
 100 garnishment, the party applying for it shall pay deposit \$100 ~~in~~
 101 ~~the registry of the court which shall be paid to the garnishee~~
 102 ~~on the garnishee's demand at any time after the service of the~~
 103 ~~writ for the payment or part payment of his or her attorney~~
 104 ~~attorney's~~ fee which the garnishee expends or agrees to expend
 105 in obtaining representation in response to the writ. ~~At the time~~
 106 ~~of deposit, the clerk shall collect the statutory fee provided~~
 107 ~~by s. 28.24(10) in addition to the \$100 deposited into the~~
 108 ~~registry of the court.~~ On rendering final judgment, the court
 109 shall determine the garnishee's costs and expenses, including a
 110 reasonable attorney attorney's fee, and in the event of a
 111 judgment in favor of the plaintiff, the amount ~~is shall be~~
 112 subject to offset by the garnishee against the defendant whose
 113 property or debt owing is being garnished. In addition, the
 114 court shall tax the garnishee's costs and expenses as costs. ~~The~~
 115 ~~plaintiff may recover in this manner the sum advanced by him or~~
 116 ~~her plaintiff~~ and paid into registry of court, and if the amount

29-01063-14 2014788__

117 allowed by the court is greater than the amount of the deposit,
118 together with any offset, judgment for the garnishee shall be
119 entered against the party against whom the costs are taxed for
120 the deficiency.

121 Section 4. Subsection (4) of section 197.432, Florida
122 Statutes, is amended to read:

123 197.432 Sale of tax certificates for unpaid taxes.—

124 (4) A tax certificate representing less than \$250 in
125 delinquent taxes on property that has been granted a homestead
126 exemption for the year in which the delinquent taxes were
127 assessed may not be sold at public auction or by electronic sale
128 as provided in subsection (1) but must be issued by the tax
129 collector to the county at the maximum rate of interest allowed.
130 Section ~~The provisions of s.~~ 197.4725 or s. 197.502(3) may not
131 be invoked if the homestead exemption is granted to the person
132 who received the homestead exemption for the year in which the
133 tax certificate was issued. However, if all such tax
134 certificates and accrued interest represent an amount of \$250 or
135 more, ss. 197.4725 and 197.502(3) ~~s. 197.502(3)~~ shall be invoked
136 ~~used to determine whether the county must apply for a tax deed.~~

137 Section 5. Subsection (1) of section 197.472, Florida
138 Statutes, is amended to read:

139 197.472 Redemption of tax certificates.—

140 (1) A ~~Any~~ person may redeem a tax certificate at any time
141 after the certificate is issued and before a tax deed is issued
142 ~~or the property is placed on the list of lands available for~~
143 ~~sale.~~ The person redeeming a tax certificate shall pay the tax
144 collector the face amount plus all interest, costs, and charges.

145 Section 6. Subsections (2) and (7) of section 197.502,

29-01063-14 2014788__

146 Florida Statutes, are amended to read:

147 197.502 Application for obtaining tax deed by holder of tax
148 sale certificate; fees.—

149 (2) A certificateholder, other than the county, who makes
150 application for a tax deed shall pay the tax collector at the
151 time of application all amounts required for redemption or
152 purchase of all other outstanding tax certificates, plus
153 interest, any omitted taxes, plus interest, any delinquent
154 taxes, plus interest, and current taxes, if due, covering the
155 property. In addition, the certificateholder shall pay the costs
156 of resale, if applicable, and failure to pay such costs within
157 15 days after notice from the clerk shall result in the clerk's
158 entering the land on a list entitled "lands available for
159 taxes."

160 (7) On county-held or individually held certificates for
161 which there are no bidders at the public sale and the
162 certificateholder fails to timely pay costs of resale or fails
163 to pay the amounts due for issuance of a tax deed within 15 days
164 after the sale, the clerk shall enter the land on a list
165 entitled "lands available for taxes" and shall immediately
166 notify the county commission and all other persons holding
167 certificates against the property that the property is
168 available. During the first 90 days after the property is placed
169 on the list, the county may purchase the land for the opening
170 bid or may waive its rights to purchase the property.
171 Thereafter, any person, the county, or any other governmental
172 unit may purchase the property from the clerk, without further
173 notice or advertising, for the opening bid, except that if the
174 county or other governmental unit is the purchaser for its own

29-01063-14

2014788

175 use, the board of county commissioners may cancel omitted years'
 176 taxes, as provided under s. 197.447. If the county does not
 177 elect to purchase the property, the county must notify each
 178 legal titleholder of property contiguous to the property
 179 available for taxes, as provided in paragraph (4)(h), before
 180 expiration of the 90-day period. Interest on the opening bid
 181 continues to accrue through the month of sale as prescribed by
 182 s. 197.542.

183 Section 7. Subsections (1) and (3) of section 197.542,
 184 Florida Statutes, are amended to read:

185 197.542 Sale at public auction.—

186 (1) Real property advertised for sale to the highest bidder
 187 as a result of an application filed under s. 197.502 shall be
 188 sold at public auction by the clerk of the circuit court, or his
 189 or her deputy, of the county where the property is located on
 190 the date, at the time, and at the location as set forth in the
 191 published notice, which must be during the regular hours the
 192 clerk's office is open. The amount required to redeem the tax
 193 certificate, plus the amounts paid by the holder to the clerk in
 194 charges for costs of sale, redemption of other tax certificates
 195 on the same property, and all other costs to the applicant for
 196 tax deed, plus interest at the rate of 1.5 percent per month for
 197 the period running from the month after the date of application
 198 for the deed through the month of sale and costs incurred for
 199 the service of notice provided for in s. 197.522(2), shall be
 200 the bid of the certificateholder for the property. If tax
 201 certificates exist or if delinquent taxes accrued subsequent to
 202 the filing of the tax deed application, the amount required to
 203 redeem such tax certificates or pay such delinquent taxes must

Page 7 of 11

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

29-01063-14

2014788

204 be included in the minimum bid. However, if the land to be sold
 205 is assessed on the latest tax roll as homestead property, the
 206 bid of the certificateholder must be increased to include an
 207 amount equal to one-half of the assessed value of the homestead
 208 property as required by s. 197.502. If there are no higher bids,
 209 the property shall be struck off and sold to the
 210 certificateholder, who shall pay to the clerk any amounts
 211 included in the minimum bid, the documentary stamp tax, ~~and~~
 212 recording fees, and, if the property is homestead property, the
 213 moneys to cover the one-half value of the homestead within 15
 214 days after the sale ~~due~~. Upon payment, a tax deed shall be
 215 issued and recorded by the clerk. If the certificateholder fails
 216 to make full payment when due, the sale is considered canceled,
 217 and the clerk shall enter the land on a list entitled "lands
 218 available for taxes."

219 (3) If the sale is canceled for any reason, or the buyer
 220 fails to make full payment within the time required, the clerk
 221 shall ~~immediately~~ readvertise the sale ~~to be held~~ within 30 days
 222 after the buyer's nonpayment or, if canceled, within 30 days
 223 after the clerk receives the costs of resale. The sale shall be
 224 held within 30 days after readvertising ~~after the date the sale~~
 225 ~~was canceled.~~ Only one advertisement is necessary. The amount of
 226 the opening bid shall be increased by the cost of advertising,
 227 additional clerk's fees as provided for in s. 28.24(21), and
 228 interest as provided for in subsection (1). If at the subsequent
 229 sale there are no bidders at the tax deed sale and the
 230 certificateholder fails to pay the moneys due within 15 days
 231 after the sale, the clerk may not readvertise the sale and shall
 232 place the property on a list entitled "lands available for

Page 8 of 11

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

29-01063-14

2014788__

233 ~~taxes." This process must be repeated until the property is sold~~
 234 ~~and the clerk receives full payment or the clerk does not~~
 235 ~~receive any bids other than the bid of the certificateholder.~~
 236 The clerk must receive full payment before the issuance of the
 237 tax deed.

