

<b>Tab 1</b>	<b>CS/SB 196</b> by <b>CM, Jones (CO-INTRODUCERS) Hutson, Perry</b> ; (Identical to CS/H 00141) Guidance Services on Academic and Career Planning				
<b>Tab 2</b>	<b>CS/SB 384</b> by <b>CJ, Bradley (CO-INTRODUCERS) Martin</b> ; (Identical to CS/H 00071) Violent Offenses Committed Against Criminal Defense Attorneys				
<b>Tab 3</b>	<b>CS/SB 408</b> by <b>RI, Perry</b> ; (Compare to CS/CS/1ST ENG/H 00327) Fire Sprinkler System Project Permitting				
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<b>Tab 4</b>	<b>CS/SB 626</b> by <b>RI, DiCeglie</b> ; (Identical to CS/H 01221) Broadband Internet Service Providers				
<b>Tab 5</b>	<b>SB 662</b> by <b>Bradley (CO-INTRODUCERS) Garcia</b> ; (Identical to H 00699) Student Online Personal Information Protection				
<b>Tab 6</b>	<b>SB 708</b> by <b>Burgess</b> ; (Identical to H 00743) Estoppel Letters				
<b>Tab 7</b>	<b>SB 942</b> by <b>Calatayud (CO-INTRODUCERS) Martin, Rodriguez</b> ; (Identical to H 00941) Authorization of Restrictions Concerning Dogs				
<b>Tab 8</b>	<b>SB 1002</b> by <b>Stewart (CO-INTRODUCERS) Hooper</b> ; (Similar to CS/H 00541) Motor Vehicle Glass				
<b>Tab 9</b>	<b>CS/CS/SB 1068</b> by <b>CA, CM, Collins (CO-INTRODUCERS) Boyd</b> ; (Similar to CS/CS/H 01071) Drones				
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<b>Tab 10</b>	<b>SB 1220</b> by <b>Brodeur (CO-INTRODUCERS) Perry</b> ; (Similar to H 00991) Defamation and Related Actions				
<b>Tab 11</b>	<b>CS/SB 1332</b> by <b>CJ, Martin</b> ; (Identical to CS/H 01039) Missing Persons				
<b>Tab 12</b>	<b>SB 1396</b> by <b>Garcia</b> ; (Similar to CS/H 01411) Department of Elderly Affairs				
<b>Tab 13</b>	<b>CS/SB 1416</b> by <b>FP, Gruters</b> ; (Identical to CS/H 01409) Dissolution of Marriage				
<b>Tab 14</b>	<b>SB 1442</b> by <b>Collins (CO-INTRODUCERS) Boyd, Burgess</b> ; (Identical to H 01501) Terrorism				
<b>Tab 15</b>	<b>SB 1616</b> by <b>Martin</b> ; (Similar to H 01495) Public Records/Transportation and Protective Services				
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**  
**Senator Mayfield, Chair**  
**Senator Perry, Vice Chair**

**MEETING DATE:** Wednesday, April 5, 2023

**TIME:** 11:00 a.m.—1:00 p.m.

**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Mayfield, Chair; Senator Perry, Vice Chair; Senators Baxley, Book, Boyd, Brodeur, Broxson, Burgess, Burton, DiCeglie, Garcia, Hooper, Hutson, Jones, Osgood, Rodriguez, Rouson, Simon, Torres, and Yarborough

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/SB 196</b> Commerce and Tourism / Jones (Identical CS/H 141, Compare H 7051, CS/S 240)	Guidance Services on Academic and Career Planning; Requiring district school boards to inform students and parents of certain acceleration, academic, and career planning options; requiring certain information to be included in such notification; requiring a personalized academic and career plan to be developed in consultation with a certified school counselor for certain students; requiring certain information to be included in such plan, etc.  ED 03/06/2023 Favorable CM 03/20/2023 Fav/CS RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0
2	<b>CS/SB 384</b> Criminal Justice / Bradley (Identical CS/H 71)	Violent Offenses Committed Against Criminal Defense Attorneys; Providing for the reclassification of specified offenses committed against criminal defense attorneys, etc.  CJ 03/13/2023 Fav/CS RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0
3	<b>CS/SB 408</b> Regulated Industries / Perry (Compare CS/CS/H 327)	Fire Sprinkler System Project Permitting; Defining terms; requiring replacement fire sprinkler system components to meet certain criteria; requiring local enforcement agencies to perform at least one inspection for a fire sprinkler system project; requiring contractors to keep certain documentation available at a worksite for a fire sprinkler system project and make such documentation available for inspection, etc.  CA 03/07/2023 Favorable RI 03/21/2023 Fav/CS RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0



**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, April 5, 2023, 11:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 626</b> Regulated Industries / DiCeglie (Identical CS/H 1221)	Broadband Internet Service Providers; Specifying that the poles of rural electric cooperatives that are engaged in the provision of broadband are subject to regulation by the Public Service Commission; authorizing the commission to access the books and records of such cooperatives for specified purposes; providing that such information that contains proprietary confidential business information retains its confidential or exempt status when held by the commission; authorizing rural electric cooperatives to engage in the provision of broadband, etc.  RI 03/07/2023 Fav/CS CM 03/27/2023 Favorable RC 04/05/2023 Temporarily Postponed	Temporarily Postponed
5	<b>SB 662</b> Bradley (Identical H 699)	Student Online Personal Information Protection; Citing this act as the "Student Online Personal Information Protection Act"; prohibiting operators from knowingly engaging in specified activities relating to students' covered information; specifying the duties of an operator; providing circumstances under which an operator may disclose students' covered information, etc.  JU 03/07/2023 Favorable ED 03/20/2023 Favorable RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0
6	<b>SB 708</b> Burgess (Identical H 743)	Estoppel Letters; Revising the timeframe within which a mortgagee or mortgage servicer must send or cause to be sent an estoppel letter containing specified information; requiring notice to the mortgagor of a request for an estoppel letter under certain circumstances; revising requirements for an estoppel letter; prohibiting certain actions by the mortgagee or mortgage servicer; prohibiting the mortgagee or mortgage servicer from denying the accuracy of certain information provided in an estoppel letter under certain circumstances; prohibiting payments received pursuant to an estoppel letter from being returned and requiring such payments to be promptly applied to any unpaid balance of the loan properly due under or secured by a mortgage, etc.  JU 03/21/2023 Favorable RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, April 5, 2023, 11:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 942</b> Calatayud (Identical H 941)	Authorization of Restrictions Concerning Dogs; Authorizing public housing authorities to adopt certain policies relating to dogs; removing an exemption for local breed-specific ordinances adopted before a specified date, etc.  CA 03/07/2023 Favorable AG 03/20/2023 Favorable RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0
8	<b>SB 1002</b> Stewart (Similar CS/H 541)	Motor Vehicle Glass; Prohibiting motor vehicle repair shops or their employees from offering anything of value to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair, including offers made through certain persons; prohibiting persons from entering into assignment agreements of post-loss benefits for motor vehicle glass replacement or repair after a specified date; defining the term "assignment agreement", etc.  BI 03/15/2023 Favorable CM 03/20/2023 Favorable RC 04/05/2023 Temporarily Postponed	Temporarily Postponed
9	<b>CS/CS/SB 1068</b> Community Affairs / Commerce and Tourism / Collins (Similar CS/CS/H 1071)	Drones; Prohibiting a political subdivision from taking certain actions relating to drone delivery services; exempting drone ports from the Florida Building Code; exempting drone ports from the Florida Fire Prevention Code and other specified codes incorporated by reference, etc.  CM 03/13/2023 Fav/CS CA 03/22/2023 Fav/CS RC 04/05/2023 Fav/CS	Fav/CS Yeas 17 Nays 0
10	<b>SB 1220</b> Brodeur (Similar H 991, Compare H 951)	Defamation and Related Actions; Specifying that the professional journalist's privilege does not apply to defamation or related actions; specifying that the publication of an altered or unaltered photograph, video, or audio recording may form the basis of a defamation action; specifying that a defamatory allegation is made with actual malice for purposes of a defamation action under certain circumstances; providing that the negligence standard applies in a defamation action in which the defendant does not identify the source for a defamatory statement, etc.  JU 03/21/2023 Favorable RC 04/05/2023 Temporarily Postponed	Temporarily Postponed

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, April 5, 2023, 11:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	<b>CS/SB 1332</b> Criminal Justice / Martin (Identical CS/H 1039)	Missing Persons; Revising provisions concerning missing children and adults to include references to the National Missing and Unidentified Persons System, etc.  CJ 03/20/2023 Fav/CS RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0
12	<b>SB 1396</b> Garcia (Similar CS/H 1411)	Department of Elderly Affairs; Revising the list of individuals who may not be appointed as ombudsmen under the State Long-Term Care Ombudsman Program; deleting an exemption from level 2 background screening requirements for certain individuals; requiring the office to notify complainants within a specified timeframe after determining that a complaint against a professional guardian is not legally sufficient; requiring the office to provide a certain written statement to the complainant and the professional guardian within a specified timeframe after completing an investigation; requiring clerks of the court to report to the office within a specified timeframe after the court imposes any sanctions on a professional guardian, etc.  CF 03/20/2023 Favorable RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0
13	<b>CS/SB 1416</b> Fiscal Policy / Gruters (Identical CS/H 1409, Compare H 1301, CS/S 1292)	Dissolution of Marriage; Authorizing the court to consider the adultery of either spouse and any resulting economic impact in determining the amount of alimony awarded; providing a burden of proof for the party seeking support, maintenance, or alimony; removing the unanticipated change of circumstances requirement regarding modifying a parenting plan and time-sharing schedule; requiring the court to reduce or terminate support, maintenance, or alimony under certain circumstances; authorizing the court to reduce or terminate an award of support, maintenance, or alimony upon specific written findings of fact regarding the obligor's retirement, etc.  FP 03/23/2023 Fav/CS RC 04/05/2023 Favorable	Favorable Yeas 15 Nays 2
14	<b>SB 1442</b> Collins (Identical H 1501)	Terrorism; Specifying that there is no right to a jury trial under specified provisions and that neither defendants nor certain persons may use the resources of the courts of this state in furtherance of a defense or objection to postjudgment collection proceedings in any postjudgment execution proceedings to enforce certain judgments; providing a directive to the Division of Law Revision, etc.  JU 03/21/2023 Favorable CJ 03/27/2023 Favorable RC 04/05/2023 Favorable	Favorable Yeas 17 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, April 5, 2023, 11:00 a.m.—1:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	<b>SB 1616</b> Martin (Similar H 1495)	Public Records/Transportation and Protective Services; Providing an exemption from public records requirements for records relating to transportation and protective services of specified persons provided by law enforcement agencies; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  GO 03/22/2023 Favorable RC 04/05/2023 Temporarily Postponed	Temporarily Postponed

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 196

INTRODUCER: Commerce and Tourism Committee and Senator Jones and others

SUBJECT: Guidance Services on Academic and Career Planning

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	<b>Favorable</b>
2.	Baird	McKay	CM	<b>Fav/CS</b>
3.	Brick	Twogood	RC	<b>Favorable</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 196 adds requirements to notify parents and students of career and academic planning options and work-based learning opportunities and pathways. The bill:

- Requires a middle grade student's personalized academic and career plan to be developed in consultation with a certified school counselor, and include information on the career and technical education graduation pathway option and work-based learning opportunities.
- Expands the required annual school district parental notification on high school acceleration options to include information on career and academic planning options as well as foundational and soft-skill credentialing programs.

The bill takes effect July 1, 2023.

**II. Present Situation:**

**Middle Grades Career Planning**

Students are required to complete a career and education planning course during grades 6, 7, or 8.<sup>1</sup> The required course may be implemented as a stand-alone course or integrated into another course or courses and must:<sup>2</sup>

- Be internet-based.

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<sup>1</sup> Section 1003.4156(1)(e), F.S.

<sup>2</sup> *Id.*

- Emphasize the importance of entrepreneurship and employability skills.
- Include information from the Department of Economic Opportunity's economic security report and other state career planning resources.
- Result in a personalized academic and career plan for the student that may be revised as the student progresses. The plan is required to inform students of:
  - High school graduation requirements.
  - Requirements for each scholarship in the Florida Bright Futures Scholarship Program.
  - State college and university admission requirements.
  - Available opportunities to earn college credit in high school.<sup>3</sup>

The Department of Education (DOE) outlines the eight course standards of the career and education planning course which requires a student to:<sup>4</sup>

- Describe the influences that societal, economic, and technological changes have on employment trends and future training.
- Develop skills to locate, evaluate, and interpret career information.
- Identify and demonstrate processes for making short- and long-term goals.
- Demonstrate employability skills such as working in a group, problem-solving and organizational skills, and the importance of entrepreneurship.
- Understand the relationship between educational achievement and career choices/postsecondary options.
- Identify a career cluster and related pathways through an interest assessment that match career and education goals.
- Develop a career and education plan that includes short and long-term goals, high school program of study, and postsecondary and career goals.
- Demonstrate knowledge of technology and its application in career fields/clusters.

For the 2022-2023 school year, the DOE identified 80 approved middle grades courses for career and education planning.<sup>5</sup> In addition, the DOE publishes a Career Cruiser document, providing resources such as classroom activities, guided worksheets, and additional resources to assist teachers in career and education course planning.<sup>6</sup>

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<sup>3</sup> Section 1003.4156(1)(e), F.S. To include Advanced Placement courses, the International Baccalaureate Program, the Advanced International Certificate of Education Program, dual enrollment, including career dual enrollment and career education courses, including career-themed courses, preapprenticeship and apprenticeship programs, and course sequences that lead to industry certifications.

<sup>4</sup> Florida Department of Education, *Career & Education Planning Course Standards*, available at <http://www.fldoe.org/core/fileparse.php/3/urlt/ceplanningcoursecompetencies.pdf> (last visited March 17, 2023).

<sup>5</sup> Florida Department of Education, *Approved Middle School Courses for Career & Education Planning 2021-2022 School Year* (Aug. 9, 2022), available at <https://www.fldoe.org/core/fileparse.php/7746/urlt/MGCEPC2223.pdf> (last visited March 17, 2023).

<sup>6</sup> Florida Department of Education, *Career Exploration Resources: Career Cruiser*, available at <https://www.fldoe.org/core/fileparse.php/7534/urlt/cruiser.pdf> (last visited March 17, 2023).

### **Notification of Student Acceleration Options**

At the beginning of each school year, a district school board is required to notify parents of students entering high school or already enrolled in high school of the opportunity and benefits of courses in:<sup>7</sup>

- Advanced Placement (AP).
- International Baccalaureate (IB).
- Advanced International Certificate of Education (AICE).
- Dual enrollment.
- The Florida Virtual School.

Additionally, each high school is required to advise each student of courses through which the student could earn college credit, including AP, IB, AICE, dual enrollment, early admission, and career academy courses and courses that lead to industry certification, as well as the availability of course offerings through virtual instruction.<sup>8</sup> Students and their parents must also be advised of early graduation options.<sup>9</sup>

### **Certified School Counselors**

School counselors are considered instructional personnel within Florida's public school system.<sup>10</sup> To be employed as a school counselor, a person must be certified as required by law and State Board of Education rule.<sup>11</sup>

In the 2021-2022 school year, there were 6,465 certified school counselors working in Florida school districts, serving 2,833,179 students. Each of the 67 school districts reported at least one school counselor on staff.<sup>12</sup> On average, there was one school counselor for every 438 students.

## **III. Effect of Proposed Changes:**

CS/SB 196 adds requirements to notify parents and students of career and academic planning options and work-based learning opportunities and pathways.

### **Middle Grades Career Planning**

The bill requires a middle grade student's personalized academic and career plan to include information on the career and technical education graduation pathway option<sup>13</sup> and work-based learning opportunities, including internships and preapprenticeship and apprenticeship programs.

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<sup>7</sup> Section 1003.02(1)(i), F.S.

<sup>8</sup> Section 1003.4295(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 1012.01(2)(b), F.S.

<sup>11</sup> Section 1012.55(1)(b), F.S.

<sup>12</sup> The Florida Department of Education, *Staff in Florida's Public Schools, District Reports: Full-Time Staff 2021-22, Survey 2*, available at <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/staff.html>; and The Florida Department of Education, *Membership in Florida Public Schools, Survey 2, 2021-2022*, available at <https://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/archive.html> (last visited March 17, 2023).

<sup>13</sup> Section 1003.4282(10), F.S.

Additionally, the bill requires the student's plan to be developed in consultation with a certified school counselor.

### **Notification of Student Acceleration Options**

The bill expands the required annual school district parental notification on high school acceleration options to include notification to students, and requires such notification to be in a language that is understandable to students and parents. The bill adds to the information required to be included in the notification to include:

- Career and professional academies.
- Career-themed courses.
- The career and technical education pathway option to earn a standard high school diploma.
- Work-based learning opportunities, including internships and apprenticeship and preapprenticeship programs.
- Florida Ready to Work career readiness credentials for the state of Florida for both foundational academic skills (math, reading, digital literacy) and soft-skills (communication, teamwork, etc.).<sup>14</sup>
- The contact information of a certified school counselor who can advise the student on the acceleration, academic, and career planning options.

The additional notifications required in the bill may increase student awareness of and participation in career and academic planning options and work-based learning opportunities and pathways.

The bill takes effect July 1, 2023.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

### **D. State Tax or Fee Increases:**

None.

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<sup>14</sup> Section 445.06 F.S. establishes the Florida Ready to Work Credential Program that is housed under the Department of Economic Opportunity.



E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1003.02 and 1003.4156.

**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 Commerce and Tourism on March 20, 2023:**

The CS adds foundational and soft skill credentialing programs under the Florida Ready to Work program to the list of acceleration, academic, and career planning options that must be provided to high school students and their parents.

B. Amendments:

None.

By the Committee on Commerce and Tourism; and Senators Jones, Hutson, and Perry

577-02792-23

2023196c1

A bill to be entitled

An act relating to guidance services on academic and career planning; amending s. 1003.02, F.S.; requiring district school boards to inform students and parents of certain acceleration, academic, and career planning options; requiring certain information to be included in such notification; amending s. 1003.4156, F.S.; requiring a personalized academic and career plan to be developed in consultation with a certified school counselor for certain students; requiring certain information to be included in such plan; providing an effective date.

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

Section 1. Paragraph (i) of subsection (1) of section 1003.02, Florida Statutes, is amended to read:

1003.02 District school board operation and control of public K-12 education within the school district.—As provided in part II of chapter 1001, district school boards are constitutionally and statutorily charged with the operation and control of public K-12 education within their school districts. The district school boards must establish, organize, and operate their public K-12 schools and educational programs, employees, and facilities. Their responsibilities include staff development, public K-12 school student education including education for exceptional students and students in juvenile justice programs, special programs, adult education programs, and career education programs. Additionally, district school

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

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boards must:

(1) Provide for the proper accounting for all students of school age, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students in the following areas:

(i) ~~Parental~~ Notification of acceleration, academic, and career planning options.—At the beginning of each school year, notify ~~parents of~~ students in or entering high school and the students' parents, in a language that is understandable to students and parents, of the opportunity and benefits of advanced placement, International Baccalaureate, Advanced International Certificate of Education, dual enrollment, career and professional academies, career-themed courses, the career and technical education pathway to earn a standard high school diploma under s. 1003.4282(10), work-based learning opportunities, including internships and apprenticeship and preapprenticeship programs, foundational and soft-skill credentialing programs under s. 445.06, and Florida Virtual School courses; ~~and~~ options for early graduation under s. 1003.4281; and the contact information of a certified school counselor who can advise students on these options.

Section 2. Paragraph (e) of subsection (1) of section 1003.4156, Florida Statutes, is amended to read:

1003.4156 General requirements for middle grades promotion.—

(1) In order for a student to be promoted to high school from a school that includes middle grades 6, 7, and 8, the student must successfully complete the following courses:

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(e) One course in career and education planning to be completed in grades 6, 7, or 8, which may be taught by any member of the instructional staff. The course must be Internet-based, customizable to each student, and include research-based assessments to assist students in determining educational and career options and goals. In addition, the course must result in a completed personalized academic and career plan for the student that may be revised as the student progresses through middle school and high school; must emphasize the importance of entrepreneurship and employability skills; and must include information from the Department of Economic Opportunity's economic security report under s. 445.07 and other state career planning resources. The required personalized academic and career plan, developed in consultation with a certified school counselor, must inform students of high school graduation requirements, including a detailed explanation of the requirements for earning a high school diploma designation under s. 1003.4285 and the career and technical education pathway to earn a standard high school diploma under s. 1003.4282(10); the requirements for each scholarship in the Florida Bright Futures Scholarship Program; state university and Florida College System institution admission requirements; available opportunities to earn college credit in high school, including Advanced Placement courses; the International Baccalaureate Program; the Advanced International Certificate of Education Program; dual enrollment, including career dual enrollment; work-based learning opportunities, including internships and preapprenticeship and apprenticeship programs; and career education courses, including career-themed courses, ~~preapprenticeship and apprenticeship~~

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2023196c1

~~programs,~~ and course sequences that lead to industry certification pursuant to s. 1003.492 or s. 1008.44. The course may be implemented as a stand-alone course or integrated into another course or courses.

Section 3. This act shall take effect July 1, 2023.

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

**APPEARANCE RECORD**

4-4-2023

Meeting Date

196

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Richard Reeves

Phone

850-445-0627

Address

113 E. College

Street

Email

Tallahassee

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☐I am appearing without  
compensation or sponsorship.☒I am a registered lobbyist,  
representing:

WIN Learning

☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/5/2023

Meeting Date

Rules

Committee

SB 196

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Sarah Katherine Massey

Phone

850 545 0543

Address

136 S. Bronough St.

Street

Email

smassey@fchamber.com

Tallahassee

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

The Florida Chamber of Commerce

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

5 April 2023

## APPEARANCE RECORD

196

Meeting Date

Bill Number or Topic

Rules

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Chris Stranburg

Phone

813-767-9667

Address

107 E College Ave

Email

cstranburg@afphg.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐I am appearing without  
compensation or sponsorship.☒I am a registered lobbyist,  
representing:Americans for  
Prosperity☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**APPEARANCE RECORD**

4.5.23

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

196

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name Damaris AllenPhone 407.855.7604Address 1747 Orlando Central Parkway  
StreetEmail legislative@floridapta.orgOrlando, FL 32809

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information**OR**Waive Speaking: ☒ In Support ☐ Against**PLEASE CHECK ONE OF THE FOLLOWING:**☐ I am appearing without  
compensation or sponsorship.☐ I am a registered lobbyist,  
representing:☒ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 384

INTRODUCER: Criminal Justice Committee and Senator Bradley and others

SUBJECT: Violent Offenses Committed Against Criminal Defense Attorneys

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Erickson</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 384 amends s. 775.0823, F.S., to provide for enhanced punishment for certain violent offenses committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S., or a defense attorney in a criminal proceeding acting in his or her capacity as defense counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel.

These professionals are added to the list of criminal justice professionals in s. 775.0823, F.S. A sentence point multiplier in s. 921.0024, F.S., of the Criminal Punishment Code is applied when such violent offense is committed against a listed criminal justice professional when such offense arises out of or in the scope of the professional's official duties.

The Legislature's Office of Economic and Demographic Research preliminary estimates that the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.



## II. Present Situation:

### Recent Incident of Violence on Court-Appointed Counsel

On November 21, 2022, an attorney employed by the Office of Criminal Conflict and Civil Regional Counsel, First Region, was representing a defendant charged with a criminal offense at a trial in Alachua County.<sup>1</sup> Without warning, the defendant repeatedly punched his attorney on the left side of his head, fracturing the attorney's skull.<sup>2</sup> The defendant was subsequently charged with aggravated battery, a second degree felony.<sup>3</sup> While current law provides for enhanced punishment for certain violent offenses committed against specified criminal justice professionals while they are engaged in their professional duties,<sup>4</sup> this law does not currently cover court-appointed counsel or defense attorneys.<sup>5</sup>

### The Criminal Punishment Code

In 1997, the Legislature enacted the Criminal Punishment Code<sup>6</sup> (Code) as Florida's "primary sentencing policy."<sup>7</sup> Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10).<sup>8</sup> Points are assigned and accrue based upon the level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the level escalates. Points may be added or multiplied for other factors such as victim injury, commission of certain drug trafficking offenses, and certain violent offenses committed against listed criminal justice professionals performing their duties. The lowest permissible sentence is any nonstate prison sanction in which total sentence points equal or are less than 44 points, unless the court determines that a prison sentence is appropriate. If total sentence points exceed 44 points, the lowest permissible sentence in prison months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.<sup>9</sup>

Absent mitigation,<sup>10</sup> the permissible sentencing range under the Code is generally the scored lowest permissible sentence up to, and including, the maximum sentence provided in s. 775.082, F.S.<sup>11</sup> However, if the offender's offense has a mandatory minimum term that is greater than the

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<sup>1</sup> Patrick R. Fargason, *Measure Would Provide More Protections for Defense Lawyers*, Fla. Bar News, (Jan. 4, 2023), available at <https://www.floridabar.org/the-florida-bar-news/measure-would-provide-more-protections-for-defense-lawyers/> (last visited on Feb. 27, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

<sup>4</sup> See ss. 775.0823 and 921.0024(1)(b), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

<sup>7</sup> See chs. 97-194 and 98-204, L.O.F.

<sup>8</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>9</sup> Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

<sup>10</sup> The court may "mitigate" (reduce) the scored lowest permissible sentence if the court finds a mitigating circumstance. Sections 921.002(1)(g) and (3), 921.0026(1), and 921.00265(1) and (2), F.S. Section 921.0026(2), F.S., provides a list of mitigating circumstances. This type of sentence is often referred to as a "downward departure" sentence.

<sup>11</sup> Sections 921.002(1)(g) and 921.0024(2), F.S. The sentencing court may impose sentences concurrently or consecutively. A prison sentence must exceed one year. If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

scored lowest permissible sentence, the mandatory minimum term supersedes the lowest permissible sentence scored.<sup>12</sup> Further, some offenders may qualify for prison diversion under various sections of the Florida Statutes.<sup>13</sup>

### **Section 775.0823, F.S., and the LEPA Multiplier under s. 921.0024, F.S.**

Section 775.0823, F.S., and s. 921.0024(1)(b), F.S., work jointly to provide for enhanced punishment under the Code for certain violent offenses committed against a specified criminal justice professional when such offense arises out of or in the scope of the professional's official duties.<sup>14</sup> The violent offenses are:

- Attempted first degree murder under s. 782.04(1), F.S.;
- Attempted felony murder under s. 782.051, F.S.;
- Second degree murder under s. 782.04(2) and (3), F.S.;
- Attempted second degree murder under s. 782.04(2) and (3), F.S.
- Third degree murder under s. 782.04(4), F.S.;
- Attempted third degree murder under s. 782.04(4), F.S.;
- Manslaughter under s. 782.07, F.S., during the commission of a crime;
- Kidnapping under s. 787.01, F.S.;
- Aggravated battery under s. 784.045, F.S.; and
- Aggravated assault under s. 784.021, F.S.<sup>15</sup>

The specified criminal justice professionals are any:

- Law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), F.S.;
- State attorney elected pursuant to s. 27.01, F.S., or assistant state attorney appointed under s. 27.181; F.S.; and
- Justice or judge of a court described in Art. V of the State Constitution.<sup>16</sup>

The LEPA multiplier (an acronym for "Law Enforcement Protection Act," s. 775.0823, F.S.) under s. 921.0024(1)(b), F.S., of the Code multiplies sentence points under the Code for any violent offense specified in s. 775.0823, F.S., that is committed against a listed criminal justice professional when such offense arises out of or in the scope of the professional's official duties. Sentence points are multiplied in the following manner:

- Multiplier of 2.5 for:
  - Attempted first degree murder;<sup>17</sup>

<sup>12</sup> Fla. R. Crim. P. 3.704(d)(26).

<sup>13</sup> See e.g., s. 775.082(10), F.S. (diversion for an offender whose offense is a nonviolent third degree felony and whose total sentence points are 22 points or fewer); s. 921.00241, F.S. (diversion into a Department of Corrections' prison diversion program for certain nonviolent third degree felony offenders); and s. 948.01, F.S. (diversion into a postadjudicatory treatment-based drug court program for certain nonviolent felony offenders).

<sup>14</sup> Section 775.0823(1), F.S., specifies life imprisonment without early release is the punishment if a death sentence is not imposed. This provision is not relevant to the Code multiplier because the Code does not apply to capital felonies. Section 921.002, F.S.

<sup>15</sup> Section 775.0823(1)-(11), F.S.

<sup>16</sup> Section 775.0823, F.S.

<sup>17</sup> Attempted first degree murder is a level 9 first degree felony. Sections 777.04(4)(b), 782.04(1), and 921.0022(3)(i.), F.S. A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding \$10,000.

- Attempted felony murder;<sup>18</sup> and
- Second degree murder.<sup>19</sup>
- Multiplier of 2.0 for:
  - Attempted second degree murder;<sup>20</sup>
  - Third degree murder;<sup>21</sup>
  - Attempted third degree murder;<sup>22</sup>
  - Manslaughter<sup>23</sup> committed during the commission of a crime; and
  - Kidnapping under s. 787.01, F.S.<sup>24</sup>
- Multiplier of 1.5 for:
  - Aggravated battery under s. 784.045, F.S.;<sup>25</sup> and
  - Aggravated assault under s. 784.021, F.S.<sup>26</sup>

The effect of the LEPA multiplier is that the minimum prison sentence (in months) under the Code will be longer.

### III. Effect of Proposed Changes:

The bill amends s. 775.0823, F.S., to provide for enhanced punishment for certain violent offenses committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S.,<sup>27</sup> or a defense attorney in a criminal proceeding acting in his or her capacity as defense

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Sections 775.082 and 775.083, F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

<sup>18</sup> Attempted felony murder is either a level 8 first degree felony or a level 9 first degree felony (punishable by life). Sections 782.051(1) and (2), and 921.0022(3)(h) and (i), F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

<sup>19</sup> Second degree murder is either a level 9 first degree felony (punishable by life) or a level 10 first degree felony (punishable by life). Sections 782.04(2) and (3) and 921.0022(3)(i) and (j), F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

<sup>20</sup> Attempted second degree murder is a level 8 or level 9 second degree felony. Sections 777.04(4)(a) and (c) and 782.04(2) and (3), F.S. While a second degree felony is generally punishable by not more than 15 years in state prison (s. 775.082, F.S.), if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

<sup>21</sup> Third degree murder is a level 8 second degree felony. Sections 782.04(4) and 921.0022(3)(h), F.S.

<sup>22</sup> Attempted third degree murder is a level 7 third degree felony. Sections 777.04(4)(a) and (d) and 782.04(4), F.S. A third degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

<sup>23</sup> Manslaughter is a level 7 second degree felony or a level 7 first degree felony. Sections 782.07(1) and (4), 921.002(3)(g), and 921.0023(3), F.S.

<sup>24</sup> Kidnapping is generally a level 9 first degree felony (punishable by life). Sections 787.01(2) and 921.0022(3)(i), F.S.

<sup>25</sup> Aggravated battery is a level 7 second degree felony. Sections 784.045 and 921.0022(3)(g), F.S.

<sup>26</sup> Aggravated assault is a level 6 second degree felony. Sections 784.021 and 921.0022(3)(f), F.S.

<sup>27</sup> Section 27.40, F.S., provides for the appointment of counsel to represent any individual in a criminal or civil proceeding who is entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. The court appoints a public defender to represent indigent persons as authorized in s. 27.51, F.S. The office of criminal conflict and civil regional counsel are appointed to represent persons in those cases in which provision is made for court-appointed counsel, but only after the public defender has certified to the court in writing that the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation. Private counsel appointed by the

counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel.

These professionals are added to a list of criminal justice professionals in s. 775.0823, F.S. The following sentence point multiplier in s. 921.0024(1)(b), F.S., of the Code must be applied when the violent offense is committed against a listed criminal justice professional when such offense arises out of or in the scope of the professional's official duties:

- Multiplier of 2.5 for:
  - Attempted first degree murder;
  - Attempted felony murder;<sup>28</sup> and
  - Second degree murder.
- Multiplier of 2.0 for:
  - Attempted second degree murder;
  - Third degree murder;
  - Attempted third degree murder;
  - Manslaughter committed during the commission of a crime; and
  - Kidnapping under s. 787.01, F.S.
- Multiplier of 1.5 for:
  - Aggravated battery under s. 784.045, F.S.; and
  - Aggravated assault under s. 784.021, F.S.<sup>29</sup>

Conforming changes are made to ss. 921.0024 and 947.146, F.S., which are consistent with the amendment of s. 775.0823, F.S.

The bill takes effect July 1, 2023.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

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court to provide representation are selected from a registry of individual attorneys maintained under s. 27.40, F.S. *See* s. 27.40(1)-(3), F.S.

<sup>28</sup> Attempted felony murder is either a level 8 first degree felony or a level 9 first degree felony (punishable by life). Sections 782.051(1) and (2), and 921.0022(3)(h) and (i.), F.S. However, if the victim is a law enforcement officer, correctional officer, or correctional probation officer, the defendant must be sentenced to life imprisonment without eligibility for release. Section 782.065(1), F.S.

<sup>29</sup> *See* “Present Situation” section of this analysis for a discussion of the maximum penalties and offense severity ranking levels under the Code associated with these violent offenses.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed the bill. The Legislature's Office of Economic and Demographic Research (EDR) preliminary estimates that the bill will have a "positive insignificant" prison bed impact (an increase of 10 or fewer prison beds).<sup>30</sup>

The EDR provides the following information regarding its estimate:

Per [Department of Corrections], data on the profession of victims is not available for most of the violent offenses covered in this statute. However, per [Florida Department of Law Enforcement], there were 11 officers killed feloniously between 2015 and 2020. Also, s. 784.07, F.S.[,] does cover offense reclassification for aggravated assault/battery of law enforcement officers, firefighters, emergency medical providers, public transit employees, etc. In FY 18-19, there were 122 new commitments to prison for these offenses and in FY 19-20, there were 103 new commitments. In FY 20-21, there were 101 new commitments, and there were 119 new commitments in FY 21-22. Finally, s. 782.07(4)[,] F.S.[,] contains a felony for manslaughter of law enforcement officers, firefighters, and other first responders. There have been 2 new commitments in the last four fiscal years for a violation of s. 782.07(4)[,] F.S. Multiple professions are currently covered under these statutes, so this new

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<sup>30</sup> *SB 384 – Violent Offenses Committed Against Criminal Defense Attorneys*, Office of Economic and Demographic Research (on file with the Senate Committee on Criminal Justice).

language would not be expected to have a significant impact on the prison population.<sup>31</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.0823, 921.0024, and 947.146.

**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 Criminal Justice on March 13, 2023:**

The committee substitute:

- Amends s. 775.0823, F.S., to provide for enhanced punishment for certain violent offenses committed against a public defender elected pursuant to s. 27.50, F.S., regional counsel appointed pursuant to s. 27.511(3), F.S., court-appointed counsel appointed under s. 27.40, F.S., or a defense attorney in a criminal proceeding acting in his or her capacity as defense counsel, when the violent offense arises out of or in the scope of the public defender or regional counsel acting in his or her capacity as defense counsel or the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel.
- Makes conforming changes to various statutes consistent with the amendment of s. 775.0823, F.S.

**B. Amendments:**

None.

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

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<sup>31</sup> *Id.*

By the Committee on Criminal Justice; and Senators Bradley and Martin

591-02496-23

2023384c1

A bill to be entitled

An act relating to violent offenses committed against criminal defense attorneys; amending s. 775.0823, F.S.; providing for the reclassification of specified offenses committed against criminal defense attorneys; amending ss. 921.0024 and 947.146, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 775.0823, Florida Statutes, is amended to read:

775.0823 Violent offenses committed against specified justice system personnel ~~law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.~~—The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; against any public defender elected pursuant to s. 27.50 or regional counsel appointed pursuant to s. 27.511(3); against any court-appointed counsel appointed under s. 27.40 or defense attorney in a criminal proceeding; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer's duty as a law enforcement or correctional officer, the state attorney's or

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

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assistant state attorney's duty as a prosecutor or investigator, the public defender or regional counsel acting in his or her capacity as defense counsel, the court-appointed counsel or defense attorney in a criminal proceeding acting in his or her capacity as defense counsel, or the justice's or judge's duty as a judicial officer, as follows:

(1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.

(2) For attempted murder in the first degree as described in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(3) For attempted felony murder as described in s. 782.051, a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(4) For murder in the second degree as described in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(5) For attempted murder in the second degree as described in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(6) For murder in the third degree as described in s. 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(7) For attempted murder in the third degree as described in s. 782.04(4), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(8) For manslaughter as described in s. 782.07 during the commission of a crime, a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

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(9) For kidnapping as described in s. 787.01, a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(10) For aggravated battery as described in s. 784.045, a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

(11) For aggravated assault as described in s. 784.021, a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

Notwithstanding ~~the provisions of~~ s. 948.01, with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld.

Section 2. Paragraph (b) of subsection (1) of section 921.0024, Florida Statutes, is amended to read:

921.0024 Criminal Punishment Code; worksheet computations; scoresheets.—

(1)

(b) WORKSHEET KEY:

Legal status points are assessed when any form of legal status existed at the time the offender committed an offense before the court for sentencing. Four (4) sentence points are assessed for an offender's legal status.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six (6) sentence points are assessed for each community sanction violation and each successive community sanction violation, unless any of the following apply:

1. If the community sanction violation includes a new

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felony conviction before the sentencing court, twelve (12) community sanction violation points are assessed for the violation, and for each successive community sanction violation involving a new felony conviction.

2. If the community sanction violation is committed by a violent felony offender of special concern as defined in s. 948.06:

a. Twelve (12) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where:

I. The violation does not include a new felony conviction; and

II. The community sanction violation is not based solely on the probationer or offender's failure to pay costs or fines or make restitution payments.

b. Twenty-four (24) community sanction violation points are assessed for the violation and for each successive violation of felony probation or community control where the violation includes a new felony conviction.

Multiple counts of community sanction violations before the sentencing court shall not be a basis for multiplying the assessment of community sanction violation points.

Prior serious felony points: If the offender has a primary offense or any additional offense ranked in level 8, level 9, or level 10, and one or more prior serious felonies, a single assessment of thirty (30) points shall be added. For purposes of this section, a prior serious felony is an offense in the



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offender's prior record that is ranked in level 8, level 9, or level 10 under s. 921.0022 or s. 921.0023 and for which the offender is serving a sentence of confinement, supervision, or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offense was committed.

Prior capital felony points: If the offender has one or more prior capital felonies in the offender's criminal record, points shall be added to the subtotal sentence points of the offender equal to twice the number of points the offender receives for the primary offense and any additional offense. A prior capital felony in the offender's criminal record is a previous capital felony offense for which the offender has entered a plea of nolo contendere or guilty or has been found guilty; or a felony in another jurisdiction which is a capital felony in that jurisdiction, or would be a capital felony if the offense were committed in this state.

Possession of a firearm, semiautomatic firearm, or machine gun: If the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(2) while having in his or her possession: a firearm as defined in s. 790.001(6), an additional eighteen (18) sentence points are assessed; or if the offender is convicted of committing or attempting to commit any felony other than those enumerated in s. 775.087(3) while having in his or her possession a semiautomatic firearm as defined in s. 775.087(3) or a machine

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gun as defined in s. 790.001(9), an additional twenty-five (25) sentence points are assessed.

Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Violent offenses committed against specified justice system personnel ~~Law enforcement protection~~: If the primary offense is a violation of the ~~Law Enforcement Protection Act~~ under s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or ~~of the Law Enforcement Protection Act~~ under s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

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Offense related to a criminal gang: If the offender is convicted of the primary offense and committed that offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, the subtotal sentence points are multiplied by 1.5. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Domestic violence in the presence of a child: If the offender is convicted of the primary offense and the primary offense is a crime of domestic violence, as defined in s. 741.28, which was committed in the presence of a child under 16 years of age who is a family or household member as defined in s. 741.28(3) with the victim or perpetrator, the subtotal sentence points are multiplied by 1.5.

Adult-on-minor sex offense: If the offender was 18 years of age or older and the victim was younger than 18 years of age at the time the offender committed the primary offense, and if the primary offense was an offense committed on or after October 1, 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed a sexual battery under chapter 794 or a lewd act under s. 800.04 or s. 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s. 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.

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800.04; or s. 847.0135(5), the subtotal sentence points are multiplied by 2.0. If applying the multiplier results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense under chapter 775, the court may not apply the multiplier and must sentence the defendant to the statutory maximum sentence.

Section 3. Subsection (3) of section 947.146, Florida Statutes, is amended to read:

947.146 Control Release Authority.—

(3) Within 120 days prior to the date the state correctional system is projected pursuant to s. 216.136 to exceed 99 percent of total capacity, the authority shall determine eligibility for and establish a control release date for an appropriate number of parole ineligible inmates committed to the department and incarcerated within the state who have been determined by the authority to be eligible for discretionary early release pursuant to this section. In establishing control release dates, it is the intent of the Legislature that the authority prioritize consideration of eligible inmates closest to their tentative release date. The authority shall rely upon commitment data on the offender information system maintained by the department to initially identify inmates who are to be reviewed for control release consideration. The authority may use a method of objective risk assessment in determining if an eligible inmate should be released. Such assessment shall be a part of the department's management information system. However, the authority shall have sole responsibility for determining control release eligibility, establishing a control release date, and effectuating the

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release of a sufficient number of inmates to maintain the inmate population between 99 percent and 100 percent of total capacity. Inmates who are ineligible for control release are inmates who are parole eligible or inmates who:

(a) Are serving a sentence that includes a mandatory minimum provision for a capital offense or drug trafficking offense and have not served the number of days equal to the mandatory minimum term less any jail-time credit awarded by the court;

(b) Are serving the mandatory minimum portion of a sentence enhanced under s. 775.087(2) or (3), or s. 784.07(3);

(c) Are convicted, or have been previously convicted, of committing or attempting to commit sexual battery, incest, or any of the following lewd or indecent assaults or acts: masturbating in public; exposing the sexual organs in a perverted manner; or nonconsensual handling or fondling of the sexual organs of another person;

(d) Are convicted, or have been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, or aggravated battery, and a sex act was attempted or completed during commission of such offense;

(e) Are convicted, or have been previously convicted, of committing or attempting to commit kidnapping, burglary, or murder, and the offense was committed with the intent to commit sexual battery or a sex act was attempted or completed during commission of the offense;

(f) Are convicted, or have been previously convicted, of committing or attempting to commit false imprisonment upon a child under the age of 13 and, in the course of committing the

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offense, the inmate committed aggravated child abuse, sexual battery against the child, or a lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age;

(g) Are sentenced, have previously been sentenced, or have been sentenced at any time under s. 775.084, or have been sentenced at any time in another jurisdiction as a habitual offender;

(h) Are convicted, or have been previously convicted, of committing or attempting to commit assault, aggravated assault, battery, aggravated battery, kidnapping, manslaughter, or murder against an officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against a state attorney or assistant state attorney; or against a justice or judge of a court described in Art. V of the State Constitution; or against an officer, judge, or state attorney employed in a comparable position by any other jurisdiction; or

(i) Are convicted, or have been previously convicted, of committing or attempting to commit murder in the first, second, or third degree under s. 782.04(1), (2), (3), or (4), or have ever been convicted of any degree of murder or attempted murder in another jurisdiction;

(j) Are convicted, or have been previously convicted, of DUI manslaughter under s. 316.193(3)(c)3., and are sentenced, or have been sentenced at any time, as a habitual offender for such offense, or have been sentenced at any time in another jurisdiction as a habitual offender for such offense;

(k)1. Are serving a sentence for an offense committed on or after January 1, 1994, for a violation of ~~the Law Enforcement~~

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291 ~~Protection Act under~~ s. 775.0823(2), (3), (4), (5), or (6), and  
292 the subtotal of the offender's sentence points is multiplied  
293 pursuant to former s. 921.0014 or s. 921.0024;

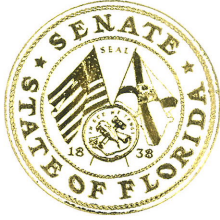
294 2. Are serving a sentence for an offense committed on or  
295 after October 1, 1995, for a violation of ~~the Law Enforcement~~  
296 ~~Protection Act under~~ s. 775.0823(2), (3), (4), (5), (6), (7),  
297 (8), or (9), and the subtotal of the offender's sentence points  
298 is multiplied pursuant to former s. 921.0014 or s. 921.0024;

299 (l) Are serving a sentence for an offense committed on or  
300 after January 1, 1994, for possession of a firearm,  
301 semiautomatic firearm, or machine gun in which additional points  
302 are added to the subtotal of the offender's sentence points  
303 pursuant to former s. 921.0014 or s. 921.0024; or

304 (m) Are convicted, or have been previously convicted, of  
305 committing or attempting to commit manslaughter, kidnapping,  
306 robbery, carjacking, home-invasion robbery, or a burglary under  
307 s. 810.02(2).