238 Section 8. Subsection (2) of section 197.582, Florida
 239 Statutes, is amended, and subsection (3) is added to that
 240 section, to read:

241 197.582 Disbursement of proceeds of sale.—

242 (2) If the property is purchased for an amount in excess of
 243 the statutory bid of the certificateholder, the excess must be
 244 paid over and disbursed by the clerk. If the property purchased
 245 is homestead property and the statutory bid includes an amount
 246 equal to at least one-half of the assessed value of the
 247 homestead, that amount must be treated as excess and distributed
 248 in the same manner. The clerk shall distribute the excess to the
 249 governmental units for the payment of any lien of record held by
 250 a governmental unit against the property, including any tax
 251 certificates not incorporated in the tax deed application and
 252 omitted taxes, if any. If the excess is not sufficient to pay
 253 all of such liens in full, the excess shall be paid to each
 254 governmental unit pro rata. If, after all liens of governmental
 255 units are paid in full, there remains a balance of undistributed
 256 funds, the balance shall be retained by the clerk for the
 257 benefit of persons described in s. 197.522(1)(a), except those
 258 persons described in s. 197.502(4)(h), as their interests may
 259 appear. The clerk shall mail notices to such persons notifying
 260 them of the funds held for their benefit. Such notice
 261 constitutes compliance with the requirements of s. 717.117(4).

Page 9 of 11

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

29-01063-14

2014788__

262 Any service charges, at the rate prescribed in s. 28.24(10), and
 263 costs of mailing notices shall be paid out of the excess balance
 264 held by the clerk. Excess proceeds shall be held and disbursed
 265 in the same manner as unclaimed redemption moneys in s. 197.473.
 266 For purposes of identifying unclaimed property pursuant to s.
 267 717.113, excess proceeds shall be presumed payable or
 268 distributable on the date the notice is sent. If excess proceeds
 269 are not sufficient to cover the service charges and mailing
 270 costs, the clerk shall receive the total amount of excess
 271 proceeds as a service charge.

272 (3) If unresolved claims against the property exist on the
 273 date the property is purchased, the clerk shall ensure that the
 274 excess funds are paid according to the priorities of the claims.
 275 If a lien appears to be entitled to priority and the lienholder
 276 has not made a claim against the excess funds, payment may not
 277 be made on any lien that is junior in priority. If potentially
 278 conflicting claims to the funds exist, the clerk shall initiate
 279 an interpleader action against the lienholders involved, and the
 280 court shall determine the proper distribution of the excess
 281 funds. The clerk may move the court for an award of reasonable
 282 fees and costs from the remaining proceeds.

283 Section 9. Subsection (5) of section 322.245, Florida
 284 Statutes, is amended to read:

285 322.245 Suspension of license upon failure of person
 286 charged with specified offense under chapter 316, chapter 320,
 287 or this chapter to comply with directives ordered by traffic
 288 court or upon failure to pay child support in non-IV-D cases as
 289 provided in chapter 61 or failure to pay any financial
 290 obligation in any other criminal case.—

Page 10 of 11

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

29-01063-14

2014788__

291 (5) (a) ~~If when~~ the department receives notice from a clerk
292 of the court that a person licensed to operate a motor vehicle
293 in this state under ~~the provisions of~~ this chapter has failed to
294 pay financial obligations for any criminal offense other than
295 those specified in subsection (1), in full or in part under a
296 payment plan pursuant to s. 28.246(4), the department shall
297 suspend the license and place a registration stop on any vehicle
298 owned by ~~of~~ the person named in the notice.

299 (b) The department must reinstate the driving privilege and
300 remove the registration stop of any vehicle owned by the person
301 if when the clerk of the court provides an affidavit to the
302 department stating that:

- 303 1. The person has satisfied the financial obligation in
304 full or made all payments currently due under a payment plan;
- 305 2. The person has entered into a written agreement for
306 payment of the financial obligation if not presently enrolled in
307 a payment plan; or
- 308 3. A court has entered an order granting relief to the
309 person ordering the reinstatement of the license and removing
310 the registration stop of any vehicle owned by the person.

311 (c) The department ~~may shall~~ not be held liable for any
312 license suspension and registration stop placed on any vehicle
313 owned by the person resulting from the discharge of its duties
314 under this section.

315 Section 10. This act shall take effect July 1, 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/14

Meeting Date

Topic Clerks of Court

Bill Number SB 788
(if applicable)

Name Jean Sperbeck

Amendment Barcode _____
(if applicable)

Job Title Attorney, Clerk of Court, Alachua Co.

Address 1941 NW 34th Terr

Phone (352) 337-6142

Street

Gainesville FL 32605

City

State

Zip

E-mail jas@alachuaclerk.org

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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 Judiciary

BILL: CS/SB 828

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Court System

DATE: March 12, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 828 repeals or modifies court-related statutes that are unnecessary or outdated. Statutes that are a duplication of provisions in Article V of the State Constitution are repealed as unnecessary. Statutes that unconstitutionally create additional requirements for judicial office are repealed because they are likely to be determined to be in conflict with constitutional qualifications for office. Other statutes are amended or repealed to reflect current practices or eliminate outdated provisions.

One example of an unnecessary statute that is being repealed pertains to the Supreme Court Library acquisition program which states that books may be acquired by purchase or exchange. It is unclear why that directive ever needed to be included in the statutes.

Provisions requiring the Supreme Court to appoint a clerk and marshal, directives which are already covered in the State Constitution, are repealed as unnecessary.

Three existing statutes require certain judges to live in specified counties in a judicial circuit. This restricts eligibility for the office beyond the requirements of the State Constitution. Accordingly, these provisions are being repealed because they are most likely unconstitutional.

An example of an outdated statute that is being repealed addresses an evidentiary issue involving receipts of a receiver of the United States Land Office. The land grant office appears to have closed in 1933 and the last appellate case under the statute was decided 100 years ago in 1914.

II. Present Situation:

Article V of the State Constitution establishes and governs the Judiciary. The various sections set forth the authority, jurisdiction, and structure of the court system and provide qualifications for justices and judges. Article V also establishes the Judicial Qualifications Commission, provides for funding of the judicial branch, the admission and discipline of attorneys, and contains provisions relating to clerks of circuit courts as well as state attorneys and public defenders.

Similarly, Title V of the Florida Statutes is devoted to the Judicial Branch of state government. Title V, which consists of chapters 25-44, contains laws governing the Supreme Court, circuit courts, state attorneys and public defenders, court system funding, district courts of appeal, general provisions regarding judges and courts, and other related provisions.

Over time, many of the judicial statutes found in Title V have become unnecessary duplications of provisions contained in the State Constitution. Other statutes have become outdated.

In an effort to update the statutes relating to the Judicial Branch, the House Civil Justice Subcommittee compiled a list of duplicative statutes that are unnecessary. Those provisions comprise 13 of the 19 sections of this bill. The subcommittee determined that additional statutes needed to be amended and a new section created to deal with compensation issues. Those combined provisions are the subject of this bill.

The “Effect of Proposed Changes” provides additional information describing the present situation for each section of the bill.

III. Effect of Proposed Changes:

This bill repeals or modifies court-related statutes that are unnecessary or outdated. Below is a section by section analysis of the changes proposed in this bill.

Section 1. Section 25.151, F.S., is a law passed in 1957 which prohibits a retired Supreme Court justice from engaging in the practice of law while drawing retirement compensation. The statute is not currently enforced and similar statutes have been found unconstitutional.¹ The bill repeals the statute.

Section 2. Sections 25.191 and 25.231, F.S., require the Supreme Court to appoint a clerk who must perform duties as directed by the court. Article V, s. 3(c), State Constitution, also requires the Supreme Court to appoint a clerk to “perform such duties as the court directs.” The bill repeals the statutory requirements, which will have not have an adverse effect, because the same requirements remain in the State Constitution.

Sections 3 and 4. Sections 25.241(1) and 25.281, F.S., provide that the clerk and marshal of the Supreme Court are to be paid a salary. Similarly, Article V, s. 3(c) of the State Constitution requires that the Clerk and Marshall of the Supreme Court be paid by general law. Section 3 repeals a subsection in s. 25.241, F.S., relating to compensation of the Clerk of the Supreme

¹ See *In re The Florida Bar-Code of Judicial Conduct*, 281 So. 2d 21 (Fla. 1973); see also, Article V, s. 15, FLA. CONST. (Supreme Court’s exclusive jurisdiction over the practice of law).

Court and section 4 repeals s. 25.281, F.S., relating to compensation of the Marshal of the Supreme Court. The bill repeals the statutory requirement, which will have no effect, because the State Constitution requires payment of the salaries and because state employees are paid for performing their duties. See also s. 29.23, F.S., created by this bill in section 11.

Section 5. Section 25.351, F.S., provides that books for the Supreme Court library may be acquired by purchase or exchange with other libraries. It is unclear why this needs to be in statute. The bill repeals the statutory language regarding books, which is unlikely to have any practical effect.

Section 6. Section 26.01, F.S., provides that there will be 20 judicial circuits in the state. Article V, s. 1 of the State Constitution requires that the state be divided into judicial circuits that follow county lines. Section 26.021, F.S. provides which counties are in each circuit. The bill repeals s. 26.01, F.S., merging its contents into s. 26.021, F.S., for simplicity.

Section 7. Section 26.021, F.S., divides the state into judicial circuits as required by the State Constitution. The statute lists the number of the judicial circuit and which counties are in each circuit. Three of the 20 judicial circuits, the Fifth, Seventh, and Sixteenth circuits, have special statutory residency requirements stating that judges must live in a particular county in the circuit. Article V, s. 8 of the State Constitution establishes the constitutional requirements for eligibility to serve as a justice or judge. The courts have ruled that no additional requirement for judicial office may be created by statute.² The bill adds the language from s. 26.01, F.S., and repeals the special residential requirements for certain judicial offices at the circuit court level.

Section 8. Section 26.51, F.S., requires that the salaries of circuit court judges be paid “in equal monthly installments.” The language first appeared in a 1925 statute setting the salaries of a number of state officials.³ At the time, salaries were in the general statutes. The practice since 1969 has been for the salaries of these state officials to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. All of the other state officials, including county judges, appellate judges, and Supreme Court justices, are paid monthly without statutory direction. It is unclear why this clause, only applicable to one class of state officials, circuit judges, has remained in statute. The bill repeals the statutory requirement that circuit judges be paid in equal monthly installments. The repeal should have no impact on judicial salaries or when they are paid.

Section 9. Section 26.55, F.S., created the Conference of Circuit Judges of Florida. The bill amends the section at the request of the Conference to:

- Specify that a retired judge who is actively engaged in the practice of law is excluded from automatic membership.
- Delete a provision declaring it to be an official function of each circuit judge to attend meetings of the conference and participate in committee activities.

² See *Miller v. Mendez*, 804 So. 2d 1243, 1246 (Fla. 2001). A statute cannot require residency within a circuit at the time of qualifying when the constitution only requires residency at the time of taking office; *Levey v. Dijols*, 990 So. 2d 688, 692 (Fla. 4th DCA 2008), rev. denied, 994 So. 2d 304. (“Any statute that restricts eligibility beyond the requirements of the Florida Constitution is invalid.”),

³ Chapter 11335, L.O.F., s. 1 (1925).

- Require the Conference to operate according to the Rules of Judicial Administration adopted by the Supreme Court.
- Eliminate the requirement that the chair of the conference submit an “annual” report to the President of the Senate and the Speaker of the House.
- Make grammatical and technical changes.

Section 10. This section repeals s. 27.55, F.S., relating to the compensation and expenses of a public defender in a newly created judicial circuit.

Section 27.55, F.S., provides for the compensation of a public defender and the payment of expenses of a public defender should the state create a new judicial circuit. There are no current known plans for creation of a new judicial circuit, and, if there were, the payment of salaries and expenses relating to such creation would normally be a part of the law creating such circuit or would be in the General Appropriations Act for that legislative session. The bill repeals the statute regarding such expenses, which should have no impact.

Section 11. This section creates s. 29.23, F.S., relating to the salaries of certain positions in the judicial branch.

The State Constitution requires that certain employees of the court system are to be paid an annual salary. The requirement related to some of those employees is repeated in various statutes repealed by this bill. The practice since 1969 has been for the salaries of constitutional state officials, including those in the judicial branch, to be a part of the General Appropriations Act rather than in the compiled Florida Statutes. This bill creates s. 29.23, F.S., to consolidate all of the constitutional salary provisions into one statute reflecting current practices. The section provides that salaries of justices and judges must be part of the General Appropriations Act, and salaries of appellate marshals and clerks are determined in accordance with s. 25.382, F.S., current law regarding court system budgeting. The newly created statute reflects long-standing policies.

Section 12. This section repeals ss. 35.12, 35.13, 35.19, and 35.21, F.S., relating to district courts of appeal.

Article V, s. 2(c), State Constitution, provides for selection of a chief judge in each district court of appeal. Section 35.12, F.S., also provides for selection of a chief judge in each district court of appeal. The bill repeals the statutory provision, which repeal would have no practical effect.

Article V, s. 4(a), State Constitution, requires that three judges hear a case before a district court of appeal, and that the “concurrence of two” is required for a decision. Section 35.13, F.S., requires the same. The bill repeals the statutory provision, which will have no adverse effect, because the same provision remains in the State Constitution.

Article V, s. 14(a), State Constitution, provides that the salaries of justices and judges are to be set by general law. Section 35.19, F.S., provides that the salaries of judges of the district courts of appeal are to be set by law. The bill repeals the statutory provision, which repeal will have no detrimental effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Article V, s. 4(c), State Constitution, requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. Section 35.21, F.S., also requires each district court of appeal to appoint a clerk to serve at the pleasure of the court. The bill repeals the statutory provision, which will have no adverse effect, as the same provision remains in the State Constitution.

Section 13. This section amends s. 35.22, F.S., relating to the salary of the clerk of a district court of appeal. Article V, s. 4(c) of the State Constitution provides that the salary of a clerk of a district court of appeal is to be set by general law. Section 35.22(1), F.S., provides that the compensation of the clerk of a district court of appeal is to be set by law. The bill repeals the statutory provision, which will have no adverse effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Section 14. Sections 35.25 and 35.27, F.S., relate to the duties of the clerk of a district court of appeal and the compensation of the marshal of a district court of appeal. Section 35.25, F.S., provides that the duties of the clerk of a district court of appeal “shall be as prescribed by the rules of the court.” No rules have been promulgated to prescribe the specific duties of a clerk of a district court of appeal. Article V, s. 4(c), State Constitution, requires the clerk to “perform such duties as the court directs.” Because a clerk of a district court of appeal serves at the pleasure of the court, formal rulemaking is unnecessary. The adoption of internal operating procedures, both formal and informal, is sufficient to govern the conduct of a clerk or any other employee who serves at the pleasure of an appointing body. The bill repeals the statute, which is anticipated to have no effect on appellate court clerks or their operation.

Article V, s. 4(c), State Constitution, provides that the salary of a marshal of a district court of appeal is to be set by general law. Section 35.27, F.S., provides that the compensation of the marshal of a district court of appeal is to be set by law. The bill repeals the statutory provision, which will have no detrimental effect, because the same provision remains in the State Constitution. See also s. 29.23, F.S., created by this bill in section 11.

Section 15. This section repeals s. 38.13, F.S., relating to the appointment of a judge ad litem in a circuit or county court.

Section 38.13, F.S., provides for the appointment of a judge ad litem in a particular civil case. The law, first enacted in 1887, provides that, where the trial judge is disqualified, the parties to the action may agree on an attorney at law to act as the judge for that particular case. The statute was helpful at a time when most rural judicial circuits had only one judge, but it is outdated today. The need for the statute has been superseded by Article V, s. 2(b), of the State Constitution, which allows the Chief Justice to appoint a judge to another court, Fla. R. Jud. Admin. 2.215(b)(4), and the concept of arbitration found in s. 44.104, F.S. The bill repeals the statute allowing the appointment of a judge ad litem.

Section 16. Section 43.20, F.S., relating to the Judicial Qualifications Commission, is amended. The Judicial Qualifications Commission is created by Article V, s. 12, State Constitution. The commission is authorized to investigate and recommend to the Supreme Court the removal of a justice or judge whose conduct demonstrates unfitness to hold office and to recommend appropriate disciplinary action. Section 43.20, F.S., implements the Judicial Qualifications

Commission by statute. A 1996 constitutional amendment increased the membership of the commission to 15 from 13 members. This bill amends s. 43.20, F.S., to conform to the change to 15 from 13 members.

Section 17. This section repeals s. 57.101, F.S., relating to costs in the Supreme Court. Section 57.101, F.S., provides that a party to an appeal before the Supreme Court cannot be made to pay for copies made by the Clerk of the Supreme Court which the party did not order. It is unclear how or why copies would be made by the Clerk except where actually ordered by a party, and thus the statute has no apparent meaning. The bill repeals the statute.

Section 18. Section 92.15, F.S., relating to federal land office receipts, is repealed.