308  
309 In making control release eligibility determinations under this  
310 subsection, the authority may rely on any document leading to or  
311 generated during the course of the criminal proceedings,  
312 including, but not limited to, any presentence or postsentence  
313 investigation or any information contained in arrest reports  
314 relating to circumstances of the offense.

315 Section 4. This act shall take effect July 1, 2023.



**SENATOR JENNIFER BRADLEY**  
6th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Committee on Criminal  
and Civil Justice, *Chair*  
Criminal Justice, *Vice Chair*  
Appropriations  
Appropriations Committee on Health  
and Human Services  
Children, Families, and Elder Affairs  
Community Affairs  
Regulated Industries

### SELECT COMMITTEE:

Select Committee on Resiliency

March 15, 2023

Senator Debbie Mayfield, Chair  
Senate Committee on Rules  
400 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Mayfield:

I respectfully request that CS/SB 384 be placed on the committee's agenda at your earliest convenience. This bill relates to violent offenses committed against criminal defense attorneys.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Philip Twogood, Staff Director  
Cynthia Futch, Administrative Assistant

### REPLY TO:

- ☐ 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
- ☐ 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**KATHLEEN PASSIDOMO**  
President of the Senate

**DENNIS BAXLEY**  
President Pro Tempore

The Florida Senate

# APPEARANCE RECORD

4.5.23

Meeting Date

Rules

Committee

384

Bill Number or Topic

Amendment Barcode (if applicable)

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Name Barney Bishop III

Phone 850.510.9922

Address 1454 Vieux Carre Dr  
Street

Email Barney@BarneyBishop.com

Tall  
City

FL  
State

32308  
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

Fla. Smart Justice  
Alliance

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
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While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 408

INTRODUCER: Regulated Industries Committee and Senator Perry

SUBJECT: Fire Sprinkler System Project Permitting

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
3.	<u>Hunter</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 408 creates a simplified permitting process for certain “fire sprinkler system projects,” as defined in the bill, similar to the current process for fire alarm system projects. Specifically, the bill allows a local enforcement agency to require a fire protection system contractor to submit a permit application and pay a permit fee for a fire sprinkler system project, but may not require the contractor to submit plans or specifications as a condition of obtaining such permit. Such fire sprinkler system project must have at least one inspection to ensure compliance with applicable codes and standards, and a contractor must keep a copy of plans available at inspection. The local enforcement agency must issue a permit for a fire sprinkler system project in person or electronically.

The bill defines a "fire sprinkler system project" to mean a fire protection system alteration of a total of 20 or fewer fire sprinklers that have the same K-factor (relating to discharge rates from sprinkler heads) and does not change a hazard classification or an increased system coverage area, or the installation or replacement of an equivalent sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building.

The bill is effective July 1, 2023.

## **II. Present Situation:**

### **State Fire Marshal and Florida Fire Prevention Code**

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal (Division) located within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety. The DFS has the responsibility to minimize the loss of life and property in this state due to fire. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Prevention Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code. Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.

### **Fire Protection Systems**

A "fire protection system" is a system individually designed to protect the interior or exterior of a specific building or buildings, structure, or other special hazard from fire. A fire protection system includes, but is not limited to:<sup>1</sup>

- Water sprinkler systems;
- Water spray systems;
- Foam-water sprinkler systems;
- Foam-water spray systems;
- Carbon dioxide systems;
- Foam extinguishing systems;
- Dry chemical systems; and
- Halon and other chemical systems used for fire protection use.

Fire protection systems also include any tanks and pumps connected to fire sprinkler systems, overhead and underground fire mains, fire hydrants and hydrant mains, standpipes and hoses connected to sprinkler systems, sprinkler tank heaters, air lines, and thermal systems used in connection with fire sprinkler systems.<sup>2</sup>

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<sup>1</sup> Section 633.102(11), F.S.

<sup>2</sup> *Id.*



Fire protection systems must be installed in accordance with the Fire Code and the Florida Building Code. Current law requires local governments to enforce the Fire Code and the Florida Building Code including the permitting, inspecting, and approving the installation of a fire protection system.<sup>3</sup> Owners of fire protection systems are responsible for the maintenance of their fire protection systems, and must contract with a certified fire protection system contractor to regularly inspect such systems.<sup>4</sup>

### **Fire Protection System Contractors**

In order to engage in the business of laying out, fabricating, installing, inspecting, altering, repairing, or servicing a fire protection system in Florida, other than a pre-engineered system, a person must be certified as a fire protection system contractor.<sup>5</sup>

Fire protection system contractors are regulated by ch. 633, F.S., which outlines the law pertaining to fire protection system contractors in Florida. The State Fire Marshal is responsible for licensing and regulating fire system protection contractors in Florida.<sup>6</sup>

There are five levels of certification for fire protection system contractors. A contractor's ability to practice is limited to the category or categories for which the contractor has obtained certification.<sup>7</sup>

- Contractor I - means a contractor whose business includes the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service *all types of fire protection systems*, excluding pre-engineered systems.
- Contractor II - means a contractor whose business is limited to the execution of contracts requiring the ability to lay out, fabricate, install, inspect, alter, repair, and service water sprinkler systems, water spray systems, foam-water sprinkler systems, foam-water spray systems, standpipes, combination standpipes and sprinkler risers, all piping that is an integral part of the system beginning at the point of service, sprinkler tank heaters, air lines, thermal systems used in connection with sprinklers, and tanks and pumps connected thereto, excluding pre-engineered systems.
- Contractor III - means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair, and service carbon dioxide systems, foam extinguishing systems, dry chemical systems, and Halon and other chemical systems, excluding pre-engineered systems.
- Contractor IV - means a person who can lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one- and two-family dwellings and mobile homes.
- Contractor V - means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service and ending no more than 1 foot above the finished floor. A Contractor V may inspect

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<sup>3</sup> See generally chs. 553 and 633, F.S.; ss. 10.1.2 and 10.1.3 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).

<sup>4</sup> Section 633.312, F.S.; See s. 10.2.7 of the 7th edition of the Florida Fire Prevention Code (NFPA Standard 1).

<sup>5</sup> Section 633.336(1), F.S.

<sup>6</sup> Sections 633.318 and 633.338, F.S.

<sup>7</sup> Section 633.102(3), F.S.

underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.<sup>8</sup>

A fire protection system contractor must have insurance providing coverage for comprehensive general liability for bodily injury and property damages, products liability, completed operations, and contractual liability. A Contractor I, Contractor II, Contractor III, or Contractor V must have insurance in an amount not less than \$500,000, and a Contractor IV must have insurance in an amount not less than \$250,000.<sup>9</sup>

In order to obtain certification as a fire protection system contractor, a person must submit a written application to the Division, pay a fee of \$300, be at least 18 years of age, be of good moral character, provide proof of insurance, and pass a written exam administered by the Division.<sup>10</sup>

In order to sit for an exam for certification as a contractor, a person must provide evidence of experience and/or education levels, depending on the certification sought by the person.<sup>11</sup>

### **Fire Alarm System Projects**

In 2022, the Legislature enacted s. 553.7932, F.S., to create a simplified permitting process for certain fire alarm system projects, streamlining processing time by eliminating any requirement for a local enforcement agency to review plans prior to a contractor starting work.<sup>12</sup> The law prohibits a local enforcement agency from requiring an electrical or alarm system contractor to submit plans or specifications in order to obtain a permit for certain fire alarm system projects, but preserves the agency's authority to require a permit application and permit fee.<sup>13</sup>

A “fire alarm system project” is defined as a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator<sup>14</sup> connected to an existing fire alarm control panel<sup>15</sup> in an existing commercial, residential, apartment, cooperative, or condominium building.<sup>16</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Section 633.318(4), and (7), F.S.

<sup>10</sup> The Division administers examinations and collects fees for each type of fire protection system certification. *See* ss. 633.318(1), (2), and (4), and 633.132(1)(a), F.S.

<sup>11</sup> Section 633.318(3), F.S.

<sup>12</sup> Ch. 2022-124, Laws of Fla.

<sup>13</sup> Section 553.7932(2), F.S.

<sup>14</sup> A “fire alarm communicator” is a device that sends a coded signal when a fire alarm or abnormal condition occurs to special receivers at a 24-hour central station, to alert station operators to call the appropriate authorities and a building's management or owners. Norris Inc., available at <https://norrisinc.com/2016/08/12/alarm-system-communicators/> (last visited March 14, 2023).

<sup>15</sup> A “fire alarm control unit” or fire alarm panel, serves as the brain of the fire alarm system. It is a component of a fire alarm system that receives signals from initiating devices or other fire alarm control units, and processes these signals to determine part or all of the required fire alarm system output. National Fire Protection Association, *A Guide to Fire Alarm Basics*, available at <https://www.nfpa.org/News-and-Research/Publications-and-media/Blogs-Landing-Page/NFPA-Today/Blog-Posts/2021/03/03/A-Guide-to-Fire-Alarm-Basics> (last visited March 14, 2023).

<sup>16</sup> Section 553.7932(1)(b), F.S.

A local enforcement agency must:

- Issue a permit for a fire alarm system project in person or electronically.<sup>17</sup>
- Require at least one inspection to ensure the work complies with the applicable codes and standards, and if a fire alarm system project fails an inspection, the contractor must take corrective action to pass inspection.<sup>18</sup>

The contractor must keep a copy of the plans and specifications at the fire alarm system project worksite, and make them available to the inspector at each inspection.<sup>19</sup>

### III. Effect of Proposed Changes:

The bill creates s. 553.7953, F.S., to establish a simplified permitting process for certain “fire sprinkler system projects.” A “fire sprinkler system project” is a fire protection system alteration of a total of 20 or fewer fire sprinklers that have the same K-factor (relating to discharge rates from sprinkler heads) and does not change a hazard classification (which depends on a building’s occupancy or use)<sup>20</sup> or an increased system coverage area, or the installation or replacement of an equivalent sprinkler system component in an existing commercial, residential, apartment, cooperative, or condominium building.

A contractor replacing a fire sprinkler system component must use a component equivalent to the component being replaced, including electrical, hydraulic, pressure losses, required listings, and spacings. The bill defines the term “component” to mean “valves, fire sprinklers, escutcheons [plates that seal the gap between sprinklers and surfaces], hangers, compressors, or any other item deemed acceptable by the local enforcement agency.” Under the bill, the term “valves” does not include pressure-regulating, pressure-reducing, or pressure-control valves.

The bill prohibits local enforcement agencies from requiring a fire protection system contractor to submit plans or specifications as a condition of obtaining a permit for a fire sprinkler system project. However, a local enforcement agency may require a contractor, as a condition of obtaining a permit for a fire sprinkler system project, to submit a completed application and make a payment.

A local enforcement agency must require a fire sprinkler system project to have at least one inspection to ensure compliance with applicable codes and standards. If a fire sprinkler system project fails an inspection, the contractor must take corrective action to pass inspection.

If the purpose of the fire sprinkler system project is to alter a fire sprinkler system, the contractor must keep a copy of the plans or as-built plans at the fire sprinkler system project worksite, and make such plans available to the inspector at each inspection.

If the purpose of the fire sprinkler system project is to replace a component of the fire system, the contractor must keep a copy of the manufacture’s installation instructions and any related

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<sup>17</sup> Section 553.7932(3), F.S.

<sup>18</sup> Section 553.7932(4), F.S.

<sup>19</sup> Section 553.7932(5), F.S.

<sup>20</sup> See s. 302 of the Florida Building Code, *Occupancy Classification and Use Designation* at <https://codes.iccsafe.org/content/FLBC2020P1/chapter-3-use-and-occupancy-classification> (last visited Mar. 21, 2023).

testing instructions to certify or accept the component at a fire sprinkler system project and make such documents to the inspection at each inspection.

The bill is effective July 1, 2023.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Fire system contractors may experience improved workflow and increased efficiency resulting from implementation of the simplified permitting process.

C. Government Sector Impact:

Local governments may experience a reduction in workload and increased administrative and inspection efficiencies due to eliminating review of plans before issuing a permit for fire sprinkler system projects.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 553.7953 of the Florida Statutes.

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

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

**CS by Regulated Industries on March 21, 2023:**

The CS revises the definitions of:

- “Component” to delete backflow preventers, switches, hydrants, pumps, pump motors and engines, and to provide that the term “valves” in this definition does not include pressure-regulating, pressure-reducing, or pressure-control valves; and
- “Fire sprinkler system project” to add a requirement that alteration of a fire protection system have the same K-factor (relating to discharge rates from sprinkler heads) and does not change a hazard classification or an increased system coverage area.

The amendment also clarifies that eligible projects include those for installation or replacement of an “equivalent” component, not “an equal or equivalent” one.

**B. Amendments:**

None.



588326

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2023	.	
	.	
	.	
	.	

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The Committee on Rules (Perry) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 553.7932, Florida Statutes, is amended  
to read:

553.7932 Simplified permitting processes ~~process for fire  
alarm system projects.~~

(1) As used in this section, the term:

(a) "Component" means valves, fire sprinklers, escutcheons,  
hangers, compressors, or any other item deemed acceptable by the



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12 local enforcing agency. For purposes of this paragraph, a valve  
13 does not include pressure-regulating, pressure-reducing, or  
14 pressure-control valves.

15 (b) ~~(a)~~ "Contractor" means a person who:

16 1. Is qualified to engage in the business of electrical or  
17 alarm system contracting pursuant to a certificate or  
18 registration issued by the department under part II of chapter  
19 489; or

20 2. Is qualified to engage in the business of fire  
21 protection system contracting pursuant to a license or  
22 certificate issued by the State Fire Marshal.

23 (c) ~~(b)~~ "Fire alarm system project" means a fire alarm  
24 system alteration of a total of 20 or fewer initiating devices  
25 and notification devices, or the installation or replacement of  
26 a fire communicator connected to an existing fire alarm control  
27 panel in an existing commercial, residential, apartment,  
28 cooperative, or condominium building.

29 (d) "Fire sprinkler system project" means a fire protection  
30 system alteration of a total of 20 or fewer fire sprinklers in  
31 which the sprinklers are of the same K-factor and located in  
32 spaces where there is no change of hazard classification or  
33 increased system coverage area, or the installation or  
34 replacement of an equivalent fire sprinkler system component in  
35 an existing commercial, residential, apartment, cooperative, or  
36 condominium building. For purposes of this paragraph, a  
37 component is equivalent if the component has the same or better  
38 characteristics, including electrical, hydraulic, pressure  
39 losses, and required listings and spacing as the component being  
40 replaced.



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41 (2) (a) A local enforcement agency may require a contractor,  
42 as a condition of obtaining a permit for a fire alarm system  
43 project or fire sprinkler system project, to submit a completed  
44 application and payment.

45 (b) A local enforcement agency may not require a contractor  
46 to submit plans or specifications as a condition of obtaining a  
47 permit for a fire alarm system project or fire sprinkler system  
48 project.

49 (3) A local enforcement agency must issue a permit for a  
50 fire alarm system project or fire sprinkler system project in  
51 person or electronically.

52 (4) A local enforcement agency must require at least one  
53 inspection of a fire alarm system project or fire sprinkler  
54 system project to ensure compliance with applicable codes and  
55 standards. If a fire alarm system project or fire sprinkler  
56 system project fails an inspection, the contractor must take  
57 corrective action as necessary to pass inspection.

58 (5) (a) For a fire alarm system project, a contractor must  
59 keep a copy of the plans and specifications at the ~~a~~ fire alarm  
60 system project worksite and make such plans and specifications  
61 available to the inspector at each inspection.

62 (b) For a fire sprinkler system project to alter an  
63 existing fire protection system, a contractor must keep a copy  
64 of the plans and specifications at the fire sprinkler system  
65 project worksite and make such plans and specifications  
66 available to the inspector at each inspection.

67 (c) For a fire sprinkler system project to install or  
68 replace a component, a contractor must keep a copy of the  
69 manufacturer's installation instructions and any pertinent





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70 testing instructions needed to certify or accept the component  
71 at the fire sprinkler system project worksite and make such  
72 documents available to the inspector at each inspection.

73 Section 2. Subsection (3) of section 633.102, Florida  
74 Statutes, is amended to read:

75 633.102 Definitions.—As used in this chapter, the term:

76 (3) (a) "Contractor I" means a contractor whose business  
77 includes the execution of contracts requiring the ability to lay  
78 out, fabricate, install, inspect, alter, repair, and service all  
79 types of fire protection systems, excluding preengineered  
80 systems.

81 (b) "Contractor II" means a contractor whose business is  
82 limited to the execution of contracts requiring the ability to  
83 lay out, fabricate, install, inspect, alter, repair, and service  
84 water sprinkler systems, water spray systems, foam-water  
85 sprinkler systems, foam-water spray systems, standpipes,  
86 combination standpipes and sprinkler risers, all piping that is  
87 an integral part of the system beginning at the point of service  
88 as defined in this section, sprinkler tank heaters, air lines,  
89 thermal systems used in connection with sprinklers, and tanks  
90 and pumps connected thereto, excluding preengineered systems.

91 (c) "Contractor III" means a contractor whose business is  
92 limited to the execution of contracts requiring the ability to  
93 fabricate, install, inspect, alter, repair, and service carbon  
94 dioxide systems, foam extinguishing systems, dry chemical  
95 systems, and Halon and other chemical systems, excluding  
96 preengineered systems.

97 (d) "Contractor IV" means a contractor whose business is  
98 limited to the execution of contracts requiring the ability to



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lay out, fabricate, install, inspect, alter, repair, and service automatic fire sprinkler systems for detached one-family dwellings, detached two-family dwellings, and mobile homes, excluding preengineered systems and excluding single-family homes in cluster units, such as apartments, condominiums, and assisted living facilities or any building that is connected to other dwellings. A Contractor IV is limited to the scope of practice specified in NFPA 13D.

(e) "Contractor V" means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, alter, repair, and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in this act and ending no more than 1 foot above the finished floor. A Contractor V may inspect underground piping for a water-based fire protection system under the direction of a Contractor I or Contractor II.

This subsection may not be construed to include engineers or architects within the defined terms and does not limit or prohibit a licensed fire protection engineer or architect with fire protection design experience from designing any type of fire protection system. A distinction is made between system design concepts prepared by the design professional and system layout as defined in this section and typically prepared by the contractor. However, a person certified under this chapter as a Contractor I or Contractor II may design new fire protection systems of 49 or fewer sprinklers; may design the alteration of an existing fire sprinkler system if the alteration consists of



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the relocation, addition, or deletion of 49 or fewer sprinklers, notwithstanding the size of the existing fire sprinkler system; and ~~or~~ may design the alteration of an existing fire sprinkler system if the alteration consists of the relocation or deletion of 249 or fewer sprinklers and the addition of up to 49 sprinklers, as long as the cumulative total number of fire sprinklers being added, relocated, or deleted does not exceed 249, notwithstanding the size of the existing fire sprinkler system, if there is no change of occupancy of the affected areas, as defined in the Florida Building Code and the Florida Fire Prevention Code, and there is no change in the water demand as defined in NFPA 13, "Standard for the Installation of Sprinkler Systems," and if the occupancy hazard classification as defined in NFPA 13 is reduced or remains the same as a result of the alteration. Conflicts between the Florida Building Code and the Florida Fire Prevention Code shall be resolved pursuant to s. 553.73(1)(d). A person certified as a Contractor I, Contractor II, or Contractor IV may design a new fire protection system or design the alteration of an existing fire protection system, the scope of which complies with NFPA 13D, "Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes," as adopted by the State Fire Marshal, notwithstanding the number of fire sprinklers. Contractor-developed plans may not be required by any local permitting authority to be sealed by a registered professional engineer.

Section 3. This act shall take effect July 1, 2023.

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



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And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to fire sprinkler system projects;  
amending s. 553.7932, F.S.; revising and defining  
terms; providing requirements for a simplified  
permitting process for certain fire sprinkler system  
projects; amending s. 633.102, F.S.; revising the  
definition of the term "contractor" as it relates to  
fire sprinkler systems; providing an effective date.

By the Committee on Regulated Industries; and Senator Perry

580-02862-23

2023408c1

A bill to be entitled

An act relating to fire sprinkler system project permitting; creating s. 553.7953, F.S.; defining terms; requiring replacement fire sprinkler system components to meet certain criteria; authorizing local enforcement agencies to require contractors to submit certain documentation and payment for obtaining a permit for a fire sprinkler system project; prohibiting local enforcement agencies from requiring contractors to submit certain documentation and payment for obtaining a permit for a fire sprinkler system project; requiring local enforcement agencies to issue certain permits in person or electronically; requiring local enforcement agencies to perform at least one inspection for a fire sprinkler system project; requiring contractors to keep certain documentation available at a worksite for a fire sprinkler system project and make such documentation available for inspection; requiring contractors to retain instructions for components; providing an effective date.

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

Section 1. Section 553.7953, Florida Statutes, is created to read:

553.7953 Simplified permitting process for fire sprinkler system projects.-

(1) As used in this section, the term:

Page 1 of 3

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

580-02862-23

2023408c1

(a) "Component" means valves, fire sprinklers, escutcheons, hangers, compressors, or any other item deemed acceptable by the local enforcement agency. For the purposes of this paragraph, the term "valves" does not include pressure-regulating, pressure-reducing, or pressure-control valves.

(b) "Contractor" means a person qualified to engage in the business of fire sprinkler systems contracting pursuant to a certificate or registration issued by the department under s. 633.318.

(c) "Fire sprinkler system project" means a fire protection system alteration of a total of 20 or fewer fire sprinklers that have the same K-factor which does not result in a change of hazard classification or an increased system coverage area, or the installation or replacement of an equivalent fire sprinkler system component, in an existing commercial, residential, apartment, cooperative, or condominium building.

(2) A contractor replacing a fire sprinkler system component must use a component with the same or better characteristics as the component being replaced, including electrical, hydraulic, pressure losses, required listings, and spacings.

(3) (a) A local enforcement agency may require a contractor, as a condition of obtaining a permit for a fire sprinkler system project, to submit a completed application and make a payment.

(b) A local enforcement agency may not require a contractor to submit plans or specifications as a condition of obtaining a permit for a fire sprinkler system project as defined in this section.

(4) A local enforcement agency shall issue a permit for a

Page 2 of 3

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

580-02862-23

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59 fire sprinkler system project in person or electronically.

60 (5) A local enforcement agency shall require a fire  
61 sprinkler system project to have at least one inspection to  
62 ensure compliance with applicable codes and standards. If a fire  
63 sprinkler system project fails an inspection, the contractor  
64 must take corrective action as necessary to pass inspection.

65 (6) If the fire sprinkler system project is to alter a fire  
66 sprinkler system, the contractor must keep a copy of the plans  
67 or as-built plans at the fire sprinkler system project worksite  
68 and make such plans available to the inspector at each  
69 inspection.

70 (7) If the project is to replace a component of the fire  
71 system, the contractor must keep a copy of the manufacturer's  
72 installation instructions and any related testing instructions  
73 needed to certify or accept the component at a fire sprinkler  
74 system project and must make such documents available to the  
75 inspector at each inspection.

76 Section 2. This act shall take effect July 1, 2023.



The Florida Senate

## Committee Agenda Request

**To:** Senator Debbie Mayfield, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 22, 2023

---

I respectfully request that **Senate Bill #408**, relating to Fire Sprinkler System Project Permitting, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry  
Florida Senate, District 9

The Florida Senate  
**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4-5-23

Meeting Date

Rules

Committee

408

Bill Number or Topic

Amendment Barcode (if applicable)

Name Chief Jim Millican fl. fire chiefs assn. Phone 727-526-5650

Address 4362 55th St Email jmillican@lealmanfire.com  
Street

St. Petersburg  
City

FL  
State

33714  
Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



4/5/23

Meeting Date

Rules

Committee

Name

Daniel Olson

Phone

Address

300 South Duval

Email

Street

Tallahassee

FL

32303

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Florida Fire Sprinkler Association

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate  
**APPEARANCE RECORD**

408

Bill Number or Topic

Amendment Barcode (if applicable)

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/5/23

Meeting Date

Rules

Committee

Name

Edward Briggs

Phone

8509335994

Address

113 E. College Ave.

Email

edward@teamrsa.com

Street

Brandon

FL

32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without compensation or sponsorship.

☒

I am a registered lobbyist, representing:

American Fire Sprinkler  
Associaiton - FL Chapter

☐

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate  
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Senate professional staff conducting the meeting

408

Bill Number or Topic

Amendment Barcode (if applicable)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 626

INTRODUCER: Regulated Industries Committee and Senator DiCeglie

SUBJECT: Broadband Internet Service Providers

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
2.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	<u>Schrader</u>	<u>Twogood</u>	<u>RC</u>	<b>Pre-meeting</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 626 amends s. 425.04, F.S., regarding the powers of rural electric cooperatives, to specify that such cooperatives have the power to engage in the provision of broadband service. The bill also creates a new s. 364.391, F.S., which requires that if a cooperative engages in the provision of broadband service:

- All poles owned by that cooperative are subject to pole attachment regulation by the Public Service Commission (PSC) under 366.04(8), F.S., as if the cooperative was a public utility; and
- The PSC may access the books and records of the cooperative for the limited purpose of exercising its pole regulatory authority. Such records would be subject to the same confidentiality protection procedures as other records utilized in PSC proceedings.

The bill also provides that the rural electric cooperative pole attachment regulatory authority established pursuant to the bill may not be construed to impair the contract rights of a party to a valid rural electric cooperative pole attachment agreement in existence before July 1, 2023.

The bill has an effective date of July 1, 2023.

## II. Present Situation:

### History of Rural Electric Cooperatives

Rural electric cooperatives are electric utilities that are owned by their consumer members. These private companies are generally nonprofit, with their principal purpose being to deliver electrical service to their members. Rural electric cooperatives are mostly located in rural areas where, at least historically, the return on investment for building or installing electrical infrastructure was not enough for investor-owned utilities to want to service them.<sup>1</sup>

Historically, rural homes, farms, and businesses were some of the last places to electrify in the United States (U.S.). By the mid-1930's, 90 percent of U.S. urban homes were electrified,<sup>2</sup> however, the opposite was true in rural areas—only one out of 10 rural homes had electric service.<sup>3</sup> This lack of electrical service deeply limited economic development in rural areas of the country. Despite this impact, the costs to electrify most rural areas were usually prohibitive and often thought not economically feasible.<sup>4</sup> In the limited areas where rural electric power was available, often the prices paid by such consumers were far higher than those paid by their urban counterparts.

In 1935, Executive Order 7037, issued by President Franklin Roosevelt, created the Rural Electrification Administration (REA). One year later, Congress passed the Rural Electrification Act (Pub. L. 74–605), codifying the REA and creating a loan program to encourage the growth of rural electrification. Even with these available federal loans, established investor-owned utilities did not have much interest in building rural systems. However, there was significant interest from farmer-based electric cooperatives.<sup>5</sup> By 1939, with assistance from REA funds, 413 rural electric cooperatives had been established in the U.S.,<sup>6</sup> and by 1950, 80 percent of U.S. farms had electric service.<sup>7</sup>

During a reorganization of the United States Department of Agriculture (USDA) in 1994, the REA was replaced with the Rural Utilities Service, which still exists today.<sup>8</sup> According to the National Rural Electric Cooperative Association (NRECA), now over 99 percent of U.S. farms have electrical service.<sup>9</sup> Rural electric cooperatives continue to be the most prevalent way for consumers in rural areas to obtain electrical service.<sup>10</sup>

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<sup>1</sup> University of Wisconsin Center for Cooperatives, *Research on the Economic Impact of Cooperatives*, available at <https://reic.uwcc.wisc.edu/electric/> (last visited Mar. 24, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> National Rural Electric Cooperative Association, *History*, available at <https://www.electric.coop/our-organization/history> (last visited Mar. 24, 2023).

<sup>4</sup> United States Department of Agriculture, *Celebrating the 80th Anniversary of the Rural Electrification Administration*, Feb. 21, 2017, available at <https://www.usda.gov/media/blog/2016/05/20/celebrating-80th-anniversary-rural-electrification-administration> (last visited March 24, 2023).

<sup>5</sup> National Rural Electric Cooperative Association, *History*, *supra* note 3.

<sup>6</sup> University of Wisconsin Center for Cooperatives, *supra* note 1.

<sup>7</sup> *Celebrating the 80th Anniversary of the Rural Electrification Administration*, *supra* note 4.

<sup>8</sup> University of Wisconsin Center for Cooperatives, *supra* note 1.

<sup>9</sup> National Rural Electric Cooperative Association, *History*, *supra* note 3.

<sup>10</sup> United States Energy Information Administration, *Today in Energy: August 15, 2019*, available at <https://www.eia.gov/todayinenergy/detail.php?id=40913> (last visited March 24, 2023).

## Issues with Electrifying Rural Areas

The issues with electrifying rural areas of the U.S. have generally stemmed from lack of population density and unique consumer demographics. One issue initially was the voltage of distribution systems. The low voltage distribution systems used in urban areas would experience significant and unacceptable voltage drop between the necessary distance runs needed in rural areas. This problem was overcome by using a higher voltage distribution network.<sup>11</sup> The second issue, which is still present today, is the very different customer base rural electric cooperatives service versus the rest of the electricity industry.

As of 2019, rural electric cooperatives averaged 7.98 customers per mile of line, as compared with 32.4 customers per mile of line for the rest of the electricity industry. In addition, while rural electric cooperatives have ownership of 42 percent of U.S. electricity distribution lines, their electricity sales only represent 12 percent of the nation's overall sales. Rural electric cooperatives have a different customer mix as well. For rural electric cooperatives, 53 percent of their customers are residential, with the remainder being commercial, industrial, and transportation customers—which generally have much higher energy consumption. For the U.S. electric industry at-large, the percentage of residential customers is 38 percent.<sup>12</sup>

These factors lead to rural electric cooperatives receiving significantly less revenue per dollar of capital investment in distribution. Rural electric cooperatives' average revenue per mile of distribution line is \$19,135 (versus \$79,298 for the rest of the electricity industry) and their cost of distribution plant per customer is \$4,219 (versus \$3,698).<sup>13</sup> Thus, on a per customer basis, the distribution of electric power in rural areas is higher versus the rest of the industry.

## Rural Electric Cooperatives in Florida

In 1937, the REA drafted the Electric Cooperative Corporation Act as a model state law for states to adopt for the forming and operating of rural electric cooperatives. Florida's first distribution electric cooperatives were formed that same year.<sup>14</sup> At that time, much of Florida's geographic territory lacked electrical service due to, like most of the U.S., the lack of enough economic development to make providing service worthwhile for existing electric companies.

At present, Florida has 18 rural electric cooperatives, with 16 of these cooperatives being distribution cooperatives and two being generation and transmission cooperatives. These cooperatives are represented by the Florida Electric Cooperative Association (FECA).<sup>15</sup> These cooperatives operate in 57 of Florida's 67 counties and have more than 2.7 million

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<sup>11</sup> University of Wisconsin Center for Cooperatives, *supra* note 1.

<sup>12</sup> National Rural Electric Cooperative Association, *Fact Sheet: February 2021*, available at <https://www.cooperative.com/programs-services/bts/documents/data/electric-co-op-fact-sheet-update-february-2021.pdf> (last visited Mar. 24, 2023).

<sup>13</sup> *Id.*

<sup>14</sup> Seminole Electric Cooperative, *Empowering our Community*, available at <https://www.seminole-electric.com/> (last visited Mar. 24, 2023).

<sup>15</sup> Florida Electric Cooperative Association, *Members*, available at <https://feca.com/members/> (last visited Mar 24, 2023).

customers.<sup>16</sup> Much like other areas of the U.S., Florida rural electric cooperatives serve a large percentage of area, but have a low customer density. Specifically, Florida cooperatives serve approximately 10 percent of Florida's total electric utility customers, but their service territory covers 60 percent of Florida's total land mass. Each cooperative is governed by a board of cooperative members elected by the cooperative's membership.<sup>17</sup>

### **Florida Public Service Commission**

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.<sup>18</sup> The role of the PSC is to ensure Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.<sup>19</sup> In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.<sup>20</sup>

The PSC monitors the safety and reliability of the electric power grid<sup>21</sup> and may order the addition or repair of infrastructure as necessary.<sup>22</sup> The PSC has broad jurisdiction over the rates and service of investor-owned electric utilities.<sup>23</sup> However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC does have jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.<sup>24</sup> Municipally owned utility rates and revenues are regulated by their respective local governments. Rates and revenues for a cooperative utility are regulated by their governing body elected by the cooperative's membership.

Under ch. 364, F.S., telecommunications carriers in Florida are also subject to only limited PSC regulation. During the 2011 legislative session, the "Regulatory Reform Act" (Act) was passed and signed into law by the Governor, effective July 1, 2011.<sup>25</sup> Under the Act, the Legislature eliminated most of the PSC's jurisdiction over telecommunications. However, the PSC still:

- Maintains the authority to ensure that incumbent local exchange carriers meet their obligation to provide unbundled access, interconnection, and resale to competitive local exchange companies in a nondiscriminatory manner;
- Administers the system to provide Telecommunications Relay Services; and

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<sup>16</sup> Florida Electric Cooperative Association, *Our History*, available at <https://feca.com/our-history/> (last visited Mar 24, 2023).

<sup>17</sup> *Id.*

<sup>18</sup> Section 350.001, F.S.

<sup>19</sup> See Florida Public Service Commission, *Florida Public Service Commission Homepage*, available at <http://www.psc.state.fl.us> (last visited Mar 24, 2023).

<sup>20</sup> Florida Public Service Commission, *About the PSC*, available at <https://www.psc.state.fl.us/about> (last visited Mar 24, 2023).

<sup>21</sup> Section 366.04(5) and (6), F.S.

<sup>22</sup> Section 366.05(1) and (8), F.S.

<sup>23</sup> Section 366.05, F.S.

<sup>24</sup> Florida Public Service Commission, *About the PSC*, supra note 20.

<sup>25</sup> Ch. 2011-36, Laws of Florida.

- Oversees the Federal Lifeline Assistance program for Florida.<sup>26</sup>

### **Regulatory Assessment Fees**

The PSC collects Regulatory Assessment Fees (RAFs) from all of the utilities under its jurisdiction. RAFs, license fees, other fees, and any other charges collected by the PSC are credited to the Florida Public Service Regulatory Trust Fund (Trust Fund).<sup>27</sup> Florida law generally directs the PSC to manage its trust fund in such a manner that each industry funds its own regulation.<sup>28</sup> While the PSC's budget is set annually by the Legislature, as approved by the Governor, Florida general revenue funds are not used to support the PSC's regulatory activities.

Rates for RAFs are set by PSC rule, subject to maximum rates established by statute. RAFs are charged as a percentage of gross operating revenues derived from intrastate business, subject to certain exclusions. Chart 1 below provides the current RAFs for Florida utilities, by industry.

---

<sup>26</sup> Florida Public Service Commission, *About the PSC*, supra note 20.

<sup>27</sup> Section 350.113, F.S.

<sup>28</sup> Specifically:

- Section 364.336(2) and (3), F.S., requires the PSC to reduce the RAFs for telecommunications industry after the Regulatory Reform Act of 2011 to reflect the PSC's reduced regulatory oversight of that industry;
- Section 367.145(3), F.S., requires that RAFs collected pursuant to the water and wastewater RAF collection authorization may only be used to cover the cost of regulating water and wastewater systems. Also, fees collected under the electricity utility industry, gas utility industry, and telecommunications industry RAF collection authorizations may not be used to pay for the cost of water and wastewater regulation.
- Section 368.109, F.S., states that the RAFs set by the PSC for the natural gas transmission (i.e. natural gas pipeline) industry must, to the extent practicable, be related to the cost of regulating that industry.

**Chart 1: Regulatory Assessment Fees by Florida Utility Industry**

<b>Utility Type</b>	<b>Current RAF</b>	<b>Statutory Maximum</b>
Investor-owned Gas Utilities	0.5% <sup>29</sup>	0.5% <sup>30</sup>
Municipal Gas Utilities	0.1919% <sup>31</sup>	0.25% <sup>32</sup>
Natural Gas Transmission	0.25% <sup>33</sup>	0.25% <sup>34</sup>
Telecommunications Companies	0.16% <sup>35</sup>	0.25% <sup>36</sup>
Water and Wastewater Utilities	4.5% <sup>37</sup>	4.5% <sup>38</sup>
Investor-owned Electric Utilities	0.072% <sup>39</sup>	0.125% <sup>40</sup>
Municipal Electric Utilities and Rural Electric Cooperatives	0.015625% <sup>41</sup>	0.015625% <sup>42</sup>

By a significant margin, municipal electric utilities and rural electric cooperatives have the lowest RAF rates of all Florida utilities (the next closest is investor-owned electric utilities, with RAF rates over 4.5 times that of municipal electric utilities and rural electric cooperatives). These rates reflect the comparatively lower regulatory costs the PSC incurs in regulating these types of utilities due, in large part, to the PSC having limited jurisdiction over them.

### **Certificates of Authority**

Section 364.33, F.S., specifies that a person may not provide telecommunications services to the public without either a certificate of authority or a certificate of necessity. As part of the Regulatory Reform Act, the PSC was directed to stop issuing certificates of authority after July 1, 2011; however, existing certificates remain valid. Certificates of authority may be transferred to said holder's parent company, an affiliate, or another person holding a certificate of necessity or authority (or such entity's parent company or an affiliate) without prior approval of the PSC by giving written notice of the transfer to the PSC within 60 days after the completion of the transfer. Under s. 364.33, F.S., companies offering traditional wireline telephone service must obtain a certificate of authority from the PSC before providing service to the public. However, for companies offering other communications

<sup>29</sup> Fla. Admin. Code R. 25-7.0131, (2013).

<sup>30</sup> Section 366.14, F.S.

<sup>31</sup> Fla. Admin. Code R. 25-7.0131, (2013).

<sup>32</sup> Section 366.14, F.S.

<sup>33</sup> Fla. Admin. Code R. 25-7.101, (2013).

<sup>34</sup> Section 368.109, F.S.

<sup>35</sup> Fla. Admin. Code R. 25-4.0161, (2011).

<sup>36</sup> Section 364.336, F.S.

<sup>37</sup> Fla. Admin. Code R. 25-30.120, (2013).

<sup>38</sup> Section 367.145, F.S.

<sup>39</sup> Fla. Admin. Code R. 25-6.0131, (2013).

<sup>40</sup> Section 366.14, F.S.

<sup>41</sup> Fla. Admin. Code R. 25-6.0131, (2013).

<sup>42</sup> Section 366.14, F.S.



services such as broadband, cable, or wireless services, a certificate is optional if that company does not offer such traditional wireline service. This is because such services are exempt from PSC jurisdiction under s. 364.011, F.S.

Section 364.335, F.S., provides the application requirements for a certificate of authority. An applicant must provide all of the following:

- Their official name and, if different, any name under which the applicant will do business;
- The street address of their principal place of business;
- Their federal employer identification number or the Department of State's document number;
- The name, address, and telephone number of an officer, partner, owner, member, or manager as a contact person to whom questions or concerns may be addressed; and
- Information demonstrating their managerial, technical, and financial ability to provide telecommunications service, including an attestation to the accuracy of the information provided.

The PSC must grant the certificate upon the applicant demonstrating they have the sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

### **Regulation of Pole Attachments**

Utility poles were first deployed in the U.S. in 1844 to extend telegraph service. While they are an over 175 year old technology, utility poles continue to provide the scaffolding for the technology of the twenty-first century. In the mid-nineteenth and early twentieth centuries, many states adopted laws granting rights-of-way (ROW) to construct utility poles, wires, and facilities to transmit electricity and communications signals. First telegraph, then telephone, electricity, cable, wireless, and Internet service providers have sought to attach facilities to wooden, and later steel or composite, utility poles.<sup>43</sup>

The term “pole attachment” refers to the process by which communications companies colocate communications infrastructure on existing electric utility poles. Colocation reduces the number of poles that must be built to accommodate utility services, thereby reducing costs to users of both services by allowing providers to share costs. Rules governing pole attachments seek to balance the desire to maximize value for users of both electric and communications services with concerns unique to electric utility poles, such as safety and reliability.<sup>44</sup> The space requested for a pole attachment is typically one foot.<sup>45</sup>

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<sup>43</sup> Catherine J.K. Sandoval, Contested Places, Utility Pole Spaces: A Competition and Safety Framework for Analyzing Utility Pole Association Rules, Roles, and Risks, 69 Cath. U. L. Rev. 473, 474–75 (2020), available at <https://scholarship.law.edu/cgi/viewcontent.cgi?article=3552&context=lawreview> (last visited March 24, 2023).

<sup>44</sup> American Public Power Association, *Issue Brief: Preserving the Municipal Exemption from Federal Pole Attachment Regulations* (Jan. 2021), available at <https://www.publicpower.org/policy/preserving-municipal-exemption-federal-pole-attachment-regulations> (last visited March 24, 2023).

<sup>45</sup> Evari GIS Consulting, *Joint Use Pole Audit*, available at <https://www.evarigisconsulting.com/joint-use-pole-audit> (last visited March 24, 2023).

Pole attachments were originally established by mutual agreement. Later, such agreements were regulated by federal statute and administrative rules. Pole attachments provide non-pole-owning cable and telecommunication service providers (such as cable television providers and local exchange carriers) with access to a pole-owning utility's distribution poles, conduits, and right-of-way for:

- Installing fiber, coaxial cable or wires, and other equipment;
- Building an interconnected network; and
- Reaching customers.<sup>46</sup>

In 1978, Congress passed the “Pole Attachment Act,” which added s. 224 to the Communications Act of 1934, to require the Federal Communications Commission (FCC) to establish rates, terms, and conditions for pole attachments for the cable television industry.<sup>47</sup>

The “Telecommunications Act of 1996,” which, amended 47 U.S.C. s. 244 to add provisions making access to utility poles mandatory for telecommunications services providers and providing for nondiscriminatory access—unless there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.<sup>48</sup> Municipal owned electric utilities and rural electric cooperatives are exempt from the provisions of 47 U.S.C. s. 224.<sup>49</sup> Specifically, the term “utility” is defined as:

[A]ny person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.<sup>50</sup>

A state, however, can assume regulation of pole attachment through a process known as “reverse preemption.” This requires a state to expressly assert jurisdiction through state legislation, followed by certifying to the FCC that “in so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the utility services.”<sup>51</sup> As of June 13, 2022, 23 states and the District of Columbia have reverse preemption, including Florida.<sup>52</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> Pub. L. No. 95-234, *codified* at 47 U.S.C. s. 224.

<sup>48</sup> Pub. L. No. 104-104, *codified* at 47 U.S.C. s. 224(f).

<sup>49</sup> 47 U.S.C. s. 224(a)(1).

<sup>50</sup> *Id.*

<sup>51</sup> 47 U.S.C. s. 224(c)(2).

<sup>52</sup> Federal Communications Commission, *Public Notice: States That Have Certified That They Regulate Pole Attachments*, June 13, 2022, *available at* <https://www.fcc.gov/document/states-have-certified-they-regulate-pole-attachments-3> (last visited March 24, 2023).

Florida assumed regulation of pole attachments from the FCC after the passage and enactment of SB 1944 in 2021.<sup>53</sup> Presently, pole attachments are regulated under sections 366.04(8) and (9), F.S. and 366.97, F.S.

Section 366.04(8), F.S., grants authority to the PSC to regulate and enforce rates, charges, terms, and conditions for pole attachments, including attachments to streetlight fixtures, owned by a public utility or a communications services provider. The subsection specifies that the PSC's authority includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c), relating to pole attachments. The types of pole attachments regulated under this provision are defined in 47 U.S.C. s. 224(a)(4) and "means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." Rural electric cooperatives are not included in the definition of "utility" for this federal code section. In addition, rural electric cooperatives and municipal electric utilities are not considered public utilities for the purposes of ch. 366, F.S.