Section 92.15, F.S., provides that a receipt of a receiver of a United States Land Office shall in all cases be prima facie evidence that the title to the land covered by the receipt has passed from the United States to the person named in the receipt as having paid for the land. Federal law in the 1800's recognized that certain settlers of land who paid a nominal registration fee would be given a receipt that was evidence of the payment of the fee giving the settlor the right to possess the land. That receipt was not a title document like a deed, and so "the statute was passed with a view to obviating the inconvenience that ensued from the delays so frequently occurring in the issuance from Washington of the letters patent, and in recognition of the fact that the full equitable title had passed from the government to the [settlor]."⁴ The last appellate case under the statute was decided in 1914,⁵ and the records of the Florida land grant office show that it closed in 1933.⁶ All land grant properties should have had numerous recorded title transactions since then and reference to such receipts appears outdated and unnecessary. See generally, ch. 712, F.S. (the Marketable Record Title Act). The bill repeals the statute.

Section 19. This section provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ *Boley v. Wynn*, 67 So. 117 (Fla. 1914). See also, generally, *Yellow River R. Co. v. Harris*, 17 So. 568 (Fla. 1895).

⁵ *Boley v. Wynn*, 67 So. 117 (Fla. 1914).

⁶ National Archives, *Records of the Bureau of Land Management [BLM], 49.9.7 Florida Land Offices*, <http://www.archives.gov/research/guide-fed-records/groups/049.html>, (last visited March 6, 2014).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect the bill to have a fiscal impact on the state courts system.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 26.021, 26.55, 35.22, and 43.20.

This bill creates section 29.23 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 25.151, 25.191, 25.231, 25.241(1), 25.281, 25.351, 26.01, 26.51, 27.55, 35.12, 35.13, 35.19, 35.21, 35.25, 35.27, 38.13, 57.101, and 92.15.

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 Judiciary on March 11, 2014:**

The committee substitute removes the repeal of s. 27.50, F.S., relating to the qualifications and election of a public defender.

B. Amendments:

None.

⁷ Office of the State Courts Administrator, *Judicial Impact Statement for SB 828*, (March 1, 2014) (on file with the Senate Committee on Judiciary).

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



107796

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 167 - 168

and insert:

Section 10. Section 27.55, Florida Statutes, is repealed.

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

And the title is amended as follows:

Delete lines 25 - 26

and insert:

s. 27.55, F.S., relating to compensation and certain

By Senator Bradley

7-00992-14

2014828__

1 A bill to be entitled
 2 An act relating to the court system; repealing s.
 3 25.151, F.S., relating to a prohibition on the
 4 practice of law by a retired justice of the Supreme
 5 Court; repealing ss. 25.191 and 25.231, F.S., relating
 6 to the appointment and duties of a Clerk of the
 7 Supreme Court; amending s. 25.241, F.S.; deleting a
 8 requirement regarding the salary of the Clerk of the
 9 Supreme Court, to conform; repealing s. 25.281, F.S.,
 10 relating to compensation of the Marshal of the Supreme
 11 Court; repealing s. 25.351, F.S., relating to the
 12 acquisition of books by the Supreme Court; repealing
 13 s. 26.01, F.S., relating to the number of judicial
 14 circuits; amending s. 26.021, F.S.; specifying the
 15 number of judicial circuits; repealing certain
 16 residency requirements for circuit judges; repealing
 17 s. 26.51, F.S., relating to payment of the salaries of
 18 circuit judges; amending s. 26.55, F.S.; excluding
 19 retired judges practicing law from the Conference of
 20 Circuit Judges of Florida; removing a requirement that
 21 circuit court judges attend and participate in such
 22 conference; requiring that the conference operate
 23 according to the Rules of Judicial Administration;
 24 revising requirements for such conferences; repealing
 25 ss. 27.50 and 27.55, F.S., relating to the
 26 qualifications, election, compensation, and certain
 27 expenditures of public defenders; creating s. 29.23,
 28 F.S.; providing for certain judicial branch salaries;
 29 repealing ss. 35.12, 35.13, 35.19, and 35.21, F.S.,

Page 1 of 9

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

7-00992-14

2014828__

30 relating to the chief judge, quorum, compensation of
 31 judges, and clerk, respectively, of the district
 32 courts of appeal; amending s. 35.22, F.S.; deleting a
 33 requirement for the appointment and salary of a clerk
 34 for each district court of appeal; repealing ss. 35.25
 35 and 35.27, F.S., relating to duties of the clerk and
 36 compensation of the marshal, respectively, of the
 37 district courts of appeal; repealing s. 38.13, F.S.,
 38 relating to replacement of disqualified judges of the
 39 district courts of appeal; amending s. 43.20, F.S.;
 40 revising the number of members of the Judicial
 41 Qualifications Commission to conform to requirements
 42 of the State Constitution; repealing s. 57.101, F.S.,
 43 relating to the charging of costs against the losing
 44 party for certain copies of records in the Supreme
 45 Court; repealing s. 92.15, F.S., relating to an
 46 evidentiary rule regarding evidence of title to land
 47 passing from the United States; providing an effective
 48 date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Section 25.151, Florida Statutes, is repealed.
 53 Section 2. Sections 25.191 and 25.231, Florida Statutes,
 54 are repealed.
 55 Section 3. Subsection (1) of section 25.241, Florida
 56 Statutes, is amended to read:
 57 25.241 Clerk of Supreme Court; compensation; assistants;
 58 filing fees, etc.-

Page 2 of 9

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

7-00992-14

2014828

59 ~~(1) The Clerk of the Supreme Court shall be paid an annual~~
60 ~~salary to be determined in accordance with s. 25.382.~~

61 Section 4. Section 25.281, Florida Statutes, is repealed.

62 Section 5. Section 25.351, Florida Statutes, is repealed.

63 Section 6. Section 26.01, Florida Statutes, is repealed.

64 Section 7. Section 26.021, Florida Statutes, is amended to
65 read:

66 26.021 Judicial circuits; judges.—The state is divided into
67 20 judicial circuits:

68 (1) The first circuit is composed of Escambia, Okaloosa,
69 Santa Rosa, and Walton Counties.

70 (2) The second circuit is composed of Franklin ~~Leon,~~
71 ~~Gadsden, Jefferson, Leon, Liberty, and Wakulla, Liberty, and~~
72 ~~Franklin~~ Counties.

73 (3) The third circuit is composed of Columbia, Dixie,
74 Hamilton, Lafayette, Madison, Suwannee, and Taylor Counties.

75 (4) The fourth circuit is composed of Clay, Duval, and
76 Nassau Counties.

77 (5) The fifth circuit is composed of Citrus, Hernando,
78 Lake, Marion, and Sumter Counties. ~~Two of the circuit judges~~
79 ~~authorized for the fifth circuit shall reside in either Citrus,~~
80 ~~Hernando, or Sumter County, and neither of such two judges shall~~
81 ~~reside in the same county.~~

82 (6) The sixth circuit is composed of Pasco and Pinellas
83 Counties.

84 (7) The seventh circuit is composed of Flagler, Putnam, St.
85 Johns, and Volusia Counties. ~~One judge shall reside in Flagler~~
86 ~~County; two judges shall reside in Putnam County; two judges~~
87 ~~shall reside in St. Johns County; and three judges shall reside~~

7-00992-14

2014828

88 ~~in Volusia County. There shall be no residency requirement for~~
89 ~~any other judges in the circuit.~~

90 (8) The eighth circuit is composed of Alachua, Baker,
91 Bradford, Gilchrist, Levy, and Union Counties.

92 (9) The ninth circuit is composed of Orange and Osceola
93 Counties.

94 (10) The tenth circuit is composed of Hardee, Highlands,
95 and Polk Counties.

96 (11) The eleventh circuit is composed of Miami-Dade County.

97 (12) The twelfth circuit is composed of Desoto, Manatee,
98 ~~and Sarasota, and DeSoto~~ Counties.

99 (13) The thirteenth circuit is composed of Hillsborough
100 County.

101 (14) The fourteenth circuit is composed of Bay, Calhoun,
102 Gulf, Holmes, Jackson, and Washington Counties.

103 (15) The fifteenth circuit is composed of Palm Beach
104 County.

105 (16) The sixteenth circuit is composed of Monroe County.
106 ~~One judge in the circuit shall reside in the middle or upper~~
107 ~~Keys. There shall be no residency requirement for any other~~
108 ~~judge in the circuit.~~

109 (17) The seventeenth circuit is composed of Broward County.

110 (18) The eighteenth circuit is composed of Brevard and
111 Seminole Counties.

112 (19) The nineteenth circuit is composed of Indian River,
113 Martin, Okeechobee, and St. Lucie Counties.

114 (20) The twentieth circuit is composed of Charlotte,
115 Collier, Glades, Hendry, and Lee Counties.

116 (21) Notwithstanding subsections (1)-(20), the territorial

7-00992-14 2014828__

117 jurisdiction of a circuit court may be expanded as provided for
118 in s. 910.03(3).
119

120 The judicial nominating commission of each circuit, in
121 submitting nominations for any vacancy in a judgeship, and the
122 Governor, in filling any vacancy for a judgeship, shall consider
123 whether the existing judges within the circuit, together with
124 potential nominees or appointees, reflect the geographic
125 distribution of the population within the circuit, the
126 geographic distribution of the caseload within the circuit, the
127 racial and ethnic diversity of the population within the
128 circuit, and the geographic distribution of the racial and
129 ethnic minority population within the circuit.

130 Section 8. Section 26.51, Florida Statutes, is repealed.

131 Section 9. Section 26.55, Florida Statutes, is amended to
132 read:

133 26.55 Conference of Circuit Judges of Florida; duties and
134 reports.—

135 (1) There is created and established the Conference of
136 Circuit Judges of Florida. The conference consists ~~shall consist~~
137 of the active and retired circuit judges of the several judicial
138 circuits of the state, excluding retired judges practicing law.

139 (2) The conference shall annually elect a chair. The chair,
140 ~~whose duty it shall be to~~ call all meetings and ~~to~~ appoint
141 committees to effectuate the purposes of the conference. ~~It is~~
142 ~~declared to be an official function of each circuit judge to~~
143 ~~attend the meetings of the conference. It is also an official~~
144 ~~function of each circuit judge to participate in the activity of~~
145 ~~each committee to the membership of which such judge is~~

7-00992-14 2014828__

146 ~~appointed.~~

147 (3) ~~(a) It is declared to be the responsibility of The~~
148 ~~conference shall operate according to the Rules of Judicial~~
149 ~~Administration adopted by the Supreme Court. The~~
150 ~~responsibilities of the conference include ~~to~~:~~

151 (a)1- Considering and making ~~Consider and make~~
152 recommendations concerning the betterment of the judicial system
153 of the state and its various parts;

154 (b)2- Considering and making ~~Consider and make~~
155 recommendations concerning the improvement of rules and methods
156 of procedure and practice in the several courts; ~~and~~

157 (c)3- Reporting ~~Report~~ to the Supreme Court its such
158 findings and recommendations under this subsection; and as the
159 ~~conference may have with reference thereto.~~

160 (d) (b) Providing Not less than 60 days before the convening
161 of the regular session of the Legislature with, ~~the chair of the~~
162 ~~conference shall report to the President of the Senate and the~~
163 ~~Speaker of the House such recommendations as the conference may~~
164 ~~have concerning defects in the laws of this state and such~~
165 ~~amendments or additional legislation as the conference may deem~~
166 ~~necessary regarding the administration of justice.~~

167 Section 10. Sections 27.50 and 27.55, Florida Statutes, are
168 repealed.

169 Section 11. Section 29.23, Florida Statutes, is created to
170 read:

171 29.23 Salaries of certain positions in the judicial
172 branch.—

173 (1) The salaries of justices, judges of the district courts
174 of appeal, circuit judges, and county judges shall be fixed

7-00992-14

2014828__

175 annually in the General Appropriations Act.

176 (2) The clerk and the marshal of the Supreme Court, or a
 177 clerk or marshal of a district court of appeal, shall be paid an
 178 annual salary to be determined in accordance with s. 25.382(3).

179 Section 12. Sections 35.12, 35.13, 35.19, and 35.21,
 180 Florida Statutes, are repealed.

181 Section 13. Subsection (1) of section 35.22, Florida
 182 Statutes, is amended to read:

183 35.22 Clerk of district court; ~~appointment~~; compensation;
 184 assistants; filing fees; teleconferencing.-

185 ~~(1) Each district court of appeal shall appoint a clerk who~~
 186 ~~shall be paid an annual salary to be determined in accordance~~
 187 ~~with s. 25.382.~~

188 (1)(2) The clerk ~~may is authorized to~~ employ ~~such~~ deputies
 189 and clerical assistants as may be necessary. Their number and
 190 compensation shall be approved by the court, and paid from the
 191 annual appropriation for the district courts of appeal.

192 (2)(3)(a) The clerk, upon the filing of a certified copy of
 193 a notice of appeal or petition, shall charge and collect a
 194 filing fee of \$300 for each case docketed, and service charges
 195 as provided in s. 28.24 for copying, certifying or furnishing
 196 opinions, records, papers or other instruments and for other
 197 services. The state ~~of Florida~~ or its agencies, when appearing
 198 as appellant or petitioner, is exempt from the filing fee
 199 required in this subsection. ~~From each attorney appearance pro~~
 200 ~~hac vice~~, The clerk shall collect from each attorney appearance
 201 pro hac vice a fee of \$100 for deposit as provided in this
 202 section.

203 (b) Upon the filing of a notice of cross-appeal, or a

7-00992-14

2014828__

204 notice of joinder or motion to intervene as an appellant, cross-
 205 appellant, or petitioner, the clerk shall charge and collect a
 206 filing fee of \$295. The clerk shall remit the fee to the
 207 Department of Revenue for deposit into the General Revenue Fund.
 208 The state and its agencies are exempt from the filing fee
 209 required by this paragraph.

210 (3)(4) The opinions of the district court of appeal may
 211 ~~shall~~ not be recorded, but the original as filed shall be
 212 preserved with the record in each case.

213 (4)(5) The clerk may is authorized immediately, after a
 214 case is disposed of, ~~to~~ supply the judge who tried the case and
 215 from whose order, judgment, or decree, appeal or other review is
 216 taken, a copy of all opinions, orders, or judgments filed in
 217 such case. Copies of opinions, orders, and decrees shall be
 218 furnished in all cases to each attorney of record and for
 219 publication in Florida reports to the authorized publisher
 220 without charge, and copies furnished to other law book
 221 publishers at one-half the regular statutory fee.

222 (5)(6) The clerk of each district court of appeal shall is
 223 ~~required to~~ deposit all fees collected in the State Treasury to
 224 the credit of the General Revenue Fund, except that \$50 of each
 225 \$300 filing fee collected shall be deposited into the State
 226 Courts Revenue Trust Fund to fund court operations as authorized
 227 in the General Appropriations Act. The clerk shall retain an
 228 accounting of each such remittance.

229 (6)(7) The clerk of the district court of appeal may is
 230 ~~authorized to~~ collect a fee from the parties to an appeal
 231 reflecting the actual cost of conducting the proceeding through
 232 teleconferencing if ~~where~~ the parties have requested that an

7-00992-14

2014828__

233 oral argument or mediation be conducted through
234 teleconferencing. The fee collected for this purpose shall be
235 used to offset the expenses associated with scheduling the
236 teleconference and shall be deposited in the State Courts
237 Revenue Trust Fund.

238 Section 14. Sections 35.25 and 35.27, Florida Statutes, are
239 repealed.

240 Section 15. Section 38.13, Florida Statutes, is repealed.

241 Section 16. Subsection (2) of section 43.20, Florida
242 Statutes, is amended to read:

243 43.20 Judicial Qualifications Commission.-

244 (2) MEMBERSHIP; TERMS.-The commission shall consist of 15
245 ~~13~~ members. The members of the commission shall serve for terms
246 of 6 years.

247 Section 17. Section 57.101, Florida Statutes, is repealed.

248 Section 18. Section 92.15, Florida Statutes, is repealed.

249 Section 19. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 14
Meeting Date

Topic Cour & System

Bill Number SB 828
(if applicable)

Name Olin Shinkholser, Circuit Judge

Amendment Barcode _____
(if applicable)

Job Title Chair - Conference of Circuit Judges

Address 430 S. Commerce Ave

Phone 863-402-6901

Street

Sebring
City

FL 33870
State Zip

E-mail oshinkholser@Jud10.flcourts.org

Speaking: For Against Information

Representing Conference of Circuit Judges

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-14

Meeting Date

Topic _____

Bill Number 828
(if applicable)

Name Peter Dunbar

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe St

Phone 999-4100

Street

Tallahassee 32301

E-mail pdunbar@deanwood.com

City

State

Zip

Speaking: For Against Information

Representing Conference of Circuit Court Judges

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/14
Meeting Date

Topic Court System

Bill Number 828
(if applicable)

Name Lisa Goodner

Amendment Barcode _____
(if applicable)

Job Title State Courts Administrator

Address 500 S. Duval St.