In addition, s. 366.04(8), F.S., provides:

- Jurisdiction for the PSC to regulate and enforce rates, charges, terms, and conditions of pole attachments and ensure that such rates, charges, terms, and conditions are just and reasonable.<sup>54</sup> In adopting rules to regulate and enforce these provisions, the PSC must consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.
- Legislative intent that parties are encouraged to enter into voluntary pole attachment agreements without PSC approval and that parties not be prevented from voluntarily entering into such contracts without PSC approval.
- Circumstances under which a pole owner, on a non-discriminatory basis, may deny access to its poles, including insufficient capacity, safety, reliability, and engineering requirements. The subsection also provides that a pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider the PSC's approved construction and reliability standards.
- That the PSC hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. FCC precedent is not binding upon the PSC in the exercise of this delegated authority. The PSC must establish just and reasonable cost-based rates when exercising its jurisdiction to hear such cases and to apply the decisions and orders of the FCC and any appellate court decisions reviewing FCC orders regarding pole attachment rates, terms or conditions in determining just and reasonable pole attachment rates, terms or conditions.
- That a pole owner or attaching entity may provide evidence, subject to proceedings conducted pursuant to s. 120.569, F.S., and s. 120.57, F.S., to establish that an alternative cost of service-based pole attachment rate is appropriate and in the public interest.

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<sup>53</sup> Chapter 2021-191, L.O.F.

<sup>54</sup> The types of pole attachments under PSC regulation include the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, attachments to poles owned by a public utility, or attachments to poles owned by a communications services provider.

- The PSC must authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights under ch. 120, F.S., in the first four formal administrative proceedings to determine pole attachment rates, so as to provide PSC precedent to establish pole attachment rates and help guide negotiations toward voluntary pole attachment agreements.
- That, after the fourth such proceeding, parties subject to a pole attachment rate proceeding are limited to the specific pole owner and pole attaching entity involved in and directly affected by the specific pole attachment rate after the fifth formal administrative proceeding is concluded by final order.
- That the PSC must engage initial rulemaking regarding s. 366.04(8), F.S., and must have those rules proposed for adoption no later than January 1, 2022.

As of June 8, 2022, the PSC has adopted rules to implement s. 366.04(8), F.S., which are codified under Florida Administrative Code Rule 25-18.010.

Section 366.04(9), F.S., requires that the PSC regulate the safety, vegetation management, repair, replacement, maintenance, relocation, emergency response, and storm restoration requirements for poles of communication services providers; however, this provision does not apply to a communications services provider that does not own poles. Section 366.04(9), F.S., also directed the PSC to engage initial rulemaking regarding this provision and to have those rules proposed for adoption no later than April 1, 2022. At minimum, PSC rules regarding s. 366.04(9), F.S.:

- Address mandatory pole inspections, including repair or replacement;
- Establish vegetation management requirements for poles owned by providers of communications services; and
- Establish monetary penalties to be imposed upon any communications services provider that fails to comply with pole attachment rules of PSC established pursuant to s. 366.04(8), F.S. Such penalties must be consistent with s. 366.095, F.S., which limits fines to \$5,000 per offense.

As of April 12, 2022, the PSC has adopted rules to implement s. 366.04(9), F.S., which are codified under Florida Administrative Code Rule 25-18.020.

Section 366.97, F.S., provides procedures relating to redundant poles and the transfer of pole ownership. These procedures require:

- Pole owners to provide advance notice to attaching entities of major hardening projects to replace poles within 180 calendar days of receiving written notice to do so. Such hardening notices must include:
  - The scope of the major hardening project (to the extent it has been determined), the location of affected poles, the expected start date, and the expected completion date; and
  - The date, time, and location of a field meeting for the pole owner and attaching entities to review and discuss the planned major hardening project details, including the types of replacement poles to be used. The field meeting must occur no sooner than 15 calendar days after the date of the notice and no later than 60 calendar days

after the notice and, at a minimum, must include sufficient information to enable the attaching entity to locate the affected poles and identify the owner of any facilities attached to the poles.

- An attaching entity to remove its pole attachments from a redundant pole within 180 calendar days after receipt of an electronic or written notice from a pole owner requesting such removal. A pole owner may use a joint use notification software program to accomplish such written or electronic removal notice.
- If an attaching entity fails to remove such a pole attachment (except in the event of force majeure or other good cause as agreed to by the parties or as determined by the PSC or its designee within 30 calendar days after the 180 calendar-day period), the pole owner or its agent may transfer or relocate an attachment to a new pole at the attachment owner's expense. This provision does not apply to an electric utility's pole attachments. Payment for such transfer or removal is due to the pole owner in 60 days after receipt of invoice. A pole owner may seek to enforce its right to payment in circuit court and, if it prevails, is entitled to prejudgment interest at the prevailing statutory rate and reasonable attorney fees and court costs. Upon receipt by the pole owner of written notice, the attaching entity that fails to comply with such removal shall indemnify, defend, and hold harmless the pole owner and its directors, officers, agents, and employees from and against all liability, except to the extent of any finding of negligence or willful misconduct, including attorney fees and litigation costs, arising in connection with the transfer of the pole attachment from a redundant pole to a new pole by the pole owner.
- If a pole attachment is abandoned by an attaching entity that fails to remove or transfer its attachments as required under s. 366.97, F.S., the pole owner or its agent may remove the pole attachment at the noncompliant attaching entity's expense and may sell or dispose of the pole attachment. This does not apply where the attaching entity's noncompliance is excused by an event of force majeure or other good cause as determined by the PSC. Non-compliant attaching utilities who have abandoned their attachments as specified in this provision, are subject to the same 60-day payment and indemnification requirements as those who failed to remove an attachment from a redundant pole above.
- A pole owner may petition the PSC to enforce this section, except to the extent that petitioning to the circuit court is specified.

Section 366.97, F.S., also specifies that the legislature encourages entities to enter voluntary agreements authorizing a pole owner to remove an attaching entity's attachment and that the section should not be construed as preventing such agreements. Also, the section specifies that it should not be construed to impair the contract rights of a party to a valid pole attachment agreement in existence before June 29, 2021.

### **Broadband Availability in Rural Areas**

Much like with rural electricity distribution, the primary challenge in deploying broadband in rural areas is one of population density. The U.S. Department of Transportation estimates that the average cost of laying fiber is \$27,000 per mile.<sup>55</sup> Many rural areas are remote and

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<sup>55</sup> Congressional Research Service, *Raising the Minimum Fixed Broadband Speed Benchmark: Background and Selected Issues*, July 12, 2021, available at <https://crsreports.congress.gov/product/pdf/IF/IF11875/2> (last visited March 24, 2023).

have geographically dispersed populations, thus more fiber per customer must be laid to serve them. Moreover, rural areas often have more harsh terrain than urban areas—such as mountain ranges or ground that is frozen for substantial portions of the year. These features can make it more difficult and costly to serve such areas with fiber.<sup>56</sup> Cable networks can also face similar density and terrain issues.

While rural customers still lag behind urban counterparts, the difference in broadband access between these areas is at its lowest ever. In 2015, reflecting advances in technology, the FCC raised benchmark speeds to be considered broadband service to 25 megabits per second (Mbps) for downloads and 3 Mbps for uploads (25/3 Mbps service).<sup>57</sup> Under this benchmark, the FCC reported that 53 percent of people living in U.S. rural areas lacked access to broadband—as compared to just 8 percent of persons living in U.S. urban areas lacking such access. By 2021, the gap for 25/3 Mbps service with at least one provider had essentially vanished.<sup>58</sup> Rural areas still were behind their urban counterparts in choice however; 91 percent of rural customers had access to three or more providers, versus 99 percent of urban customers.<sup>59</sup>

In 2021, the FCC considered increasing their standard for broadband to 100 Mbps of download and 10 Mbps of upload speed (100/10 Mbps service), but ultimately rejected the change given concerns about whether enough providers could meet such a standard.

## **Broadband Growth Programs**

### ***Florida Broadband Opportunity Program***

Established under s. 288.9962, F.S., the Broadband Opportunity Program (BOP) is a competitive reimbursement program within the Florida Department of Economic Opportunity (DEO).<sup>60</sup> The purpose of the program is to award grants to applicants who seek to expand broadband Internet service to unserved areas of Florida. To operate the program, Florida Legislature appropriated \$400 million in federally funded State and Local Fiscal Recovery Funds (SLFRF) to increase Floridians' access to reliable, affordable, and high-speed internet service.<sup>61</sup>

### ***Connect America Fund***

One of the earliest and most significant federal broadband programs is the Connect America Fund, which is part of the FCC's Universal Service Fund (USF). Started in 2011, the purpose of the fund is to provide subsidies to telecommunications companies to expand

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<sup>56</sup> *Id.*

<sup>57</sup> Federal Communications Commission, *Wireline: 2015 Broadband Progress Report*, Feb. 14, 2015, available at <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2015-broadband-progress-report> (last visited March 24, 2023).

<sup>58</sup> USA Facts, *How Many Americans have Broadband Internet Access*, Sep. 27, 2022, available at <https://usafacts.org/articles/how-many-americans-have-broadband-internet-access/#footnote-3> (last visited March 24, 2023).

<sup>59</sup> *Id.*

<sup>60</sup> Florida Department of Economic Opportunity, *Broadband Opportunity Program*, available at <https://www.floridajobs.org/community-planning-and-development/broadband/broadband-opportunity-program> (last visited Mar. 24, 2023).

<sup>61</sup> *Id.*

telecommunications infrastructure in rural and remote areas of the United States.<sup>62</sup> The Connect America Fund is a “high-cost” program, meaning that it is designed to ensure that consumers in rural, insular, and high cost areas have access to modern telecommunications networks and that services through those networks, like voice and broadband, are available at a cost comparable to that in more developed urban areas.<sup>63</sup> The Connect America Fund is the largest of the USF’s programs, and has an annual budget of \$4.5 billion.<sup>64</sup>

### ***Broadband Technology Opportunities Program***

The Broadband Technology Opportunities Program (BTOP) is a federal grant program administered by the National Telecommunications and Information Administration (NTIA), part of the U.S. Department of Commerce. The BTOP is funded by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and has an annual budget of \$4 billion. The purpose of the program is to “bridge the technological divide” and BTOP projects include deploying broadband Internet infrastructure, enhancing and expanding public computer centers, and encouraging the sustainable adoption of broadband service.<sup>65</sup>

### ***USDA Programs: ReConnect Program and the Rural Broadband Program***

The USDA operates two programs aimed at developing broadband in rural areas—the ReConnect Program and the Rural Broadband Program. Though these programs both existed prior to 2021, the Infrastructure Investment and Jobs Act (Public Law 117-58), signed into law on November 15, 2021, provided new funding for both of these programs (and other broadband initiatives). The ReConnect Program received \$1.926 billion in funds for grants and loans and the Rural Broadband Program received \$74 million in funds for loans. This new funding level, starting in 2022, exceeded the fiscal year 2021 levels by \$1.291 billion (an increase of 203 percent) for the ReConnect Program and by \$72 million (an increase of 97 percent) for the Rural Broadband Program.<sup>66</sup>

The purpose of the ReConnect Program is to offer loans, grants, and loan-grant combinations to facilitate broadband deployment in rural areas that currently do not have sufficient access to broadband. The entities eligible to apply for the Reconnect Program include:

- Corporations, limited liability companies, and limited liability partnerships;
- State and local governments;
- U.S. territories and possessions; and

<sup>62</sup> Federal Communications Commission, *Universal Service Monitoring Report*, Feb. 13, 2023, available at <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports> (last visited March 24, 2023).

<sup>63</sup> Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund*, available at <https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund#releases> (last visited Mar. 24, 2023).

<sup>64</sup> Universal Service Administrative Co., *Program Overview*, available at <https://www.usac.org/high-cost/program-overview/> (last visited Mar 24, 2023).

<sup>65</sup> National Telecommunications and Information Administration, *Broadband Technology Opportunities Program*, available at <https://ntia.gov/category/broadband-technology-opportunities-program#:~:text=The%20Broadband%20Technology%20Opportunities%20Program,in%20communities%20across%20the%20country> (last visited Mar. 24, 2023).

<sup>66</sup> Congressional Research Service, *Infrastructure Investment and Jobs Act: Funding for USDA Rural Broadband Programs*, Nov. 19. 2021, available at <https://crsreports.congress.gov/product/pdf/IF/IF11918> (last visited March 24, 2023).



- Indian tribes, as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. §450b).<sup>67</sup>

The purposes for which Reconnect grants may be used are:

- Construction or improvement of facilities required to provide fixed terrestrial broadband services;
- Funding of reasonable pre-application expenses; and
- Funding the acquisition of an existing telecommunications system that does not currently provide sufficient access to broadband.<sup>68</sup>

The Rural Broadband Program offers funds to help construct, improve, or acquire facilities and equipment needed to provide broadband to rural areas. The entities eligible to apply for the program are:

- Corporations;
- Limited liability companies;
- Cooperative or mutual organizations;
- State and local governments; and
- Indian tribes and tribal organizations.

For the most recent years prior to 2021, Congress only appropriated funds to the Rural Broadband Program for loans. However, with the increase in funding under the Infrastructure Investment and Jobs Act, funding for grants and loan guarantees is also now available in the program.<sup>69</sup>

While the USDA's Reconnect and Rural programs are similar in their purpose, a key distinction lies in the standards for eligible service areas. For the ReConnect Program, eligible service areas are areas where at least 90% of households lack sufficient access to broadband with at least 100 Mbps download and 20 Mbps upload speed (100/20 Mbps service). For the Rural Broadband Program, the standard for eligibility is if the area in question does not have at least 50% of households with at least 25 Mbps download and 3 Mbps upload speed (25/3 Mbps service).

### **Growth of Rural Electric Cooperative Engagement in Broadband**

According to the NRECA, about 200 rural electric cooperatives are currently providing or building out broadband service. In addition, the NRECA states that 200 additional rural electric cooperatives are "assessing the feasibility of providing service to more than 6 million households in co-op service areas that don't have access to high-speed internet service."<sup>70</sup> To support its members wishing to be, or currently engaged in, the broadband business, the

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<sup>67</sup> United States Department of Agriculture, *ReConnect Program*, available at <https://www.usda.gov/reconnect/program-overview> (last visited Mar 24, 2023).

<sup>68</sup> *Id.*

<sup>69</sup> Federal Communications Commission, *Universal Service for High Cost Areas-Connect America Fund*, supra note 66.

<sup>70</sup> National Rural Electric Cooperatives Association, *Broadband*, available at <https://www.electric.coop/issues-and-policy/broadband> (last visited Mar 24, 2023).



NRECA launched a new level of service for its members in July 2022 called NRECA Broadband.<sup>71</sup> The stated purpose of NRECA Broadband is to offer:

- Federal policy and regulatory advocacy;
- Communication, events, and education; and
- Operations and technology support.<sup>72</sup>

While rural electric cooperatives have experience in operating a monopoly electric utility, many have little institutional experience in operating in a non-monopoly competitive market in general or in broadband telecommunications specifically. Thus, these companies can face challenges in learning how to market and provide broadband services.<sup>73</sup>

### **Rural Electric Cooperative Involvement in Broadband in Florida**

Section 425.04, F.S., establishes the powers of rural electric cooperatives in Florida. It states, that, in addition to providing energy, water, and wastewater utility services, rural electric cooperatives may, in order to promote economic development, “provide...nonenergy services to its membership.” Utilizing this provision, currently, five of Florida’s 18 rural electric cooperatives, are engaged in or developing broadband service:

- Glades Electric Cooperative (5.1 members per mile of line).
- Central Florida Electric Cooperative (6.34 members per mile of line).
- Suwannee Valley Electric Cooperative (4.5 members per mile of line).
- Tri-County Electric Cooperative (4.48 members per mile of line).
- Escambia River Electric Cooperative (6.94 members per mile of line).

According to the FECA these five cooperatives are the most rural in nature of the cooperatives in Florida.<sup>74</sup>

### **III. Effect of Proposed Changes:**

**Section 1** creates s. 364.391, F.S., which provides that, if a rural electric cooperative engages in the provision of broadband service:

- All poles owned by that cooperative are subject to pole attachment regulation by the Public Service Commission (PSC) under s. 366.04(8), F.S., as if the cooperative was a public utility.
- The PSC may access the books and records of the cooperative for the limited purpose of exercising its pole regulatory authority. Such records would be subject to the same confidentiality protection procedures as other records utilized in PSC proceedings under ss. 364.183 and 366.093, F.S.

<sup>71</sup> *Id.*

<sup>72</sup> Cooperative.com, *NRECA Broadband*, available at <https://www.cooperative.com/topics/telecommunications-broadband/nreca-broadband/Pages/default.aspx> (last visited Mar. 24, 2023).

<sup>73</sup> National Rural Electric Cooperatives Association, *Along Those Lines: What It Takes for Electric Co-ops to Enter the Broadband Space*, Jan 24, 2023, available at <https://www.electric.coop/along-those-lines-what-it-takes-for-electric-co-ops-to-enter-the-broadband-space> (last visited March 24, 2023).

<sup>74</sup> Email from Drew Love, Director of Government Affairs, Florida Electric Cooperatives Association, to Senate Regulated Industries Staff (Mar. 6, 2023) (on file with Senate Regulated Industries Committee).

Proposed s. 364.391, F.S., defines “engages in the provision of broadband” as:

- Providing broadband directly, through an affiliate,<sup>75</sup> or pursuant to an agreement with a third party; or
- Receiving broadband grant funding:
  - Pursuant to the Florida Department of Economic Opportunity’s Broadband Opportunity Program (BOP); or
  - From any other federal or state program offering grants to expand broadband Internet service to unserved areas of this state.

The section also specifies that the rural electric cooperative pole attachment regulatory authority established pursuant to proposed s. 364.391, F.S., may not be construed to impair the contract rights of a party to a valid rural electric cooperative pole attachment agreement in existence before July 1, 2023.

**Section 2** amends s. 425.04, F.S., which establishes the powers of a rural electric cooperative. Specifically, the bill provides that rural cooperatives may engage in the provision of broadband, pursuant to the pole attachment regulations specified in proposed s. 364.391, F.S., in the bill.

**Section 3** of the bill provides an effective date of July 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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<sup>75</sup> “Affiliate” is defined in proposed s. 364.391, F.S., as an entity related through a parent cooperative’s controlling interest. The term includes a subsidiary or any other entity under common control with the cooperative.

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

Currently, rural electric cooperatives pay limited RAFs to the Florida PSC to fund only the limited regulatory authority the PSC has over these utilities. In addition, under s. 364.011(2), F.S., broadband services, regardless of the provider, platform, or protocol, are exempt from oversight by the PSC (except to the extent delineated in ch. 364, F.S.).

Traditionally, the cost associated with regulatory requirements established in Florida law has been assessed to the utilities and telecommunications companies subject to the PSC's authority. The bill does not provide the PSC with authority to increase RAFs for rural electric cooperatives, nor does it establish authority to assess RAFs to the communication services providers that may become subject to the PSC's authority under the bill.

**B. Private Sector Impact:**

The financial and legal responsibilities of parties to rural electric cooperative pole attachment arrangements in Florida may substantially change depending on the PSC's implementation of new pole attachment regulatory authority under this bill.

**C. Government Sector Impact:**

The bill may have a negative impact on state revenues and expenditures. However, the PSC has stated that, as currently drafted, the expected increased workload "can be absorbed."<sup>76</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 425.04 of the Florida Statutes.  
This bill creates section 364.391 of the Florida Statutes.

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<sup>76</sup> Florida Public Service Commission, *Bill Analysis for SB 626* (Mar. 3, 2023) (on file with the Senate Regulated Industries Committee).

**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 Regulated Industries on March 7, 2023:**

The committee substitute:

- Adds a provision allowing the Public Service Commission (PSC) limited access to cooperative records to the extent necessary to administer rural electric cooperative pole attachment regulation established under the bill. A statement is also included to clarify that such records would be given the same protection as other utility records subject to PSC proceedings.
- Adds a provision stating that the bill is not intended to impair existing pole attachment agreements.
- Removes a reference in the bill to the definition of “communications services” in s. 350.81(1), F.S., in establishing powers of rural cooperatives under ch. 425, F.S. This is revised to state “broadband” instead, in order to clarify that a rural electric cooperative offering such services does not need to obtain a certificate of authorization from the PSC in order to do so.
- Clarifies that the PSC-regulated pole attachment provisions established under the bill only apply when a rural electric cooperative engages in broadband.
- Makes technical changes.

**B. Amendments:**

None.

By the Committee on Regulated Industries; and Senator DiCeglie

580-02350-23

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A bill to be entitled

An act relating to broadband Internet service providers; creating s. 364.391, F.S.; defining terms; specifying that the poles of rural electric cooperatives that are engaged in the provision of broadband are subject to regulation by the Public Service Commission; authorizing the commission to access the books and records of such cooperatives for specified purposes; providing that such information that contains proprietary confidential business information retains its confidential or exempt status when held by the commission; providing construction; amending s. 425.04, F.S.; authorizing rural electric cooperatives to engage in the provision of broadband; providing an effective date.

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

Section 1. Section 364.391, Florida Statutes, is created to read:

364.391 Rural electric cooperatives engaged in the provision of broadband.—

(1) As used in this section, the term:

(a) "Affiliate" means an entity related through a parent cooperative's controlling interest. The term includes a subsidiary or any other entity under common control with the cooperative.

(b) "Cooperative" means a rural electric cooperative established pursuant to chapter 425.

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(c) "Engages in the provision of broadband" means an entity that:

1. Provides broadband service directly, through an affiliate, or pursuant to an agreement with a third party; or  
2. Accepts broadband grant funding pursuant to s. 288.9962 or from any other federal or state program offering grants to expand broadband Internet service to unserved areas of this state.

(2) If a cooperative engages in the provision of broadband:

(a) All poles owned by the cooperative are subject to regulation under s. 366.04(8) on the same basis as if such cooperative were a public utility under that subsection; and

(b) The commission may access the books and records of such cooperative to the limited extent necessary to perform its functions and to exercise its authority under ss. 366.04(8) and 366.97(4). Upon request of the cooperative, any records the commission receives under this paragraph which are proprietary confidential business information under s. 364.183 or s. 366.093 shall retain their status as confidential or exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section may not be construed to impair the contract rights of a party to a valid pole attachment agreement in existence before July 1, 2023.

Section 2. Section 425.04, Florida Statutes, is amended to read:

425.04 Powers.—A cooperative shall have all of the following powers ~~power~~:

(1) To sue and be sued, in its corporate name, ~~+~~

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59 (2) To have perpetual existence.~~+~~  
60 (3) To adopt a corporate seal and alter the same at  
61 pleasure.~~+~~  
62 (4) To generate, manufacture, purchase, acquire, accumulate  
63 and transmit electric energy, and to distribute, sell, supply,  
64 and dispose of electric energy in rural areas to its members, to  
65 governmental agencies and political subdivisions, and to other  
66 persons not in excess of 10 percent of the number of its  
67 members; to process, treat, sell, and dispose of water and water  
68 rights; to purchase, construct, own and operate water systems;  
69 to own and operate sanitary sewer systems; and to supply water  
70 and sanitary sewer services. However, a ~~no~~ cooperative may not  
71 ~~shall~~ distribute or sell any electricity, or electric energy to  
72 any person residing within any town, city, or area in which the  
73 person is receiving adequate central station service or who at  
74 the time of commencing such service, or offer to serve, by a  
75 cooperative, is receiving adequate central station service from  
76 any utility agency, privately or municipally owned individual  
77 partnership, or corporation.~~+~~  
78 (5) To make loans to persons to whom electric energy is or  
79 will be supplied by the cooperative for the purpose of, and  
80 otherwise to assist such person in, wiring their premises and  
81 installing therein electric and plumbing fixtures, appliances,  
82 apparatus and equipment of any and all kinds and character, and  
83 in connection therewith, to purchase, acquire, lease, sell,  
84 distribute, install and repair such electric and plumbing  
85 fixtures, appliances, apparatus and equipment, and to accept or  
86 otherwise acquire, and to sell, assign, transfer, endorse,  
87 pledge, hypothecate and otherwise dispose of notes, bonds and

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88 other evidences of indebtedness and any and all types of  
89 security therefor.~~+~~  
90 (6) To make loans to persons to whom electric energy is or  
91 will be supplied by the cooperative for the purpose of, and  
92 otherwise to assist such persons in, constructing, maintaining  
93 and operating electric refrigeration plants.~~+~~  
94 (7) To become a member in one or more other cooperatives or  
95 corporations or to own stock therein.~~+~~  
96 (8) To construct, purchase, take, receive, lease as lessee,  
97 or otherwise acquire, and to own, hold, use, equip, maintain,  
98 and operate, and to sell, assign, transfer, convey, exchange,  
99 lease as lessor, mortgage, pledge, or otherwise dispose of or  
100 encumber, electric transmission and distribution lines or  
101 systems, electric generating plants, electric refrigeration  
102 plants, lands, buildings, structures, dams, plants and  
103 equipment, and any and all kinds and classes of real or personal  
104 property whatsoever, which shall be deemed necessary, convenient  
105 or appropriate to accomplish the purpose for which the  
106 cooperative is organized.~~+~~  
107 (9) To purchase or otherwise acquire; to own, hold, use and  
108 exercise; and to sell, assign, transfer, convey, mortgage,  
109 pledge, hypothecate, or otherwise dispose of or encumber,  
110 franchises, rights, privileges, licenses, rights-of-way and  
111 easement.~~+~~  
112 (10) To borrow money and otherwise contract indebtedness;  
113 to issue notes, bonds, and other evidences of indebtedness  
114 therefor; and to secure the payment thereof by mortgage, pledge,  
115 deed of trust, or any other encumbrance upon any or all of its  
116 then owned or after-acquired real or personal property, assets,

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franchises, revenues or income.~~+~~

(11) To construct, maintain, and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation, all roads, highways, streets, alleys, bridges and causeways, and upon, under and across all publicly owned lands, subject, however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems.~~+~~

(12) To exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems.~~+~~

(13) To engage in the provision of broadband pursuant to s. 364.391.

(14) To conduct its business and exercise any or all of its powers within or without this state.~~+~~

~~(15)-(14)~~ To adopt, amend, and repeal bylaws.~~+~~~~and~~

~~(16)-(15)~~ To do and perform any and all other acts and things, and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

~~(17)~~ To promote economic development by providing,~~an~~ ~~electric cooperative may provide~~ any energy or nonenergy services to its membership.

Section 3. This act shall take effect July 1, 2023.



The Florida Senate

## Committee Agenda Request

**To:** Senator Debbie Mayfield, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 29, 2023

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I respectfully request that **Senate Bill #626**, relating to Broadband Internet Service Providers be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink that reads "Nick DiCeglie".

---

Senator Nick DiCeglie  
Florida Senate, District 18



**BILL WAS TEMPORARILY POSTPONED**

**BEFORE ANY PUBLIC APPEARANCE**

TP

04-05-2023  
Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

SB 0626  
Bill Number or Topic

RULES  
Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Chante' Jones AARP Phone 850-272-0551

Address 215 S Monroe St Ste 603 Email Cejones@aarp.org  
Street  
Tallahassee FL 32301  
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

AARP, Florida

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 662

INTRODUCER: Senator Bradley

SUBJECT: Student Online Personal Information Protection

DATE: April 4, 2023

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Collazo	Cibula	JU	<b>Favorable</b>
2. Brick	Bouck	ED	<b>Favorable</b>
3. Collazo	Twogood	RC	<b>Favorable</b>

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## I. Summary:

SB 662 creates the Student Online Personal Information Protection Act, which substantially restricts the operator of a website, online service, or online application that is used for K-12 school purposes from collecting, disclosing, or selling student data, or from using student data to engage in targeted advertising.

The bill prohibits operators from knowingly:

- Engaging in targeted advertising based on any information, including persistent unique identifiers, acquired through the use of their educational technology.
- Using any information, including persistent unique identifiers, gathered through their educational technology to create profiles of students, except for K-12 school purposes.
- Sharing, selling, or renting student information to third parties.
- Disclosing certain covered information, except under specified circumstances.

The bill requires operators to:

- Collect no more covered information than reasonably necessary to operate the educational technology.
- Implement and maintain reasonable security procedures and practices to protect covered information.
- Delete a student's covered information if requested by the K-12 school or school district, unless a student or a parent or guardian consents to its maintenance.

The bill allows operators to disclose covered information if:

- Federal or state law requires disclosure.
- It is disclosed for legitimate research purposes, if not used for targeted advertising or profiling for purposes other than K-12 school purposes.

- It is disclosed to a state or local educational agency, including K-12 schools and school districts, for K-12 school purposes.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Privacy of Student Information

Since the pandemic, schools have significantly increased their reliance upon Internet and online-based software and educational technologies. Classroom assignments and assessments are often delivered online via laptops or tablets, and teachers make regular use social media platforms, websites, and “free” apps in class.<sup>1</sup> In fact, a single educator will use, on average, 148 apps in a school year.<sup>2</sup> This increased reliance on Internet-based apps in schools risks compromising student privacy because it exposes students to online profiling and targeted advertising.

Profiling is the automated process of compiling personal data to evaluate certain personal aspects relating to a specific student.<sup>3</sup> The operators of Internet-based apps can use persistent unique identifiers or third-party scripts to recognize and track students across third-party websites, then use this information to analyze or predict student interests for marketing or advertising purposes. Tracking students in this manner can result in unintended consequences such as the disclosure of sensitive data through unknown tracking processes.<sup>4</sup>

Targeted advertising collects generalized information about students from various sources, including their race, location, gender, age, school, or interests.<sup>5</sup> This information is then interpreted in order to display products and services that may be more relevant (i.e. targeted) to students. Targeted advertising can also include the collection of specific information about individual students using cookies, beacons, tracking pixels, persistent unique identifiers, or other tracking technologies that provide more specific information about a student’s online behavior or activities over time. This information can then be sold to, or shared with, third-party advertisers, who are able to display even more targeted products and services to students than general targeted advertisements based on the highly-specific information they received from the student’s behavior while using the application or service.<sup>6</sup>

Targeted advertising is different than contextual advertising, which displays products and services to students based only on the content or webpage that they are currently viewing, and

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<sup>1</sup> Parent Coalition for Student Privacy and the Network for Public Education, *The State Student Privacy Report Card: Grading the States on Protecting Student Data Privacy*, 1 (Jan. 2019), <https://studentprivacymatters.org/wp-content/uploads/2019/01/The-2019-State-Student-Privacy-Report-Card.pdf>.

<sup>2</sup> Rebecca Torchia, *What is Third-Party Risk, and What Do Schools Need to Know?* (Feb. 24, 2023), EdTech Focus On K-12, <https://edtechmagazine.com/k12/article/2023/02/what-third-party-risk-and-what-do-schools-need-know-perfcon> (citing LearnPlatform, *EdTech Top 40: Fall Report* (Sept. 2022), <https://learnplatform.com/top40>).

<sup>3</sup> Girard Kelly, *How California’s Student Privacy Law Protects Against Targeted Advertising* (Apr. 26, 2018), *The Journal*, <https://thejournal.com/articles/2018/04/26/how-california-student-privacy-law-protects-against-targeted-advertising.aspx>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also Wharton School, University of Pennsylvania, *Your Data Is Shared and Sold... What’s Being Done About It?* (Oct. 28, 2019), Knowledge at Wharton, <https://knowledge.wharton.upenn.edu/article/data-shared-sold-whats-done/>.

which does not collect any specific information about the student to determine which advertisements to display.<sup>7</sup>

There is significant unease about the privacy implications associated with the online collection and use of data.<sup>8</sup> One international, pre-pandemic poll found that 71% of individuals worried about how tech companies collect and use their personal data.<sup>9</sup> And in another poll, specifically with respect to the collection and use of K-12 student data, 93% of parents of K-12 students said it was important for schools to engage with them about the use of student data, but only 44% said that they had been asked for their input.<sup>10</sup>

### State Student Privacy Legislation

At the state level, 42 states and the District of Columbia have passed more than 128 student privacy laws.<sup>11</sup> Indeed, most states have passed more than one student privacy law.<sup>12</sup>

States have generally approached the regulation of student data use in three ways:

- By regulating schools and state-level education agencies;
- By regulating companies that collect and use student data; and
- By combining the first two models.<sup>13</sup>

An example of the first approach is Oklahoma's Student Data Accessibility, Transparency, and Accountability Act of 2013 (the Student DATA Act), which addressed the permissible state-level collection, security, access, and uses of student data. Legislation following the Oklahoma model has limited data collection and use and defined how holders of student data can collect, safeguard, use, and grant access to data.<sup>14</sup>

An example of the second approach is California's Student Online Personal Information Protection Act (SOPIPA), which prevents online service providers from using student data for commercial purposes, while allowing specific beneficial uses such as personalized learning.

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<sup>7</sup> Kelly, *supra* at note 3.

<sup>8</sup> See University of Texas at Austin, Center for Media Engagement, *Privacy versus Products in Targeted Digital Advertising*, <https://mediaengagement.org/research/privacy-versus-products-in-targeted-digital-advertising/> (last visited Feb. 28, 2023).

<sup>9</sup> Amnesty International, *New poll reveals 7 in 10 people want governments to regulate Big Tech over personal data fears* (Dec. 4, 2019), <https://www.amnesty.org/en/latest/press-release/2019/12/big-tech-privacy-poll-shows-people-worried/>.

<sup>10</sup> Adam Stone, *Understanding FERPA, CIPA, and Other K-12 Student Data Privacy Laws* (Apr. 28, 2022), EdTech Focus On K-12, <https://edtechmagazine.com/k12/article/2022/04/understanding-ferpa-cipa-and-other-k-12-student-data-privacy-laws-perfcon> (citing the Center for Democracy and Technology, *Sharing Student Data Across Public Sectors* (Dec. 2021), available at <https://cdt.org/wp-content/uploads/2021/12/12-01-2021-Civic-Tech-Community-Engagement-Full-Report-final.pdf>).

<sup>11</sup> *Id.* (citing a senior technologist with at the Future of Privacy Forum at <https://fpf.org/>).

<sup>12</sup> LearnPlatform, *Student Data Privacy Regulations Across the U.S.: A Look at How Minnesota, California and Others Handle Privacy*, <https://learnplatform.com/blog/edtech-management/student-data-privacy-regulations> (last visited Feb. 28, 2023); see also Student Privacy Compass, *State Student Privacy Laws*, <https://studentprivacycompass.org/state-laws/> (last visited Feb. 28, 2023) (maintaining a running list of state student privacy laws).

<sup>13</sup> The Student Privacy Compass, *Policymakers: Student [State] Laws and Legislation*, <https://studentprivacycompass.org/audiences/policymakers/> (last visited Feb. 27, 2023).

<sup>14</sup> *Id.*; see also State of Oklahoma, Department of Education, *Data Privacy and Security*, <https://sde.ok.gov/data-privacy-and-security> (last visited Feb. 28, 2023) (describing, among other things, certain important provisions of the Student DATA Act of 2013).

California supplemented SOPIPA by enacting AB 1584, a law that explicitly allows districts and schools to contract with third parties in order to manage, store, access, and use information in students' education records. An enforcement provision, AB 375, was also added to give the California Attorney General additional authority to fine companies that violate SOPIPA and AB 1584. This law has become a model for the regulation of educational technology vendors' use of student data; more than 20 states have since adopted similar laws.<sup>15</sup>

Examples of the third approach may be found in Georgia and Utah:

- To regulate its state longitudinal data system,<sup>16</sup> Georgia chose to follow Oklahoma's lead in addressing three core issues regarding state education entities: which data is collected, how student data can be used securely and ethically, and who can access student data. Combined with SOPIPA-like regulation of third parties, this approach has allowed innovative uses of student data while establishing meaningful privacy protections for students.<sup>17</sup>
- Similarly, Utah has taken a modified hybrid approach by regulating districts, the state education agency, and companies. Utah took the additional step of creating and funding a Chief Privacy Officer and three additional privacy staff not only to carry out the law, but also to provide training for teachers and administrators and to create resources that help stakeholders ensure compliance.<sup>18</sup>

Since 2015, state legislation has tended to regulate data use rather than collection, and to focus laws on specific privacy topics such as data deletion, data misuse, biometric data, and breach notification.<sup>19</sup>

### Federal Student Privacy Legislation

At the federal level, there are three laws that are most often referenced when it comes to student privacy and local schools or school districts:<sup>20</sup> the Family Educational Rights and Privacy Act,<sup>21</sup> the Protection of Pupil Rights Amendment,<sup>22</sup> and the Children's Online Privacy Protection Act (COPPA).<sup>23</sup>

<sup>15</sup> The Student Privacy Compass, *supra* note 13; see also State of California, Department of Justice, *Recommendations for the Ed Tech Industry to Protect the Privacy of Student Data*, 7-9 (Nov. 2016), available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/cybersecurity/ready-for-school-1116.pdf> (describing, among other things, SOPIPA's provisions).

<sup>16</sup> In education, a longitudinal data system is a data system that collects and maintains detailed, high quality, student- and staff-level data; links these data across entities and over time, providing a complete academic and performance history for each student; and makes these data accessible through reporting and analysis tools. National Center for Education Statistics, U.S. Department of Education, *Traveling Through Time: The Forum Guide to Longitudinal Data Systems*, Ch. 2 LDS Basics, [https://nces.ed.gov/forum/ldsguide/book1/ch\\_2\\_1.asp](https://nces.ed.gov/forum/ldsguide/book1/ch_2_1.asp) (last visited Feb. 28, 2023).

<sup>17</sup> The Student Privacy Compass, *supra* note 13.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; see also LearnPlatform, *supra* note 12 (discussing Minnesota, Illinois, and New York student data privacy legislation).

<sup>20</sup> LearnPlatform, *supra* note 12.

<sup>21</sup> 20 U.S.C. s. 1232g; 34 C.F.R. pt. 99.

<sup>22</sup> 20 U.S.C. s. 1232h; 34 C.F.R. pt. 98.

<sup>23</sup> 15 U.S.C. ss. 6501-06; 16 C.F.R. pt. 312.

***Family Educational Rights and Privacy Act (FERPA)***

FERPA protects the privacy of students' education records.<sup>24</sup> The law applies to any school that receives applicable funds from the U.S. Department of Education. FERPA grants parents certain rights respecting their child's education records, and this privacy right transfers to the student when he or she reaches age 18 or attends a post-secondary school (at which point he or she is known as an "eligible student").<sup>25</sup>

Parents or eligible students have the right to inspect and review the student's education records maintained by the school. They also have the right to request that a school correct records that they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.<sup>26</sup>

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- School officials having a legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- Persons authorized to receive the records pursuant to a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.<sup>27</sup>

Schools may disclose, without consent, directory information, such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must allow parents and students to opt out of the disclosure of their directory information. Schools must give an annual notice about rights granted by FERPA to affected parties.<sup>28</sup>

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<sup>24</sup> U.S. Department of Education, *Family Educational Rights and Privacy Act (FERPA)* (Aug. 25, 2021), <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*



### ***Protection of Pupil Rights Amendment (PPRA)***

PPRA applies to programs and activities that get their funding from the U.S. Department of Education.<sup>29</sup> It governs the administration to students of a survey, analysis, or evaluation that concerns one or more of the following eight protected areas:

- Political affiliations or beliefs of the student or the student's parent;
- Mental or psychological problems of the student or the student's family;
- Sex behavior or attitudes;
- Illegal, anti-social, self-incriminating, or demeaning behavior;
- Critical appraisals of other individuals with whom respondents have close family relationships;
- Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers;
- Religious practices, affiliations, or beliefs of the student or student's parent; or
- Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).<sup>30</sup>

PPRA also concerns marketing surveys and other areas of student privacy, parental access to information, and the administration of certain physical examinations to minors. The rights under PPRA transfer from the parents to a student who is 18 years old or an emancipated minor under state law.<sup>31</sup>

### ***Children's Online Privacy Protection Act (COPPA)***

COPPA and its related rules regulate websites' collection and use of children's information.<sup>32</sup> The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security. For purposes of COPPA, children are individuals under the age of 13.<sup>33</sup>

COPPA defines personal information as individually identifiable information about an individual that is collected online, including:

- First and last name;
- A home or other physical address including street name and name of a city or town;
- Online contact information;
- A screen or user name that functions as online contact information;
- A telephone number;
- A social security number;
- A persistent identifier that can be used to recognize a user over time and across different websites or online services;

<sup>29</sup> U.S. Department of Education, *What is the Protection of Pupil Rights Amendment (PPRA)?*, <https://studentprivacy.ed.gov/faq/what-protection-pupil-rights-amendment-ppra> (last visited Feb. 27, 2023).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited Feb. 27, 2023).

<sup>33</sup> *Id.*



- A photograph, video, or audio file, where such file contains a child's image or voice;
- Geolocation information sufficient to identify street name and name of a city or town; or
- Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described above.<sup>34</sup>

Operators covered by the rule must:

- Post a clear and comprehensive online privacy policy describing their information practices for personal information collected online from children;
- Provide direct notice to parents and obtain verifiable parental consent, with limited exceptions, before collecting personal information online from children;
- Give parents the choice of consenting to the operator's collection and internal use of a child's information, but prohibiting the operator from disclosing that information to third parties (unless disclosure is integral to the site or service, in which case, this must be made clear to parents);
- Provide parents access to their child's personal information to review or have the information deleted;
- Give parents the opportunity to prevent further use or online collection of a child's personal information;
- Maintain the confidentiality, security, and integrity of information they collect from children, including by taking reasonable steps to release such information only to parties capable of maintaining its confidentiality and security;
- Retain personal information collected online from a child for only as long as is necessary to fulfill the purpose for which it was collected and delete the information using reasonable measures to protect against its unauthorized access or use; and
- Not condition a child's participation in an online activity on the child providing more information than is reasonably necessary to participate in that activity.<sup>35</sup>

Violations of COPPA are deemed an unfair or deceptive act or practice and are therefore prosecuted by the Federal Trade Commission.<sup>36</sup>

### **Required Instruction in Florida Schools**

The mission of Florida's K-20 education system is to allow its students to increase their proficiency by allowing them the opportunity to expand their knowledge and skills through rigorous and relevant learning opportunities.<sup>37</sup> Each district school board must provide appropriate instruction to ensure that students meet State Board of Education (SBE) adopted standards in the following subject areas: reading and other language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.<sup>38</sup> Subject to the

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<sup>34</sup> Federal Trade Commission, *Complying with COPPA: Frequently Asked Questions*, <https://www.ftc.gov/business-guidance/resources/complying-coppa-frequently-asked-questions> (last visited Feb. 27, 2023).

<sup>35</sup> *Id.*

<sup>36</sup> *See id.*; *see also* 15 U.S.C. s. 6502(c); 16 C.F.R. s. 312.9.

<sup>37</sup> Section 1000.03(4), F.S.

<sup>38</sup> Section 1003.42(1), F.S.

rules of the SBE and the district school board, public school instructional staff<sup>39</sup> must also provide instruction in several other subject matters.<sup>40</sup>

### III. Effect of Proposed Changes:

SB 662 creates s. 1006.1494, F.S., entitled “Student online personal information protection.” The section generally limits and regulates the collection and use of K-12 student data by operators of Internet websites, online services, online applications, and mobile applications for K-12 school purposes. Among other things, the section prohibits operators from engaging in targeted advertising; places new and significant restrictions on operators’ collection and use of K-12 students’ data; prohibits operators from sharing, selling, or renting such data; and requires operators to adhere to new baseline privacy and security protections in connection with such data.

#### Definitions

The bill defines “covered information” to mean the personal identifying information or material of a student, or information linked to personal identifying information or material of a student, in any media or format that is not publicly available and is any of the following:

- Created by or provided to an operator by the student, or the student’s parent or legal guardian, in the course of the student’s, parent’s, or legal guardian’s use of the operator’s site, service, or application for K-12 school purposes.
- Created by or provided to an operator by an employee or agent of a K-12 school or school district for K-12 school purposes.
- Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student, including, but not limited to, information in the student’s educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

The bill defines “interactive computer service” to mean any information, service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

The bill incorporates by reference the existing definition for “K-12 school” in state law.<sup>41</sup> K-12 schools include charter schools and consist of kindergarten classes; elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be

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<sup>39</sup> Instructional staff of charter schools are generally exempt from this section of law. Section 1002.33(16), F.S.