Phone 850-922-5081

Street

Tallahassee, FL 32399

City

State

Zip

E-mail goodnerl@flcourts.org

Speaking: For Against Information

circuit judges statute
Representing State Courts System

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/2014

Meeting Date

Topic _____

Bill Number 828
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 (10/20/11)

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 Judiciary

BILL: SJR 1188

INTRODUCER: Senator Lee

SUBJECT: Prospective Appointment of Judicial Vacancies

DATE: March 11, 2014

REVISED: 03/12/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/1 amendment
2.			RC	

Please see Section IX. for Additional Information:

AMENDMENTS - Amendments were recommended

I. Summary:

SJR 1188 amends the State Constitution to require the Governor to prospectively fill a vacancy in a judicial office on the Florida Supreme Court or a district court of appeal. The amendment requires the Governor to prospectively fill a vacancy that will occur due to a justice or judge reaching the mandatory retirement age, failing to qualify for a retention election, or failing to be retained in office at an election.

Currently, the Governor's authority to appoint a Supreme Court Justice or district court of appeal judge does not manifest itself until the expiration of the sitting judge's or justice's term. Additionally, under the existing timeframes for filling a judicial vacancy, the potential exists for a judicial office to be vacant for 120 days after a vacancy occurs. Under the amendment, the existing timeframes for a judicial nominating commission to nominate individuals to fill a prospective vacancy begin at the conclusion of the qualifying period for retention or immediately following the general election in which the voters do not vote to retain a judge or justice.

In some cases, the amendment will require an outgoing Governor to appoint an individual to fill a judicial vacancy that under current law may be within the purview of an incoming Governor.

II. Present Situation:

The Selection and Retention of Judges and Justices under Florida Law

Trial Courts -Election by Voters

Florida law establishes two separate methods for selecting judges and justices for office. In the trial courts, comprised of the county and circuit courts, judges are elected by a majority vote of the qualified electors in a nonpartisan election. The term of office is 6 years. To serve an additional term, the judge must qualify and run for office in a subsequent general election and again be elected by a majority of the electorate voting in that election.

Appellate Courts -Nomination and Merit Retention

Initial Appointment

In the appellate courts, which are the district courts of appeal and the Supreme Court, the method is different. The selection process is called merit retention which was adopted in 1976 through an amendment to the State Constitution. The Supreme Court justices and district court judges are initially appointed by the Governor from a list of three to six nominees supplied by the appropriate judicial nominating commission. The new judge or justice faces his or her first merit retention vote in the first general election that is scheduled at least 1 year after appointment. If a majority of the electors in the territorial jurisdiction vote to retain, the judge or justice is retained for a 6-year term in office. The territorial jurisdiction for a judge on a district court of appeal is comprised of multiple counties and judicial circuits making up that particular jurisdiction. In contrast, because the Supreme Court has statewide jurisdiction, the name of the Justice appears on the ballot state-wide for election.

Subsequent Terms

To serve a subsequent term, the judge from the district court of appeal or a justice from the Supreme Court must qualify for retention by a vote of the electors in the general election which occurs closest and before the expiration of the judge's or justice's term. The ballot then asks the simple question "Shall Justice (or Judge) (name of judge or justice) of the (name of the court) be retained in office?" If a majority of the qualified electors voting in the territorial jurisdiction of the court vote to retain, the justice or judge is retained for another 6-year term. If a majority of the electors vote to not retain, a vacancy exists in the office upon the expiration of the term being served by the justice or judge.¹

Term of Office for Supreme Court Justices and District Court of Appeals Judges

The term of office for a justice or judge who is retained begins on the first Tuesday after the first Monday in January following the general election.²

Judicial Nominating Commissions

The State Constitution requires the establishment of a separate judicial nominating commission, as provided by general law, for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts within the circuit.³

¹ The State Constitution, in s. 10, Art. V, provides that, under specified circumstances, a jurisdiction may approve a local option to select circuit or county judges by merit selection and retention rather than election. The local option has not been approved in any circuit or county.

² FLA. CONST. art. V, s. 10(a).

³ FLA. CONST. art. V, s. 11(d).

Each judicial nominating commission is composed of four members of The Florida Bar, nominated by the Board of Governors of the Bar and selected by the Governor, and five members appointed by the Governor, of which two are members of the Bar and engaged in the practice of law. The members must be residents of the territorial jurisdiction served by the commission. The term of office is 4 years.⁴

No justice of judge is permitted to serve as a member of the commission but members may hold an office other than a judicial office. A member of a commission is not eligible for appointment to a state judicial office over which the commission has authority to make a nomination during his or her term of office or for 2 years afterwards.

Vacancy in Office and Timeframes

A vacancy in office occurs if a justice or judge is ineligible for retention, fails to qualify for retention,⁵ or is not retained by a majority vote in the general election. The vacancy exists upon the expiration of the term being served by the justice. The State Constitution directs that the governor must “fill the vacancy by appointing for a term ending on the first Tuesday after the first Monday in January of the year following the next general election occurring at least one year after the date of appointment.” The Governor must make the selection from a list of three to six persons nominated by the judicial nominating committee for the Supreme Court.⁶ The Supreme Court has determined that the Governor must make his or her selection from the list of nominees supplied by the commission and is not allowed to reject the list and request another slate of names.⁷

The nominations must be submitted by the judicial nominating committee within 30 days after the prospective vacancy occurs unless the Governor extends the period for a time that does not exceed 30 days. The Governor then has 60 days after the nominations are submitted to him or her to make the appointment.⁸

Mandatory Retirement under the Constitution

The State Constitution prohibits a justice or judge from serving after he or she has attained the age of 70 except for a temporary assignment or to complete a term “one-half of which has been served.”⁹

Term of Office – Governor

A Governor is elected to a 4-year term in office at each general election which is held in an even numbered year but which is not a multiple of four. The term begins on the first Tuesday after the first Monday in January of the year after the election.¹⁰

⁴ FLA. CONST. art. V, s. 20(c); s. 43.291(3), F.S.

⁵ Section 105.031(1), F.S. provides that “Candidates for judicial office shall qualify no earlier than noon on the 120th day, and no later than noon of the 116th day, before the primary election.”

⁶ FLA. CONST. art V, s. 11(a).

⁷ 14 So. 3d 941 (Fla. 2009).

⁸ FLA. CONST. art. V, s. 11(c).

⁹ FLA. CONST. art. V, s. 8.

¹⁰ FLA. CONST. art. IV, s. 5(a).

When Appointments May be Made to Fill Vacancies

Governor Bush requested an advisory opinion from the Supreme Court in 2006 as to when a vacancy occurs as the result of a mandatory retirement of a judge who was not eligible for retention. The Court responded that the vacancy would not occur until the judge's term actually expired.¹¹ In a concurring opinion, Justice Cantero agreed¹² with the majority holding but emphasized that nothing in the Florida Constitution prevented the appropriate judicial nominating commission from beginning the nominating process to name a successor before the vacancy actually occurs. He stated that "The constitution is silent on when the process must begin" and noted that vacancies in office should be avoided when possible, or at least, minimized. Justice Cantero wrote that if a judicial nominating commission is forced to delay the beginning of its proceedings until a judge leaves office, the affected court might be left without a judge for months, thereby placing an enormous burden on the remaining members of the court.

When Does a Governor's Authority to Make Appointments End?

The Florida Supreme Court issued a 1955 decision resolving the question of when an outgoing Governor's authority to fill a judicial vacancy ends and when an incoming Governor's authority begins.¹³ The Court concluded that the authority of the outgoing Governor did not end until the incoming Governor actually takes office.

When Governor Dan McCarty died in office on September 30, 1953, Senate President Charley Johns became acting Governor until the installation of Governor LeRoy Collins on January 4, 1955. Governor Collins had been elected in 1954 to fill the unexpired term of the deceased Governor. Outgoing Governor Johns appointed Thomas Tappy to fill a judicial vacancy that would occur at midnight, Monday, January 3, 1955, just hours before Governor Collins' inauguration. On Tuesday, January 4, 1955, inauguration day, Governor Collins was sworn into office at about noon. He tried to appoint another person to that same judicial office once he was inaugurated. The Supreme Court concluded that acting Governor John's midnight appointment of Thomas Tappy was valid. The Court noted that the incumbent Governor continued in office and was entitled to exercise any power to appoint an individual to office until his successor had been sworn into the office.

III. Effect of Proposed Changes:

This joint resolution amends two sections of Article V of the State Constitution pertaining to the Governor's ability to appoint judges and justices to the district courts of appeal and the Supreme Court. The bill authorizes the Governor to "prospectively" fill vacancies and explains when a prospective vacancy occurs. The Governor is currently permitted to fill vacancies only upon the expiration of the term of the person vacating the office.