<sup>40</sup> Section 1003.42(2)(a)-(t), F.S. (listing a number of subject matters including, among others, the history of the U.S., the state, African Americans, and the Holocaust).

<sup>41</sup> Section 1000.04(2), F.S.

operated under the control of district school boards; and lab schools operated under the control of state universities.

The bill defines “K-12 school purposes” to mean purposes directed by or that customarily take place at the direction of a K-12 school, teacher, or school district or that aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents, or that are otherwise for the use and benefit of the school.

The bill defines “operator” to mean – to the extent that it is operating in this capacity – the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or online application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes.

The bill incorporates by reference the existing definition for “school district” in state law.<sup>42</sup> “School district” means any of the 67 county school districts, including their respective district school boards.

The bill defines “targeted advertising” to mean presenting advertisements to a student which are selected on the basis of information obtained or inferred over time from that student’s online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based upon the student’s current visit to that location, or advertising presented in response to a student’s request for information or feedback, if the student’s online activities or requests are not retained over time for the purpose of targeting subsequent advertisements to that student.

### **Prohibitions**

The bill prohibits operators from knowingly:

- Engaging in targeted advertising on the operator’s site, service, or application, or targeted advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, which the operator has acquired because of the use of that operator’s site, service, or application for K-12 purposes.
- Using information, including persistent unique identifiers, created or gathered by the operator’s site, service, or application to amass a profile of a student, except in furtherance of K-12 school purposes. The term “amass a profile” does not include the collection and retention of account information that remains under the control of the student or the student’s parent or guardian or K-12 school.
- Sharing, selling, or renting a student’s information, including covered information. This paragraph does not apply to the purchase, merger, or other acquisition of an operator by another entity, if the operator or successor entity complies with this section regarding previously acquired student information, or to a national assessment provider if the provider obtains the express written consent of the parent or student, given in response to clear and

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<sup>42</sup> Section 595.402(5), F.S.

conspicuous notice, solely to provide access to employment, educational scholarships or financial aid, or postsecondary educational opportunities.

- Disclosing covered information, except as otherwise provided in the bill, unless the disclosure is made for any of the following reasons:
  - In furtherance of the K-12 school purpose of the site, service, or application, if the recipient of the covered information that is disclosed does not further disclose the information, unless such disclosure is made to allow or improve operability and functionality of the operator's site, service, or application.
  - To ensure legal and regulatory compliance or protect against liability.
  - To respond to or participate in the judicial process.
  - To protect the safety or integrity of users of the site or others or the security of the site, service, or application.
  - For a school, educational, or employment purpose requested by the student or the student's parent or guardian, provided that the information is not used or further disclosed for any other purpose.
  - To a third party, if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

### **Requirements**

The bill requires operators to:

- Collect no more covered information than is reasonably necessary to operate an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 purposes.
- Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information which are designed to protect it from unauthorized access, destruction, use, modification, or disclosure.
- Within a reasonable timeframe, delete a student's covered information if the K-12 school or school district requests deletion of covered information under the control of the K-12 school or school district, unless a student or a parent or guardian consents to the maintenance of the covered information.

### **Permitted Disclosures**

The bill provides that an operator may use or disclose covered information of a student if:

- Federal or state law requires the operator to disclose the information, and the operator complies with federal or state law, as applicable, in protecting and disclosing that information.
- It is disclosed for legitimate research purposes, as required by state or federal law and subject to restrictions imposed thereunder, if covered information is not used for advertising or to amass a profile of the student for purposes other than K-12 school purposes; or as allowed by state or federal law and in furtherance of K-12 school purposes or postsecondary education purposes.

- The covered information is disclosed to a state or local educational agency, including K-12 schools and school districts, for K-12 school purposes, as allowed under state or federal law.

### **Permitted Activities**

The bill provides that its terms do not prohibit an operator from:

- Using covered information to improve educational products, if that information is not associated with an identified student within the operator's site, service, or application, or other sites, services, or applications owned by the operator.
- Using covered information that is not associated with an identified student to demonstrate the effectiveness of the operator's products or services, including use in their marketing.
- Sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications.
- Using recommendation engines to recommend to a student any of the following:
  - Additional content relating to an education, an employment, or any other learning opportunity purpose within an online site, service, or application, if the recommendation is not determined in whole or in part by payment or other consideration from a third party.
  - Additional services relating to an educational, an employment, or any other learning opportunity purpose within an online site, service, or application, if the recommendation is not determined in whole or in part by payment or other consideration from a third party.
- Responding to a student's request for information or feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.

### **Unregulated Activities**

The bill provides that it does not:

- Limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order.
- Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes.
- Apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.
- Limit service providers from providing Internet connectivity to schools or students and their families.
- Prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents, if such marketing did not result from the use of covered information obtained by the operator through the provision of services covered under the bill.
- Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this bill on such software or applications.

- Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this bill by third-party content providers.
- Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents.

**Effective Date**

The bill takes effect on July 1, 2023.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

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

None.

**B. Private Sector Impact:**

Because the bill prohibits operators from engaging in targeted advertising; places new and significant restrictions on operators' collection and use of students' online personal information; and prohibits operators from sharing, selling, or renting such information, operators will no longer be able to financially benefit from such activities. Additionally, because the bill requires operators to adhere to new baseline privacy and security protections in connection with students' online personal information, operators will incur costs associated with implementing these measures and complying with the bill.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 1006.1494 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 Bradley

6-00348A-23

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A bill to be entitled

An act relating to student online personal information protection; providing a short title; creating s. 1006.1494, F.S.; defining terms; prohibiting operators from knowingly engaging in specified activities relating to students' covered information; providing an exception; specifying the duties of an operator; providing circumstances under which an operator may disclose students' covered information; providing construction; providing an effective date.

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

Section 1. This act may be cited as the "Student Online Personal Information Protection Act."

Section 2. Section 1006.1494, Florida Statutes, is created to read:

1006.1494 Student online personal information protection.—

(1) As used in this section, the term:

(a) "Covered information" means personal identifying information or material of a student, or information linked to personal identifying information or material of a student, in any media or format that is not publicly available and is any of the following:

1. Created by or provided to an operator by the student, or the student's parent or legal guardian, in the course of the student's, parent's, or legal guardian's use of the operator's site, service, or application for K-12 school purposes.

2. Created by or provided to an operator by an employee or

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

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agent of a K-12 school or school district for K-12 school purposes.

3. Gathered by an operator through the operation of its site, service, or application for K-12 school purposes and personally identifies a student, including, but not limited to, information in the student's educational record or electronic mail, first and last name, home address, telephone number, electronic mail address, or other information that allows physical or online contact, discipline records, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security number, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information, text messages, documents, student identifiers, search activity, photos, voice recordings, or geolocation information.

(b) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(c) "K-12 school" has the same meaning as described in s. 1000.04(2).

(d) "K-12 school purposes" means purposes directed by or that customarily take place at the direction of a K-12 school, teacher, or school district or that aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and

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collaboration between students, school personnel, or parents, or that are otherwise for the use and benefit of the school.

(e) "Operator" means, to the extent that it is operating in this capacity, the operator of an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes.

(f) "School district" has the same meaning as in s. 595.402.

(g) "Targeted advertising" means presenting advertisements to a student which are selected on the basis of information obtained or inferred over time from that student's online behavior, usage of applications, or covered information. The term does not include advertising to a student at an online location based upon the student's current visit to that location, or advertising presented in response to a student's request for information or feedback, if the student's online activities or requests are not retained over time for the purpose of targeting subsequent advertisements to that student.

(2) An operator may not knowingly do any of the following:

(a) Engage in targeted advertising on the operator's site, service, or application, or targeted advertising on any other site, service, or application if the targeting of the advertising is based on any information, including covered information and persistent unique identifiers, which the operator has acquired because of the use of that operator's site, service, or application for K-12 school purposes.

(b) Use information, including persistent unique

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identifiers, created or gathered by the operator's site, service, or application to amass a profile of a student, except in furtherance of K-12 school purposes. The term "amass a profile" does not include the collection and retention of account information that remains under the control of the student or the student's parent or guardian or K-12 school.

(c) Share, sell, or rent a student's information, including covered information. This paragraph does not apply to the purchase, merger, or other acquisition of an operator by another entity, if the operator or successor entity complies with this section regarding previously acquired student information, or to a national assessment provider if the provider obtains the express written consent of the parent or student, given in response to clear and conspicuous notice, solely to provide access to employment, educational scholarships or financial aid, or postsecondary educational opportunities.

(d) Except as otherwise provided in subsection (4), disclose covered information, unless the disclosure is made for any of the following purposes:

1. In furtherance of the K-12 school purpose of the site, service, or application, if the recipient of the covered information disclosed under this subparagraph does not further disclose the information, unless such disclosure is made to allow or improve operability and functionality of the operator's site, service, or application.

2. To ensure legal and regulatory compliance or protect against liability.

3. To respond to or participate in the judicial process.

4. To protect the safety or integrity of users of the site

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or others or the security of the site, service, or application.

5. For a school, educational, or employment purpose requested by the student or the student's parent or guardian, provided that the information is not used or further disclosed for any other purpose.

6. To a third party, if the operator contractually prohibits the third party from using any covered information for any purpose other than providing the contracted service to or on behalf of the operator, prohibits the third party from disclosing any covered information provided by the operator with subsequent third parties, and requires the third party to implement and maintain reasonable security procedures and practices.

(e) This subsection does not prohibit an operator's use of information for maintaining, developing, supporting, improving, or diagnosing the operator's site, service, or application.

(3) An operator shall do all of the following:

(a) Collect no more covered information than is reasonably necessary to operate an Internet website, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K-12 school purposes and was designed and marketed for K-12 school purposes.

(b) Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information which are designed to protect it from unauthorized access, destruction, use, modification, or disclosure.

(c) Within a reasonable timeframe, delete a student's covered information if the K-12 school or school district

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requests deletion of covered information under the control of the K-12 school or school district, unless a student or a parent or guardian consents to the maintenance of the covered information.

(4) An operator may use or disclose covered information of a student under any of the following circumstances:

(a) If federal or state law requires the operator to disclose the information, and the operator complies with federal or state law, as applicable, in protecting and disclosing that information.

(b) If covered information is not used for advertising or to amass a profile of the student for purposes other than K-12 school purposes, legitimate research purposes, as required by state or federal law and subject to restrictions imposed thereunder; or as allowed by state or federal law and in furtherance of K-12 school purposes or postsecondary educational purposes.

(c) If the covered information is disclosed to a state or local educational agency, including K-12 schools and school districts, for K-12 school purposes, as allowed under state or federal law.

(5) This section does not prohibit an operator from doing any of the following:

(a) Using covered information to improve educational products, if that information is not associated with an identified student within the operator's site, service, or application, or other sites, services, or applications owned by the operator.

(b) Using covered information that is not associated with

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an identified student to demonstrate the effectiveness of the operator's products or services, including use in their marketing.

(c) Sharing covered information that is not associated with an identified student for the development and improvement of educational sites, services, or applications.

(d) Using recommendation engines to recommend to a student any of the following:

1. Additional content relating to an educational, an employment, or any other learning opportunity purpose within an online site, service, or application, if the recommendation is not determined in whole or in part by payment or other consideration from a third party.

2. Additional services relating to an educational, an employment, or any other learning opportunity purpose within an online site, service, or application, if the recommendation is not determined in whole or in part by payment or other consideration from a third party.

(e) Responding to a student's request for information or feedback without the information or response being determined in whole or in part by payment or other consideration from a third party.

(6) This section does not do any of the following:

(a) Limit the authority of a law enforcement agency to obtain any content or information from an operator as authorized by law or under a court order.

(b) Limit the ability of an operator to use student data, including covered information, for adaptive learning or customized student learning purposes.

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(c) Apply to general audience Internet websites, general audience online services, general audience online applications, or general audience mobile applications, even if login credentials created for an operator's site, service, or application may be used to access those general audience sites, services, or applications.

(d) Limit service providers from providing Internet connectivity to schools or students and their families.

(e) Prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to parents, if such marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section.

(f) Impose a duty upon a provider of an electronic store, gateway, marketplace, or other means of purchasing or downloading software or applications to review or enforce compliance with this section on such software or applications.

(g) Impose a duty upon a provider of an interactive computer service to review or enforce compliance with this section by third-party content providers.

(h) Prohibit students from downloading, exporting, transferring, saving, or maintaining their own student data or documents.

Section 3. This act shall take effect July 1, 2023.



**SENATOR JENNIFER BRADLEY**  
6th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Appropriations Committee on Criminal  
and Civil Justice, *Chair*  
Criminal Justice, *Vice Chair*  
Appropriations  
Appropriations Committee on Health  
and Human Services  
Children, Families, and Elder Affairs  
Community Affairs  
Regulated Industries

**SELECT COMMITTEE:**

Select Committee on Resiliency

March 20, 2023

Senator Debbie Mayfield, Chair  
Senate Committee on Rules  
400 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Mayfield:

I respectfully request that Senate Bill 662 be placed on the committee's agenda at your earliest convenience. This bill relates to the student online personal information protection.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bradley". The signature is fluid and cursive.

Jennifer Bradley

cc: Philip Twogood, Staff Director  
Cynthia Futch, Administrative Assistant

**REPLY TO:**

- ☐ 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
- ☐ 410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**KATHLEEN PASSIDOMO**  
President of the Senate

**DENNIS BAXLEY**  
President Pro Tempore

## APPEARANCE RECORD

4.5.23

Meeting Date

Rules

Committee

662

Bill Number or Topic

Amendment Barcode (if applicable)

Deliver both copies of this form to  
Senate professional staff conducting the meetingName Barney Bishop IIIPhone 850.510.9922Address 1454 Vieux Carre Dr  
StreetEmail Barney@BarneyBishop.comTall  
CityFL  
State32308  
Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐I am appearing without  
compensation or sponsorship.☒I am a registered lobbyist,  
representing:Florida Smart Justice  
Alliance☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

04-05-2023

Meeting Date

Rules

Committee

The Florida Senate  
**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 662

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Dannie McMillon-Florida PTA

Phone

305-401-8332

Address

1747 Orlando Central Pkwy

Street

Email

memillonactivist@aol.com

Orlando

City

FL

State

32809

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☒

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 708

INTRODUCER: Senator Burgess

SUBJECT: Estoppel Letters

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Bond</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 708 revises Florida law regarding estoppel letters provided by mortgagees and mortgage servicers. Specifically, the bill:

- Reduces the time to respond to an estoppel letter request from 14 days to 10 days.
- Allows a mortgagee or mortgage servicer to send a corrected estoppel letter, so long as the previous estoppel letter was not relied upon.
- Prohibits a mortgagee or mortgage servicer from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on a current, valid estoppel letter.
- Prohibits a mortgagee or mortgage servicer from refusing to accept funds received that conform with the amount provided in a current, valid estoppel letter; and requires the mortgagee or mortgage servicer to apply such funds to the balance of the loan.
- Requires a mortgagee or mortgage servicer to execute an instrument acknowledging release of the mortgage and send it for recording in the official records of the proper county within 60 days of payoff. The recorded release must be sent to the mortgagor or record title owner of the property. The bill also provides for attorney fees for prevailing parties in civil actions relating to these requirements.
- Specifies that the release of a mortgage does not necessarily relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations previously secured by the mortgage.
- Provides the requirements for making and responding to an estoppel letter request.
- Standardizes the minimum contents of an estoppel letter.
- Provides for application to existing mortgages.

The effective date of the bill is October 1, 2023.

## II. Present Situation:

### Estoppel Letters

In general, an estoppel letter (or estoppel certificate) is a legal document that stops someone from claiming different facts or terms regarding an agreement.<sup>1</sup> In regards to real estate, these types of letters are typically used to confirm amounts of moneys owed that attach to a certain piece of property, such as mortgage debt, condominium association fees, homeowners' association fees, and outstanding claims or deposits due to tenants. Estoppel letters are often sought prior to closing on a real estate transaction as part of the closing agent's due diligence. Closing agents rely on estoppel letters to determine proper amounts due as part of the settlement process.

In Florida, s. 701.04, F.S., provides the requirements for estoppel letters in regards to real estate mortgages (these letters are also commonly known as mortgage payoff letters).<sup>2</sup> Section 701.04(1), F.S., requires that a mortgage lender (also known as the mortgagee) or mortgage servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter setting forth the unpaid balance of the loan secured by the mortgage. The request may be made by a mortgagor (the borrower under the mortgage), a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property.

Section 701.04(2), F.S., requires that, upon the payment of the money due on a mortgage, the mortgage lender or servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county.<sup>3</sup> Within 60 days after the date of receipt of the full payment of the mortgage the person required to acknowledge satisfaction of the mortgage must send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of these requirements, the prevailing party is entitled to attorney fees and costs.

It is notable, that s. 701.04(2), F.S., requires the *full* payment of the mortgage, not the amount that was specified in the estoppel letter provided pursuant to 701.04(1), F.S. This is in contrast with homeowners' association estoppel certificates in Florida where s. 720.30851(3), F.S., specifically states that a homeowners' association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns." Similar language regarding estoppel certificates applies to unpaid condominium association assessments and unpaid rents and assessments due to cooperatives (i.e. co-ops).<sup>4</sup> A mortgagee is not

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<sup>1</sup> *Estoppel Letter*, CREPedia, <https://www.crepedia.com/dictionary/definitions/estoppel-letter/> (last visited Feb. 4, 2022); and *What is an Estoppel Certificate*, Redfin <https://www.redfin.com/definition/estoppel-certificate> (last visited Feb. 4, 2022).

<sup>2</sup> Section 701.041, F.S., defines an estoppel letter in regards to mortgages as a statement of the amount of the unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage; and the interest on a per-day basis for the unpaid balance.

<sup>3</sup> Section 701.04(2), F.S., also applies to liens and judgments attached to a property.

<sup>4</sup> Section 718.116(8)(c) states that a condominium association "waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns." 719.108(6)(c), F.S. states that a cooperative association "waives the right to collect any



necessarily held to the same waiver of rights to collect additional moneys from a mortgagor upon the provision of an estoppel letter as s. 701.04, F.S., does not provide a similar waiver provision as seen for homeowners' associations, condominium associations, and cooperatives.<sup>5</sup>

### **Qualifying Language in Estoppel Letters**

Some mortgage servicers and lenders, when sending the estoppel letter required under 701.04(2), F.S., include language which seeks to reserve that servicer's or lender's right to change the amounts listed in the payoff letter or disclaiming the reliance of others on the information in the payoff letter. Examples of such language include:

- “The payoff figures provided are subject to final verification by the Note Holder. The noteholder reserves the right to adjust these figures and refuse or accept any funds which are insufficient to satisfy the full indebtedness for any reason.”
- “The payoff amount is subject to our final verification once we receive payoff funds. ... If the payoff funds received are insufficient to pay off the account in full for any reason including, but not limited to, error in calculation, NSF, or additional escrow disbursements and/or adjustments. [We] reserve the right to decline to pay the account in full. In addition, any and all interest will be due at the time of payoff.”
- “We will not be bound by errors and/or omissions contained herein.”<sup>6</sup>

Such language can frustrate the parties involved in a real estate transaction since, arguably, the amounts provided in estoppel letters with such language cannot be definitively relied upon. In the event that the mortgage lender or servicer determines after sending an estoppel letter that the borrower owes additional money beyond that provided in the estoppel letter, some mortgage lenders or servicers return all of the funds received from the closing and demand full payment—even if such funds were sent in reliance on an estoppel letter that was never corrected or revised by the lender or servicer. This can result in the continued accrual of interest on the full amount of the mortgage (not just the amount in dispute) during the pendency of resolving the discrepancy in the amount owed. Further, prior to resolution of the discrepancy, there may not be clear title to the property.<sup>7</sup>

Because the closing agent has a duty to assure clear title in the buyer, some closing agents have been put in the difficult position of having to pay the difference between the conditional estoppel letter and the amended amount. Effectively, this is forcing closing agents to pay for the mistakes of the mortgage lenders, a mistake that they have no control over.

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moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.”

<sup>5</sup> *But see, Rissman on Behalf of Rissman Inv. Co. v. Kilbourne*, 643 So. 2d 1136, 1139 (Fla. 1st DCA 1994), where the 1<sup>st</sup> District Court of Appeal found that a lender could be estopped from claiming additional moneys after an estoppel letter. The facts of this case, however, were rather unique. As the court mentioned, the mortgagee regularly reaffirmed the amount given in the estoppel letter over a number of years. In addition, the mortgagor made a number of transactions based in detrimental reliance on the amount provided by the mortgagee.

<sup>6</sup> See Email from Melissa Murphy, Executive Vice President, Chief Legal Officer & General Counsel, The Fund (Feb. 28, 2023 at 9:26 EST) (on file with the Senate Judiciary), which provided samples of escrow letters that were sent to Florida closing agents.

<sup>7</sup> *Id.*

## Retroactive Application and the Contracts Clause

Under Florida law, statutes are presumed to operate prospectively, not retroactively. In other words, statutes generally apply only to actions that occur on or after the effective date of the legislation, not before the legislation becomes effective. The Florida Supreme Court has noted that, under the rules of statutory construction, if statutes are to operate retroactively, the Legislature must clearly express that intent for the statute to be valid.<sup>8</sup> When statutes that are expressly retroactive have been litigated and appealed, the courts have been asked to determine whether the statute applies to cases that were pending at the time the statute went into effect. The conclusion often turns on whether the statute is procedural or substantive.

In a recent Florida Supreme Court case, the Court acknowledged that “[t]he distinction between substantive and procedural law is neither simple nor certain.”<sup>9</sup> The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.<sup>10</sup>

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.<sup>11</sup> Still, in other cases, the courts have permitted statutes to be applied retroactively if they do not create new, or take away, vested rights, but only operate to further a remedy or confirm rights that already exist.<sup>12</sup>

Florida’s contracts clause states that “no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”<sup>13</sup> Regarding the impairment of an existing contract by the retroactive application of a statute, the Florida Supreme Court recently said:

“[V]irtually no degree of contract impairment is tolerable.” However, we also recognized that the holding that “virtually” no impairment is tolerable “necessarily implies that some impairment is tolerable.” The question thus becomes how much impairment is tolerable and how to determine that amount. To answer that question, in *Pomponio* we proposed a balancing test that “allow[ed] the court to consider the actual effect of the provision on the contract and to balance a party’s interest in not having the contract impaired against the State’s source of authority and the evil sought to be remedied.” “[T]his becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the State’s objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”

An impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. However, where the impairment is severe, “[t]he severity of the impairment is said to increase the level of scrutiny to which the legislation

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<sup>8</sup> *Walker & LaBerge, Inc., v. Halligan*, 344 So. 2d 239 (Fla. 1977).

<sup>9</sup> *Love v. State*, 286 So. 3d 177, 183 (Fla. 2019) quoting *Caple v. Tuttle’s Design-Build, Inc.*, 753 So. 2d 49, 53 (Fla. 2000).

<sup>10</sup> *Love*, at 184.

<sup>11</sup> *R.A.M. of South Florida, Inc. v. WCI Communities, Inc.*, 869 So. 2d 1210 (Fla 2004).

<sup>12</sup> *Ziccardi v. Strother*, 570 So. 2d 1319 (Fla. 1990).

<sup>13</sup> Art. I, s. 10, Fla. Const.

will be subjected.” There must be a “significant and legitimate public purpose behind the regulation.”<sup>14</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill substantially amends s. 701.04, F.S., in regards to estoppel letters and the satisfaction of mortgages. Specifically, the bill:

- Reduces from 14 days to 10 days the amount of time a mortgagee or mortgage servicer has to send, or cause to be sent, a requested estoppel letter setting forth the unpaid balance of the mortgage loan;<sup>15</sup>
- Requires that if the estoppel letter request is sent by a person other than the mortgagor, the request must include a copy of the instrument showing such person’s title in the property or other lawful authorization, and the mortgagee or mortgage servicer must notify the mortgagor of the request; and
- Specifies that the mortgagee or mortgage servicer must send the estoppel letter by first-class mail; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgagee or mortgage servicer for this purpose. However, the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service.

For an estoppel request to be valid under the bill, a written request for an estoppel letter must be sent to the mortgagee or mortgage servicer, by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgagee or mortgage servicer for such purpose or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter. The mortgagee or mortgage servicer is deemed to have received the request:

- Five business days after the request sent by first-class mail is deposited with the United States Postal Service;
- The day the request is delivered by a common carrier delivery service; or
- The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.<sup>16</sup>

The bill also creates a standard specifying the minimum information that must be included in an estoppel letter (regardless of which party made the request). An estoppel letter must include:

- The unpaid balance secured by the mortgage as of the date specified in the estoppel letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and
- Interest accruing on a per-day basis for the unpaid balance, if applicable.

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<sup>14</sup> *Searcy, Denney, Scarola, Barnhart & Shipley, etc. v. State*, 209 So. 3d 1181, 1192 (Fla. 2017) (internal citations omitted for clarity).

<sup>15</sup> If the 10th day after receipt of a written request is a Saturday, Sunday, or legal holiday, the estoppel letter would be considered timely if sent on the next business day.

<sup>16</sup> If any of these days falls upon on a Saturday, Sunday, or legal holiday, the request for an estoppel letter is considered timely received by the mortgagee or mortgage servicer on the next business day.

In addition, the bill – except for those mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded – prohibits mortgagees and mortgage servicers from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in said estoppel letter.<sup>17</sup> However, the bill does allow for mortgagees or servicers of mortgages to send corrected estoppel letters in the event that they determine that a previous letter that was sent was inaccurate. In such case, if the person who requested the original letter receives a corrected letter by 3 p.m. in such person's time zone, at least 1 business day before a payment is issued in reliance on the previous estoppel letter, the corrected estoppel letter supersedes all prior estoppel letters.

If any of the required information in the estoppel letter is inaccurate, and is not corrected as provided above, the mortgagee or mortgage servicer may not deny the accuracy of such information as against any person who relied on it. In addition, such mortgagee or servicer of the mortgage may not return or refuse to accept any funds received in response to an estoppel letter if such funds were received in the location and manner specified in such letter. Further, such mortgagee or servicer must promptly apply such funds to the unpaid balance of the loan properly due under or secured by the mortgage. The bill specifies that the prohibition against a mortgagee denying the accuracy of information in an inaccurate, uncorrected estoppel letter does not, however, affect the right of a mortgagee to recover any sum that it did not include in an estoppel letter from any person liable for payment of the loan or other obligations secured by the mortgage, nor does it limit any claim or defense to recovery that such person may have at law or in equity.

The bill also requires that, within 60 days after the unpaid balance of a loan secured by a mortgage has been fully paid or paid pursuant to the last effective estoppel letter, whichever is earlier, the mortgagee or mortgage servicer must execute in writing an instrument acknowledging satisfaction of the mortgage; have the instrument acknowledged, or proven, and send it or cause it to be sent for recording in the official records of the proper county; and send or cause to be sent the recorded release to the mortgagor or record title owner of the property. For civil actions seeking to enforce these satisfaction and recording requirements, the prevailing party is entitled to recover reasonable attorney fees and costs. Such recording, however, does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations secured by the mortgage.<sup>18</sup>

Finally, the section makes conforming changes to provisions involving the cancellation of liens and judgments under the section.

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<sup>17</sup> Any attempt to do so is void and unenforceable under the provisions of the bill.

<sup>18</sup> Essentially, what the proposed provisions of the bill allow, is that if the lender later determines that additional funds are due from the borrower (over and above what was in the last-effective estoppel letter), the lender must release the mortgage; however, the lender will still have an unsecured debt that it may attempt to collect from the borrower or the borrower's successors or assigns.

**Section 2** of the bill revises the definition of an “estoppel letter” to be a statement containing, at minimum, the information required for estoppel letters under proposed s. 701.04(1)(b), F.S., and makes a technical change.

**Section 3** of the bill is a statement of retroactive application providing that applying the requirements of **Sections 1** and **2** to existing mortgage contracts achieves an important state interest.

**Section 4** provides that the provisions of the bill apply to all mortgages existing as of the effective date and entered into on or after that date, as well as to all loans secured by such mortgages.

**Section 5** provides an effective date of October 1, 2023.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

**Sections 3** and **4** of the bill provide for retroactive application of **Section 1** and **2**’s provisions to existing mortgages. The bill clearly states the Legislature’s intention that the bill’s provisions be retroactively applied, and gives the justifications for doing so.

It should be noted that the Fannie Mae standard mortgage document for Florida does not specifically address estoppel letters, but provides for reduced charges due under the mortgage to those charges authorized by law and otherwise appears to adopt Florida law as it may be amended.<sup>19</sup> Current law already regulates estoppel letters, so amendment to the law can be anticipated by those in the industry. The bill does not substantially or significantly affect a lender who sends an accurate estoppel letter, as is currently required. The bill does not impair the monies lawfully due to a mortgage company pursuant to the promissory note, it only affects the use of a mortgage to compel payment

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<sup>19</sup> See paragraphs 15(d) and 17 of Florida Single Family Fannie Mae/Freddie Mac UNIFORM INSTRUMENT, Form 3010 (July 2021).

through the foreclosure process. The courts may find the bill applies to outstanding mortgages and is neither unconstitutionally retroactive nor does it unconstitutionally impair contractual rights.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 701.04 and 701.041.

**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 Burgess

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1 A bill to be entitled  
 2 An act relating to estoppel letters; amending s.  
 3 701.04, F.S.; revising the timeframe within which a  
 4 mortgagee or mortgage servicer must send or cause to  
 5 be sent an estoppel letter containing specified  
 6 information; revising the circumstances under which a  
 7 copy of the instrument showing title in the property  
 8 or other lawful authorization must be included in a  
 9 request for an estoppel letter; requiring notice to  
 10 the mortgagor of a request for an estoppel letter  
 11 under certain circumstances; revising requirements for  
 12 an estoppel letter; prohibiting certain actions by the  
 13 mortgagee or mortgage servicer; authorizing the  
 14 mortgagee or mortgage servicer to send a corrected  
 15 estoppel letter under certain circumstances; requiring  
 16 a mortgagee or mortgage servicer to provide a copy of  
 17 a corrected estoppel letter to a mortgagor under  
 18 certain circumstances; providing that a corrected  
 19 estoppel letter supersedes any previous estoppel  
 20 letter under certain circumstances; prohibiting the  
 21 mortgagee or mortgage servicer from denying the  
 22 accuracy of certain information provided in an  
 23 estoppel letter under certain circumstances; providing  
 24 construction; prohibiting payments received pursuant  
 25 to an estoppel letter from being returned and  
 26 requiring such payments to be promptly applied to any  
 27 unpaid balance of the loan properly due under or  
 28 secured by a mortgage; providing methods for sending a  
 29 written request for an estoppel letter and for sending

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30 an estoppel letter; providing that the mortgagee or  
 31 mortgage servicer is not required to pay for a common  
 32 carrier delivery service; requiring the mortgagee or  
 33 mortgage servicer to take certain actions within a  
 34 specified time after the unpaid balance of a loan  
 35 properly secured by a mortgage has been fully paid or  
 36 paid pursuant to an estoppel letter; authorizing  
 37 reasonable attorney fees and costs for specified  
 38 parties in certain civil actions; providing that  
 39 certain persons may still be personally liable for a  
 40 loan or other obligation after the recording of a  
 41 release of a mortgage; conforming provisions to  
 42 changes made by the act; amending s. 701.041, F.S.;  
 43 revising the definition of the term "estoppel letter";  
 44 conforming provisions to changes made by the act;  
 45 providing legislative findings; providing for  
 46 retroactive applicability; providing an effective  
 47 date.  
 48  
 49 Be It Enacted by the Legislature of the State of Florida:  
 50  
 51 Section 1. Section 701.04, Florida Statutes, is amended to  
 52 read:  
 53 701.04 Cancellation of mortgages, liens, and judgments.—  
 54 (1) (a) Within 10 ~~14~~ days after receipt of the written  
 55 request of a mortgagor, a record title owner of the property, a  
 56 fiduciary or trustee lawfully acting on behalf of a record title  
 57 owner, or any other person lawfully authorized to act on behalf  
 58 of a mortgagor or record title owner of the property, the

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~~mortgagee holder of a mortgage shall deliver or mortgage cause the servicer shall send or cause to be sent of the mortgage to deliver to the person making the request at a place designated in the written request an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage. If the written request is made by a person other than the mortgagor, the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgagee or mortgage servicer must notify the mortgagor of the request.~~

~~(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel letter must include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.~~

~~(b) If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:~~

~~1. The request must include a copy of the instrument showing title in the property or lawful authorization.~~

~~2. The estoppel letter may include the itemization of information required under paragraph (a), but must at a minimum include:~~

~~1. The total unpaid balance of the loan due under or secured by the mortgage as of the date specified in the estoppel letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and~~

~~2. Interest accruing on a per-day basis for the unpaid balance from and after the date specified in the estoppel~~

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letter, if applicable.

(c)1. Except for mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded, the mortgagee or mortgage servicer may not qualify, reserve the right to change, or condition or disclaim the reliance of others on the information provided in an estoppel letter under paragraph (b), and any attempt to do so is void and unenforceable. However, if the mortgagee or mortgage servicer determines that any of the information provided in the estoppel letter under paragraph (b) was inaccurate, the mortgagee or mortgage servicer may send a corrected estoppel letter to the person who requested the estoppel letter in the same manner as used to respond to the original written request. If the original written request is made by a person other than the mortgagor, the mortgagee or mortgage servicer must also provide a copy of any corrected estoppel letter to the mortgagor.

2. If the person who requested the original estoppel letter under paragraph (a) receives a corrected estoppel letter by 3 p.m. in such person's time zone at least 1 business day before a payment is issued in reliance on the previous estoppel letter, the corrected estoppel letter supersedes all prior estoppel letters.

3. If any of the information provided in the estoppel letter under paragraph (b) was inaccurate, but the person who requested the estoppel letter did not timely receive a corrected estoppel letter as provided in subparagraph 2., the mortgagee or mortgage servicer may not deny the accuracy of such information as against any person who relied on it. This subparagraph does



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not affect the right of a mortgagee to recover any sum that it did not include in an estoppel letter from any person liable for payment of the loan or other obligations secured by the mortgage, nor does it limit any claim or defense to recovery which such person may have at law or in equity ~~on a per day basis~~.

~~(d)3-~~ The mortgagee or mortgage servicer ~~of the mortgagee~~ acting in accordance with a request in substantial compliance with this ~~subsection paragraph~~ is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(e) If a payment is received at the location and in the manner specified by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer must accept and may not return any payment received in reliance on an estoppel letter and must promptly apply such payment to the unpaid balance of the loan properly due under or secured by the mortgage.

(f)1. A written request for an estoppel letter under paragraph (a) must be sent to the mortgagee or mortgage servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgagee or mortgage servicer for such purpose or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter. The written request is considered received by the mortgagee or mortgage servicer:

a. Five business days after the request sent by first-class mail is deposited with the United States Postal Service;

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b. The day the request is delivered by a common carrier delivery service; or

c. The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.

If any of the days in sub-subparagraph a., sub-subparagraph b., or sub-subparagraph c. fall on a Saturday, Sunday, or holiday specified in s. 110.117(1) or the laws of the United States, the request for an estoppel letter is considered timely received by the mortgagee or mortgage servicer on the next business day.

2. The mortgagee or mortgage servicer must send an estoppel letter by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgagee or mortgage servicer for this purpose. However, the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgagee or mortgage servicer ends on a Saturday, Sunday, or holiday specified in s. 110.117(1) or the laws of the United States, the estoppel letter is considered timely if it is sent by the close of business on the next business day.

(g)~~(e)~~ Notwithstanding s. 655.059, a mortgagee or mortgage servicer ~~mortgage holder~~ may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information ~~notwithstanding~~ s. ~~655.059~~.

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(2) (a) Within 60 days after the unpaid balance of a loan secured by a mortgage has been fully paid or paid pursuant to an estoppel letter under subsection (1), whichever is earlier, the mortgagee or mortgage servicer shall execute in writing an instrument acknowledging release of the mortgage; have the instrument acknowledged, or proven, and send it or cause it to be sent for recording in the official records of the proper county; and send or cause to be sent the recorded release to the mortgagor or record title owner of the property. The prevailing party in a civil action brought against the mortgagee or mortgage servicer to enforce the requirements of this paragraph is entitled to reasonable attorney fees and costs.

(b) The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations previously secured by the mortgage.

~~(3) (2) Within 60 days after the unpaid balance Whenever the amount of money due on a any mortgage, lien, or judgment has been fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the payment was made, shall execute in writing an instrument acknowledging satisfaction of the mortgage, lien, or judgment; and have the instrument acknowledged, or proven, and send it or cause it to be sent for recording duly entered in the official records of the proper county; and. Within 60 days after the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded~~

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satisfaction to the person who has made the full payment. ~~In the case of a civil action arising out of this section,~~ The prevailing party in a civil action brought against the creditor or assignee, or the attorney of record in the case of a judgment, to enforce the requirements of this subsection is entitled to reasonable attorney fees and costs.

~~(4) (3) When Whenever~~ a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is the responsibility of the person party receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Section 2. Paragraph (a) of subsection (1) and subsection (2) of section 701.041, Florida Statutes, are amended to read:

701.041 Title insurer; mortgage release certificate.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Estoppel letter" means a statement containing, at a minimum, the information required in s. 701.04(1)(b) of the amount of:

~~1. The unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage.~~

~~2. Interest on a per-day basis for the unpaid balance.~~

(2) CERTIFICATE OF RELEASE.—An officer or duly appointed agent of a title insurer may, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records

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of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded after the date payment in full of the loan properly due under or secured by the mortgage was made in accordance with an estoppel letter ~~a payoff statement~~ furnished by the mortgagee or the mortgage servicer.

Section 3. The Legislature finds that the timeliness and accuracy of an estoppel letter is critical because the parties to a real estate transaction must rely on the estoppel letter to establish the loan payoff amount necessary to release the mortgage, which in turn will allow the owner to confer clean title to a buyer or to refinance the property. The Legislature further finds that estoppel letters increasingly contain conditional language disclaiming the ability of an owner to rely on the stated loan payoff amounts, extending even to the return of such payments submitted by owners. These practices create unnecessary delays in the efficient operation of this state's real estate market, which is a vital economic contributor to this state, and impose needless costs and burdens on property owners and buyers. In addition, the Legislature finds that real estate lending, mortgages, real estate transactions, and estoppel letters are extensively regulated under both Florida and federal law. The Legislature finds and determines that this act makes changes to state law which appropriately balance the parties' interests, are reasonable and necessary to serve and achieve an important state interest, are necessary for the prosperity and welfare of the state and its property owners and inhabitants, and must be applied to existing mortgages in order to provide effective relief.

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Section 4. This act applies to all mortgages, and all loans secured by such mortgages, existing as of, or entered into on or after, October 1, 2023.

Section 5. This act shall take effect October 1, 2023.

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*The Florida Senate*

## Committee Agenda Request

**To:** Senator Debbie Mayfield, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 23, 2023

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I respectfully request that **Senate Bill #708**, relating to Estoppel Letters, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in cursive script, appearing to read "Danny", is written over a horizontal line.

Senator Danny Burgess  
Florida Senate, District 23

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

April 5, 2023

Meeting Date

Senate Rules

Committee

SB 708

Bill Number or Topic

Amendment Barcode (if applicable)

Name Scott Merritt

Phone 850-681-6422

Address 249 E. Virginia St

Street

Email Scott@FLTA.ORG

Tallahassee FL

City

State

32301

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

Florida Land Title  
Association

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 942

INTRODUCER: Senators Calatayud and others

SUBJECT: Authorization of Restrictions Concerning Dogs

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	<b>Favorable</b>
2.	Becker	Becker	AG	<b>Favorable</b>
3.	Hunter	Twogood	RC	<b>Favorable</b>

---

## I. Summary:

SB 942 makes changes to Florida’s “Dangerous Dogs” law. Currently a county or municipality may address safety and welfare concerns caused by attacks on persons or domestic animals by dogs by ordinance as long as such ordinance is not breed specific. The bill adds weight and size as prohibited ordinance topics in addition to breed.

The bill also incorporates “public housing authorities” into the statute, authorizing a public housing authority to enact policies pertaining to dangerous dogs, but such policy may not be specific to breed, size, or weight. This change effectively nullifies any existing restrictions imposed by housing authorities pertaining to specific breeds and sizes of dogs on housing authority property.

Finally, the bill removes the grandfather provision in statute which allows local governments to enforce dog breed-specific regulations if the ordinance enacting such regulations was adopted before October 1, 1990. This change effectively nullifies Miami-Dade County’s and the City of Sunrise’s existing regulations and restrictions on owners of “pit bull dogs.”

The bill takes effect October 1, 2023.

## II. Present Situation:

### Dangerous Dogs

Part II of ch. 767, F.S., outlines the state’s “Dangerous Dogs” provisions, originally enacted in 1990.<sup>1</sup> The Legislature found that “dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals; that such attacks are in part attributable to the failure

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<sup>1</sup> Ch. 90-180, Laws of Fla.

of the owners to confine and properly train and control their dogs; that existing laws inadequately address this growing problem; and that it is appropriate and necessary to impose uniform requirements on the owners of dangerous dogs.”<sup>2</sup>

A “dangerous dog” is defined as a dog that:

- Has aggressively bitten, attacked, endangered or inflicted severe injury on a person on public or private property;
- Has more than one time severely injured or killed a domestic animal while the dog is off the owner’s property; or
- Has, when unprovoked, chased or approached a person in public in a menacing fashion, or with an attitude of attack.<sup>3</sup>

### ***Process for Classification of Dogs as Dangerous***

An animal control officer<sup>4</sup> is typically the person who would investigate an incident involving a dog. In areas unserved by an animal control authority,<sup>5</sup> the sheriff assumes the duties required of an animal control officer.<sup>6</sup>

Upon receiving a report of a potentially dangerous dog, the animal control authority must investigate the incident, interview the owner, and require a sworn affidavit from any person who seeks to have a dog classified as dangerous.<sup>7</sup> An animal that is the subject of a dangerous dog investigation because of severe injury to a human being may be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time, or impounded and held.<sup>8</sup> A dog that is being investigated as a dangerous dog that is not impounded with the animal control authority must be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation.<sup>9</sup>

The animal control authority may not declare a dog as dangerous if:

- The injured person was unlawfully on the property, or if lawfully on the property was tormenting, abusing, or assaulting the dog or its owner or a family member; or
- The dog was protecting a person within the immediate vicinity of the dog from an unjustified attack or assault.<sup>10</sup>

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<sup>2</sup> Section 767.10, F.S.

<sup>3</sup> Section 767.11(1), F.S., requires an appropriate authority to document a dog as a dangerous dog. Section 767.11(2), F.S., further defines what is meant by “unprovoked” as that the victim whom while acting peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by a dog. A severe injury is any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery, pursuant to s. 767.11(3), F.S.

<sup>4</sup> “Animal control officer” means any individual employed, contracted with, or appointed by the animal control authority for the purpose of aiding in the enforcement of this act or any other law or ordinance relating to the licensure of animals, control of animals, or seizure and impoundment of animals and includes any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve seizure and impoundment of any animal. See s. 767.11(6), F.S.

<sup>5</sup> “Animal control authority” means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control law of the city, county, or state. See s. 767.11(5), F.S.

<sup>6</sup> Section 767.11(5) and (6), F.S.

<sup>7</sup> Section 767.12(1), F.S.

<sup>8</sup> Section 767.12(1)(a), F.S.

<sup>9</sup> Section 767.12(1)(b), F.S.

<sup>10</sup> Section 767.12(2)(a-b), F.S.

After investigating, the animal control authority must initially determine whether sufficient cause exists to classify the dog as dangerous and if sufficient cause is found, provide the owner an opportunity for a hearing before making a final determination regarding the classification or penalty.<sup>11</sup> The animal control authority must provide written notice of sufficient cause and proposed penalty to the owner by registered mail, certified hand delivery, or service in conformity with how service of process is made.

The owner has seven calendar days from receiving the notice to file a written request for a hearing. The hearing officer must hold the hearing as soon as possible, no more than 21 calendar days, and no sooner than five days after receiving the request for hearing.<sup>12</sup> If a hearing is not timely requested the authority's determination becomes final.

Within 14 days after the classification as a dangerous dog by the animal control authority, the owner must register the dog with the animal control authority and renew the certification annually. Vaccination, enclosure, warning sign, and identification requirements must then be followed. The owner must immediately notify the animal control authority if the dog is loose, bites or attacks a person or another animal, or if there is any other change in status. A dangerous dog must remain in its enclosure at all times unless it is muzzled and restrained by a chain or leash. Any violation of these requirements is a noncriminal infraction punishable by a fine, not to exceed \$500.<sup>13</sup>

In addition to civil penalties, the owner of a dangerous dog can be charged with the following criminal violations:

- 1<sup>st</sup> degree misdemeanor if the dog has previously been declared “dangerous” and it attacks or bites a person or domestic animal without provocation.<sup>14</sup>
- 2<sup>nd</sup> degree misdemeanor if the dog has not previously been declared “dangerous” but causes severe injury to or death of any human and the owner had prior knowledge of, but recklessly disregarded, the dog's dangerous propensities.<sup>15</sup>
- 3<sup>rd</sup> degree felony if the dog has previously been declared “dangerous” and it attacks and causes severe injury to or death of any human.<sup>16</sup>

### ***Local Government Regulation of Dangerous Dogs***

Current law authorizes local governments to address safety and welfare concerns caused by attacks on persons or domestic animals, place further restrictions and additional requirements on owners of dogs that have bitten or attacked persons or domestic animals, and to develop procedures and criteria to implement the “dangerous dogs” provisions in ch. 767, F.S.<sup>17</sup> However, no local regulation may be breed-specific, or lessen the provisions of ch. 767, F.S., unless the regulation was adopted prior to October 1, 1990.<sup>18</sup> Breed-specific regulation is a term used for laws and ordinances that seek to reduce dog attacks on humans and other animals by regulating or banning

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<sup>11</sup> Section 767.12(3), F.S.

<sup>12</sup> Section 767.12(3), F.S.

<sup>13</sup> Section 767.12 (7), F.S.

<sup>14</sup> Section 676.13(1), F.S.

<sup>15</sup> Section 767.136(1), F.S.

<sup>16</sup> Section 767.13(2), F.S.

<sup>17</sup> Section 767.14, F.S.

<sup>18</sup> Section 767.14, F.S.



a specific breed of dog.<sup>19</sup> Florida is one of twenty-one states that prohibit local governments from enacting breed specific ordinances.<sup>20</sup>

Because of the 1990 grandfather provision, Miami-Dade County<sup>21</sup> and the City of Sunrise<sup>22</sup> are known to be the only two local governments in Florida with breed specific ordinances currently in effect. Miami-Dade's ordinance provides that pit bull dogs are banned from purchase, from being brought into Miami-Dade County, or otherwise acquired and regulated due to unique history, nature and characteristics which require special regulation. The county defines "pit bull dog" with reference to the descriptions given by the American Kennel Club and the United Kennel Club. In 2012, Miami-Dade County held a referendum to gauge public opinion on keeping the ordinance in place. Over 63 percent of voters chose to keep the county's regulation of pit bull dogs in place.<sup>23</sup>

### Public Housing Authorities

The federal government has created programs to provide housing assistance to lower-income households since the 1930s. Public housing developments which provide low-rent opportunities are generally owned and operated by the local public housing authorities (PHAs) in each state and subsidized and regulated by the federal government. Families are eligible to live in public housing if they are low-income<sup>24</sup> but 40 percent of public housing units that become available in a year must be given to families that are extremely low-income.<sup>25</sup> Families living in public housing typically are required to pay 30 percent of their adjusted income toward rent.

PHAs receive several streams of funding from United States Department of Housing and Urban Development (HUD) to help make up the difference between what tenants pay in rent and what it costs to maintain public housing.<sup>26</sup> PHAs receive operating funds and capital funds through a formula allocation process; operating funds are used for management, administration and day-to-day costs of running a housing development, and capital funds are used for modernization needs (i.e., replacing a roof or heating and cooling system).<sup>27</sup> Most PHAs own and manage the public housing developments themselves, but some contract with private management companies or transfer ownership to a private subsidiary or another entity that operates the development under public housing rules.<sup>28</sup>

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<sup>19</sup> ASPCA, *What Is Breed-Specific Legislation?* Available at: <https://www.aspc.org/improving-laws-animals/public-policy/what-breed-specific-legislation> (last visited March 17, 2023).

<sup>20</sup> *Id.*

<sup>21</sup> Ord. No. 89-22, § 2, 4-4-89

<sup>22</sup> Ord. No. 251-A, § 2(4-17), 5-2-89. The ordinance is "designed to regulate pit bull dogs and to ensure responsible handling by their owners through registration and confinement."

<sup>23</sup> Miami-Dade County Supervisor of Elections, *2012 Primary Election Results* (see Repeal of County's Pit Bull Dog Ban results), available at <https://enr.electionsfl.org/DAD/3042/Summary/> (last visited March 17, 2023).

<sup>24</sup> Congressional Research Service, *Overview of Federal Housing Assistance Programs and Policy*, available at: <https://crsreports.congress.gov/product/pdf/RL/RL34591> (last visited March 17, 2023). Low-income is defined as earning at or below 80 percent of area median income for these purposes.

<sup>25</sup> *Id.* Extremely low-income is defined as earning at or below the greater of 30 percent of area median income or the federal poverty guidelines.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Center on Budget and Policy Priorities, *Policy Basics: Public Housing*, available at: <https://www.cbpp.org/research/public-housing> (last visited March 17, 2023).

There are 99 active HUD-registered PHAs in Florida,<sup>29</sup> of which 91 are special districts.<sup>30</sup> PHAs are created pursuant to Florida law at municipal, county, and regional levels, and become active through resolution by the applicable governing body. The powers of each authority are vested in housing authority commissioners and action may be taken upon a majority vote of the commissioners.<sup>31</sup> Housing authorities have the power to:

- Acquire, lease, and operate housing projects.
- Provide for the construction, reconstruction, improvement, alteration, or repair of any housing project.
- Lease or rent dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project.
- Invest funds held in reserves or sinking funds.<sup>32</sup>

### **Pet Regulation in Public Housing Authorities**

HUD regulations permit public housing tenants to own common household pets.<sup>33</sup> However, HUD allows local PHAs to enforce reasonable restrictions on the types of common household pets allowed in their rules and policies.<sup>34</sup> A tenant in public housing must maintain each pet responsibly, in accordance with relevant state and local public health, animal control and anti-cruelty laws, and in accordance with the policies established in the PHA's Annual Plan.<sup>35</sup>

A PHA's reasonable requirements for pet policies in general occupancy developments may include but are not limited to tenant and pet density; size, weight, and type of pets; pet fees and deposits; pet care and handling; and pet registration. PHAs have discretion to consider additional factors if reasonable and consistent with state or local law.<sup>36</sup>

Currently, some PHAs include provisions in their policies prohibiting pets based on breed, size, weight, behavior, or training of the pet.<sup>37</sup> However, some regulations based on breed do not depend on a finding that the pet is vicious or dangerous. Additionally, the definition of "dangerous dog" under Florida law is not uniformly applied in all PHA policies.<sup>38</sup>

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<sup>29</sup> HUD, *Public Housing Authority Contact Information*, available at:

[https://www.hud.gov/sites/dfiles/PIH/documents/PHA\\_Contact\\_Report\\_FL.pdf](https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_FL.pdf) (last visited March 17, 2023).

<sup>30</sup> Florida Department of Economic Opportunity, *Official List of Special Districts*, available at:

<https://specialdistrictreports.floridajobs.org/OfficialList/CustomList> (last visited March 17, 2023). To generate the special district list, select "Housing Authority" from the "Option 7: Select Special Purposes" field.

<sup>31</sup> Section 421.05(2), F.S.

<sup>32</sup> Section 421.08, F.S.

<sup>33</sup> See HUD's *Public Housing Occupancy Guidebook: Pet Ownership in Public Housing*, (Dec. 2020), available at:

<https://www.hud.gov/sites/dfiles/PIH/documents/PHOGPetOwnership.pdf> (last visited March 17, 2023).

<sup>34</sup> 24 CFR § 5.318(a); § 960.707(b)

<sup>35</sup> 24 CFR § 960.707(a)

<sup>36</sup> 24 CFR § 960.707

<sup>37</sup> See e.g., Tampa Housing Authority, <https://www.thafl.com/Departments/Real-Estate-Development/library/PHA-PLAN.pdf> (last visited March 27, 2023) (forbidding certain breeds and regulating weight of dog); St. Petersburg Housing Authority, [https://www.stpeteha.org/plugins/show\\_image.php?id=1912](https://www.stpeteha.org/plugins/show_image.php?id=1912) (last visited March 17, 2023) (certain breeds may be prohibited at the discretion of [St. Petersburg Housing Authority]); Key West Housing Authority, [https://www.kwha.org/egov/documents/1614973714\\_73249.pdf](https://www.kwha.org/egov/documents/1614973714_73249.pdf) (last visited March 17, 2023) (prohibiting certain breeds of dog and regulating weight).

<sup>38</sup> See s. 767.11(1), F.S.

**III. Effect of Proposed Changes:**

SB 942 amends s. 767.14, F.S., to add size and weight to the prohibited topics which a local government may not use to regulate dogs in their jurisdiction. Currently only breed-specific ordinances are not allowable.

The bill also authorizes PHAs to adopt rules or policies imposing restrictions or further requirements on owners of dogs, as long as such requirements are not specific to breed, weight, or size. This change effectively nullifies any existing restrictions imposed by housing authorities pertaining to specific breeds or sizes of dogs for housing authority tenants.

The bill also removes a provision that exempts local ordinances adopted before October 1, 1990, from the prohibition on enacting ordinances that are specific to certain breeds of dogs. This change nullifies any breed-specific local ordinances currently in place.

The bill takes effect on October 1, 2023.

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

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 767.14 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.

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

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By Senator Calatayud

38-01050B-23

2023942\_\_

A bill to be entitled

An act relating to the authorization of restrictions concerning dogs; amending s. 767.14, F.S.; authorizing public housing authorities to adopt certain policies relating to dogs; restricting the types of ordinances and policies that may be adopted; removing an exemption for local breed-specific ordinances adopted before a specified date; providing an effective date.

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

Section 1. Section 767.14, Florida Statutes, is amended to read:

767.14 Additional local restrictions authorized.—This act does not limit any local government or public housing authority from adopting an ordinance or a policy, respectively, to address the safety and welfare concerns caused by attacks on persons or domestic animals, placing further restrictions or additional requirements on owners of dogs that have bitten or attacked persons or domestic animals, or developing procedures and criteria for the implementation of this act, provided that no such regulation is specific to breed, weight, or size and that the provisions of this act are not lessened by such additional regulations or requirements. ~~This section does not apply to any local ordinance adopted prior to October 1, 1990.~~

Section 2. This act shall take effect October 1, 2023.



**SENATOR Alexis M. Calatayud**  
38th District

## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, Chair  
Appropriations Committee on Education  
Appropriations Committee of Health and Human  
Services  
Education Pre-K 12  
Fiscal Policy  
Health Policy  
Military and Veterans Affairs, Space and Domestic  
Security  
Select Committee on Resiliency

March 20, 2023

Honorable Senator Debbie Mayfield  
Chair  
Committee on Rules

Honorable Chair Mayfield,

I respectfully request SB 942 Authorization of Restrictions Concerning Dogs be placed on the next committee agenda.

This bill requests public housing authorities adopt certain policies relating to dogs; removing an exemption for local breed-specific ordinances adopted before a specified date.

Sincerely,

*Alexis M. Calatayud*

---

Senator Alexis M. Calatayud  
Florida Senate, District 38

CC: Philip Twogood, Staff Director  
Cynthia Futch, Committee Administrative Assistant

### REPLY TO:

- ☐ 11011 SW 101<sup>st</sup> St, STE 5101, Miami Florida 33176 (305) 596-3002
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Kathleen Passidomo**  
President of the Senate

**Dennis Baxley**  
President Pro Tempore

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/5/23

Meeting Date

Rules

Committee

942

Bill Number or Topic

Amendment Barcode (if applicable)

Name

TRAVIS MOORE

Phone

727.421.6902

Address

P.O. Box 2020

Email

Travis@moore-relations.com

Street

St. Petersburg

City

FL

State

33731

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Animal Legal Defense Fund

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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4 | 5 | 2023

Meeting Date

SB 942

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name Sandy Golding

Phone 904-333-5101

Address 1203 18th Ave N  
Street

Email sandyg@bestfriends.org

Jacksonville Beach, FL 32250  
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

Best Friends Animal Society

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



4/5/23

Meeting Date

The Florida Senate

# APPEARANCE RECORD

SB 942

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
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Amendment Barcode (if applicable)

Name

Kate MacFall - HSUS

Phone

850 508 1001

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

Humane Society United States

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**APPEARANCE RECORD**

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4/5/23

Meeting Date

SB 942

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Helsey Gilmore-Futeral

Phone

843 323 7000

Address

Street

Email

kfuteral@bestfriends.org

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☒I am appearing without  
compensation or sponsorship.☐I am a registered lobbyist,  
representing:☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

Best Friends Animal Society

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 942

Bill Number or Topic

4/15

Meeting Date

Publ

Committee

Amendment Barcode (if applicable)

Name

JACK CORRY

Phone

850-693-0995

Address

720 East Port A-L

Email

Street

Tallah

State

FL

Zip

32301

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

FLORIDA

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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 Rules

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BILL: SB 1002

INTRODUCER: Senators Stewart and Hooper

SUBJECT: Motor Vehicle Glass

DATE: April 4, 2023

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Thomas	Knudson	BI	<b>Favorable</b>
2. Renner	McKay	CM	<b>Favorable</b>
3. Thomas	Twogood	RC	<b>Pre-meeting</b>

---

## I. Summary:

SB 1002 revises definitions under the Florida Motor Vehicle Repair Act to ensure that businesses that calibrate or recalibrate advanced driver assistance systems associated with windshields are regulated under the Act. The bill prohibits motor vehicle repair shops, their employees, and their representatives, from offering an inducement to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair. Finally, the bill prohibits a policyholder, or any other person, from entering an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including for calibration or recalibration of advanced driver assistance systems.

It is not anticipated that the bill will have any significant fiscal impact on state or local government.

The bill is effective July 1, 2023.

## II. Present Situation:

### Automobile Insurance Coverage Related to Windshield Repair

Comprehensive motor vehicle insurance provides coverage for damage to the insured vehicle caused by events other than a collision.<sup>1</sup> This coverage type also covers damage to the vehicle's windshield, and is required by most lenders for purposes of protecting the financial interest of the lender.<sup>2</sup> For insured vehicles with comprehensive coverage, insurers may not apply the insurance policy deductible to the damaged windshield.<sup>3</sup>

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<sup>1</sup>Florida Department of Financial Services, *Automobile Insurance Toolkit*, available at [automobile-insurance-toolkit](#) (last accessed March 17, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> Section 627.7288, F.S.

## In-Network Versus Out-of-Network Motor Vehicle Repair Shops

Insurers frequently create preferred vendor networks with motor vehicle repair shops to expedite windshield repairs and negotiate rates for services to be paid directly by the insurer.<sup>4</sup> An out-of-network motor vehicle repair shop receives payment either from the insured in the form of direct payment or from the insurer by obtaining an assignment of benefits (AOB) of the insured's insurance policy.<sup>5</sup> Where the policyholder has executed an AOB with the out-of-network motor vehicle repair shop, the shop can either negotiate with, or file a lawsuit against, the insurer if the two sides do not agree on the claim amount.<sup>6</sup>

In Florida, the insured has the right to select either an insurer's preferred motor vehicle repair shop or one not in the insurer's preferred network of motor vehicle repair shops to repair the damaged windshield.<sup>7</sup> However, an insurer that requires a particular repair shop to restore the damaged windshield, must require that particular repair shop to restore the damaged windshield to its pre-accident condition no matter the cost to the insurer.<sup>8</sup> An insurer may not require the use of replacement parts that are not at least equivalent in kind and quality to the damaged parts prior to the loss.<sup>9</sup>

## Windshield Litigation

The Florida Department of Financial Services provided the following information on the volume of windshield litigation involving an AOB<sup>10</sup>:

Year	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Auto Glass Lawsuits	435	1,200	3,329	6,753	11,077	17,768	21,851	14,539	16,168	21,094	24,080	33,196

## Florida Motor Vehicle Repair Act

The Department of Agriculture and Consumer Services (DACS) regulates motor vehicle repair shops in Florida under the Florida Motor Vehicle Repair Act.<sup>11</sup> This Act requires that all motor vehicle repair shops, with limited exceptions, register with the DACS.<sup>12</sup> A motor vehicle repair shop may be fixed or mobile and includes a person or business that does motor vehicle glass work for compensation.<sup>13</sup> Under the Act, it is unlawful for a motor vehicle repair shop or its employee to engage in various activities such as misrepresenting that repairs have been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other

<sup>4</sup> Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20), available at [Florida-Auto-Glass-Claims-A-Cracked-System](#) (last accessed March 17, 2023).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Ibid*, fn. 1.

<sup>8</sup> Section 626.9743(3), F.S.

<sup>9</sup> Section 626.9743(4), F.S.

<sup>10</sup> Data provided by the Florida Department of Financial Services to the Senate Committee on Banking and Insurance on January 19, 2023 (on file with the Senate Banking and Insurance Committee).

<sup>11</sup> Sections 559.901-559.9221, F.S.

<sup>12</sup> Section 559.904, F.S.

<sup>13</sup> Section 559.903(6) and (7), F.S.

document.<sup>14</sup> The Act provides for various remedies for unlawful acts by motor vehicle repair shops, including notices of noncompliance, administrative fines, orders to cease and desist, probation of registrants, and suspension or revocation of registrations.<sup>15</sup> In addition, a customer injured by a violation of the Motor Vehicle Repair Act may bring an action against a repair shop.<sup>16</sup> The prevailing party is entitled to damages plus court costs and reasonable attorney fees.<sup>17</sup>

### **Use of Inducements by Motor Vehicle Repair Shops**

The Florida Motor Vehicle Repair Act does not prohibit motor vehicle repair shops from offering inducements to consumers. Some out-of-network motor vehicle repair shops advertise inducements to compete for business with in-network vehicle repair shops, while others offer inducements if a consumer files a qualified insurance claim for windshield replacement.<sup>18</sup>

### **Regulation of Inducements in Related Insurance Fields**

#### ***Prohibited Practices by Insurance Agents***

Insurance agents are subject to prosecution under the Unfair Insurance Trade Practices Act<sup>19</sup> for knowingly misrepresenting the benefits, advantages, conditions, or terms of any insurance policy,<sup>20</sup> offering inducements to enter into an insurance contract in many settings,<sup>21</sup> and causing false insurance claims to be filed.<sup>22</sup>

#### ***Prohibited Practices by Public Adjusters***

Public adjusters are subject to prosecution for unfair and deceptive insurance practices<sup>23</sup> if the adjuster offers a monetary or other valuable inducement to invite a policyholder to submit a claim.<sup>24</sup> Such unfair and deceptive trade practices also include making an untrue, deceptive, or misleading representation with respect to the business of insurance,<sup>25</sup> inviting a policyholder to submit a claim when the policyholder does not have coverage,<sup>26</sup> or inviting a policyholder to submit a claim by stating that there is “no risk” to the policyholder by submitting such claim.<sup>27</sup>

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<sup>14</sup> Section. 559.920, F.S.

<sup>15</sup> Section 559.921, F.S.

<sup>16</sup> Section 559.921(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> See, e.g.: [FREE WINDSHIELD](#) “up to \$150 cash back at the time of service”; [Cash Back Quote](#) “Get up to \$100 - \$200 Cash Back with FL Insurance” (last accessed March 17, 2023).

<sup>19</sup> Section 626.9541, F.S.

<sup>20</sup> Section 626.9541(1)(a)1., F.S.

<sup>21</sup> Section 626.9541(1)(h), F.S.

<sup>22</sup> Section 626.9541(1)(u)1., F.S.

<sup>23</sup> Section 626.854(7), F.S.

<sup>24</sup> Section 626.854(7)(a)2., F.S.

<sup>25</sup> Section 626.854(7), F.S.

<sup>26</sup> Section 626.854(7)(a)1., F.S.

<sup>27</sup> Section 626.854(7)(a)3., F.S.



## Advanced Driver Assistance Systems

Advanced driver assistance systems (ADAS) are technological features of a motor vehicle that are designed to increase the safety of driving a vehicle by reducing traffic crashes. Traffic crashes are a leading cause of death in the United States for people ages 1–54 and each year, 1.35 million people are killed on roadways around the world. More than half of those killed are pedestrians, motorcyclists, or cyclists.<sup>28</sup>

Such technologies help keep the driver and passengers safe, but also other drivers and pedestrians. Driver assistance systems may warn of an impending crash, while others are designed to take action to avoid a crash. A forward collision warning system monitors the vehicle's speed, the speed of the vehicle in front of it and the distance between the vehicles. A lane departure warning system monitors lane markings and alerts the driver when it detects that the vehicle is drifting out of its lane. Automatic emergency braking systems apply the vehicle's brakes automatically in time to avoid or mitigate an impending forward crash with another vehicle. Other systems include backup cameras, adaptive cruise control, lane centering, blind spot warning, lane keeping assistance, and automatic high beams.<sup>29</sup>

These ADAS functions are typically based on one front camera or on a front stereovision camera. The camera information may be supplemented with information from other sensors like light detection and ranging or radio detection. The ADAS cameras are located inside the car, against the front windshield, behind the central rear view mirror. The ADAS camera field of view is located in the wiper area to keep the glass in front of the camera as clean as possible.<sup>30</sup> An ADAS sensor calibration is required whenever a sensor's aiming is disturbed in any way. This can occur in a collision, even a minor fender bender, or be a byproduct of common service work such as windshield replacement, suspension repairs or wheel alignment.<sup>31</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 559.903, F.S., to:

- Define the term “advanced driver assistance system” to mean “any motor vehicle electronic safety system that is associated with motor vehicle glass and is designed to support the driver and motor vehicle in a manner intended to increase motor vehicle safety and reduce losses associated with motor vehicle crashes.”
- Revise the definition of the term “motor vehicle repair” to include the “calibration or recalibration of advanced driver assistance systems.”

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<sup>28</sup> *Road Traffic Injuries and Deaths—A Global Problem*, Centers for Disease Control and Prevention, available at [global-road-safety](#) (last accessed March 17, 2023).

<sup>29</sup> *Driver assistance technologies*, National Highway Traffic Safety Administration, available at [driver-assistance-technologies](#) (last accessed March 17, 2023).

<sup>30</sup> *Advanced Driver Assistance Systems*, On-Road Intelligent Vehicles, Rahul Kala, 2016, available at [advanced-driver-assistance-systems](#) (last accessed March 17, 2023).

<sup>31</sup> *ADAS Sensor Calibration Increases Repair Costs*, available at <https://www.aaa.com/autorepair/articles/adas-sensor-calibration-increases-repair-costs> (last accessed March 17, 2023).

These changes will ensure that businesses that calibrate or recalibrate electronic safety systems associated with windshields are regulated by the DACS pursuant to the Florida Motor vehicle Repair Act.

**Section 2** amends s. 559.920, F.S., to provide that a motor vehicle repair shop may not provide an inducement in the form of a rebate, gift, gift card, cash, coupon, or any other thing of value, in exchange for making an insurance claim for motor vehicle glass replacement or repair, including the calibration or recalibration of an advanced driver assistance system. A nonemployee who is compensated for soliciting insurance claims is also prohibited from offering such inducements. Motor vehicle repair shops would be subject to disciplinary actions by the DACS for violations of the bill's provisions.

**Section 3** creates s. 627.7289, F.S., to prohibit a policyholder, or any other person, from entering an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including for calibration or recalibration of advanced driver assistance systems. This prohibition will apply to motor vehicle insurance policies issued or renewed in this state on or after July 1, 2023. An "assignment agreement" includes any agreement whereby post-loss benefits under a motor vehicle insurance policy are assigned or transferred to a person providing services for motor vehicle glass replacement or repair, including inspecting, protecting, repairing, restoring, or replacing the motor vehicle glass or calibrating or recalibrating advanced driver assistance systems.

The bill provides an effective date of July 1, 2023.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.



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

None.

**B. Private Sector Impact:**

Motor vehicle repair shops will be prohibited from providing certain inducements to customers. This may negatively affect their businesses.

Indeterminate with respect to insurance premiums. A reduction in auto glass costs resulting in a reduction in insurance premiums for auto comprehensive coverage is difficult to estimate as comprehensive coverage includes a wide variety of coverages including, but not limited to, flood, hail, theft, and hurricane.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 559.903 and 559.920 of the Florida Statutes.

This bill creates section 627.7289 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 Stewart

17-00257B-23

20231002\_\_

A bill to be entitled

An act relating to motor vehicle glass; amending s. 559.903, F.S.; defining the term "advanced driver assistance system"; revising the definition of the term "motor vehicle repair"; amending s. 559.920, F.S.; prohibiting motor vehicle repair shops or their employees from offering anything of value to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair, including offers made through certain persons; specifying that the failure to provide certain electronic or written notice relating to calibrating or recalibrating an advanced driver assistance system is unlawful; creating s. 627.7289, F.S.; prohibiting persons from entering into assignment agreements of post-loss benefits for motor vehicle glass replacement or repair after a specified date; providing that such assignment agreements are void and unenforceable; defining the term "assignment agreement"; providing an effective date.

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

Section 1. Present subsections (1) through (5), (6), and (7) of section 559.903, Florida Statutes, are redesignated as subsections (2) through (6), (8), and (9), respectively, a new subsection (1) is added to that section, and present subsection (8) of that section is amended, to read:

559.903 Definitions.—As used in this act:

Page 1 of 5

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

17-00257B-23

20231002\_\_

(1) "Advanced driver assistance system" means any motor vehicle electronic safety system that is associated with motor vehicle glass and is designed to support the driver and motor vehicle in a manner intended to increase motor vehicle safety and reduce losses associated with motor vehicle crashes.

~~(7)(8)~~ "Motor vehicle repair" means all maintenance of and modifications and repairs to motor vehicles, and diagnostic work incident thereto, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, calibration or recalibration of advanced driver assistance systems, and other work customarily undertaken by motor vehicle repair shops.

Section 2. Section 559.920, Florida Statutes, is amended to read:

559.920 Unlawful acts and practices.—It is ~~shall be~~ a violation of this act for any motor vehicle repair shop or employee thereof to do any of the following:

(1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or having submitted an affidavit of exemption to the department. ~~+~~

(2) Make or charge for repairs that ~~which~~ have not been expressly or impliedly authorized by the customer. ~~+~~

(3) Misrepresent that repairs have been made to a motor vehicle. ~~+~~

(4) Misrepresent that certain parts and repairs are necessary to repair a vehicle. ~~+~~

(5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great

Page 2 of 5

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

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59 damage to the vehicle.~~+~~

60 (6) Fraudulently alter any customer contract, estimate,  
61 invoice, or other document.~~+~~

62 (7) Fraudulently misuse any customer's credit card.~~+~~

63 (8) Make or authorize in any manner or by any means  
64 ~~whatever~~ any written or oral statement ~~that which~~ is untrue,  
65 deceptive, or misleading~~+~~ and ~~that which~~ is known, or ~~that which~~  
66 by the exercise of reasonable care should be known, to be  
67 untrue, deceptive, or misleading.~~+~~

68 (9) Make false promises of a character likely to influence,  
69 persuade, or induce a customer to authorize the repair, service,  
70 or maintenance of a motor vehicle.~~+~~

71 (10) Substitute used, rebuilt, salvaged, or straightened  
72 parts for new replacement parts without notice to the motor  
73 vehicle owner and to her or his insurer if the cost of repair is  
74 to be paid pursuant to an insurance policy and the identity of  
75 the insurer or its claims adjuster is disclosed to the motor  
76 vehicle repair shop.~~+~~

77 (11) Cause or allow a customer to sign any work order that  
78 does not state the repairs requested by the customer or the  
79 automobile's odometer reading at the time of repair.~~+~~

80 (12) Fail or refuse to give to a customer a copy of any  
81 document requiring the customer's signature upon completion or  
82 cancellation of the repair work.~~+~~

83 (13) Willfully depart from or disregard accepted practices  
84 and professional standards.~~+~~

85 (14) Have repair work subcontracted without the knowledge  
86 or consent of the customer unless the motor vehicle repair shop  
87 or employee thereof demonstrates that the customer could not

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20231002\_\_

88 reasonably have been notified.~~+~~

89 (15) Conduct the business of motor vehicle repair in a  
90 location other than that stated on the registration  
91 certificate.~~+~~

92 (16) Rebuild or restore a rebuilt vehicle without the  
93 knowledge of the owner in such a manner that it does not conform  
94 to the original vehicle manufacturer's established repair  
95 procedures or specifications and allowable tolerances for the  
96 particular model and year.~~+~~~~+~~

97 (17) Offer to a customer a rebate, gift, gift card, cash,  
98 coupon, or any other thing of value in exchange for making an  
99 insurance claim for motor vehicle glass replacement or repair,  
100 including, but not limited to, calibration or recalibration of  
101 an advanced driver assistance system. A nonemployee who is  
102 compensated for the solicitation of insurance claims is also  
103 prohibited from making such offer.

104 (18) Fail to provide electronic notice or written notice in  
105 at least 12-point type to the customer whether the calibration  
106 or recalibration of the advanced driver assistance system is  
107 required as part of the replacement or repair of motor vehicle  
108 glass to make such system operable and to ensure such service is  
109 performed in a manner that meets or exceeds the vehicle  
110 manufacturer's specifications.

111 (20) Perform any other act that is a violation of this part  
112 or that constitutes fraud or misrepresentation.

113 (19)~~(18)~~ Violate any provision of s. 713.585.

114 Section 3. Section 627.7289, Florida Statutes, is created  
115 to read:

116 627.7289 Assignment of post-loss motor vehicle glass

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20231002\_\_

benefits prohibited.—

(1) A policyholder or any other person may not enter into an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including, but not limited to, for calibration or recalibration of advanced driver assistance systems as defined in s. 559.903, under a policy of motor vehicle insurance issued or renewed in this state by an authorized insurer on or after July 1, 2023. Any such assignment agreement entered into in violation of this subsection is void and unenforceable.

(2) As used in this section, the term "assignment agreement" means any instrument, regardless of how such agreement is named or styled, by which post-loss benefits, including, but not limited to, claim payments, under a motor vehicle insurance policy are, in whole or in part, assigned or transferred to, or acquired in any manner by, a person providing services for motor vehicle glass replacement or repair, including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the motor vehicle glass or calibrating or recalibrating advanced driver assistance systems.

Section 4. This act shall take effect July 1, 2023.



The Florida Senate

## Committee Agenda Request

**To:** Senator , Chair Debbie Mayfield  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 21, 2023

---

I respectfully request that **Senate Bill #1002**, relating to Motor Vehicle Glass, be placed on:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

This bill would address the excess litigation perpetuated by some motor vehicle glass replacement shops by eliminating the ability sign an AOB and use an inducement to secure business. The bill also creates a definition for advanced driver assistance feature recalibration. This definition in statute will make sure that these systems are properly calibrated during a replacement. Thank you for your consideration of this good bill.

A handwritten signature in cursive script that reads "Linda Stewart".

---

Senator Linda Stewart  
Florida Senate, District 17

**BILL WAS TEMPORARILY POSTPONED**

**BEFORE ANY PUBLIC APPEARANCE**

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

April 5, 2023

Meeting Date

Rules Committee

Committee

SB 1002

Bill Number or Topic

N/A

Amendment Barcode (if applicable)

Name Tasha Carter, FL's Insurance Consumer Advocate Phone 850.413.5923

Address 200 E. Gaines St.

Street

Email tasha.carter@myfloridacfo.com

Tallahassee

City

FL

State

32399

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Office of the Insurance Consumer  
Advocate, Dept. of Financial  
Services

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**APPEARANCE RECORD**

4-4-2023

Meeting Date

Rules

Committee

1002

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Richard Reeves

Phone

850-445-0622

Address

113 E. College

Street

Email

rr@rrconsult.com

Tallahassee

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☐I am appearing without  
compensation or sponsorship.☒I am a registered lobbyist,  
representing:☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

Florida Association of Insurance Agents

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)



4/4/23

Meeting Date

The Florida Senate

# APPEARANCE RECORD

1002

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Rules

Committee

Amendment Barcode (if applicable)

Name

Ched Kunde

Phone

(850) 786-7896

Address

176 S. Bronough St

Email

ckunde@fletcher.com

Street

Tallahassee

State

FL 32301

Zip

City

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Florida Chamber  
of Commerce

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/5/23

Meeting Date

Rules

Committee

1002

Bill Number or Topic

Amendment Barcode (if applicable)

Name **George Feijoo**

Phone **3057207099**

Address **108 S Monroe St**

Email **grfeijoo@flapartners.com**

Street

**Tallahassee**

**FL**

**32312**

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

**Florida Insurance Council**

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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 Rules

---

BILL: CS/CS/CS/SB 1068

INTRODUCER: Rules Committee; Community Affairs Committee; Commerce and Tourism Committee;  
and Senator Collins and others

SUBJECT: Drones

DATE: April 5, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	<b>Fav/CS</b>
2.	Hunter	Ryon	CA	<b>Fav/CS</b>
3.	Baird	Twogood	RC	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1068 amends the Unmanned Aircraft Systems Act to define the terms “drone delivery service” and “drone port” as well as prohibit a political subdivision from withholding the issuance of a business tax receipt or development permit, or enacting or enforcing an ordinance or resolution prohibiting a drone delivery service’s operation based on the location of the delivery service’s drone port, but does allow them to enforce generally applicable minimum setback and landscaping regulations.

The bill exempts drone ports, except for their stairwells, from the Florida Building Code. The bill also exempts drone ports from provisions concerning fire protection systems of the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

The bill provides an effective date of July 1, 2023.

**II. Present Situation:**

**Drones**

A drone is a powered, aerial vehicle that:

- Does not carry a human operator;

- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.<sup>1</sup>

The full system comprising of a drone and its associated elements – including communication links and components used to control the drone – is called an unmanned aircraft system (UAS).<sup>2</sup>

### Federal Law and Regulation

Federal law and regulation govern who may fly a drone, as well as when and where the person may do so. The Federal Aviation Administration (FAA) is responsible for regulating aircraft, including drones, that fly in the U.S. airspace.<sup>3</sup> In February 2012, Congress passed the FAA Modernization and Reform Act of 2012, which required the FAA to safely open the nation's airspace to nongovernmental drones by September 2015.<sup>4</sup>

### Drone Delivery Services

As technology continues to evolve, a new method of facilitating commerce has emerged in the form of drone delivery services.

In 2019, UPS started their drone delivery service and in 2020 Amazon began their commercial drone delivery operation.<sup>5</sup> As of 2023, nine Walmarts located in Florida offer drone delivery services.<sup>6</sup>

Typically, businesses like Walmart utilize third party drone vendors to execute the deliveries and operate the drone technology. Such vendors, which employ teams of certified pilots that operate within FAA guidelines, set up delivery hubs at the participating stores and handle the physical deliveries of the parcels.<sup>7</sup>

One recent study found that the drone package delivery market is set for a dramatic increase from a global market size of \$988 million in 2020 to an estimated \$31 billion global market size by the year 2028.<sup>8</sup>

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<sup>1</sup> Section 934.50(2)(a), F.S.

<sup>2</sup> Section 330.41(2)(c), F.S.

<sup>3</sup> See 49 U.S.C. s. 40103(b)(1) and (2).

<sup>4</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, Congressional Research Service, April 3, 2013, available at <https://sgp.fas.org/crs/natsec/R42701.pdf> (last visited March 10, 2023).

<sup>5</sup> Federal Aviation Administration, *Package Delivery by Drone (Part 135)*, available at: [https://www.faa.gov/uas/advanced\\_operations/package\\_delivery\\_drone](https://www.faa.gov/uas/advanced_operations/package_delivery_drone) (last visited March 10, 2023).

<sup>6</sup> Natalie Neysa Alund. USA Today, *Does your local Walmart offer drone delivery? See the list of 36 stores that do here.*, February 14, 2023, available at <https://www.usatoday.com/story/money/2023/02/14/walmart-drone-delivery-locations-states/11254959002/> (last visited March 10, 2023).

<sup>7</sup> Jessica Bursztynsky, Fast Company, *DroneUp has partnered with Walmart to make home deliveries even faster*, November 19, 2022, available at: <https://www.fastcompany.com/90810793/droneup-has-partnered-with-walmart-to-make-home-deliveries-even-faster> (last visited March 10, 2023).

<sup>8</sup> Fortune Business Insights, *Drone Package Delivery Market Size, Share & COVID-19 Impact Analysis, By Type (Fixed Wing, Rotary Wing, and Hybrid), By Package Size (Less Than 2 Kg, 2-5 Kg, and Above 5 Kg), By End-use (Restaurant &*

## **Business Tax Receipts**

Businesses operating in Florida are required to pay a local business tax whereby a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.<sup>9</sup> Upon paying the local business tax, a person from the business is provided a business tax receipt. A business tax receipt is a document issued by a local government that provides evidence a person has complied with the provisions of law relating to the business tax.<sup>10</sup>

## **Florida Building Code**

The intent of the Florida Building Code is to establish unified and consistent minimum standards in the design, construction and compliance processes, and regulations for the safety, health, and general welfare of building occupants.

The Legislature has provided local governments with the power to inspect all buildings, structures, and facilities within their jurisdiction to protect the public's health, safety, and welfare.<sup>11</sup>

Every local government must enforce the building code and issue building permits.<sup>12</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons that may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>13</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>14</sup> A building official is a local government employee or a person contracted by a local government who supervises building code activities, including plan review, enforcement, and inspection to ensure work complies with the building code.<sup>15</sup>

## **Florida Fire Prevention Code**

The Florida Fire Prevention Code is largely based on the National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code, along with the current edition of the NFPA's Life

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*Food Supply, E-commerce, Healthcare, Retail Logistics & Transportation and Others), and Regional Forecast, 2021-2028*, available at: <https://www.fortunebusinessinsights.com/drone-package-delivery-market-104332> (last visited March 10, 2023).

<sup>9</sup> Section 205.022(5), F.S.

<sup>10</sup> Section 205.022(2), F.S.

<sup>11</sup> Section 553.72, F.S.

<sup>12</sup> Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

<sup>13</sup> See Sections 125.56(4)(a) and 553.79(1), F.S.

<sup>14</sup> Section 202 of the Building Code, Sixth Edition.

<sup>15</sup> Section 468.603(2), F.S.

Safety Code, NFPA 101.<sup>16</sup> The Florida Fire Prevention Code incorporates these by reference in s. 633.202, F.S.

The Florida Fire Prevention Code is the minimum fire prevention code deemed adopted by each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.<sup>17</sup> Municipalities, counties, and special districts with firesafety responsibilities may supplement the Florida Fire Prevention Code with more stringent standards adopted in accordance with s. 633.208, F.S.<sup>18</sup>

### **III. Effect of Proposed Changes:**

The bill incorporates the definitions of “drone delivery service” and “drone port” into Florida law.

A “drone delivery service” is defined as a person engaged in a business or profession of delivering goods via drone, and who is governed by the Small Unmanned Aircraft Systems Rule.<sup>19</sup>

A “drone port” is defined as a stand-alone building that does not exceed 1,500 square feet in area or 36 feet in height; is located in a nonresidential area; is used, or intended for use, by a drone delivery service for the launch and landing of drones; was constructed using Type I or Type II<sup>20</sup> construction as described in the Florida Building Code; and, if greater than one story in height, includes at least one stairwell that may be used for egress.

The bill prohibits political subdivisions from withholding the issuance of a business tax receipt, or from enacting or enforcing an ordinance or resolution prohibiting a drone delivery service’s operation based on the location of the delivery service’s drone port but does allow them to enforce generally applicable minimum setback and landscaping regulations.

The bill exempts drone ports from the Florida Building Code, except for the stairwells. The bill also exempts drone ports from certain provisions concerning fire protection systems of the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

The bill takes effect on July 1, 2023.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

Article VII, section 18 of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to pass legislation requiring counties and

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<sup>16</sup> Section 633.202(2), F.S.

<sup>17</sup> Section 633.208, F.S., and 69A-60.002(1), F.A.C.

<sup>18</sup> Section 633.208(3), F.S., and 69A-60.002(2), F.A.C.

<sup>19</sup> See 14 C.F.R. 107.

<sup>20</sup> Types I and II are the types of construction in which the building elements are of noncombustible materials, except as permitted in the Building Code.

municipalities to spend funds, limiting their ability to raise revenue, or reducing the percentage of a state tax shared with them. This bill does not require counties or municipalities to spend funds, limit their authority to raise revenue, or reduce the percentage of a state tax shared with them as specified in Article VII, section 18 of the Florida Constitution. Therefore, the provisions of Article VII, section 18 of the Florida Constitution do not apply.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The bill does not create or raise a state tax or fee. Therefore, the requirements of Art. VII, s. 19 of the Florida Constitution do not apply.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 330.41, 553.73, and 633.202.

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

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

**CS/CS/CS by Rules on April 5, 2023:**

The CS:

- Clarifies that drone ports include the storage and observation of drones;
- Clarifies that drone port stairwells must comply with the Florida Building Code;
- Provides that a political subdivision may enforce generally applicable minimum setback and landscaping regulations;
- Clarifies that drone ports are exempt from provisions of the Florida Fire Prevention Code concerning fire protection system.

**CS/CS by Community Affairs on March 22, 2023:**

The CS makes changes to the definition of “drone port” by providing specificity regarding the size of the building, acceptable locations, type of construction, and certain building features.

**CS by Commerce and Tourism on March 13, 2023:**

The CS provides that drone ports are exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

**B. Amendments:**

None.





185836

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/05/2023	.	
	.	
	.	
	.	

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The Committee on Rules (Collins) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 24 - 117  
and insert:

(c) "Drone delivery service" means a person or entity engaged in a business or profession of delivering goods via drone and who is governed by Title 14 of the Code of Federal Regulations.

(d) "Drone port" means a stand-alone building that does not exceed 1,500 square feet in area or 36 feet in height; is located in a nonresidential area; is used or intended for use by



185836

a drone delivery service for the storage, launch, landing, and observation of drones; was constructed using Type I or Type II construction as described in the Florida Building Code; and, if greater than one story in height, includes at least one stairwell that is compliant with the Florida Building Code.

(3) REGULATION.—

(c) Except as otherwise expressly provided, a political subdivision may not withhold issuance of a business tax receipt, development permit, or other use approval to a drone delivery service or enact or enforce an ordinance or resolution that prohibits a drone delivery service's operation based on the location of its drone port, notwithstanding part II of chapter 163 and chapter 205. A political subdivision may enforce minimum setback and landscaping regulations that are generally applicable to permitted uses in the drone port site's zoning district. This paragraph may not be construed to authorize a political subdivision to require additional landscaping as a condition of approval of a drone port.

Section 2. Paragraph (1) is added to subsection (10) of section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

(1) A drone port as defined in s. 330.41(2).

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public,



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the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule, pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

Section 3. Paragraphs (a) and (b) of subsection (16) of section 633.202, Florida Statutes, are amended to read:

633.202 Florida Fire Prevention Code.—

(16) (a) As used in this subsection, the term:

1. "Agricultural pole barn" means a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

2. "Drone port" has the same meaning as provided in s. 330.41(2).

3.2. "Nonresidential farm building" has the same meaning as provided in s. 604.50.



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(b) Notwithstanding any other provision of law:

1. A nonresidential farm building in which the occupancy is limited by the property owner to no more than 35 persons is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference.

2. An agricultural pole barn is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code incorporated by reference.

3. Except for an agricultural pole barn, a structure on a farm, as defined in s. 823.14(3)(c), which is used by an owner for agritourism activity, as defined in s. 570.86, for which the owner receives consideration must be classified in one of the following classes:

a. Class 1: A nonresidential farm building that is used by the owner 12 or fewer times per year for agritourism activity with up to 100 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

b. Class 2: A nonresidential farm building that is used by the owner for agritourism activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

c. Class 3: A structure or facility that is used primarily



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for housing, sheltering, or otherwise accommodating members of the general public. A structure or facility in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is subject to the Florida Fire Prevention Code.