¹¹ *Advisory Opinion to the Governor re Judicial Vacancy Due to Mandatory Retirement*, 940 So. 2d 1090 (Fla. 2006).

¹² *Id.* at 94, 95.

¹³ *Tappy v. State*, 82 So. 2d (Fla. 1955).

Article V, Section 10—Retention

Under current law, a Governor is permitted to fill a vacancy on an appellate court or the Supreme Court when a justice or judge is either ineligible for retention, fails to qualify for retention, or loses a retention election. The vacancy exists upon “the expiration of the term being served by the justice or judge” and not before that time.

This amendment to the State Constitution requires the Governor to fill a “prospective” vacancy on a court. A prospective vacancy occurs, not at the end of the term being served by the justice or judge, but at the time that the justice or judge is either ineligible for retention, at the end of the qualifying period for retention when the individual fails to qualify for retention, or immediately after the general election when the judge or justice does not receive the necessary votes to be retained.

This amendment requires the judicial nominating commission to begin its work in advance of the expiration of the justice of judge’s term. By requiring the commission to provide the Governor with a list of nominees sooner, the process of nomination and appointment will conclude before the expiration of the term of the sitting justice or judge if a justice or judge is ineligible for retention or fails to qualify for retention. If a justice or judge is not retained at the general election, the judicial nominating commission will begin its 30 day work in November instead of January as the current law requires. As a result, instead of actual vacancies on a court potentially lasting 120 days, some vacancies may be eliminated on the Supreme Court and district courts of appeal while others may be significantly reduced.

Article V, Section 11—Vacancies

The amendment to this section of the State Constitution provides that whenever a prospective vacancy occurs in a judicial office subject to election for retention, the Governor must fill the prospective vacancy, as under existing law, by an appointment from a list of at least three but not more than six persons nominated by the appropriate judicial nominating commission. The amendment further specifies that the appointment commences upon the expiration of the term of the office being vacated and ends on the first Tuesday after the first Monday in January of the year following the next general election.

Although this amendment authorizes the Governor to select an appointee before the expiration of the current office holder’s term, it does not allow the Governor to shorten the current office holders’ term of office.

Potential Outcomes

When the term of a justice or judge expires at the same time as the term of an outgoing Governor, the amendment requires the outgoing Governor to make an appointment that, under existing law, would likely be made by the incoming Governor.¹⁴

¹⁴ Recent news articles have stated that, if these constitutional amendments are adopted at the general election of 2014, whoever is Governor at the term ending in January 2019 will select replacements for three retiring Supreme Court Justices before the next Governor takes office in January 2019. The three justices’ terms end at the exact same moment that the sitting

Application of the Amendment

The amendment will first apply to judicial vacancies on a district court of appeal or on the Supreme Court which occur in January 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This joint resolution will be submitted to the voters for approval or rejection if agreed to by a three-fifths vote of the membership of each house of the Legislature.¹⁵ To take effect, this amendment must be approved by a vote of at least 60 percent of the voters voting on the measure during the 2014 General Election.¹⁶

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect the joint resolution to have a fiscal impact on the state courts system.¹⁷

Governor's term ends. The Governor whose term begins on that day will be denied the opportunity to select those appointments.

¹⁵ FLA. CONST. art. XI, s. 1.

¹⁶ FLA. CONST. art. XI, s. 5(e).

¹⁷ Office of the State Courts Administrator, *Judicial Impact Statement for SJR 1188*, (March 8, 2014) (on file with the Senate Committee on Judiciary).

Proposed amendments to the State Constitution must be published in a newspaper of general circulation in each county in which a newspaper is published in the 10th week and 6th week before the election in which amendments are submitted to the electors.¹⁸ The state will bear the costs of publishing the joint resolution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 10 and 11 of Article V of the State Constitution.

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:

147730 by Judiciary on March 11, 2014:

Clarifies the ballot summary language to state that the Governor is required to prospectively fill vacancies resulting from a justice or judge reaching the mandatory retirement age or failing to qualify for retention and allows prospective appointments if a judge or justice is not retained at an election.

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

¹⁸ FLA. CONST. art. XI, s. 5(e).



147730

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/12/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Lee) recommended the following:

Senate Amendment

In ballot statement, delete lines 127 - 135
and insert:

PROSPECTIVE APPOINTMENT OF CERTAIN JUDICIAL VACANCIES.-
Proposing an amendment to the State Constitution requiring the
Governor to prospectively fill vacancies in a judicial office to
which election for retention applies resulting from the
justice's or judge's reaching the mandatory retirement age or
failure to qualify for a retention election; and allowing
prospective appointments if a justice or judge is not retained



147730

12 | at an election. Currently, the Governor may not fill an expected
13 | vacancy until the current justice's or judge's term expires.

By Senator Lee

24-01143B-14

20141188__

Senate Joint Resolution

A joint resolution proposing amendments to Sections 10 and 11 of Article V of the State Constitution to authorize the Governor to prospectively fill vacancies in certain judicial offices.

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

That the following amendments to Sections 10 and 11 of Article V of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

JUDICIARY

SECTION 10. Retention; election and terms.—

(a) Any justice or judge may qualify for retention by a vote of the electors in the general election next preceding the expiration of the justice's or judge's term in the manner prescribed by law. ~~When~~ ~~if~~ a justice or judge is ineligible for retention or fails to qualify for retention, a prospective vacancy is deemed to occur at the conclusion of the qualifying period for retention for the purpose of appointing a successor justice or judge, and a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge. When a justice or judge so qualifies, the ballot shall read substantially as follows: "Shall Justice (or Judge) ...(name of justice or judge)... of the ...(name of the court)... be

Page 1 of 5

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

24-01143B-14

20141188__

retained in office?" If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to retain, the justice or judge shall be retained for a term of six years. The term of the justice or judge retained shall commence on the first Tuesday after the first Monday in January following the general election. If a majority of the qualified electors voting within the territorial jurisdiction of the court vote to not retain, a prospective vacancy is deemed to occur immediately following the general election for the purpose of appointing a successor justice or judge, and a vacancy shall exist in that office upon the expiration of the term being served by the justice or judge.

(b) (1) The election of circuit judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that circuit approves a local option to select circuit judges by merit selection and retention rather than by election. The election of circuit judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(2) The election of county court judges shall be preserved notwithstanding the provisions of subsection (a) unless a majority of those voting in the jurisdiction of that county approves a local option to select county judges by merit selection and retention rather than by election. The election of county court judges shall be by a vote of the qualified electors within the territorial jurisdiction of the court.

(3)a. A vote to exercise a local option to select circuit court judges and county court judges by merit selection and retention rather than by election shall be held in each circuit

Page 2 of 5

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

24-01143B-14

20141188__

59 and county at the general election in the year 2000. If a vote
60 to exercise this local option fails in a vote of the electors,
61 such option shall not again be put to a vote of the electors of
62 that jurisdiction until the expiration of at least two years.

63 b. After the year 2000, a circuit may initiate the local
64 option for merit selection and retention or the election of
65 circuit judges, whichever is applicable, by filing with the
66 custodian of state records a petition signed by the number of
67 electors equal to at least ten percent of the votes cast in the
68 circuit in the last preceding election in which presidential
69 electors were chosen.

70 c. After the year 2000, a county may initiate the local
71 option for merit selection and retention or the election of
72 county court judges, whichever is applicable, by filing with the
73 supervisor of elections a petition signed by the number of
74 electors equal to at least ten percent of the votes cast in the
75 county in the last preceding election in which presidential
76 electors were chosen. The terms of circuit judges and judges of
77 county courts shall be for six years.

78 SECTION 11. Vacancies.—

79 (a) (1) Whenever a vacancy occurs in a judicial office to
80 which election for retention applies, the governor shall fill
81 the vacancy by appointing for a term ending on the first Tuesday
82 after the first Monday in January of the year following the next
83 general election occurring at least one year after the date of
84 appointment, one of not fewer than three persons nor more than
85 six persons nominated by the appropriate judicial nominating
86 commission.

87 (2) Whenever a prospective vacancy occurs in a judicial

24-01143B-14

20141188__

88 office for which election for retention applies, the governor
89 shall fill the prospective vacancy by appointing a justice or
90 judge from among at least three persons but not more than six
91 persons nominated by the appropriate judicial nominating
92 commission. The term of the appointment commences upon the
93 expiration of the term of the office being vacated and ends on
94 the first Tuesday after the first Monday in January of the year
95 following the next general election.