4. A drone port is exempt from provisions of the Florida Fire Prevention Code, including national codes and the Life Safety Code incorporated by reference, concerning fire protection systems as defined in s. 633.102.

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

And the title is amended as follows:

Delete lines 2 - 10

and insert:

An act relating to drone delivery services; amending s. 330.41, F.S.; defining terms; prohibiting a political subdivision from taking certain actions against a drone delivery service based on the location of its drone port; authorizing a political subdivision to enforce certain regulations relating to setback and landscaping; providing construction; amending s. 553.73, F.S.; exempting drone ports from the Florida Building Code; amending s. 633.202, F.S.; defining the term "drone port"; exempting drone ports from certain provisions of the Florida Fire Prevention Code; providing

By the Committees on Community Affairs; and Commerce and  
Tourism; and Senators Collins and Boyd

578-02922-23

20231068c2

A bill to be entitled

An act relating to drones; amending s. 330.41, F.S.; defining the terms "drone delivery service" and "drone port"; prohibiting a political subdivision from taking certain actions relating to drone delivery services; amending s. 553.73, F.S.; exempting drone ports from the Florida Building Code; amending s. 633.202, F.S.; defining the term "drone port"; exempting drone ports from the Florida Fire Prevention Code and other specified codes incorporated by reference; providing an effective date.

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

Section 1. Present paragraph (c) of subsection (2) and present paragraphs (c) and (d) of subsection (3) of section 330.41, Florida Statutes, are redesignated as paragraph (e) of subsection (2) and paragraphs (d) and (e) of subsection (3), respectively, and new paragraphs (c) and (d) are added to subsection (2) and a new paragraph (c) is added to subsection (3) of that section, to read:

330.41 Unmanned Aircraft Systems Act.—

(2) DEFINITIONS.—As used in this act, the term:

(c) "Drone delivery service" means a person engaged in a business or profession of delivering goods via drone and who is governed by Title 14 of the Code of Federal Regulations.

(d) "Drone port" means a stand-alone building that does not exceed 1,500 square feet in area or 36 feet in height; is located in a nonresidential area; is used, or intended for use,

578-02922-23

20231068c2

by a drone delivery service for the launch and landing of drones; was constructed using Type I or Type II construction as described in the Florida Building Code; and, if greater than one story in height, includes at least one stairwell that may be used for egress.

(3) REGULATION.—

(c) Except as otherwise expressly provided, and notwithstanding part II of chapter 163 and chapter 205, a political subdivision may not withhold issuance of a business tax receipt or enact or enforce an ordinance or resolution that prohibits a drone delivery service's operation based on the location of the delivery service's drone port.

Section 2. Paragraph (1) is added to subsection (10) of section 553.73, Florida Statutes, to read:

553.73 Florida Building Code.—

(10) The following buildings, structures, and facilities are exempt from the Florida Building Code as provided by law, and any further exemptions shall be as determined by the Legislature and provided by law:

(1) A drone port as defined in s. 330.41(2).

With the exception of paragraphs (a), (b), (c), and (f), in order to preserve the health, safety, and welfare of the public, the Florida Building Commission may, by rule adopted pursuant to chapter 120, provide for exceptions to the broad categories of buildings exempted in this section, including exceptions for application of specific sections of the code or standards adopted therein. The Department of Agriculture and Consumer Services shall have exclusive authority to adopt by rule,

578-02922-23

20231068c2

pursuant to chapter 120, exceptions to nonresidential farm buildings exempted in paragraph (c) when reasonably necessary to preserve public health, safety, and welfare. The exceptions must be based upon specific criteria, such as under-roof floor area, aggregate electrical service capacity, HVAC system capacity, or other building requirements. Further, the commission may recommend to the Legislature additional categories of buildings, structures, or facilities which should be exempted from the Florida Building Code, to be provided by law. The Florida Building Code does not apply to temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

Section 3. Paragraphs (a) and (b) of subsection (16) of section 633.202, Florida Statutes, are amended to read:

633.202 Florida Fire Prevention Code.—

(16)(a) As used in this subsection, the term:

1. "Agricultural pole barn" means a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress.

2. "Drone port" has the same meaning as in s. 330.41(2).

3. "Nonresidential farm building" has the same meaning as provided in s. 604.50.

(b) Notwithstanding any other provision of law:

1. A nonresidential farm building in which the occupancy is limited by the property owner to no more than 35 persons is exempt from the Florida Fire Prevention Code, including the national codes and Life Safety Code incorporated by reference.

2. An agricultural pole barn is exempt from the Florida Fire Prevention Code, including the national codes and the Life

578-02922-23

20231068c2

Safety Code incorporated by reference.

3. Except for an agricultural pole barn, a structure on a farm, as defined in s. 823.14(3)(c), which is used by an owner for agritourism activity, as defined in s. 570.86, for which the owner receives consideration must be classified in one of the following classes:

a. Class 1: A nonresidential farm building that is used by the owner 12 or fewer times per year for agritourism activity with up to 100 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

b. Class 2: A nonresidential farm building that is used by the owner for agritourism activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code but is subject to rules adopted by the State Fire Marshal pursuant to this section.

c. Class 3: A structure or facility that is used primarily for housing, sheltering, or otherwise accommodating members of the general public. A structure or facility in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is subject to the Florida Fire Prevention Code.

4. A drone port is exempt from the Florida Fire Prevention Code, including the national codes and the Life Safety Code

578-02922-23

20231068c2

117 incorporated by reference.

118 Section 4. This act shall take effect July 1, 2023.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JAY COLLINS**

14th District

**COMMITTEES:**

Agriculture, *Chair*  
Appropriations Committee on Education  
Appropriations Committee on Transportation, Tourism,  
and Economic Development  
Education Postsecondary  
Education Pre-K -12  
Fiscal Policy  
Military and Veterans Affairs, Space, and  
Domestic Security

**SELECT COMMITTEE:**

Select Committee on Resiliency

**JOINT COMMITTEE:**

Joint Select Committee on Collective Bargaining

March 22, 2023

Senator Debbie Mayfield  
400 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Mayfield,

I respectfully request that SB 1068 – Drones be placed on the next available agenda for the Rules Committee. This bill is crucial for ensuring proficient and efficient drone delivery operations.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in black ink, appearing to read "Jay Collins", with a horizontal line underneath.

Senator Jay Collins  
District 14

Cc: Phillip Twogood, Staff Director  
Shasta W. Kruse, Deputy Staff Director  
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- ☐ 405 North Reo Street, Suite 170, Tampa, Florida 33609 (813) 281-2538
- ☐ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 387-4014

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**KATHLEEN PASSIDOMO**  
President of the Senate

**DENNIS BAXLEY**  
President Pro Tempore

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
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4/15/2023

Meeting Date

Rules

Committee

1068

Bill Number or Topic

185836

Amendment Barcode (if applicable)

Name

Jeff Branch

Phone

701-3701

Address

Street

Email

jbranch@flcitics

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

Florida League of Citics

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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4/5/2023  
Meeting Date

1068  
Bill Number or Topic

Rules  
Committee

Amendment Barcode (if applicable)

Name Jeff Branch

Phone 701-3701

Address

Email jbranch@flcities

Street

Tallahassee FL

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

Florida League of Cities

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S-001 (08/10/2021)

## APPEARANCE RECORD

04/05/2023

Meeting Date

1068

Bill Number or Topic

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Rules

Amendment Barcode (if applicable)

Committee

Name

Ken Williams

Phone

813-493-7685

Address

7411 Meadow Drive

Street

Email

Tampa, FL 33634

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without  
compensation or sponsorship.I am a registered lobbyist,  
representing:I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

**APPEARANCE RECORD**

Meeting Date

4/5/23

Rules

Committee

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Bill Number or Topic

SB 1067

Amendment Barcode (if applicable)

Name

Dr. Rich Templin

Phone

Address

135 S. Monroe

Street

Email

Tallahassee

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☐I am appearing without  
compensation or sponsorship.☒I am a registered lobbyist,  
representing:

Florida AFL-CIO

☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

**APPEARANCE RECORD**

4/5/2023  
Meeting Date

1068  
Bill Number or Topic

Deliver both copies of this form to  
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Committee

Amendment Barcode (if applicable)

Name Michael F Davis

Phone 213-666-9173

Address 632 Marphil Loop  
Street

Email VER Michael@aol.com

Bradon FL  
City State

33511  
Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)



The Florida Senate

APPEARANCE RECORD

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Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date

Committee

Name

Phone

Address

Street

City

State

Zip

Email

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

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4/5/2023

Meeting Date

Rules

Committee

1068

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Nancy Luna

Phone

(407) 219-1787

Address

2934 Tanzanite Terrace

Street

Email

Nancy162002@gmail.com

Kissimmee

City

FL

State

34758

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)



4/5/23

Meeting Date

Rules

Committee

The Florida Senate

## APPEARANCE RECORD

Deliver both copies of this form to  
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1068

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Jimmy Card Card

Phone

850-321-8896

Address

101 N. Monroe St. Suite 250

Street

Email

jcard@continentalstrategy.com

Tallahassee

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

### PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Drone Up

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

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4/15/23  
Meeting Date

SB1068  
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name DONNA Pixley

Phone 754-235-9966

Address 2226 SE PEAR LANE  
Street

Email Pixlexster@outlook.com

Port ST. LUCIE FL.  
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☐ In Support ☒ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/5/23

Meeting Date

SB 1068

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Joseph Groover

Phone

407 625 9288

Address

2428 Pershing Ave

Email

Joseph.1990Groover@msn.com

Street

Orlando

State

FL

Zip

32806

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

4/5/23

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

SB 1068

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Rule 5

Committee

Amendment Barcode (if applicable)

Name

Gabriel Thomas

Phone

443 764 5335

Address

263 N Fort Christmas rd.

Email

AFGEGabriel@gmail.com

Street

Christmas

City

FL

State

32709

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

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SB 1068

Bill Number or Topic

Amendment Barcode (if applicable)

4/5/2023

Meeting Date

Rules

Committee

Name

Tatiana Finlay

Phone

407-967-8977

Address

2454 Bexley Dr.

Email

tfinlayafge@gmail.com

Street

Tavares,

City

FL

State

32778

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without  
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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB1068

Bill Number or Topic

4/5/23

Meeting Date

Rules

Committee

Amendment Barcode (if applicable)

Name

Tatishka Thomas

Phone

727 688 6269

Address

1130 Beeke H St

Email

Street

CLW

City

FL

State

33755

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

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S-001 (08/10/2021)

**APPEARANCE RECORD**4/5/23

Meeting Date

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meetingSB 1068

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Jeremy Childress

Phone

386-233-4796

Address

488 Hickory St.

Street

Email

New Smyrna Beach FL 32168

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
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04/05/2023

Meeting Date

Rules

Committee

1068

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Keith Hamrah

Phone

401-933-2413

Address

2902 Katie Beth Ct

Email

KatieBethHamrah399@gmail.com

Street

Missimmee FL 34744

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without  
compensation or sponsorship.

☐

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representing:

☐

I am not a lobbyist, but received  
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S-001 (08/10/2021)



The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1068

Bill Number or Topic

Amendment Barcode (if applicable)

04/05/2023

Meeting Date

Rules

Committee

Name

Jovan Rodriguez

Phone

321242261

Address

2841 Spring Breeze Way

Street

Email

joverodriguez.af@gmail.com

Kissimmee

City

FL

State

34744

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/15/23

Meeting Date

Rules

Committee

SB 1068

Bill Number or Topic

Drones

Amendment Barcode (if applicable)

Name

Charles Tribble

Phone

561-298-8998

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
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S-001 (08/10/2021)

4-5-2023

The Florida Senate

# APPEARANCE RECORD

SB 1068

Meeting Date

Rules

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Ramela Burrell-Tomlinson

Phone

727-692-1467

Address

5488 30th Ave N

Email

Bentley5550@yahoo.com

Street

St. Petersburg, FL 33710

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/5/23  
Meeting Date

SB 1068  
Bill Number or Topic

Drones  
Amendment Barcode (if applicable)

Committee

Name Lorraine Boone

Phone 954-326-6086

Address 2650 SW 11 4th Terr Apt. 108

Email lboone2007@yahoo.com

Street

Miramar, FL 33025

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
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S-001 (08/10/2021)

**APPEARANCE RECORD**

4/5/23

Meeting Date

SB1068

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Ashley Page

Phone

407-538-1613

Address

9000 Jannettan Dr

Email

Street

Winter Park

City

FL

State

32791

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☒I am appearing without  
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S-001 (08/10/2021)

04/05/23

Meeting Date

Rules

Committee

Name

Kim Katz

Phone

215-200-7142

Address

4695 Ellis Cir

Email

Street

Titusville FL 32780

City

State

Zip

The Florida Senate  
**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

SB 1068

Bill Number or Topic

Amendment Barcode (if applicable)

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

BRIAN ANTOINE

Phone

504 296 1730

Address

13737 Mendonpark Ave

Email

Street

Orlando

FL

32826

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

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I am not a lobbyist, but received  
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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4/5/2023

Meeting Date

SB 1068

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Sheryl Posey

Phone

815-404-8601

Address

3104 Lake Jean Drive

Email

saposey818@gmail.com

Street

Orlando

City

FL

State

32817

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without  
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S-001 (08/10/2021)



The Florida Senate

# APPEARANCE RECORD

Meeting Date

4.5.23

Bill Number or Topic

1068

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Willie Kitchin

Phone

813-323-3943

Address

1309 E LACR A St

Email

mrwckitchin@flsenate.gov

Street

Plant City

State

FLA

Zip

33563

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

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I am appearing without  
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S-001 (08/10/2021)

**APPEARANCE RECORD**

SB 1068

4/5/23

Meeting Date

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Gretchen Robinson

Phone

520-576-6706

Address

520 Remora Ln

Street

Email

pallas77gr@gmail.com

Orlando

City

FL

State

32805

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☒I am appearing without  
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representing:☐I am not a lobbyist, but received  
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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

5 Apr 2023

Meeting Date

1068

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

James Totten

Phone

727 641 6171

Address

644 Northwest Blvd, N.

Street

Email

tottenj2011@gmail.com

St. Pete, FL 33702

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
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sponsored by:

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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4-5-2023

Meeting Date

1068

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Rick Myers

Phone

904 610-5609

Address

940 17th Ave N

Email

myersr48@hotmail.com

Street

SAX

City

FL

State

32250

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

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I am appearing without  
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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4-5-2023

Meeting Date

10685B

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Christopher Jones

Phone 407-694-3508

Address 1401 Cricket Club Cir.  
Street

Email C803jones@gmail.com

Orlando  
City

FL  
State

32828  
Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
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This form is part of the public record for this meeting.

S-001 (08/10/2021)

**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 Rules

---

BILL: SB 1220

INTRODUCER: Senators Brodeur and Perry

SUBJECT: Defamation and Related Actions

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collazo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Collazo</u>	<u>Twogood</u>	<u>RC</u>	<b>Pre-meeting</b>

---

**I. Summary:**

SB 1220 creates and amends several statutes relating to defamation causes of action. The most significant changes purport to reduce a plaintiff's burden of proof necessary to prevail in a defamation action. More specifically, the bill creates statutes providing that:

- Defamation actions include actions for libel, slander, and other recognized causes of action like defamation by implication.
- The publication of an altered or unaltered photograph, video, or audio recording may form the basis of a defamation action.
- A person is not a public figure for purposes of a defamation action if the person acquires fame or notoriety from engaging in certain specified activities.
- A defamatory allegation is made with actual malice for purposes of a defamation action if certain specified criteria apply.
- If the actual malice standard otherwise applies to a defamation action in which the defendant does not identify the source for a defamatory statement, the plaintiff need only prove that the defendant acted negligently in making the defamatory statement.
- In a defamation action based on an alleged defamatory statement that does not relate to the reasons for the plaintiff's status as a public figure, the plaintiff need only prove that the defendant acted negligently in making or repeating the statement.

The bill amends the statute governing venue for defamation actions, to provide that venue for such actions is proper in any county identified in the general venue statute, including any county where the defamatory material is accessed by a third party.

The bill also amends:

- The statute codifying the journalist's privilege, to provide that it does not apply to defamation or related actions against a professional journalist.
- Two anti-strategic lawsuit against public participation (SLAPP) statutes, to provide that a defendant in an action for defamation or similar action who files a motion to dismiss or

motion for summary judgment under those statutes is entitled to attorney fees and costs only if the allegedly defamatory statement was not negligently made.

The bill takes effect July 1, 2023.

## II. Present Situation:

### Defamation

#### *Generally*

Defamation is the unprivileged publication of false statements that naturally and proximately result in an injury to another.<sup>1</sup> It has also been described as a statement that tends to harm the reputation of another by lowering him or her in the estimation of the community or, more broadly stated, one that exposes a plaintiff to hatred, ridicule, or contempt or injures his business, reputation, or occupation.<sup>2</sup>

The Florida Constitution provides that every person may speak, write, and publish sentiments on all subjects, but will be responsible for the abuse of that right.<sup>3</sup> The law of defamation embodies the public policy that individuals should be free to enjoy their reputations unimpaired by false and defamatory attacks. An action for defamation is based upon a violation of this right.<sup>4</sup>

Different states vary in their anti-defamation statutes; as such, courts in different states will interpret defamation laws differently, and defamation statutes will vary somewhat from state to state.<sup>5</sup> But generally, defamation may take one of three forms:

- Spoken words, commonly known as “slander.”<sup>6</sup>
- A written statement, commonly known as “libel.”<sup>7</sup>
- An implication, commonly known as “false light” invasion of privacy.<sup>8</sup>

Before 2008, Florida courts recognized separate causes of action for slander and libel premised upon spoken or written defamatory statements, but did not recognize a separate cause of action for defamation itself.<sup>9</sup> However, in 2008, the Florida Supreme Court recognized a standalone tort of defamation,<sup>10</sup> and in doing so effectively subsumed all claims for slander and libel into that

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<sup>1</sup> *Hoch v. Loren*, 273 So. 3d 56, 57 (Fla. 4<sup>th</sup> DCA 2019) (internal citation omitted).

<sup>2</sup> *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1108-09 (Fla. 2008) (internal citation omitted).

<sup>3</sup> FLA. CONST. art. I, s. 4.

<sup>4</sup> 19 FLA. JUR. 2D s. 1 *Defamation and Privacy*.

<sup>5</sup> Cornell Law School Legal Information Institute, *Defamation*, <https://www.law.cornell.edu/wex/defamation> (last visited Mar. 15, 2023).

<sup>6</sup> See *Spears v. Albertson's, Inc.*, 848 So. 2d 1176, 1179 (Fla. 1<sup>st</sup> DCA 2003) (providing that “[s]lander may be defined as the speaking of base and defamatory words”).

<sup>7</sup> See *Dunn v. Air Line Pilots Association*, 193 F.3d 1185, 1191 (11<sup>th</sup> Cir. 1999) (noting that under Florida law, libel is defined as the unprivileged written publication of false statements).

<sup>8</sup> See RESTATEMENT (SECOND) OF TORTS s. 652E.

<sup>9</sup> See *Delacruz v. Peninsula State Bank*, 221 So. 2d 772, 775 (Fla. 2d DCA 1969) (explaining that there is no such legal cause of action as ‘defamation’ and “[l]ibel and slander may be Founded [sic] on defamation, but the right of action itself is libel or slander, depending upon whether it is written or oral”).

<sup>10</sup> See *Jews for Jesus, Inc.*, 997 So. 2d at 1105-08 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida).



tort. Therefore, defamation now encompasses both libel and slander.<sup>11</sup> False light is not recognized as a separate cause of action in Florida, but like slander and libel, it is nearly identical to a form of defamation, known as “defamation by implication.”<sup>12</sup>

Although libel is generally perpetrated by written communication, it also includes defamation through the publication of pictures or photographs.<sup>13</sup> Alteration of a photograph may support a defamation action.<sup>14</sup>

### ***Cause of Action***

In Florida, the five required elements of a claim for defamation are:

- Publication.
- Falsity.
- Knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.
- Actual damages.
- A defamatory statement.<sup>15</sup>

“Publication” is a required element because a defamatory statement does not become actionable until it is published or communicated to a third person.<sup>16</sup> Publication requires proof that the statement is exposed to the public so it may be read or heard by a third person, but not necessarily that it has in fact been read or heard by a third person.<sup>17</sup>

The element of “falsity” requires that the defamation be “of and concerning” the plaintiff,<sup>18</sup> and that the allegation or representation about the plaintiff be false.<sup>19</sup> The falsity may be premised upon untruthfulness, such as in the case of slander or libel, or from truthful statements that imply falsely, such as in the case of defamation by implication.<sup>20</sup>

An actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.<sup>21</sup> With respect to this element, case law has developed which purports to balance the interests of the First

<sup>11</sup> *Norkin v. The Florida Bar*, 311 F. Supp. 3d 1299, 1303-04 (S.D. Fla. 2018) (internal citations omitted); *Klayman v. Judicial Watch, Inc.*, 22 F. Supp. 3d 1240, 1247 fn. 2 (S.D. Fla. 2014).

<sup>12</sup> See *Jews for Jesus, Inc.*, 997 So. 2d at 1108 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida); but see RESTATEMENT (SECOND) OF TORTS s. 652E (recognizing a separate tort of false light).

<sup>13</sup> 19 FLA. JUR. 2D *Defamation and Privacy* s. 15 (citing 50 AM. JUR. 2D *Libel and Slander* s. 153).

<sup>14</sup> 50 AM. JUR. 2D *Libel and Slander* s. 153 (internal citations omitted).

<sup>15</sup> *Jews for Jesus, Inc.*, 997 So. 2d at 1106.

<sup>16</sup> *American Airlines, Inc. v. Geddes*, 960 So. 2d 830, 833 (Fla. 3d DCA 2007).

<sup>17</sup> *Axiom Worldwide, Inc. v. Becerra*, 2009 WL 1347398, \*7 (M.D. Fla. 2009) (citing *Rives v. Atlanta Newspapers, Inc.*, 220 Ga. 485, 139 S.E.2d 395, 398 (1964) (noting, in applying single publication rule to newspaper, that “whether or not it is read is immaterial once it is shown that it was exposed to public view”)).

<sup>18</sup> *Thomas v. Jacksonville Television, Inc.*, 699 So. 2d 800, 805 (Fla. 1st DCA 1997).

<sup>19</sup> See generally *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 23 (1990) (Brennan, J., dissenting) (noting that “only defamatory statements that are capable of being proved false are subject to liability under state libel law”).

<sup>20</sup> *Jews for Jesus, Inc.*, 997 So. 2d at 1106-08.

<sup>21</sup> *Id.* at 1106.



Amendment while also protecting people from being unjustly defamed.<sup>22</sup> Accordingly, courts apply an actual malice standard, which is addressed separately and in more detail below, to public figures, and a simple negligence standard to private individuals.<sup>23</sup> A private individual may recover actual damages from a media defendant that publishes false and defamatory statements and that fails to use reasonable care to determine their falsity.<sup>24</sup>

With respect to the element of actual damages, the recovery of actual damages depends upon whether the defamation was “per se” or “per quod.” Defamation per se generally relieves plaintiffs of having to prove damages, because such statements are so inherently damaging that damages are typically presumed.<sup>25</sup> On the other hand, defamation per quod generally requires plaintiffs to provide supporting and extrinsic evidence in order to prove that the statement or publication was actually defamatory.<sup>26</sup>

Finally, the statements must actually be defamatory. To make this determination, courts consider allegedly defamatory statements in their totality. For example, they consider all the words, pictures, and illustrations as used and presented together, not just a particular phrase or sentence in isolation.<sup>27</sup> An allegedly defamatory statement should be considered in its natural sense without a forced or strained construction.<sup>28</sup> Courts also make threshold determinations regarding whether a claim should even be considered by a jury,<sup>29</sup> and whether a privilege applies.<sup>30</sup>

### ***Defenses***

In addition to general procedural and other defenses that may be available (e.g. a failure to allege and prove any of the elements of defamation), the following specific defenses are available in response to a claim of libel, slander, or defamation by implication:

- Statutory protections:
  - For radio and television broadcasters.<sup>31</sup>
  - For good faith reports of potential child abuse, abandonment, or neglect.<sup>32</sup>
- Privilege:
  - Absolute immunity, for any act occurring during the course of a legislative, judicial, or quasi-judicial proceeding, so long as the act has some relation to the proceeding.<sup>33</sup>

<sup>22</sup> Gleisy Sopena, *Attorney-Fee Shifting is the Solution to Slapping Meritless Claims Out of Federal Courts*, 16 FIU L. REV. 833, 842 (Spring 2022).

<sup>23</sup> *Jews for Jesus, Inc.*, 997 So. 2d at 1111.

<sup>24</sup> *Thomas*, 699 So. 2d at 804.

<sup>25</sup> *Wolfson v. Kirk*, 273 So. 2d 774, 776 (Fla. 4<sup>th</sup> DCA 1973); *Bass v. Rivera*, 826 So. 2d 534, 535 (Fla. 2d DCA 2002); *Delacruz*, 221 So. 2d at 775.

<sup>26</sup> *Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 633 (Fla. 5<sup>th</sup> DCA 1983) (quoting *Piplack v. Mueller*, 97 Fla. 440, 121 So. 459 (Fla. 1929)).

<sup>27</sup> *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4<sup>th</sup> DCA 1983).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*; *Wolfson*, 273 So. 2d at 778.

<sup>30</sup> See *Jews for Jesus, Inc.*, 997 So. 2d at 1111-12 (providing a list of cases that applied various privileges to defamatory statements); see also s. 770.04, F.S. (regarding liability of radio or television broadcasters); see also *Wright v. Yurko*, 446 So. 2d 1162, 1164 (Fla. 5<sup>th</sup> DCA 1984) (holding privilege extends to communications made within lawsuits).

<sup>31</sup> See generally s. 770.04, F.S.

<sup>32</sup> See generally s. 39.203, F.S.

<sup>33</sup> See *Kidwell v. General Motors Corp.*, 975 So. 2d 503, 505 (Fla. 2d DCA 2007) (regarding judicial and quasi-judicial immunity); see also *Tucker v. Resha*, 634 So. 2d 756, 758 (Fla. 1<sup>st</sup> DCA 1994), *apprv'd*, 670 So. 2d 56 (Fla. 1996) (noting,

- Absolute immunity, for state executive officers<sup>34</sup> and public officials,<sup>35</sup> as long as their statements are made in connection with their duties and responsibilities.
- Qualified immunity, when made in good faith and certain other conditions are met.<sup>36</sup>
- Immunity as an expression of pure opinion, which occurs when one makes a comment or opinion based on facts in an article or are otherwise known or available to the reader or listener as a member of the public.<sup>37</sup>

Actions for libel and slander must be brought within 2 years after the cause of action accrues.<sup>38</sup>

### Actual Malice Standard

Private individuals only need to allege and prove simple negligence to recover in defamation actions, but public figures who sue for defamation actions are subject to a different standard known as the “actual malice” standard.<sup>39</sup>

As required by the landmark federal case *New York Times v. Sullivan*<sup>40</sup> and its progeny,<sup>41</sup> people who qualify as public figures must show actual malice by a publisher in order to maintain an action in defamation. The existence of actual malice must be proved by clear and convincing evidence.<sup>42</sup> Under the actual malice test, a public figure claimant must show that the disseminator of the information “either knew the alleged defamatory statements were false, or published them with reckless disregard despite awareness of their probable falsity.”<sup>43</sup>

Because direct evidence of actual malice is rare, courts have permitted actual malice to be proved through inference and circumstantial evidence alone.<sup>44</sup> For example, actual malice may be found where a publisher fabricates an account, makes inherently improbable allegations, relies on a source where there is an obvious reason to doubt its veracity, or deliberately ignores evidence that calls into question published statements.<sup>45</sup> Although motive alone cannot suffice to prove

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with emphasis added, that “[t]he public interest requires that *statements made by officials of all branches of government in connection with their official duties* be absolutely privileged”) (internal citations omitted).

<sup>34</sup> *Tucker*, 634 So. 2d at 758.

<sup>35</sup> *Hope v. National Alliance of Postal and Federal Employees, Jacksonville Local No. 320*, 649 So. 2d 897, 901 fn. 5 (Fla. 1<sup>st</sup> DCA 1995).

<sup>36</sup> *See Lundquist v. Alewine*, 397 So. 2d 1148, 1149 (Fla. 5<sup>th</sup> DCA 1981) (providing that the elements essential to the finding of a conditionally privileged publication are good faith; an interest to be upheld; a statement limited in its scope to this purpose; a proper occasion; and publication in a proper manner) (internal citations omitted).

<sup>37</sup> *Sepmeier v. Tallahassee Democrat, Inc.*, 461 So. 2d 193, 195 (Fla. 1<sup>st</sup> DCA 1984) (internal citation omitted); *Smith v. Taylor County Pub. Co., Inc.*, 443 So. 2d 1042, 1046-47 (Fla. 1<sup>st</sup> DCA 1983).

<sup>38</sup> *See* s. 95.11(4)(g), F.S. (providing a 2-year statute of limitations for libel or slander); *see also* s. 95.031(1), F.S. (providing that unless otherwise specified, the statute of limitations runs from the time the cause of action accrues).

<sup>39</sup> *Jews for Jesus, Inc.*, 997 So. 2d at 1105-06; *Mile Marker, Inc. v. Petersen Publishing, L.L.C.*, 811 So. 2d 841, 845 (Fla. 4<sup>th</sup> DCA 2002) (citing *New York Times*).

<sup>40</sup> 376 U.S. 254 (1964).

<sup>41</sup> In *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-84 (1964), the U.S. Supreme Court applied the actual malice standard to public officials. Three years after *New York Times*, the Court applied the same standard to public figures in *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 164-65 (1967) (Warren, C.J., concurring in plurality opinion).

<sup>42</sup> *Lampkin-Asam v. Miami Daily News, Inc.*, 408 So. 2d 666, 668-69 (Fla. 3d DCA 1981).

<sup>43</sup> *Mile Marker, Inc.*, 811 So. 2d at 845 (citing *New York Times*).

<sup>44</sup> *Sindi v. El-Moslimany*, 896 F.3d 1, 16 (1<sup>st</sup> Cir. 2018).

<sup>45</sup> *Id.*; *see also St. Amant v. Thompson*, 390 U.S. 727, 732 (1968) (remarking that publications are likely not made in good faith where “a story is fabricated by the defendant, is the product of his imagination, or is based wholly on an unverified

actual malice, it is a highly relevant consideration.<sup>46</sup> Reliance on an anonymous source for a defamatory statement constitutes actual malice only if the defendant had an obvious reason to doubt that source.<sup>47</sup>

Whether a person qualifies as a public figure is a question of law for courts to decide.<sup>48</sup> State and federal common law recognize two classes of public figures: “general public figures,” who by reason of fame or notoriety in a community will in all cases be required to prove actual malice, and “limited public figures,” who are individuals who have thrust themselves forward in a particular public controversy and are therefore required to prove actual malice only in regard to certain issues.<sup>49</sup>

Courts employ a three-part test to determine whether a claimant is a limited public figure.<sup>50</sup> First, the court must determine whether there is a public controversy. In determining whether a matter is a public controversy, the court determines whether a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution. Second, the court must determine whether the claimant played a sufficiently central role in the controversy. And third, the court must find that the alleged defamation was germane to the claimant’s involvement in the controversy.<sup>51</sup>

Courts have found individuals to be public figures for purposes of a defamation action in many factual situations, including the following:

- A person defending himself against accusations.<sup>52</sup>
- A person granting an interview on a specific topic.<sup>53</sup>
- A person obtaining public employment in a capacity other than as an elected officeholder or appointee of an elected officeholder.<sup>54</sup>

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anonymous telephone call[.]” or when the allegations “are so inherently improbable that only a reckless man would have put them into circulation[.]” or where there are “obvious reasons to doubt the veracity of the informant or the accuracy of his reports”).

<sup>46</sup> *Sindi*, 896 F.3d at 16.

<sup>47</sup> *See Lorenz v. Donnelly*, 350 F.3d 1272, 1283-84 (D.C. Cir. 2003) (providing that a plaintiff must show that when the defendants published the alleged defamations they were subjectively aware that it was highly probable that the story was fabricated, so inherently improbable that only a reckless person would have put it in circulation, or based wholly on an unverified anonymous telephone call or some other source that appellees had obvious reasons to doubt).

<sup>48</sup> *Saro Corporation v. Waterman Broadcasting Corporation*, 595 So. 2d 87, 89 (Fla. 2d DCA 1992) (internal citation omitted).

<sup>49</sup> *Id.* (internal citation omitted); *see also Mile Marker, Inc.*, 811 So. 2d at 845 (recognizing same at the state level); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) (recognizing same at the federal level).

<sup>50</sup> *Della-Donna v. Gore Newspapers Company*, 489 So. 2d 72, 77 (Fla. 4<sup>th</sup> DCA 1986) (internal citations omitted).

<sup>51</sup> *Id.*

<sup>52</sup> *See Berisha v. Lawson*, 973 F.3d 1304, 1311 (11<sup>th</sup> Cir. 2020) (finding a person a public figure because he defended himself against accusations that he was involved in an arms-dealing scandal).

<sup>53</sup> *See Mile Marker, Inc.*, 811 So. 2d at 846 (finding a person a limited public figure because, among other things, he gave an interview).

<sup>54</sup> *See Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966) (finding that the “‘public official’ designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs”).

- A person who has uploaded a video, image, or statement on the Internet which has reached a broad audience.<sup>55</sup>

### *Criticisms*

In 1993, when U.S. Supreme Court Justice Elena Kagan was still a law professor at the University of Chicago, she wrote a book review wherein she noted that extending the actual malice standard to public figures was “questionable” and the Court has “increasingly lost contact with the case’s premises and principles[.]”<sup>56</sup> She observed that “to the extent [*New York Times*] decreases the threat of libel litigation, it promotes not only true but also false statements of fact – statements that may themselves distort public debate[.]” and in this way “the legal standard adopted in [*New York Times*] may cut against the very values underlying the decision.”<sup>57</sup>

In 2021, U.S. Supreme Court Justices Clarence Thomas and Neil Gorsuch issued dissenting opinions in *Berisha v. Lawson* which heavily criticized the Court’s extension of the *New York Times*’ actual malice standard to public figures.

Justice Thomas advocated for reconsideration of the *New York Times* actual malice standard for two basic reasons. First, he argued that requiring public figures to establish actual malice lacks historical support and bears “no relation to the text, history, or structure of the Constitution.”<sup>58</sup> Second, setting aside the constitutional concerns, the doctrine has “real-world effects” that should also be considered, because “[p]ublic or private, lies impose real harm” and the actual malice standard, which is an “almost impossible” standard to meet, effectively “insulate[s] those who perpetrate lies from traditional remedies like libel suits[.]”<sup>59</sup>

Justice Gorsuch echoed many of Justice Thomas’ criticisms but also expanded upon how changes in the media landscape since 1964, the year the Court formulated the actual malice standard in *New York Times*, have resulted in a proliferation of disinformation. After surveying those changes (e.g. the fall of traditional news outlets and professional fact-checking, the rise of cable news and social media platforms, etc.), he concluded that “[w]hat started in 1964 with a decision to tolerate the occasional falsehood to ensure robust reporting by a comparative handful of print and broadcast outlets has evolved into an ironclad subsidy for the publication of falsehoods by means on a scale previously unimaginable.”<sup>60</sup>

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<sup>55</sup> See *Berisha v. Lawson*, 141 S. Ct. 2424, 2429 (Mem) (2021) (Gorsuch, J., dissenting) (recognizing that private citizens can become public figures “on social media overnight”).

<sup>56</sup> Elena Kagan, “A Libel Story: *Sullivan* Then and Now (reviewing Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment* (1991)),” 18 LAW AND SOCIAL INQUIRY 197, 209 (1993).

<sup>57</sup> *Id.* at 206-07.

<sup>58</sup> *Berisha*, 141 S. Ct. at 2424-25 (Thomas, J., dissenting) (citing *McKee v. Cosby*, 139 S. Ct. 675 (Mem) (2019) and quoting *Tah v. Global Witness Publishing, Inc.*, 991 F.3d 231, 251 (D.C. Cir. 2021) (Silberman, J., dissenting)).

<sup>59</sup> *Berisha*, 141 S. Ct. at 2425 (Thomas, J., dissenting) (listing several examples where defamatory statements caused real world harm).

<sup>60</sup> *Id.* at 2428 (Gorsuch, J., dissenting).

In his dissenting opinion, Justice Gorsuch also included a significant list of former U.S. Supreme Court justices who have raised questions about various aspects of the *New York Times* case over the years.<sup>61</sup>

### **Journalist's Privilege**

With respect to information that a professional journalist has obtained while actively gathering news, state law provides that the professional journalist may not be compelled to either be a witness concerning that information, or disclose that information, including the identity of any source.<sup>62</sup>

For purposes of the qualified privilege, a “professional journalist” means:

a person regularly engaged in collecting, photographing, recording, writing, editing, reporting, or publishing news, for gain or livelihood, who obtained the information sought while working as a salaried employee of, or independent contractor for, a newspaper, news journal, news agency, press association, wire service, radio or television station, network, or news magazine. Book authors and others who are not professional journalists, as defined in this paragraph, are not included in the provisions of this section.<sup>63</sup>

“News” means information of public concern relating to local, statewide, national, or worldwide issues or events.<sup>64</sup>

The statute limits the privilege to information or eyewitness observations obtained within the normal scope of employment, with the exception that it does not apply to physical evidence, eyewitness observations, or visual or audio recording of crimes.<sup>65</sup>

The statute also provides that a party seeking to overcome this privilege must make a “clear and specific showing” that:

- The information is relevant and material to unresolved issues that have been raised in the proceeding for which the information is sought;
- The information cannot be obtained from alternative sources; and
- A compelling interest exists for requiring disclosure of the information.<sup>66</sup>

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<sup>61</sup> *Id.* at 2429-30 (Gorsuch, J., dissenting) (citing to several opinions and articles by past and present U.S. Supreme Court members).

<sup>62</sup> Section 90.5015(2), F.S.

<sup>63</sup> Section 90.5015(1)(a), F.S.

<sup>64</sup> Section 90.5015(1)(b), F.S.

<sup>65</sup> Section 90.5015(2), F.S.

<sup>66</sup> Section 90.5015(2)(a)-(c), F.S.

## Strategic Lawsuits against Public Participation

A strategic lawsuit against public participation (SLAPP) is one ostensibly brought to redress a wrong, such as an invasion of privacy, a business tort, or an interference with a contract or an economic advantage, but actually brought to silence one or more critics.<sup>67</sup>

Because of the variety of nominal bases for a SLAPP suit, laws to prevent them, known as anti-SLAPP laws, are phrased in terms of rights to be protected. Florida's anti-SLAPP statute<sup>68</sup> protects the following rights:

- The right to exercise the rights of free speech in connection with public issues.
- The right to peacefully assemble.
- The right to instruct representatives.
- The right to petition for redress of grievances before the various governmental entities of the state as protected by the First Amendment to the U.S. Constitution and section 5, article I of the State Constitution.<sup>69</sup>

Specifically, the statute prohibits a person or governmental entity from filing or causing to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity, without merit and primarily because such person or entity has exercised any of the above-listed rights.<sup>70</sup>

The statute also provides a right to an expeditious resolution of a claim that a suit has been filed in violation of the statute.<sup>71</sup> The person or entity sued by a governmental entity or another person may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. As soon as practicable, the court must set a hearing on the motion, which must be held at the earliest possible time after the filing of the claimant's or the governmental entity's response. If the person or entity prevails, the court may award actual damages arising from the governmental entity's violation of the statute. The court must award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of the anti-SLAPP statute.<sup>72</sup>

State law also contains a similar but separate anti-SLAPP statute specific to homeowners' associations.<sup>73</sup> Among other things, it also provides for the expeditious resolution of a claim that the suit is in violation of the rights protected under the statute.<sup>74</sup>

<sup>67</sup> See, e.g., The Florida Senate Committee on Judiciary, *Issue Brief 2009-332, Strategic Lawsuits Against Public Participation* (Oct. 2008), <https://flsenate.gov/UserContent/Committees/Publications/InterimWorkProgram/2009/pdf/2009-332ju.pdf>; Cornell Law School Legal Information Institute, *SLAPP suit*, [https://www.law.cornell.edu/wex/slapp\\_suit](https://www.law.cornell.edu/wex/slapp_suit) (last visited Feb. 17, 2023); Public Participation Project, *What is a SLAPP?*, <https://anti-slapp.org/what-is-a-slapp> (last visited Mar. 15, 2023); The Free Dictionary, *Legal Dictionary: Strategic Lawsuits against Public Participation*, <http://legal-dictionary.thefreedictionary.com/Strategic+Lawsuits+against+Public+Participation> (last visited Mar. 15, 2023); Reporters Committee for Freedom of the Press, *Understanding Anti-SLAPP laws*, <https://www.rcfp.org/resources/anti-slapp-laws/> (last visited Mar. 15, 2023).

<sup>68</sup> Section 768.295(1), F.S.

<sup>69</sup> *Id.*

<sup>70</sup> Section 768.295(3), F.S.

<sup>71</sup> Section 768.295(4), F.S.

<sup>72</sup> *Id.*

<sup>73</sup> See generally s. 720.304, F.S.

<sup>74</sup> Section 720.304(4)(c), F.S.

### III. Effect of Proposed Changes:

SB 1220 creates and amends several statutes relating to defamation causes of action. Most significantly, the bill sets the burdens of proof for a party to prevail in a defamation action, matters not addressed in the current defamation statutes. The burdens of proof in the bill appear to make the actual malice standard, set by the United States Supreme Court in *New York Times v. Sullivan*<sup>75</sup> and other cases, apply to fewer people and in fewer circumstances than in the Court's interpretations of the First Amendment. By setting the burdens of proof in statute, the bill may lead to appeals of decisions in defamation actions. These appeals may eventually provide the United States Supreme Court with additional opportunities to reconsider whether the First Amendment requires certain plaintiffs to prove that a defendant acted with actual malice in making a defamatory statement. For the most part, lowering the burden of proof set forth in the bill will not apply to elected officials who bring defamation actions.

#### Defamation

The bill creates s. 770.001, F.S., entitled "Definition," to provide that as used in chapter 770, F.S., governing defamation, an action for defamation includes actions for libel, slander, and related causes of action recognized in Florida. This provision is a codification of case law and not a change in Florida law.<sup>76</sup>

The bill creates s. 770.045, F.S., entitled "Defamation by photograph, video, or audio recording," to provide that the publication of an altered or unaltered photograph, video, or audio recording may form the basis of a defamation action. This provision is a codification of case law and not a change in Florida law.

The bill creates s. 770.09, F.S., entitled "Public figures for purposes of defamation or related actions," to provide that a person is not a public figure for purposes of a defamation action if the person acquires fame or notoriety from one or more of the following:

- Publicly defending himself or herself against accusations.<sup>77</sup>
- Granting an interview on a specific topic.<sup>78</sup>
- Obtaining public employment in a capacity other than as an elected officeholder or an appointee of an elected officeholder.<sup>79</sup>
- Uploading a video, image, or statement on the Internet which has reached a broad audience.<sup>80</sup>

<sup>75</sup> 376 U.S. 254 (1964).

<sup>76</sup> *Jews for Jesus*, 997 So. 2d at 1108 (finding that defamation by implication is subsumed within the tort of defamation).

<sup>77</sup> Compare to *Berisha*, 141 S.Ct. at 2429 (Gorsuch, J., dissenting) (stating that "[l]ower courts have even said that an individual can become a limited purpose public figure simply by defending himself from a defamatory statement"); *McKee v. Cosby*, 139 S.Ct. 675 (2019) (Thomas, J., concurring) (explaining that the court of appeals "concluded that, by disclosing her accusation to a reporter, McKee had 'thrust' herself to the 'forefront' of the public controversy over 'sexual assault allegations implicating Cosby' and was therefore a 'limited-purpose public figure'").

<sup>78</sup> Compare to *Mile Marker, Inc.*, 811 So. 2d at 846 (showing that the plaintiff became a public figure because he gave an interview among other things).

<sup>79</sup> Compare to *Rosenblatt*, 383 U.S. at 86 (explaining that the public official designation for purposes of the actual malice standard applies to government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs).

<sup>80</sup> Compare to *Berisha*, 141 S.Ct. at 2429 (Gorsuch, J., dissenting) (stating that "private citizens can become 'public figures' on social media overnight").

The provisions above are inconsistent with court opinions defining whether a person is a public figure and making the actual malice standard applicable to public figures.

The bill creates s. 770.11, F.S., entitled “Clarifying defamation standards,” to provide that a defamatory allegation is made with actual malice for purposes of a defamation action if any of the following apply:

- The defamatory allegation is fabricated by the defendant, is the product of his or her imagination, or is based wholly on an unverified, anonymous report.<sup>81</sup>
- The defamatory allegation is so inherently improbable that only a reckless person would have put it into circulation.<sup>82</sup>
- If the defamatory allegation was based on an informant or an informant’s report, there are obvious reasons to doubt the veracity of the informant or his or her report.<sup>83</sup> Obvious reasons exist to doubt the veracity of a report if:
  - There is sufficient contrary evidence that was known or should have been known to the defendant after a reasonable investigation;<sup>84</sup> or
  - The report is inherently improbable or implausible on its face.<sup>85</sup>

The provisions above codify case law describing acts constituting actual malice.

The bill creates s. 770.12, F.S., entitled “Unidentified source for a defamatory statement; negligence standards applicable,” to provide that if the actual malice standard otherwise applies to a defamation action in which the defendant does not identify the source for a defamatory statement, the plaintiff need only prove that the defendant acted negligently in making the defamatory statement.

This provision may require a person who does not disclose the identity of the person who provided the information for the defamatory statement to be subject to the lower negligence standard in a defamation action. With respect to public figures, the provision conflicts with case law that would subject a public figure to the higher actual malice standard.

The bill creates s. 770.13, F.S., entitled “Defamatory statements unrelated to public figure status; negligence standard applicable,” to provide that in a defamation action based on an alleged defamatory statement that does not relate to the reasons for the plaintiff’s status as a public figure, the plaintiff need only prove that the defendant acted negligently in making or repeating the defamatory statement.

Current case law does not appear to create exceptions from the actual malice standard for persons who are deemed public figures.

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<sup>81</sup> *St. Amant*, 390 U.S. at 732 (explaining that actual malice likely exists if “a publisher’s allegations are so inherently improbable that only a reckless man would have put them in circulation”).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *McFarlane v. Sheridan Square Press, Inc.*, 91 F.3d 1501, 1511 (D.C. Cir. 1996) (explaining that “actual malice may be inferred from an author’s or publisher’s inability to corroborate a story only when, in attempting to corroborate, he encounters persuasive evidence that contradicts the allegation”).

<sup>85</sup> *St. Amant*, 390 U.S. at 732 (explaining that recklessness for purposes of the actual malice standard “may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports”).



The bill amends the statute governing venue for defamation actions<sup>86</sup> to provide that venue for a cause of action for defamation is proper in any county identified in the general venue statute,<sup>87</sup> including any county where the defamatory material is accessed by a third party. This provision codifies case law interpreting the venue statutes.<sup>88</sup>

### **Journalist's Privilege**

The bill amends the statute codifying the journalist's privilege,<sup>89</sup> to provide that it does not apply to defamation or related actions against a professional journalist.

The journalist's privilege "has the effect of making proof of actual malice impossible because establishing what the publisher knew or did not know at the time of the publication depends on the kind and quality of the information and identity of the sources at hand when the publication was made."<sup>90</sup>

### **Strategic Lawsuits against Public Participation**

The bill amends two anti-SLAPP statutes<sup>91</sup> to provide that a defendant in an action for defamation or similar action who files a motion to dismiss or motion for summary judgment under those statutes is entitled to attorney fees and costs only if the allegedly defamatory statement was not negligently made. The bill also provides that nothing in those statutes shift a party's burden of proof.<sup>92</sup>

Existing law allows a person who negligently makes a defamatory statement to use the anti-SLAPP statutes to recover attorney fees and costs from the defamed individual if the defamed individual is unable to prove that the defamatory statements were made with actual malice.

### **Effective Date**

The bill takes effect July 1, 2023.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>86</sup> Section 770.05, F.S.

<sup>87</sup> Section 47.011, F.S.

<sup>88</sup> See *Lowery v. McBee*, 322 So. 3d 110 (Fla. 4<sup>th</sup> DCA 2021).

<sup>89</sup> Section 90.5015, F.S.

<sup>90</sup> *News-Journal Corp. v. Carson*, 741 So. 2d 572, 576 (Fla. 5<sup>th</sup> DCA 1999) (recognizing further that "some state shield laws are made inapplicable in defamation suits where bad faith or malice are alleged or where the media defendant raises a confidential source as a defense" and citing Carl C. Monk, *Evidentiary Privilege for Journalists' Sources: Theory and Statutory Protection*, 51 MO. L.REV. 1, 8 (1986), in support).

<sup>91</sup> Sections 768.295 and 720.304, F.S.

<sup>92</sup> The provision that the anti-SLAPP statute does not shift the burden to plaintiffs to establish that their claims have merit is consistent with *Lam v. Univision Communications, Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021), but inconsistent with *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019).

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

The following provisions in the bill potentially conflict with *New York Times* and its progeny, which construe defamation standards in light of First Amendment protections:

- A person is not a public figure for purposes of a defamation action if the person acquires fame or notoriety from one or more of the following:
  - Publicly defending himself or herself against accusations.
  - Granting an interview on a specific topic.
  - Obtaining public employment in a capacity other than as an elected officeholder or an appointee of an elected officeholder.
  - Uploading a video, image, or statement on the Internet which has reached a broad audience.
- If the actual malice standard otherwise applies to a defamation action in which the defendant does not identify the source for a defamatory statement, the plaintiff need only prove that the defendant acted negligently in making the defamatory statement.
- ‘In a defamation action based on an alleged defamatory statement that does not relate to the reasons for the plaintiff’s status as a public figure, the plaintiff need only prove that the defendant acted negligently in making or repeating the statement.

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

None.

**B. Private Sector Impact:**

Because the bill may ultimately make it easier for private plaintiffs to sue for defamation, it is anticipated that defendants in such cases may have to pay more in awards (to satisfy meritorious defamation claims), claim settlements, and additional legal fees and costs. On the other hand, persons held to higher standards to avoid making defamatory statements may incur additional costs for conducting investigations before making potentially defamatory statements.

**C. Government Sector Impact:**

Because the bill may ultimately make it easier for private plaintiffs to sue for defamation, it is anticipated that such suits will increase court caseloads to some degree, and the costs associated with maintaining same.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 90.5015, 770.05, 768.295, and 720.304.

This bill creates the following sections of the Florida Statutes: 770.001, 770.045, 770.09, 770.11, 770.12, and 770.13.

**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 Brodeur

10-01866B-23

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1 A bill to be entitled  
 2 An act relating to defamation and related actions;  
 3 amending s. 90.5015, F.S.; specifying that the  
 4 professional journalist's privilege does not apply to  
 5 defamation or related actions; creating s. 770.001,  
 6 F.S.; specifying that an action for defamation  
 7 includes other specified actions; creating s. 770.045,  
 8 F.S.; specifying that the publication of an altered or  
 9 unaltered photograph, video, or audio recording may  
 10 form the basis of a defamation action; amending s.  
 11 770.05, F.S.; specifying proper venue for a defamation  
 12 cause of action; creating s. 770.09, F.S.; specifying  
 13 that certain actions are insufficient to make a person  
 14 a public figure for purposes of a defamation action;  
 15 creating s. 770.11, F.S.; specifying that a defamatory  
 16 allegation is made with actual malice for purposes of  
 17 a defamation action under certain circumstances;  
 18 creating s. 770.12, F.S.; providing that the  
 19 negligence standard applies in a defamation action in  
 20 which the defendant does not identify the source for a  
 21 defamatory statement; creating s. 770.13, F.S.;  
 22 providing that the negligence standard applies to a  
 23 defamation action by a public figure if the defamatory  
 24 statement does not relate to the reasons for the  
 25 plaintiff's public figure status; amending ss. 768.295  
 26 and 720.304, F.S.; specifying that defendants in  
 27 certain actions are only entitled to attorney fees and  
 28 costs under certain circumstances; providing  
 29 construction; providing an effective date.

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30  
 31 Be It Enacted by the Legislature of the State of Florida:  
 32  
 33 Section 1. Section 90.5015, Florida Statutes, is amended to  
 34 read:  
 35 90.5015 Journalist's privilege.—  
 36 (1) DEFINITIONS.—For purposes of this section, the term:  
 37 (a) "Professional journalist" means a person regularly  
 38 engaged in collecting, photographing, recording, writing,  
 39 editing, reporting, or publishing news, for gain or livelihood,  
 40 who obtained the information sought while working as a salaried  
 41 employee of, or independent contractor for, a newspaper, news  
 42 journal, news agency, press association, wire service, radio or  
 43 television station, network, or news magazine. Book authors and  
 44 others who are not professional journalists, as defined in this  
 45 paragraph, are not included in the provisions of this section.  
 46 (b) "News" means information of public concern relating to  
 47 local, statewide, national, or worldwide issues or events.  
 48 (2) PRIVILEGE.—A professional journalist has a qualified  
 49 privilege not to be a witness concerning, and not to disclose  
 50 the information, including the identity of any source, that the  
 51 professional journalist has obtained while actively gathering  
 52 news. This privilege applies only to information or eyewitness  
 53 observations obtained within the normal scope of employment and  
 54 does not apply to physical evidence, eyewitness observations, or  
 55 visual or audio recording of crimes. A party seeking to overcome  
 56 this privilege must make a clear and specific showing that:  
 57 (a) The information is relevant and material to unresolved  
 58 issues that have been raised in the proceeding for which the

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information is sought;

(b) The information cannot be obtained from alternative sources; and

(c) A compelling interest exists for requiring disclosure of the information.

(3) DISCLOSURE.—A court shall order disclosure pursuant to subsection (2) only of that portion of the information for which the showing under subsection (2) has been made and shall support such order with clear and specific findings made after a hearing.

(4) WAIVER.—A professional journalist does not waive the privilege by publishing or broadcasting information.

(5) CONSTRUCTION.—This section must not be construed to limit any privilege or right provided to a professional journalist under law.

(6) AUTHENTICATION.—Photographs, diagrams, video recordings, audio recordings, computer records, or other business records maintained, disclosed, provided, or produced by a professional journalist, or by the employer or principal of a professional journalist, may be authenticated for admission in evidence upon a showing, by affidavit of the professional journalist, or other individual with personal knowledge, that the photograph, diagram, video recording, audio recording, computer record, or other business record is a true and accurate copy of the original, and that the copy truly and accurately reflects the observations and facts contained therein.

(7) ACCURACY OF EVIDENCE.—If the affidavit of authenticity and accuracy, or other relevant factual circumstance, causes the court to have clear and convincing doubts as to the authenticity

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or accuracy of the proffered evidence, the court may decline to admit such evidence.

(8) APPLICATION TO DEFAMATION AND RELATED ACTIONS.—This section does not apply to defamation or related actions against a professional journalist.

(9) SEVERABILITY.—If any provision of this section or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this section.

Section 2. Section 770.001, Florida Statutes, is created to read:

770.001 Definition.—As used in this chapter, an action for defamation includes actions for libel, slander, and related causes of action recognized in this state.

Section 3. Section 770.045, Florida Statutes, is created to read:

770.045 Defamation by photograph, video, or audio recording.—The publication of an altered or unaltered photograph, video, or audio recording may form the basis of a defamation action.

Section 4. Section 770.05, Florida Statutes, is amended to read:

770.05 Venue for defamation actions ~~Limitation of choice of venue.—~~

(1) A ~~No~~ person may not ~~shall~~ have more than one choice of venue for damages for libel or slander, invasion of privacy, or any other tort founded upon any single publication, exhibition, or utterance, such as any one edition of a newspaper, book, or

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magazine, any one presentation to an audience, any one broadcast over radio or television, or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions.

(2) Venue for a cause of action for defamation is proper in a county identified in s. 47.011, including any county where the defamatory material is accessed by a third party.

Section 5. Section 770.09, Florida Statutes, is created to read:

770.09 Public figures for purposes of defamation or related actions.—A person is not a public figure for purposes of a defamation action if the person acquires fame or notoriety from one or more of the following:

(1) Publicly defending himself or herself against accusations.

(2) Granting an interview on a specific topic.

(3) Obtaining public employment in a capacity other than as an elected officeholder or an appointee of an elected officeholder.

(4) Uploading a video, image, or statement on the Internet which has reached a broad audience.

Section 6. Section 770.11, Florida Statutes, is created to read:

770.11 Clarifying defamation standards.—A defamatory allegation is made with actual malice for purposes of a defamation action if any of the following apply:

(1) The defamatory allegation is fabricated by the defendant, is the product of his or her imagination, or is based wholly on an unverified, anonymous report.

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(2) The defamatory allegation is so inherently improbable that only a reckless person would have put it into circulation.

(3) If the defamatory allegation was based on an informant or an informant's report, there are obvious reasons to doubt the veracity of the informant or his or her report. Obvious reasons exist to doubt the veracity of a report if:

(a) There is sufficient contrary evidence that was known or should have been known to the defendant after a reasonable investigation; or

(b) The report is inherently improbable or implausible on its face.

Section 7. Section 770.12, Florida Statutes, is created to read:

770.12 Unidentified source for a defamatory statement; negligence standard applicable.—If the actual malice standard otherwise applies to a defamation action in which the defendant does not identify the source for a defamatory statement, the plaintiff need only prove that the defendant acted negligently in making the defamatory statement.

Section 8. Section 770.13, Florida Statutes, is created to read:

770.13 Defamatory statements unrelated to public figure status; negligence standard applicable.—In a defamation action based on an alleged defamatory statement that does not relate to the reasons for the plaintiff's status as a public figure, the plaintiff need only prove that the defendant acted negligently in making or repeating the defamatory statement.

Section 9. Subsection (4) of section 768.295, Florida Statutes, is amended to read:

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175 768.295 Strategic Lawsuits Against Public Participation  
 176 (SLAPP) prohibited.—  
 177 (4) A person or entity sued by a governmental entity or  
 178 another person in violation of this section has a right to an  
 179 expeditious resolution of a claim that the suit is in violation  
 180 of this section. A person or entity may move the court for an  
 181 order dismissing the action or granting final judgment in favor  
 182 of that person or entity. The person or entity may file a motion  
 183 for summary judgment, together with supplemental affidavits,  
 184 seeking a determination that the claimant's or governmental  
 185 entity's lawsuit has been brought in violation of this section.  
 186 The claimant or governmental entity shall thereafter file a  
 187 response and any supplemental affidavits. As soon as  
 188 practicable, the court shall set a hearing on the motion, which  
 189 shall be held at the earliest possible time after the filing of  
 190 the claimant's or governmental entity's response. The court may  
 191 award, subject to the limitations in s. 768.28, the party sued  
 192 by a governmental entity actual damages arising from a  
 193 governmental entity's violation of this section. The court shall  
 194 award the prevailing party reasonable attorney fees and costs  
 195 incurred in connection with a claim that an action was filed in  
 196 violation of this section. A defendant in an action for  
 197 defamation or similar action who files a motion to dismiss or  
 198 motion for summary judgment under this section is entitled to  
 199 attorney fees and costs only if the statement was not  
 200 negligently made. This subsection does not shift a party's  
 201 burden of proof.

202 Section 10. Paragraph (c) of subsection (4) of section  
 203 720.304, Florida Statutes, is amended to read:

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204 720.304 Right of owners to peaceably assemble; display of  
 205 flag; SLAPP suits prohibited.—  
 206 (4) It is the intent of the Legislature to protect the  
 207 right of parcel owners to exercise their rights to instruct  
 208 their representatives and petition for redress of grievances  
 209 before the various governmental entities of this state as  
 210 protected by the First Amendment to the United States  
 211 Constitution and s. 5, Art. I of the State Constitution. The  
 212 Legislature recognizes that "Strategic Lawsuits Against Public  
 213 Participation" or "SLAPP" suits, as they are typically called,  
 214 have occurred when members are sued by individuals, business  
 215 entities, or governmental entities arising out of a parcel  
 216 owner's appearance and presentation before a governmental entity  
 217 on matters related to the homeowners' association. However, it  
 218 is the public policy of this state that government entities,  
 219 business organizations, and individuals not engage in SLAPP  
 220 suits because such actions are inconsistent with the right of  
 221 parcel owners to participate in the state's institutions of  
 222 government. Therefore, the Legislature finds and declares that  
 223 prohibiting such lawsuits by governmental entities, business  
 224 entities, and individuals against parcel owners who address  
 225 matters concerning their homeowners' association will preserve  
 226 this fundamental state policy, preserve the constitutional  
 227 rights of parcel owners, and assure the continuation of  
 228 representative government in this state. It is the intent of the  
 229 Legislature that such lawsuits be expeditiously disposed of by  
 230 the courts.  
 231 (c) A parcel owner sued by a governmental entity, business  
 232 organization, or individual in violation of this section has a

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right to an expeditious resolution of a claim that the suit is in violation of this section. A parcel owner may petition the court for an order dismissing the action or granting final judgment in favor of that parcel owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the governmental entity's, business organization's or individual's response. The court may award the parcel owner sued by the governmental entity, business organization, or individual actual damages arising from the governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing parcel owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney ~~attorney's~~ fees and costs incurred in connection with a claim that an action was filed in violation of this section. A defendant in an action for defamation or similar action who files a motion to dismiss or motion for summary judgment under this paragraph is entitled to attorney fees and costs only if the statement was not negligently made. This paragraph does not shift a party's burden of proof.

Section 11. This act shall take effect July 1, 2023.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Committee on Agriculture,  
Environment, and General Government, *Chair*  
Health Policy, *Vice Chair*  
Appropriations  
Appropriations Committee on Health  
and Human Services  
Children, Families, and Elder Affairs  
Community Affairs  
Regulated Industries  
Rules

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR JASON BRODEUR**

10th District

March 22, 2023

The Honorable Debbie Mayfield  
Chair, Rules  
400 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Mayfield,

I respectfully request that **Senate Bill 1220, Defamation and Related Actions**, be placed on the agenda of the Rules Committee meeting to be considered at your earliest convenience.

If you have any questions or concerns, please do not hesitate to reach out to me or my office.

Sincerely,

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive.

Senator Jason Brodeur – District 10

CC: Philip Twogood – Staff Director  
Shasta W. Kruse – Deputy Staff Director  
Cynthia Futch – Administrative Assistant

### REPLY TO:

- ☐ 110 Timberlachen Circle, Suite 1012, Lake Mary, Florida 32746 (407) 333-1802
- ☐ 405 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5010

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**KATHLEEN PASSIDOMO**  
President of the Senate

**DENNIS BAXLEY**  
President Pro Tempore

**BILL WAS TEMPORARILY POSTPONED**

**BEFORE ANY PUBLIC APPEARANCE**

TP

# APPEARANCE RECORD

4.5.23

Meeting Date

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

1220

Bill Number or Topic

Amendment Barcode (if applicable)

Name

PRESTON SLOTT

Phone

Address

7421 LAUREL RIDGE LN

Email

preston@iheartradio.com

Street

TW

FL

32312

City

State

Zip

Speaking:

☐ For

☒ Against

☐ Information

☐ Information

OR

Waive Speaking:

☐ In Support

☐ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

4/5

Meeting Date

The Florida Senate

## APPEARANCE RECORD

SB 1220

Bill Number or Topic

Rules

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Bobby Block

Phone

321 794 7776

Address

1258 Guy Island Dr

Email

bblock@floridafaf.org

Street

Merritt Island, FL

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

### PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
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(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

**APPEARANCE RECORD**

4/5/2023

Meeting Date

Rules

Committee

SB1220

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Carol LoCicero

Phone

813-984-3060

Address

601 S Boulevard

Email

clocicero@floblawfirm.com

Street

Tampa, FL

33606

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☒I am appearing without  
compensation or sponsorship.☐I am a registered lobbyist,  
representing:☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

4/5/23

Meeting Date

SB 1220

Bill Number or Topic

SENATE RULES

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name JOSEPH COHN

Phone (215) 717-3473

Address 510 WALNUT STREET, SUITE 1250

Email joe@thefire.org

Street

PHILADELPHIA

City

PA

State

19106

Zip

Speaking: ☐ For ☒ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☐ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without compensation or sponsorship.

☒ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FOUNDATION FOR INDIVIDUAL RIGHTS & EXPRESSION (FIRE)

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

1220

Meeting Date

Bill Number or Topic

Rules

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Equality Florida

Phone

727-320-6275

Address

Street

Email

jw@omnipublic.global

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

4-5-23

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

1220

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Abdelilah Skhir (Ab-dee-luh Skeer) Phone 786-363-1660

Address 4343 W Flagler St #400 Email askhir@aclufl.org

Street

Miami

City

FL

State

33134

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

ACLU of Florida

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

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S-001 (08/10/2021)



The Florida Senate

# APPEARANCE RECORD

SB 1220

Bill Number or Topic

Meeting Date

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

4 / 5 / 23

Meeting Date

Rule 5

Committee

SB 1220

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ashley Page

Phone

407-538-1013

Address

906 Jamtown Dr

Street

Email

Winter Park

City

FL

State

32792

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒

I am appearing without compensation or sponsorship.

☐

I am a registered lobbyist, representing:

☐

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

**APPEARANCE RECORD**

04/05/23

Meeting Date

Rules

Committee

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SB1220

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Kim Kutz

Phone

2152007162

Address

4645 Ellis Cir

Email

Street

Titusville FL 32780

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**I am appearing without  
compensation or sponsorship.☐I am a registered lobbyist,  
representing:☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

**APPEARANCE RECORD**4/5/23  
Meeting Daterules  
CommitteeDeliver both copies of this form to  
Senate professional staff conducting the meetingSB 1220  
Bill Number or Topic

Amendment Barcode (if applicable)

Name

Dr. Rich Templin

Phone

850-224-6920

Address

135 S. Manide

Email

Street

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☐I am appearing without  
compensation or sponsorship.☒I am a registered lobbyist,  
representing:

Florida AFL-CIO

☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

4-5-2023

Meeting Date

Rules

Committee

1220

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Sam Morley

Phone

850 2124395

Address

306 W. College Ave

Email

smorley@flpress.com

Street

City

JMM FL

State

Zip

32202

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Florida Press  
Association

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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

S-001 (08/10/2021)

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

04/05/2023

Meeting Date

Rules

Committee

1220

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Javier Rodriguez

Phone

3214422161

Address

2841 Spring Breeze Way

Email

javierodriguez.af@gmail.com

Street

Kissimmee

State

FL

34144

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1332

INTRODUCER: Criminal Justice Committee and Senator Martin

SUBJECT: Missing Persons

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Erickson</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1332 addresses missing person reporting and investigations by requiring law enforcement agencies in the state to adopt policies related to standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the National Missing and Unidentified Persons System (NamUs), a national information clearinghouse and resource center for missing, unidentified, and unclaimed person cases across the United States. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in NamUs. The bill prohibits the removal of a missing child or missing adult entry on the NamUs database based solely on the age of the missing child or missing adult.

The bill also requires a law enforcement agency receiving a report of a missing child to immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion in the NamUs database.

The bill also requires a law enforcement agency to transmit to NamUs a credible police report that an adult is missing. The agency must transmit this report within 2 hours after its receipt.

Finally, the bill requires a law enforcement agency having jurisdiction over a case to purge case information from NamUs and notify the Missing Endangered Persons Clearinghouse.



The bill may impact local law enforcement agencies but that impact is indeterminate. There is no information available at present to indicate that this impact cannot be absorbed within existing resources. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2023.

## **II. Present Situation:**

### **Florida Crime Information Center**

The Florida Crime Information Center (FCIC) is a statewide information system provided by the Florida Department of Law Enforcement (FDLE) that allows users over 18 years of age who are members of an agency with statutory access to criminal justice information the ability to search information relating to missing and stolen property, missing persons, unidentified persons, people that are wanted as a result of ongoing criminal investigations, protection orders, persons on supervised release, and other criminal history information.<sup>1</sup> The FCIC deals exclusively with records, persons, and missing items from Florida,<sup>2</sup> and is tied to the National Crime Information Center of the Federal Bureau of Investigation (FBI) in Washington D.C.<sup>3</sup>

### **National Crime Information Center**

The National Crime Information Center (NCIC) is an electronic criminal records database that allows criminal justice agencies to enter or search for information related to stolen property, missing or wanted persons, domestic violence protection orders, and criminal histories, and provides access to the National Sex Offender Registry.<sup>4</sup> The NCIC allows federal, state, local, and tribal criminal justice users and law enforcement agencies to enter records into the NCIC, which can then be searched by other criminal justice and law enforcement agencies. Agencies must enter, modify, and remove their own records. Additionally, NCIC policy requires, among other things, that agencies regularly validate their records and conduct periodic audits to ensure data quality and adherence to all security rules.<sup>5</sup>

The NCIC contains seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles, and 15 persons files related to supervised release, the National Sex Offender Registry, foreign fugitives, immigration violators, missing persons, protection orders, extreme risk protection orders, unidentified persons, protective interests, gangs, known or suspected terrorists, wanted persons, identity theft, violent persons, and the

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<sup>1</sup> *FCIC/NCIC FAQ*, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/Limited-Access/FAQ> (last visited on March 14, 2023).

<sup>2</sup> *Florida Arrests*, Florida Crime Information Center, Florida Department of Law Enforcement, available at <https://www.flarrests.org/Florida-Crime-Information-Center.html> (last visited on March 14, 2023); *The Florida Crime Information Center, Public Access System (PAS)*, Florida Department of Law Enforcement, available at <http://pas.fdle.state.fl.us/pas/restricted/PAS/home/home.jsf> (last visited on March 14, 2023).

<sup>3</sup> *Florida Crime Information Center*, Office of Justice Programs, U.S. Department of Justice, available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/florida-crime-information-center> (last visited on March 14, 2023).

<sup>4</sup> *National Crime Information Systems*, U.S. Department of Justice, available at <https://www.justice.gov/tribal/national-crime-information-systems> (last visited on March 14, 2023).

<sup>5</sup> *National Crime Information Center (NCIC)*, Federal Bureau of Investigation, available at <https://le.fbi.gov/informational-tools/ncic> (last visited on March 14, 2023).



National Instant Criminal Background Check System. There are more than 17 million active records within NCIC.<sup>6</sup>

The NCIC also contains images that can be matched with NCIC records to help identify people and property items.<sup>7</sup> As of December 31, 2022, there were 97,127 active missing person entries in the NCIC. Children under the age of 18 account for 30,522, or 31 percent, of the records.<sup>8</sup>

### **Missing Child and Missing Adult Reports**

Section 937.021, F.S., requires law enforcement agencies in the state to adopt written policies that specify the procedures to be used to investigate reports of missing children<sup>9</sup> and missing adults.<sup>10</sup> The policies must ensure that cases are investigated promptly using appropriate resources and must include:

- Requirements for accepting missing child and missing adult reports;
- Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and
- Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the FCIC and the NCIC. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.<sup>11</sup>

Entries concerning a missing child or missing adult may not be removed based solely on the age of the missing person.<sup>12</sup> A report that a child or adult is missing must be accepted by and filed with the law enforcement agency having jurisdiction in the county or municipality in which the child or adult was last seen.<sup>13</sup> When a parent or guardian, the Department of Children and Families (DCF), a community-based care provider, or a sheriff's office providing investigative services for the DCF files a police report that a child is missing, the law enforcement agency receiving the report must:

- Immediately inform all on-duty law enforcement officers of the missing child report;
- Communicate the report to every other law enforcement agency having jurisdiction in the county; and
- Transmit the report for inclusion in the FCIC and the NCIC databases within two hours of receiving the report.<sup>14</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> 2022 NCIC Missing Person and Unidentified Person Statistics, Federal Bureau of Investigation, available at <https://www.fbi.gov/file-repository/2022-ncic-missing-person-and-unidentified-person-statistics.pdf/view> (last visited March 15, 2023).

<sup>9</sup> “Missing child” means a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency. Section 937.0201(3), F.S.

<sup>10</sup> “Missing adult” means a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency. Section 937.0201(2), F.S.

<sup>11</sup> Section 937.021(1), F.S.

<sup>12</sup> Section 937.021(2), F.S.

<sup>13</sup> Section 937.021(3), F.S. This section does not preclude a law enforcement agency from accepting a missing child or missing adult report when agency jurisdiction cannot be determined.

<sup>14</sup> Section 937.021(4)(a), F.S.

When a credible police report is filed regarding a missing adult, the law enforcement agency receiving the report must transmit the report for inclusion in the FCIC and the NCIC databases within two hours of receiving the report.<sup>15</sup>

If a missing child or missing adult is not located within 90 days after the report is filed, the law enforcement agency that accepted the report must attempt to obtain a biological specimen for DNA analysis from the missing child or missing adult or appropriate family member.<sup>16</sup>

### **Missing Endangered Persons Clearinghouse**

Pursuant to s. 937.022, F.S., the FDLE maintains the Missing Endangered Persons Clearinghouse (Clearinghouse), which is designed to provide a centralized repository of information on missing endangered persons<sup>17</sup> and implement intrastate communication and exchange of information relating to missing persons. The Clearinghouse is required to collect, process, maintain, and disseminate accurate and complete information on missing endangered persons.<sup>18</sup> Every state, county, and municipal law enforcement agency is required to submit information concerning missing endangered persons to the Clearinghouse.<sup>19</sup>

Any person with knowledge concerning a child or adult younger than 26 years of age whose whereabouts are known may submit a missing endangered person report<sup>20</sup> to the Clearinghouse. This information, however, should first be reported to the appropriate law enforcement agency within the county in which the child or adult went missing, which the law enforcement agency will enter into the FCIC and the NCIC. If the missing child or adult has been located the individual who submitted the original report must notify law enforcement and the Clearinghouse.<sup>21</sup>

Only a law enforcement agency having jurisdiction over the case:

- May submit a missing endangered person report to the Clearinghouse involving a missing adult 26 years of age or older who is suspected by law enforcement of being endangered or the victim of criminal activity; or

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<sup>15</sup> Section 937.021(4)(b), F.S.

<sup>16</sup> Section 937.021(6), F.S. This section does not prevent a law enforcement agency from attempting to obtain a biological specimen for DNA analysis prior to the expiration of the 90-day period. However, this section is contingent on the availability of federal funding for the submission and processing of DNA samples for analysis.

<sup>17</sup> “Missing endangered person” means any of the following: 1) a missing child; 2) a missing adult younger than 26 years of age; 3) a missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; 4) a missing adult who meets the criteria for activation of the Silver Alert Plan; and 5) a missing adult who meets the criteria for activation of a Purple Alert, pursuant to s. 937.0205, F.S. Section 937.0201(4), F.S.

<sup>18</sup> Section 937.022(3)(c), F.S.

<sup>19</sup> Section 937.022(1-2) and (3)(a-b), F.S.

<sup>20</sup> A “missing endangered person report” means a report prepared on a form prescribed by the FDLE by rule for use by the public and law enforcement agencies in reporting information to the Missing Endangered Persons Information Clearinghouse about a missing endangered person. Section 937.0201(5), F.S.

<sup>21</sup> Section 937.022(4), F.S.

- Make a request to the Clearinghouse to activate a Silver Alert<sup>22</sup> or Purple Alert<sup>23</sup> involving a missing adult.<sup>24</sup>

If a missing endangered person is located, the law enforcement agency having jurisdiction over the case must immediately purge information about the case from the FCIC and the NCIC databases and notify the Clearinghouse.<sup>25</sup>

### **National Missing and Unidentified Persons System**

In 2005, the U.S. Deputy Attorney General created the National Missing Persons Task Force, which identified the need to improve access to information that would help solve missing and unidentified person cases. The National Missing and Unidentified Persons System (NamUs) was created to improve access to information to help solve missing and unidentified person cases.<sup>26</sup> The Unidentified Persons System (UP) database was launched in 2007 and the Missing Persons database (MP) was launched in 2008 as products of the National Missing Persons Task Force's recommendations. The databases were combined in 2009 to expand the ability of the NamUs to make associations between missing and unidentified persons cases. The NamUs acts as a nationwide information clearinghouse, allowing for the search and entry of missing, unidentified, and unclaimed person cases in the U.S. and provides free-of-charge forensic services, investigative support, and training and outreach.<sup>27</sup>

Florida law enforcement agencies are not currently required to enter or maintain records of missing persons in the NamUs database.

### **III. Effect of Proposed Changes:**

The bill amends s. 937.021, F.S., to require law enforcement agencies in the state to adopt policies related to standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the National Missing and Unidentified Persons System (NamUs), a national information clearinghouse and resource center for missing, unidentified, and unclaimed person cases across the United States. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in NamUs. The bill prohibits the removal of a missing child or

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<sup>22</sup> The Silver Alert Plan is used to locate missing persons suffering from an irreversible deterioration of intellectual faculties, such as Alzheimer's disease or dementia that has been verified by law enforcement. Additional recommended criteria for activation of the plan include: 1) the person is 60 years of age or older; or 2) the person is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a local Silver Alert may be the only possible way to recuse the missing person. FDLE, *Silver Activation Steps*, Florida Department of Law Enforcement, available at <https://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps.aspx> (last visited on March 14, 2023).

<sup>23</sup> A Purple Alert concerns a missing adult: 1) who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder, an intellectual disability or a developmental disability, as those terms are defined in s. 393.063, F.S., a brain injury, another physical, mental, or emotional disability that is not related to substance abuse, or any combination of these; 2) whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself, as determined by the local law enforcement agency; 3) who cannot be returned to safety without law enforcement intervention; or 4) who does not meet the criteria for activation of a local Silver Alert Plan. Section 937.0205(4)(a), F.S.

<sup>24</sup> Section 937.022(3)(b)3.-4., F.S.

<sup>25</sup> Section 937.022(5), F.S.

<sup>26</sup> *National Missing and Unidentified Persons System*, Office of Justice Programs, U.S. Department of Justice, available at <https://namus.nij.gov/about> (last visited on March 14, 2023).

<sup>27</sup> *Id.*

missing adult entry on the NamUs database based solely on the age of the missing child or missing adult.

The bill also requires a law enforcement agency receiving a report of a missing child from a parent or guardian, the DCF, a community-based care provider, or a sheriff's office providing investigative services for the DCF, or receiving a credible report of a missing adult, to immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion in the NamUs database.<sup>28</sup>

The bill also requires a law enforcement agency to transmit to NamUs a credible police report that an adult is missing. The agency must transmit this report within 2 hours after its receipt.

Finally, the bill amends s. 937.022, F.S., to require a law enforcement agency having jurisdiction over a case to purge case information from NamUs and notify the Missing Endangered Persons Clearinghouse.

The bill takes effect July 1, 2023.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

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<sup>28</sup> The 2-hour transmittal requirement may not be needed for transmittal of a police report to the NamUs database. *See* e-mail from Jennifer Pritt, Executive Director, Florida Police Chiefs Association, dated March 15, 2023 (on file with the Senate Committee on Criminal Justice).

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill may have an indeterminate impact on local law enforcement agencies, but there is no information available at present to indicate that this impact cannot be absorbed within existing resources. Staff contacted the Florida Sheriffs Association (FSA) and Florida Police Chiefs Association (FPCA) for any input they may have regarding the fiscal impact of the bill. The FSA indicated they had reviewed the bill and did not oppose it, but did not review the bill for fiscal impact.<sup>29</sup> The FPCA also reviewed the bill but did not provide any comments specific to the fiscal impact of the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes. 937.021 and 937.022.

**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 Criminal Justice on March 20, 2023:**

The committee substitute requires a law enforcement agency having jurisdiction over a case to purge case information from NamUs and notify the Missing Endangered Persons Clearinghouse.

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<sup>29</sup> E-mail from Matt Dunagan, Deputy Executive Director of Operations, Florida Sheriffs Association, dated March 14, 2023 (on file with the Senate Committee on Criminal Justice).

B. Amendments:

None.

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

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By the Committee on Criminal Justice; and Senator Martin

591-02787-23

20231332c1

A bill to be entitled

An act relating to missing persons; amending ss. 937.021 and 937.022, F.S.; revising provisions concerning missing children and adults to include references to the National Missing and Unidentified Persons System; providing an effective date.

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

Section 1. Subsections (1), (2), and (4) of section 937.021, Florida Statutes, are amended to read:

937.021 Missing child and missing adult reports.—

(1) Law enforcement agencies in this state shall adopt written policies that specify the procedures to be used to investigate reports of missing children and missing adults. The policies must ensure that cases involving missing children and adults are investigated promptly using appropriate resources. The policies must include:

(a) Requirements for accepting missing child and missing adult reports;

(b) Procedures for initiating, maintaining, closing, or referring a missing child or missing adult investigation; and

(c) Standards for maintaining and clearing computer data of information concerning a missing child or missing adult which is stored in the Florida Crime Information Center, ~~and~~ the National Crime Information Center, and the National Missing and Unidentified Persons System. The standards must require, at a minimum, a monthly review of each case and a determination of whether the case should be maintained in the database.

Page 1 of 4

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

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(2) An entry concerning a missing child or missing adult may not be removed from the Florida Crime Information Center, ~~or~~ the National Crime Information Center, or the National Missing and Unidentified Persons System databases based solely on the age of the missing child or missing adult.

(4) (a) Upon the filing of a police report that a child is missing by the parent or guardian, the Department of Children and Families, a community-based care provider, or a sheriff's office providing investigative services for the department, the law enforcement agency receiving the report shall immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information Center, ~~and~~ the National Crime Information Center, and the National Missing and Unidentified Persons System databases. A law enforcement agency may not require a reporter to present an order that a child be taken into custody or any other such order before accepting a report that a child is missing.

(b) Upon the filing of a credible police report that an adult is missing, the law enforcement agency receiving the report shall, within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information Center, ~~and~~ the National Crime Information Center, and the National Missing and Unidentified Persons System databases.

Section 2. Paragraph (b) of subsection (3) and subsection (5) of section 937.022, Florida Statutes, is amended to read:

Page 2 of 4

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

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937.022 Missing Endangered Persons Information  
Clearinghouse.—

(3) The clearinghouse shall:

(b) Provide a centralized file for the exchange of  
information on missing endangered persons.

1. Every state, county, or municipal law enforcement agency  
shall submit to the clearinghouse information concerning missing  
endangered persons.

2. Any person having knowledge may submit a missing  
endangered person report to the clearinghouse concerning a child  
or adult younger than 26 years of age whose whereabouts is  
unknown, regardless of the circumstances, subsequent to  
reporting such child or adult missing to the appropriate law  
enforcement agency within the county in which the child or adult  
became missing, and subsequent to entry by the law enforcement  
agency of the child or person into the Florida Crime Information  
Center, ~~and~~ the National Crime Information Center, and the  
National Missing and Unidentified Persons System databases. The  
missing endangered person report shall be included in the  
clearinghouse database.

3. Only the law enforcement agency having jurisdiction over  
the case may submit a missing endangered person report to the  
clearinghouse involving a missing adult age 26 years or older  
who is suspected by a law enforcement agency of being endangered  
or the victim of criminal activity.

4. Only the law enforcement agency having jurisdiction over  
the case may make a request to the clearinghouse for the  
activation of a state Silver Alert or a Purple Alert involving a  
missing adult if circumstances regarding the disappearance have

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met the criteria for activation of the Silver Alert Plan or the  
Purple Alert.

(5) The law enforcement agency having jurisdiction over a  
case involving a missing endangered person shall, upon locating  
the child or adult, immediately purge information about the case  
from the Florida Crime Information Center, ~~or~~ the National Crime  
Information Center, and the National Missing and Unidentified  
Persons System databases and notify the clearinghouse.

Section 3. This act shall take effect July 1, 2023.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Criminal Justice, *Chair*  
Appropriations  
Appropriations Committee on Criminal and Civil Justice  
Appropriations Committee on Health and Human Services  
Community Affairs  
Environment and Natural Resources  
Ethics and Elections

### SELECT COMMITTEE:

Select Committee on Resiliency

### SENATOR JONATHAN MARTIN

33rd District

March 28, 2023

The Honorable Debbie Mayfield  
Senate Rules Committee, Chair  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

### RE: CS/SB 1332- An act relating to Missing Persons

Dear Chair Mayfield:

Please allow this letter to serve as my respectful request to place CS/SB 1332, relating to Missing Persons, on the next committee agenda.

CS/SB 1332 enhances missing persons reporting by requiring Florida law enforcement agencies to adopt policies for maintaining and clearing data of missing persons that is stored in the National Missing and Unidentified Persons System.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Martin".

Jonathan Martin  
Senate District 33

Cc: Philip Twogood, Staff Director  
Cynthia Futch, Administrative Assistant

#### REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

KATHLEEN PASSIDOMO  
President of the Senate

DENNIS BAXLEY  
President Pro Tempore

The Florida Senate

**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

04-05-2023

Meeting Date

Rules

Committee

SB 1332

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Dannie McMillon-Florida PTA

Phone

305-401-8332

Address

1747 Orlando Central Pkwy

Street

Email

memillonactivist@aol.com

Orlando

City

FL

State

32809

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☒

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

4.5.23

Meeting Date

Rules

Committee

1332

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Barney Bishop III

Phone

850.510.9922

Address

1454 Vieux Carre Dr.

Street

Email

Barney@BarneyBishop.com

Tall

City

FL

State

32308

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without compensation or sponsorship.

☒

I am a registered lobbyist, representing:

Fla. Smart Justice Alliance

☐

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1396

INTRODUCER: Senator Garcia

SUBJECT: Department of Elderly Affairs

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Delia</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 1396 makes several changes to certain programs operated within the Department of Elder Affairs (DOEA). Specifically, the bill:

- Permits Long-Term Care Ombudsman Program staff employed in the state office of the Program to become certified as ombudsmen.
- Deletes obsolete language relating to the DOEA joining the Background Screening Clearinghouse within the Agency for Health Care Administration (the AHCA), and includes certain persons within the definition of ‘direct service provider’ who require a level 2 background screening.
- Revises the duties of the executive director of the Office of Public and Professional Guardianship (the OPPG) to include offering and making certain information about alternatives to and types of guardianship available for dissemination by the Area Agencies on Aging and Aging Resource Centers throughout the state.
- Increases the continuing education requirements of professional guardians and specifies the number of continuing education hours required for certain topics.
- Reorganizes language for clarity and requires the OPPG to notify complainants no later than 10 business days after the OPPG determines that a complaint is not legally sufficient.
- Revises the number of days within which the OPPG must complete and provide any initial investigative findings and recommendations to both the guardian and the complainant from 60 to 45 days.
- Requires the OPPG to provide both the guardian and the complainant with a written statement specifying any finding of a violation of a standard of practice by a professional guardian and any actions taken or specifying that no such violation was found within 10 business days after completing an investigation.
- Requires the Clerks of the Circuit Court (Clerks) to report sanctions imposed by the court on a professional guardian to the OPPG within a specified time frame.

The bill may have a negative fiscal impact on the DOEA. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2023.

## II. Present Situation:

### Florida Long-Term Care Ombudsman Program

The federal Older Americans Act (OAA) requires each state to create a Long-Term Care Ombudsman Program (the Program) to be eligible to receive funding associated with programs under the OAA.<sup>1</sup> The Program was founded in 1975 as a result of the OAA, which grants a special set of residents' rights to individuals who live in long-term care facilities such as nursing homes, assisted living facilities (ALFs), and adult family care homes.<sup>2</sup> Volunteer ombudsmen seek to ensure the health, safety, welfare and rights of these residents throughout Florida.