96 (b) The governor shall fill each vacancy on a circuit court
97 or on a county court, wherein the judges are elected by a
98 majority vote of the electors, by appointing for a term ending
99 on the first Tuesday after the first Monday in January of the
100 year following the next primary and general election occurring
101 at least one year after the date of appointment, one of not
102 fewer than three persons nor more than six persons nominated by
103 the appropriate judicial nominating commission. An election
104 shall be held to fill that judicial office for the term of the
105 office beginning at the end of the appointed term.

106 (c) The nominations shall be made within thirty days from
107 the occurrence of a vacancy or prospective vacancy unless the
108 period is extended by the governor for a time not to exceed
109 thirty days. The governor shall make the appointment within
110 sixty days after the nominations have been certified to the
111 governor.

112 (d) There shall be a separate judicial nominating
113 commission as provided by general law for the supreme court,
114 each district court of appeal, and each judicial circuit for all
115 trial courts within the circuit. Uniform rules of procedure
116 shall be established by the judicial nominating commissions at

24-01143B-14

20141188_

117 each level of the court system. Such rules, or any part thereof,
118 may be repealed by general law enacted by a majority vote of the
119 membership of each house of the legislature, or by the supreme
120 court, five justices concurring. Except for deliberations of the
121 judicial nominating commissions, the proceedings of the
122 commissions and their records shall be open to the public.

123 BE IT FURTHER RESOLVED that the following statement be
124 placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTIONS 10, 11

127 PROSPECTIVE APPOINTMENT OF CERTAIN JUDICIAL VACANCIES.-
128 Proposing an amendment to the State Constitution authorizing the
129 Governor to prospectively fill a vacancy in a judicial office to
130 which election for retention applies that results from a
131 justice's or judge's reaching the mandatory retirement age,
132 failure to qualify for a retention election, or failure to be
133 retained through election. Under current law, the Governor may
134 not act to fill such vacancies until after the current justice
135 or judge completes his or her term.

136

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 Judiciary

BILL: SPB 7078

INTRODUCER: For consideration by the Judiciary Committee

SUBJECT: Arbitration

DATE: March 10, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Cibula	Cibula		Submitted as Committee Bill

I. Summary:

SPB 7078 corrects a scrivener’s error in the Revised Florida Arbitration Code, which was enacted by the Legislature during the 2013 Legislative Session. The bill clarifies that parties to an arbitration agreement may waive the right to a remedy, not the right to the confirmation of an arbitration award by a court.

II. Present Situation:

Arbitration Generally

Arbitration is an alternative dispute resolution process in which the parties submit a “dispute to one or more impartial persons for a final and binding decision, known as an ‘award.’”¹ Arbitration is intended to be a speedy and economical alternative to court litigation, which is often slow, time-consuming, and expensive.² Parties to arbitration voluntarily give up safeguards that litigants in court proceedings enjoy, such as a jury trial or a right to appeal and rules of evidence.³

Revised Florida Arbitration Code

During the 2013 Legislative Session, the Legislature passed CS/SB 530, codified as ch. 213-232, L.O.F. The bill substantially revised or repealed the then existing arbitration code in ch. 682, F.S., and replaced it with the “Revised Florida Arbitration Code,” based on the 2000 revision of the Uniform Arbitration Act by the National Conference of Commissioners on Uniform State Laws.

¹ American Arbitration Association, *Arbitration*, http://www.adr.org/aaa/faces/services/disputeresolutionservices/arbitration;jsessionid=2jX0RZLCyKPV4wMPSrcvCkSmCLsbXCrLZvRsLrhVNnhFChmSSnKj!-1600829671?_afLoop=832669183421451&_afWindowMode=0&_afWindowId=null (last visited March 9, 2014).

² *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009).

³ *United Ins. Co. of America v. Office of Ins. Regulation*, 985 So. 2d 665, 668 (Fla. 1st DCA 2008); *Murton Roofing Corp. v. FF Fund Corp.*, 930 So. 2d 772, 774 (Fla. 3d DCA 2006).

Among the various provisions of the revised code, the code authorizes an arbitrator to award provisional remedies before a final award is made to protect the effectiveness of the arbitration proceeding.⁴ An arbitrator may also award punitive damages or other exemplary relief and other remedies that the arbitrator considers just and appropriate.⁵ A party awarded a provisional remedy or final award may enforce the award by having it confirmed by a court.⁶

The revised arbitration code generally allows parties to an arbitration agreement to waive or vary the effect of the code's requirements. However, the code lists a number of provisions that the parties to an agreement may not waive until a controversy arises and provisions that may not be waived at all.

According to s. 682.014(3), F.S., one of the requirements that may not be waived is "The remedies provided under s. 682.012." In this instance, the requirement, however, is internally inconsistent because the cross-reference of "s. 682.012" relates, not to remedies, but a party's right to enforce the award by having a court enter an order confirming the award. In this case, the cross-reference is correct, but its description is incorrect. Remedies for a breach of contract are often waived or limited by agreement. However, if a party to an arbitration agreement waives the right to enforce an award, there would be little or no reason to arbitrate any disputes.

III. Effect of Proposed Changes:

This bill corrects scrivener's error in the Revised Florida Arbitration Code, which was enacted by the Legislature during the 2013 Legislative Session.

The revised code lists a number of provisions or rights that the parties to an arbitration agreement may not waive. One of these is "The remedies provided under s. 682.12[, F.S]." The description, "remedies," is inconsistent with the cross-reference to s. 682.12, F.S, which relates to the right of a party to have a court enter an order confirming the award. As corrected by the bill, a party to an arbitration agreement may waive a remedy, not the right to the confirmation of the award by a court.

The bill takes effect upon becoming a law and applies retroactively⁷ to July 1, 2013, which was the effective date of the legislation enacting the Revised Florida Arbitration Code.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴ See s. 682.031, F.S.

⁵ Section 682.11, F.S.

⁶ Sections 682.081 and 682.11, F.S.

⁷ See *Pembroke Lakes Mall Ltd. v. McGruder*, 2014 WL 714706, *4 (Fla. 4th DCA) (providing that the rule against retroactive application of statutes does not apply to procedural or remedial changes); *Maronda Homes, Inc., of Florida v. Lakeview Reserve Homeowners Ass'n Inc.*, 127 So. 3d 1258, 1273-1274 (Fla. 2013) (stating that a remedial statute does not "create new obligations or duties, but rather provides the remedy of clarification of an existing right").

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:

By correcting a scrivener's error in the Revised Florida Arbitration Code, litigation relating to the error may be avoided.

C. Government Sector Impact:

By correcting a scrivener's error in the Revised Florida Arbitration Code, litigation relating to the error may be avoided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 682.014.

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.

FOR CONSIDERATION By the Committee on Judiciary

590-01917-14

20147078__

1 A bill to be entitled
 2 An act relating to arbitration; amending s. 682.014,
 3 F.S.; correcting the description of a cross-reference;
 4 providing for retroactive application; providing an
 5 effective date.
 6
 7 Be It Enacted by the Legislature of the State of Florida:
 8
 9 Section 1. Subsection (3) of section 682.014, Florida
 10 Statutes, is amended to read:
 11 682.014 Effect of agreement to arbitrate; nonwaivable
 12 provisions.—
 13 (3) A party to an agreement to arbitrate or arbitration
 14 proceeding may not waive, or the parties may not vary the effect
 15 of, the requirements in this section or:
 16 (a) The applicability of this chapter, the Revised Florida
 17 Arbitration Code, under s. 682.013(1) or (4);
 18 (b) The availability of proceedings to compel or stay
 19 arbitration under s. 682.03;
 20 (c) The immunity conferred on arbitrators and arbitration
 21 organizations under s. 682.051;
 22 (d) A party's right to seek judicial enforcement of an
 23 arbitration preaward ruling under s. 682.081;
 24 (e) The authority conferred on an arbitrator to change an
 25 award under s. 682.10(4) or (5);
 26 (f) The right to confirmation of an award as remedies
 27 provided under s. 682.12;
 28 (g) The grounds for vacating an arbitration award under s.
 29 682.13;

Page 1 of 2

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

590-01917-14

20147078__

30 (h) The grounds for modifying an arbitration award under s.
 31 682.14;
 32 (i) The validity and enforceability of a judgment or decree
 33 based on an award under s. 682.15(1) or (2);
 34 (j) The validity of the Electronic Signatures in Global and
 35 National Commerce Act under s. 682.23; or
 36 (k) The effect of excluding from arbitration under this
 37 chapter disputes involving child custody, visitation, or child
 38 support under s. 682.25.
 39 Section 2. This act shall apply retroactively to July 1,
 40 2013.
 41 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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