The Program is administratively housed in the DOEA and is headed by the State Long-Term Care Ombudsman, who is appointed by the DOEA Secretary.<sup>3</sup> The Program is required to establish a statewide toll-free telephone number for receiving complaints concerning matters adversely affecting the health, safety, welfare, or rights of residents of ALFs, nursing homes, and adult family care homes.<sup>4</sup> Every resident or representative of a resident must receive, upon admission to a long-term care facility, information regarding the program and the statewide toll-free telephone number for receiving complaints.<sup>5</sup> In addition to investigating and resolving complaints, ombudsmen conduct unannounced visits to assess the quality of care in facilities, referred to as administrative assessments.<sup>6</sup>

The State Ombudsman carries out his or her responsibilities under Florida and federal law through the training and certification of volunteers who operate through district and local councils, and through staff positions in the state and district offices established to coordinate and assist the local councils.<sup>7</sup>

Federal regulations provide that the State Ombudsman may designate employees or volunteers within the Program office to carry out the duties of the office as “representatives of the office,” subject to the training and certification requirements for representatives of the office.<sup>8</sup> However, Florida law specifies certain categories of individuals who may not be appointed as ombudsmen, including, in part, “An employee of the [DOEA], except for staff certified as ombudsmen in the

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<sup>1</sup> See s. 400.0061(1), F.S.; see also the Office of Program Policy Analysis and Governmental Accountability, *Department of Elder Affairs, Older Americans Act Programs*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5026> (last visited March 16, 2023).

<sup>2</sup> The Florida Ombudsman Program, *About Us*, available at <https://ombudsman.elderaffairs.org/about-us/> (last visited March 13, 2023).

<sup>3</sup> Section 400.0063(2), F.S.

<sup>4</sup> Section 400.0078(1), F.S.

<sup>5</sup> Section 400.0078(2), F.S.

<sup>6</sup> See s. 400.0074, F.S.

<sup>7</sup> The Department of Elder Affairs (the DOEA), *Agency Analysis of SB 1396*, p. 2, February 11, 2023 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The DOEA Analysis”).

<sup>8</sup> *Id.*

district offices.”<sup>9</sup> “Offices” in this context refers to the district offices of the State Long-Term Care Ombudsman Program.<sup>10</sup> Read together, these provisions exempt staff in the Program’s district offices from the general prohibition against appointment of DOEA employees as ombudsmen, but they do not permit staff in the Program’s state office to be appointed as ombudsmen.<sup>11</sup>

### **Background Screening**

Chapter 435, F.S., establishes standard procedures for criminal history background screening of certain prospective employees working with vulnerable populations. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<sup>12</sup> and may include criminal records checks through local law enforcement agencies.<sup>13</sup>

Level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>14</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>15</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.<sup>16</sup>

For both level 1 and 2 screenings, an employer must submit the information necessary for screening to the FDLE within five working days after receiving it.<sup>17</sup> Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.<sup>18</sup> For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>19</sup> For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>20</sup>

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<sup>9</sup> See s. 400.0069(4)(b)4., F.S.

<sup>10</sup> The DOEA Analysis at p. 2; see also s. 400.0060(7), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at <https://www.nsopw.gov/> (last visited March 13, 2023).

<sup>13</sup> Section 435.03, F.S.

<sup>14</sup> Section 435.04, F.S.

<sup>15</sup> Section 435.05(1)(a), F.S.

<sup>16</sup> Sections 435.03(1) and 435.04(1)(a), F.S.

<sup>17</sup> Section 435.05(1)(b)-(c), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 435.05(1)(b), F.S.

<sup>20</sup> Section 435.05(1)(c), F.S.

The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.<sup>21</sup>

Various agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with entities who serve vulnerable populations are subject to background screening; however, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting.<sup>22</sup> In 2012, the Legislature created the Care Provider Background Screening Clearinghouse to create a single “program” of screening individuals and allow for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.<sup>23</sup> Designated agencies include the Agency for Health Care Administration (the AHCA), the Department of Health (the DOH), the Department of Children and Families (the DCF), the DOEA, the Agency for Persons with Disabilities (the APD), and Vocational Rehabilitation within the Department of Education (the DOE).<sup>24</sup>

### ***Direct Service Providers***

Direct service providers are individuals who have direct, face-to-face contact with clients served by the DOEA while providing services to the client and who have access to the client’s living areas, funds, personal property, or person identification information as defined in s. 817.568, F.S.<sup>25, 26</sup> Direct service providers must undergo a level 2 background screening, including employment history checks and local criminal records checks through local law enforcement agencies.<sup>27</sup>

However, current law provides that attorneys in good standing with the Florida Bar are exempt from background screening requirements if they are a direct service provider.<sup>28</sup> While the Florida Bar requires background screening for when an individual applies for their bar license, the Florida Bar does not have an automatic notification system for any subsequent arrests.<sup>29</sup> The

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<sup>21</sup> Section 435.05(1)(d), F.S.

<sup>22</sup> The DOEA Analysis at p. 3.

<sup>23</sup> *Id.*; see also s. 435.12, F.S. and ch. 2012-73, L.O.F.

<sup>24</sup> *Id.*

<sup>25</sup> Section 430.0402(1)(b), F.S. The individual must be 18 years of age or older.

<sup>26</sup> Section 817.568, F.S., defines “personal identification information” to mean any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any: 1. name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card; 2. unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; 3. unique electronic identification number, address, or routing code; 4. Medical records; 5. Telecommunication identifying information or access device; or 6. Other number or information that can be used to access a person’s financial resources.

<sup>27</sup> Section 430.0402(1)(a), F.S.

<sup>28</sup> Section 430.0402(2), F.S.

<sup>29</sup> The DOEA Analysis at p. 3.



Florida Bar only requires attorneys to self-report when arrested; therefore, an attorney may be in good standing, but have an arrest or conviction that has not been reported to the Florida Bar.<sup>30</sup>

### Aging and Disability Resource Centers

The DOEA administers programs and services for elders across the state of Florida through 11 Area Agencies on Aging, which operate as Aging and Disability Resource Centers (ADRCs).<sup>31</sup> These ADRCs function as a single, coordinated system for information and access to services for all Floridians seeking long-term care resources.<sup>32</sup> The ADRCs provide information and assistance about state and federal benefits, as well as available local programs and services.<sup>33</sup> The primary functions of the ADRCs include providing information and referral services, ensuring that eligibility determinations are done properly and efficiently, triaging clients who require assistance, and managing the availability of financial resources for certain key long-term care programs targeted for elders to ensure financial viability and stability.<sup>34</sup>

Florida's 11 ADRCs are distributed throughout the state as shown in the map below:<sup>35</sup>



<sup>30</sup> *Id.*

<sup>31</sup> The DOEA, *Aging and Disability Resource Centers (ADRCs)*, available at <https://elderaffairs.org/resource-directory/aging-and-disability-resource-centers-adrcs/> (last visited March 13, 2023).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*



## **Guardianship**

When an individual is unable to make legal decisions regarding his or her person or property, a guardian may be appointed to act on his or her behalf. A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property, or both.<sup>36</sup> Adjudicating a person totally incapacitated and in need of a guardian deprives a person of his or her civil and legal rights.<sup>37</sup> The Legislature has recognized that the least restrictive form of guardianship should be used to ensure the most appropriate level of care and the protection of that person's rights.<sup>38</sup>

The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.<sup>39</sup> Once a person has been adjudicated incapacitated, termed a "ward", the court appoints a guardian and the letters of guardianship are issued.<sup>40</sup> The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.<sup>41</sup>

### ***Public and Professional Guardians***

A professional guardian is a guardian who has at any time rendered services to three or more wards as their guardian; however, a person serving as a guardian for two or more relatives is not considered a professional guardian.<sup>42</sup> A public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>43</sup>

### ***Office of Public and Professional Guardians***

In 1999, the Legislature created the "Public Guardianship Act" and established the Statewide Public Guardianship Office (SPGO) within the DOEA.<sup>44</sup> In 2016, the Legislature renamed the Statewide Public Guardianship Office as the Office of Public and Professional Guardians (OPPG), required the OPPG to regulate professional guardians and investigate complaints, and added six full-time equivalent positions to the OPPG, including an attorney and investigators.<sup>45</sup> The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.<sup>46</sup>

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<sup>36</sup> Section 744.102(9), F.S.

<sup>37</sup> Section 744.1012(1), F.S.

<sup>38</sup> Section 744.1012(2), F.S.

<sup>39</sup> Section 744.3201, F.S.

<sup>40</sup> See s. 744.345, F.S.

<sup>41</sup> Section 744.2005, F.S.

<sup>42</sup> Section 744.102(17), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> Chapter 99-277, L.O.F.

<sup>45</sup> Chapter 2016-40, L.O.F.

<sup>46</sup> The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited March 13, 2023).

There are 16 public guardian offices that serve all 67 counties.<sup>47</sup> Since 2016, approximately 550 professional guardians have registered with the OPPG statewide.<sup>48</sup>

### **Registration**

A professional guardian must register with the OPPG annually.<sup>49</sup> As part of the registration, the professional guardian must:

- Provide sufficient information to identify the professional guardian;
- Complete a minimum of 40 hours of instruction and training through a course approved or offered by the OPPG;<sup>50</sup>
- Successfully pass an examination approved by the DOEA to demonstrate competency to act as a professional guardian;
- Undergo a criminal background check by the Federal Bureau of Investigation and the Florida Department of Law Enforcement;
- Submit to a credit history check; and
- Maintain a current blanket bond.<sup>51, 52</sup>

Guardians registered with the OPPG must complete a minimum of 16 hours of continuing education every two calendar years after the year in which the initial 40-hour educational requirement is met. The ward's assets may not be used to pay for such education.<sup>53</sup>

Guardians seeking appointment by the court and all employees of a professional guardian who have a fiduciary responsibility to the ward must submit to a credit history check and undergo a level 2 background screening.<sup>54</sup> The DOEA must ensure the clerks of the court and the chief judge of each judicial circuit receive information about each registered professional guardian.<sup>55</sup>

The executive director of the OPPG may deny registration to a professional guardian if the executive director determines that the guardian's proposed registration, including the guardian's credit or criminal investigations, indicates that registering the professional guardian would violate any provision of ch. 744, F.S.<sup>56</sup> The OPPG is required to report any suspension or revocation of a professional guardian's registration to the court of competent jurisdiction for any guardianship case to which the professional guardian is currently appointed.<sup>57</sup> There is also currently no statutory requirement neither for courts to report removal of guardians to the OPPG.

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Section 744.2002, F.S.

<sup>50</sup> This training may not be paid with the assets of the ward.

<sup>51</sup> Section 744.2003(2), F.S., further requires the bond to be maintained by the guardian in an amount not less than \$50,000 and must cover all wards for whom the guardian has been appointed at any given time. The liability of the provider of the bond is limited to the face amount of the bond, regardless of the number of wards for whom the professional guardian has been appointed.

<sup>52</sup> Sections 744.2002(3) and 744.3135, F.S.

<sup>53</sup> Section 744.2003(3), F.S.

<sup>54</sup> Section 744.3135(1), F.S.

<sup>55</sup> Section 744.2002(9), F.S.

<sup>56</sup> Section 744.2002(5), F.S.

<sup>57</sup> Section 744.2004(4), F.S.

***OPPG Disciplinary Action***

Disciplinary action may be taken against a professional guardian for:

- Making a misleading, deceptive, or fraudulent representation in or related to the practice of guardianship;
- Violating any rule governing guardians or guardianship adopted by OPPG;
- Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to a crime which relates to the practice of, or ability to practice as, a professional guardian;
- Failing to comply with the educational course requirements for professional guardians;
- Having a registration, license, or authority to practice a regulated profession revoked;
- Knowingly filing a false report or complaint with OPPG against another guardian;
- Attempting to obtain, obtaining, or renewing a registration or license to practice a profession by bribery, fraud, or a known error;
- Failing to report a violation of ch. 744, F.S., or the rules of OPPG to OPPG;
- Failing to perform a legal or statutory obligation;
- Making or filing a false report that is signed in the person's capacity as professional guardian;
- Using the position of guardian for financial gain;
- Violating or failing to comply with an order from OPPG;
- Improperly interfering with an investigation;
- Using the guardianship relationship to engage or attempt to engage in sexual activity;
- Failing to report to OPPG within 30 days being convicted or found guilty of, or enter a plea of guilty or nolo contendere to a crime;
- Being unable to perform the functions of guardian;
- Failing to post and maintain a blanket fiduciary bond;
- Failing to maintain all records relating to a guardianship for specified time; or
- Violating any provision of ch. 744, F.S., or any rules adopted thereunder.<sup>58</sup>

When the OPPG finds that a professional guardian is guilty of any of the grounds for discipline, it may take action against that guardian by entering an order imposing one or more penalties on the professional guardian.<sup>59</sup> When determining what action is appropriate against a professional guardian, prior to consideration of any mitigation or rehabilitation for the professional guardian, the OPPG must first consider what sanctions are necessary to safeguard the wards and protect the public.<sup>60</sup> The OPPG may impose any combination of the following sanctions:

- Refuse to register an applicant as a professional guardian;
- Suspend or revoke a professional guardian's registration;
- Issue a reprimand;
- Require treatment, completion of continuing education courses, or reexamination;
- Require restitution; or
- Require remedial education.<sup>61</sup>

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<sup>58</sup> Section 744.20041(1), F.S.

<sup>59</sup> Section 744.20041(2), F.S.

<sup>60</sup> Section 744.20041(3), F.S.

<sup>61</sup> Section 744.20041(2), F.S.

If the final determination from a disciplinary proceeding is to suspend or revoke the guardian's registration, the determination must be provided to any court that oversees any guardianship to which the professional guardian is appointed.<sup>62</sup>

### ***Guardian Complaints and Investigations***

Any person may submit a complaint against a professional guardian to the OPPG. In 2016, the Legislature expanded the responsibility and authority of the OPPG.<sup>63</sup> SB 232 required OPPG to investigate allegations of suspected wrongdoing perpetrated by public and professional guardians.<sup>64</sup> Once the OPPG receives a complaint a procedure is initiated to investigate the complaint, including that the OPPG is required to:

- Review and, if determined legally sufficient,<sup>65</sup> investigate complaints against professional guardians;
- Initiate an investigation no later than 10 business days after the OPPG receives a complaint;
- Complete and provide initial investigative findings and recommendations, if any, to the professional guardian and person filing the complaint within 60 days;
- Obtain supporting information, including interviewing the ward, family member, or interested party, or documentation to determine the legal sufficiency of a complaint;
- Dismiss any complaint that is not legally sufficient; and
- Coordinate with the clerks of the court to avoid duplication of duties.<sup>66</sup>

To achieve the statutory duty to investigate such complaints, on July 14, 2016, the OPPG entered into a memorandum of understanding (MOU) with six clerks in different regions of the state, collectively referred to as the Statewide Investigation Alliance (SIA), and have since referred many complaints of professional guardians to the SIA for investigations.<sup>67</sup> The six county clerks comprising the SIA are:

- Palm Beach County;
- Pinellas County;
- Sarasota County;
- Lee County;
- Okaloosa County; and
- Polk County.<sup>68</sup>

Investigations which find substantiated allegations of violations by professional guardians may be referred to law enforcement, the Office of the Attorney General, the Office of the State Attorney, or the Florida Bar, as appropriate.<sup>69</sup>

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<sup>62</sup> Section 744.20041(9), F.S.

<sup>63</sup> Chapter 2016-40, L.O.F., *see also* Florida Court Clerks and Comptrollers Association, *Statewide Investigative Alliance*, available at <https://flclerksia.com/> (last visited March 13, 2023) (hereinafter cited as "Clerks Association").

<sup>64</sup> Florida Court Clerks and Comptrollers Association, *Statewide Investigative Alliance*, available at <https://flclerksia.com/> (last visited March 12, 2023).

<sup>65</sup> Section 744.2004(1), F.S., states that a complaint is legally sufficient if it contains ultimate facts that show a violation of a standard of practice by a professional guardian has occurred.

<sup>66</sup> Section 744.2004, F.S.

<sup>67</sup> *Id.*

<sup>68</sup> Clerks Association. Lake County was also a part of the SIA from July 2016 through July 2018.

<sup>69</sup> *Id.*

According to the DOEA, the annual numbers of complaints filed against a guardian or involving a guardianship since 2016 are as follows:

- 183 in 2016;
- 132 in 2017;
- 56 in 2018;
- 113 in 2019;
- 169 in 2020;
- 150 in 2021; and
- 71 received through November 30, 2022.<sup>70</sup>

Further, the DOEA has stated that the average amount of time it took the SIA to complete an investigation over the period from 2021 through 2023 was approximately 8.14 months.<sup>71</sup>

### **Auditor General Report**

In August 2020, the Florida Auditor General released a report (AG Report) containing the findings of an audit conducted of the OPPG.<sup>72</sup> The AG Report detailed the following findings specifically related to the OPPG:

- Finding 1: Contrary to State law, the OPPG did not establish policies and procedures for monitoring private professional guardians, develop or implement a monitoring tool, or monitor private professional guardians for compliance with OPPG standards of practice governing the conduct of professional guardians.
- Finding 2: OPPG efforts to monitor Public Guardian Offices (PGOs) were not always adequate to ensure that:
  - OPPG records evidenced that program monitors were free from conflicts of interest, all State guardianship rules were subject to adequate monitoring.
  - Monitoring Tool responses were supported by and consistent with source documentation, and monitoring reports were appropriately reviewed and timely provided to PGOs.
- Finding 3: OPPG complaint processing controls need improvement to ensure that:
  - Complaints are referred and related investigation activities are conducted in accordance with State law, OPPG policies and procedures, other guidelines, and management expectations;
  - Investigations include all applicable complaint allegations; and
  - Guardians and complainants are timely notified of whether disciplinary actions are taken.
- Finding 4: Contrary to State law, the DOEA had not adopted rules for certain OPPG processes, including the process for investigating complaints.
- Finding 5: OPPG controls need enhancement to ensure that, prior to reimbursing Clerks of the Court for the direct costs of guardianship complaint investigations, invoiced amounts are adequately supported and agree with established rates.

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<sup>70</sup> Email from Derek Miller, former Legislative Affairs Director, the DOEA, August 26, 2021; Email from Tyler Jefferson, Legislative Affairs Director, the DOEA, February 8, 2023 (all documents on file with the Senate Committee on Children, Families, and Elder Affairs).

<sup>71</sup> Email from Tyler Jefferson, Legislative Affairs Director, the DOEA, February 2, 2023 (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>72</sup> The State of Florida Auditor General, *Operational Audit No. 2021-010: Department of Elder Affairs, Office of Public and Professional Guardians and Selected Administrative Activities* August 2020, available at [https://flauditor.gov/pages/pdf\\_files/2021-010.pdf](https://flauditor.gov/pages/pdf_files/2021-010.pdf) (last visited March 13, 2023) (hereinafter cited as “AG Report”).

- Finding 6: OPPG controls did not adequately promote the timely submittal of annual professional guardian renewal registrations or ensure that the courts responsible for appointing guardians were timely notified of lapses in guardian registration.<sup>73</sup>

### ***Finding 3: Complaint Investigations***

According to the AG Report, the OPPG and the SIA entered into a subsequent MOU in July 2018 pursuant to which the SIA was responsible for investigating all complaints against professional guardians referred by the OPPG, and the OPPG was responsible for determining whether disciplinary or administrative action against a guardian was warranted.<sup>74</sup> According to the OPPG records, during the period July 2017 through January 2019, the OPPG received 90 complaints against 57 guardians. Of the 90 complaints, the OPPG closed only 1 complaint which was initially received in December 2017.<sup>75</sup> During that same period, the OPPG closed 31 complaints received prior to July 2017 related to 23 guardians.<sup>76</sup> Additionally, during the period July 2017 through January 2019, only one complaint led to an administrative action which resulted in the revocation of the guardian's registration in March 2019.<sup>77</sup>

The 2018 MOU and the OPPG policies and procedures required the OPPG to determine whether a complaint was legally sufficient and appropriate for investigation within 3 business days of receiving the complaint.<sup>78</sup> Such complaints were to be referred to the Administrative Coordinator (AC) who was also responsible for reviewing the complaints for legal sufficiency and assigning legally sufficient guardianship complaints to the applicable Clerk for investigation.<sup>79</sup>

The Auditor General reviewed records for 20 of the 32 complaints recorded as closed in the OPPG Complaint Intake Log during the period July 2017 through January 2019 to determine whether the OPPG had established adequate complaint processing controls.<sup>80</sup> The AG Report concluded that the OPPG referred 12 of the complaints to the AC within 4 to 116 business days (an average of 64 business days) after receiving the complaints.<sup>81</sup> Additionally, the investigations for 11 of these complaints were not initiated within 10 business days of the OPPG receiving the complaint.<sup>82</sup> The investigations for the 11 complaints were initiated from 19 to 110 business days after the OPPG received the complaint.<sup>83</sup> As a result of these various delays, the Investigative Memoranda or Investigation Report, as applicable, for the 12 complaint investigations were not provided to the OPPG within 60 days of receipt of the complaint.<sup>84</sup> Specifically, the Memoranda and one Investigation Report were provided to the OPPG within 63 to 228 days (an average of 150 days) after the OPPG received the complaints.<sup>85</sup>

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<sup>73</sup> *Id.* at p. 1.

<sup>74</sup> *Id.* at p. 3.

<sup>75</sup> *Id.*

<sup>76</sup> AG Report at p. 3-4.

<sup>77</sup> *Id.* at p. 4.

<sup>78</sup> *Id.* at p. 9.

<sup>79</sup> *Id.*

<sup>80</sup> AG Report at p. 10.

<sup>81</sup> *Id.* at p. 10.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

***Finding 4: OPPG Rules***

SB 232 (2016) required the DOEA to adopt rules implementing provisions for OPPG complaint, disciplinary proceeding, and enforcement processes by October 1, 2016.<sup>86</sup> The AG Report noted that the DOEA had not, as of the time of the audit in 2020, adopted rules for:

- Investigating complaints against guardians;
- Communicating the disciplinary process to guardians and complainants; or
- Reporting determined or suspected abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline established by the DCF.<sup>87</sup>

To date, the DOEA has not promulgated rules to address the issues detailed in findings 3 and 4 of the AG Report.

**III. Effect of Proposed Changes:****Ombudsman Program Staff (Section 1)**

The bill expressly adds staff employed in the state office of the Program, in addition to staff employed in district offices, to the category of employees exempt from the prohibition against DOEA employees serving as ombudsmen. This clarifies that such state Program employees may be certified as ombudsmen and be designated as a representative of the office. Additionally, by becoming certified ombudsmen, state Program staff will gain a better understanding of the issues faced by ombudsmen around the state.

**Background Screening Requirements (Section 2)**

The bill requires any attorney, regardless of whether the attorney is licensed in Florida, to be background screened if serving as a direct service provider.

Additionally, the bill amends the definition of direct service providers to include, but not be limited to, the following additional persons:

- Administrators of persons who are responsible for the day-to-day operations of other providers or financial officers who are responsible for the financial operations of providers;<sup>88</sup> and
- Any other person who is seeking employment with a provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to:
  - Client funds;
  - Financial matters;
  - Legal matters;
  - Personal property; or
  - Living areas.

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<sup>86</sup> *Id.* at p. 13; Section 744.2006

<sup>87</sup> *Id.*

<sup>88</sup> The bill provides that this includes “similarly titled persons” to the administrators and the financial officers.

The bill also deletes obsolete language relating to the DOEA joining the Clearinghouse, as the DOEA has since become a part of the Clearinghouse.

### **OPPG Related Provisions**

#### ***Information Dissemination to Certain Stakeholders (Section 3, in part)***

The bill requires the OPPG to provide information relating to alternatives to and types of guardianship to Area Agencies on Aging and Aging Resource Centers for dissemination to the populations they serve, allowing the public to become more aware of guardianships and what options may be available to them.

#### ***OPPG Online Education Course (Sections 3, in part, and 6)***

The bill requires the executive director of the OPPG, within available resources, to offer an online education course for guardians who are not professional guardians.

The bill offers court-appointed guardians the option to complete the requisite number of hours of instruction and education needed within the first 4 months of appointment through a course offered by the OPPG under s. 744.2001, F.S. This provides an additional option for all guardians in completing required training, but may be especially useful for non-professional guardians unsure of where or how to complete the requisite training.

#### ***Continuing Education Requirements (Section 4)***

The bill revises the continuing education requirements of professional guardians by increasing the hours of continuing education required to be taken by a professional guardian from 16 hours to 30 hours every two years and be completed through a course approved or offered by the OPPG. The bill specifically requires that continuing education include at least:

- 2 hours on fiduciary responsibilities;
- 2 hours on professional ethics;
- 1 hour on advance directives;
- 3 hours on abuse, neglect, and exploitation; and
- 4 hours on guardianship law.

#### ***Complaint Investigations by the OPPG (Section 5)***

The bill revises the process by which the OPPG is required to investigate complaints made against a professional guardian and details timelines for providing information to the complainant and the professional guardian who is subject to the complaint. The OPPG must review complaints and, if determined legally sufficient, initiate investigations within 10 business days of receiving a complaint. The bill also requires the OPPG to notify the complainant no later than 10 business days after the OPPG determines a complaint is not legally sufficient. Additionally, within 45 business days (rather than the current 60 business days) after receipt of a complaint, the OPPG must complete and provide initial investigative findings and recommendations, if any, to the professional guardian and the complainant.

Within 10 business days after completing an investigation, the OPPG must provide the complainant and the professional guardian with a written statement specifying any finding of a



violation of a standard of practice by a professional guardian and any actions taken, or specifying that no such violation was found. Written statements will need to adhere to the confidentiality requirements of s. 744.2111, F.S., relating to complaints against professional guardians.

The OPPG did not previously raise objections to the timelines imposed by the bill when similar provisions were included in HB 7025 (2020).<sup>89</sup>

***Responsibilities of the Clerk of the Circuit Court (Section 7)***

The bill adds the reporting of any sanctions imposed by the court on a professional guardian, including, but not limited to, contempt of court or removal of the professional guardian, to the responsibilities of the clerk of the circuit court. The clerk must submit such information to the OPPG within 10 business days after the court imposes any sanctions, which will close the communication loop between the court and the OPPG.

***Rulemaking (Sections 3 and 5)***

The bill removes obsolete language from SB 232 (2016) requiring the OPPG to take certain actions by various dates in 2016. However, as mentioned above, the OPPG still has not promulgated these Rules and will need to promulgate these to be in compliance with Florida law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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<sup>89</sup> See The DOEA, *Agency Analysis of HB 7025 (2020)*, January 21, 2020 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as, “The DOEA HB 7025 Analysis”).

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

None.

**B. Private Sector Impact:**

The provisions of the bill that require background screening for a broader pool of individuals under the revised definition of ‘direct service provider’ may result in an indeterminate negative fiscal impact on those individuals.

**C. Government Sector Impact:**

The DOEA states that the provisions of the bill relating to certification of Program staff and background screening are not expected to have a fiscal impact on the agency.<sup>90</sup> The revised OPPG requirements may require additional staff, which may lead to an indeterminate negative fiscal impact; however the OPPG did not previously anticipate a fiscal impact for identical provisions in HB 7025 (2020).<sup>91</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 400.0069, 430.0402, 744.2001, 744.2003, 744.2004, 744.3145, and 744.368 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.

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

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<sup>90</sup> The DOEA Analysis at p. 4.

<sup>91</sup> The DOEA HB 7025 Analysis at p. 4.

By Senator Garcia

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1 A bill to be entitled  
 2 An act relating to the Department of Elderly Affairs;  
 3 amending s. 400.0069, F.S.; revising the list of  
 4 individuals who may not be appointed as ombudsmen  
 5 under the State Long-Term Care Ombudsman Program;  
 6 amending s. 430.0402, F.S.; revising the definition of  
 7 the term "direct service provider"; deleting an  
 8 exemption from level 2 background screening  
 9 requirements for certain individuals; deleting  
 10 obsolete language; amending s. 744.2001, F.S.;  
 11 deleting obsolete language; providing additional  
 12 duties for the executive director of the Office of  
 13 Public and Professional Guardians; amending s.  
 14 744.2003, F.S.; revising continuing education  
 15 requirements for professional guardians; amending s.  
 16 744.2004, F.S.; requiring the office to notify  
 17 complainants within a specified timeframe after  
 18 determining that a complaint against a professional  
 19 guardian is not legally sufficient; reducing the  
 20 timeframe within which the office must complete and  
 21 provide its initial investigative findings and  
 22 recommendations, if any, to the professional guardian  
 23 who is the subject of the investigation and to the  
 24 complainant; requiring the office to provide a certain  
 25 written statement to the complainant and the  
 26 professional guardian within a specified timeframe  
 27 after completing an investigation; deleting obsolete  
 28 language; amending s. 744.3145, F.S.; providing an  
 29 additional method of complying with certain

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30 instruction and education requirements for court-  
 31 appointed guardians; amending s. 744.368, F.S.;  
 32 requiring clerks of the court to report to the office  
 33 within a specified timeframe after the court imposes  
 34 any sanctions on a professional guardian; providing an  
 35 effective date.  
 36  
 37 Be It Enacted by the Legislature of the State of Florida:  
 38  
 39 Section 1. Paragraph (b) of subsection (4) of section  
 40 400.0069, Florida Statutes, is amended to read:  
 41 400.0069 Long-term care ombudsman districts; local long-  
 42 term care ombudsman councils; duties; appointment.-  
 43 (4) Each district and local council shall be composed of  
 44 ombudsmen whose primary residences are located within the  
 45 boundaries of the district.  
 46 (b) The following individuals may not be appointed as  
 47 ombudsmen:  
 48 1. The owner or representative of a long-term care  
 49 facility.  
 50 2. A provider or representative of a provider of long-term  
 51 care service.  
 52 3. An employee of the agency.  
 53 4. An employee of the department who is not employed in the  
 54 State Long-Term Care Ombudsman Program, except for staff  
 55 ~~certified as ombudsmen in the district offices.~~  
 56 5. An employee of the Department of Children and Families.  
 57 6. An employee of the Agency for Persons with Disabilities.  
 58 Section 2. Paragraph (b) of subsection (1), paragraphs (a)

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and (c) of subsection (2), and subsection (3) of section 430.0402, Florida Statutes, are amended to read:

430.0402 Screening of direct service providers.—

(1)

(b) For purposes of this section, the term “direct service provider” means a person 18 years of age or older who, pursuant to a program to provide services to the elderly, has direct, face-to-face contact with a client while providing services to the client and has access to the client’s living areas, funds, personal property, or personal identification information as defined in s. 817.568. The term also includes, but is not limited to, the administrator or a similarly titled person who is responsible for the day-to-day operations of the provider, the financial officer or similarly titled person who is responsible for the financial operations of the provider, coordinators, managers, and supervisors of residential facilities, and volunteers, and any other person seeking employment with a provider who is expected to, or whose responsibilities may require him or her to, provide personal care or services directly to clients or have access to client funds, financial matters, legal matters, personal property, or living areas.

(2) Level 2 background screening pursuant to chapter 435 and this section is not required for the following direct service providers:

(a) ~~1-~~ Licensed physicians, nurses, or other professionals licensed by the Department of Health who have been fingerprinted and undergone background screening as part of their licensure; ~~and~~

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~~2. Attorneys in good standing with The Florida Bar;~~

if they are providing a service that is within the scope of their licensed practice.

(c) Volunteers who assist on an intermittent basis for less than 20 hours per month and who are not listed on the Department of Law Enforcement Career Offender Search or the Dru Sjodin National Sex Offender Public Website.

1. The program that provides services to the elderly is responsible for verifying that the volunteer is not listed on either database.

2. ~~Once the department is participating as a specified agency in the clearinghouse created under s. 435.12,~~ The provider shall forward the volunteer information to the Department of Elderly Affairs if the volunteer is not listed in either database specified in subparagraph 1. The department must then perform a check of the clearinghouse. If a disqualification is identified in the clearinghouse, the volunteer must undergo level 2 background screening pursuant to chapter 435 and this section.

~~(3) Until the department is participating as a specified agency in the clearinghouse created under s. 435.12, the department may not require additional level 2 screening if the individual is qualified for licensure or employment by the Agency for Health Care Administration pursuant to the agency’s background screening standards under s. 408.809 and the individual is providing a service that is within the scope of his or her licensed practice or employment.~~

Section 3. Subsections (2) and (3) of section 744.2001,

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Florida Statutes, are amended to read:

744.2001 Office of Public and Professional Guardians.—There is created the Office of Public and Professional Guardians within the Department of Elderly Affairs.

(2) The executive director shall, within available resources:

(a) Have oversight responsibilities for all public and professional guardians.

(b) Establish standards of practice for public and professional guardians by rule, in consultation with professional guardianship associations and other interested stakeholders, ~~no later than October 1, 2016. The executive director shall provide a draft of the standards to the Governor, the Legislature, and the secretary for review by August 1, 2016.~~

(c) Review and approve the standards and criteria for the education, registration, and certification of public and professional guardians in Florida.

(d) Offer and make available online an education course to satisfy the requirements of s. 744.3145(2).

(e) Produce and make available information about alternatives to and types of guardianship for dissemination by area agencies on aging as defined in s. 430.203 and aging resource centers as described in s. 430.2053.

(3) The executive director's oversight responsibilities of professional guardians ~~must be finalized by October 1, 2016, and shall~~ include, but are not limited to:

(a) Developing and implementing a monitoring tool to ensure compliance of professional guardians with the standards of practice established by the Office of Public and Professional

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Guardians. This monitoring tool may not include a financial audit as required by the clerk of the circuit court under s. 744.368.

(b) Developing procedures, in consultation with professional guardianship associations and other interested stakeholders, for the review of an allegation that a professional guardian has violated the standards of practice established by the Office of Public and Professional Guardians governing the conduct of professional guardians.

(c) Establishing disciplinary proceedings, conducting hearings, and taking administrative action pursuant to chapter 120.

Section 4. Subsection (3) of section 744.2003, Florida Statutes, is amended to read:

744.2003 Regulation of professional guardians; application; bond required; educational requirements.—

(3) Each professional guardian as defined in s. 744.102(17) and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 30 ~~46~~ hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The required continuing education must include at least 2 hours on fiduciary responsibilities; 2 hours on professional ethics; 1 hour on advance directives; 3 hours on abuse, neglect, and exploitation; and 4 hours on guardianship law. The instruction and education must be completed through a course approved or offered by the Office of Public and Professional Guardians. The expenses incurred to satisfy the educational requirements prescribed in

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175 this section may not be paid with the assets of any ward. This  
 176 subsection does not apply to any attorney ~~who is~~ licensed to  
 177 practice law in this state or an institution acting as guardian  
 178 under s. 744.2002(7).

179 Section 5. Subsections (1) and (6) of section 744.2004,  
 180 Florida Statutes, are amended to read:

181 744.2004 Complaints; disciplinary proceedings; penalties;  
 182 enforcement.—

183 (1) ~~By October 1, 2016,~~ The Office of Public and  
 184 Professional Guardians shall establish procedures to:

185 (a) Review and, if determined legally sufficient, initiate  
 186 an investigation within 10 business days after receipt of  
 187 ~~investigate~~ any complaint that a professional guardian has  
 188 violated the standards of practice established by the Office of  
 189 Public and Professional Guardians governing the conduct of  
 190 professional guardians. A complaint is legally sufficient if it  
 191 contains ultimate facts that show a violation of a standard of  
 192 practice by a professional guardian has occurred.

193 (b) Notify the complainant ~~Initiate an investigation~~ no  
 194 later than 10 business days after the Office of Public and  
 195 Professional Guardians determines that a complaint is not  
 196 legally sufficient ~~receives a complaint~~.

197 (c) Complete and provide initial investigative findings and  
 198 recommendations, if any, to the professional guardian and the  
 199 person who filed the complaint within 45 ~~60~~ days after receipt  
 200 of a complaint.

201 (d) Obtain supporting information or documentation to  
 202 determine the legal sufficiency of a complaint.

203 (e) Interview a ward, family member, or interested party to

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204 determine the legal sufficiency of a complaint.

205 (f) Dismiss any complaint if, at any time after legal  
 206 sufficiency is determined, it is found there is insufficient  
 207 evidence to support the allegations contained in the complaint.

208 (g) Within 10 business days after completing an  
 209 investigation, provide to the complainant and the professional  
 210 guardian a written statement specifying any finding of a  
 211 violation of a standard of practice by the professional guardian  
 212 and any actions taken, or specifying that no such violation was  
 213 found, as applicable.

214 (h) Coordinate, to the greatest extent possible, with the  
 215 clerks of court to avoid duplication of duties with regard to  
 216 the financial audits prepared by the clerks pursuant to s.  
 217 744.368.

218 (6) ~~By October 1, 2016,~~ The Department of Elderly Affairs  
 219 shall adopt rules to implement the provisions of this section.

220 Section 6. Subsection (4) of section 744.3145, Florida  
 221 Statutes, is amended to read:

222 744.3145 Guardian education requirements.—

223 (4) Each person appointed by the court to be a guardian  
 224 must complete the required number of hours of instruction and  
 225 education within 4 months after his or her appointment as  
 226 guardian. The instruction and education must be completed  
 227 through a course approved by the chief judge of the circuit  
 228 court and taught by a court-approved organization or through a  
 229 course offered by the Office of Public and Professional  
 230 Guardians under s. 744.2001. Court-approved organizations may  
 231 include, but are not limited to, community or junior colleges,  
 232 guardianship organizations, and the local bar association or The

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233 Florida Bar.

234 Section 7. Subsection (8) is added to section 744.368,  
235 Florida Statutes, to read:

236 744.368 Responsibilities of the clerk of the circuit  
237 court.—

238 (8) Within 10 business days after the court imposes any  
239 sanctions on a professional guardian, including, but not limited  
240 to, contempt of court or removal of the professional guardian,  
241 the clerk shall report such actions to the Office of Public and  
242 Professional Guardians.

243 Section 8. This act shall take effect July 1, 2023.



The Florida Senate

## Committee Agenda Request

**To:** Senator Debbie Mayfield, Chair  
Committee on Rules

**Subject:** Committee Agenda Request

**Date:** March 20, 2023

---

I respectfully request that **Senate Bill # 1396**, relating to Department of Elderly Affairs, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Ileana Garcia", is written over a horizontal line.

Senator Ileana Garcia  
Florida Senate, District 36



The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

04/05/23

Meeting Date

1396

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Tyler Jefferson

Phone

850 414 2130

Address

4040 Esplanade Way

Street

Email

jefferson.t@elderaffairs.org

Tallahassee FL

City

State

32349

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

Dept of  
Elder Affairs

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate  
**APPEARANCE RECORD**

Deliver both copies of this form to  
Senate professional staff conducting the meeting

04-05-2023

Meeting Date

Rules

Committee

SB 1396

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Chante' Jones

Phone

850-272-0551

Address

215 S Monroe St Ste 603

Email

cejones@aarp.org

Street

Tallahassee

City

FL

State

32301

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐

I am appearing without  
compensation or sponsorship.

☒

I am a registered lobbyist,  
representing:

AARP Florida

☐

I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

# APPEARANCE RECORD

A.5. 23

Meeting Date

Rules

Committee

1396

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Barney Bishop III

Phone

850.510.9922

Address

1454 Vieux Carre Dr.

Street

Email

Barney@BarneyBishop.com

Tall

City

FL

State

32308

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without compensation or sponsorship.

☒

I am a registered lobbyist, representing:

Fla. Smart Justice Alliance

☐

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-Joint-Rules.pdf)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1416

INTRODUCER: Fiscal Policy Committee and Senator Gruters

SUBJECT: Dissolution of Marriage

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Yeatman</u>	<u>FP</u>	<b>Fav/CS</b>
2.	<u>Bond</u>	<u>Twogood</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1416 amends laws related to dissolution of marriage. Changes to alimony applicable to any final judgment entered on or after July 1, 2023 include:

- Permanent (lifetime) alimony is eliminated, leaving bridge-the-gap, rehabilitative, and durational forms of alimony.
- Rehabilitative alimony is limited to 5 years.
- Durational alimony may not be awarded for a marriage of less than 3 years. The term of an award is limited based on the duration of the marriage, with certain exceptions, and may not exceed the lesser of the obligee's reasonable need or 35 percent of the difference between the parties' net incomes.
- A court must make specific written findings if it requires an obligor to purchase life insurance to secure the award of alimony.
- A court must reduce or terminate an award of alimony if it makes specific written findings that a supportive relationship exists. The bill places the burden on the obligor to prove by a preponderance of the evidence that such a relationship exists. Once proven, the burden shifts to the obligee to prove by a preponderance of the evidence the court should not reduce or terminate alimony.

Current case law allows for modification or termination of alimony upon "reasonable retirement," a loosely-defined court-created concept. The bill codifies standards and procedures related to retirement of a party in a dissolution of marriage case. If the obligor seeks to retire, the obligor may apply for modification of the alimony award no sooner than 6 months prior to the

planned retirement. The bill provides a number of factors the court must consider in determining whether to modify or terminate alimony.

The bill provides that a parent moving to a residence within 50 miles of the primary residence of a child is a substantial change in circumstances. For a modification of parenting plan and time-sharing schedule, the bill eliminates a requirement that a party shows that a change in circumstance was unanticipated.

The bill will have no fiscal impact on state government.

The bill is effective July 1, 2023, and the provisions related to an award of alimony apply to all initial petitions for dissolution of marriage or support unconnected with dissolution of marriage pending or filed on or after July 1, 2023.

## **II. Present Situation:**

### **Alimony**

Alimony is a court-ordered allowance that one spouse pays to the other spouse for maintenance and support while they are separated, while they are involved in a matrimonial lawsuit, or after they are divorced.<sup>1</sup> Alimony may be agreed to by the parties or awarded by the court after an evidentiary hearing.

### ***Calculation of the Amount of Alimony***

There is no fixed formula for alimony. Alimony is based on both financial need and the ability to pay.<sup>2</sup> After making an initial determination to award alimony, the court must consider ten factors in determining the amount of alimony:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.
- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.<sup>3</sup>

The court may also consider adultery by either spouse in a decision to award alimony.<sup>4</sup> That consideration is dependent upon the circumstances of each particular case. Absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award

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<sup>1</sup> Alimony, BLACK'S LAW DICTIONARY (11th ed. 2019).

<sup>2</sup> Section 61.08(2), F.S.

<sup>3</sup> Section 61.08(2)(a)-(j), F.S.

<sup>4</sup> Section 61.08(1), F.S.

a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony. Furthermore, despite evidence of adultery, need and ability to pay remain the primary considerations in awarding alimony.<sup>5</sup>

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.<sup>6</sup> A court making the requirement must first make specific findings regarding the availability and cost of insurance, the obligor's ability to pay, and the special circumstances that warrant the requirement for security of the obligation.<sup>7</sup> The special circumstances required to support an order mandating life insurance include "a spouse potentially left in dire financial straits after the death of the obligor spouse due to age, ill health and/or lack of employment skills, obligor spouse in poor health, minors living at home, supported spouse with limited earning capacity, obligor spouse in arrears on support obligations, and cases where the obligor spouse agreed on the record to secure an award with a life insurance policy."<sup>8</sup>

An award of alimony may not result in the obligor with significantly less net income than the net income of the obligee absent exceptional circumstances.<sup>9</sup> What qualifies as exceptional circumstances is undefined.

### ***Types of Alimony***

For purposes of determining the appropriate type of alimony to award, marriages are classified by term or length of marriage, based on the time from the date of marriage to the date the dissolution of marriage action is filed:

- Short-term means less than 7 years.
- Moderate-term means greater than 7 years but less than 17 years.
- Long-term means greater than 17 years.<sup>10</sup>

The length of the marriage does not include time spent cohabitating prior to marriage.<sup>11</sup>

Florida law recognizes four forms of alimony: bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.<sup>12</sup>

Bridge-the-gap alimony:<sup>13</sup>

- Is designed to assist a party in his or her transition from being married to being single.
- May be awarded in a marriage of any term.
- Cannot exceed 2 years in duration.

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<sup>5</sup> *Williamson v. Williamson*, 367 So. 2d 1016, 1019 (Fla.1979); *Noah v. Noah*, 491 So. 2d 1124, 1127 (Fla. 1986); *Keyser v. Keyser*, 204 So. 3d 159, 161 (Fla. 1st DCA 2016).

<sup>6</sup> Section 61.08(3), F.S.

<sup>7</sup> *O'Neill v. O'Neill*, 305 So. 3d 551, 554 (Fla. 4th DCA 2020).

<sup>8</sup> *Kotlarz v. Kotlarz*, 21 So. 3d 892, 893 (Fla. 1st DCA 2009).

<sup>9</sup> Section 61.08(9), F.S.; *Rabadan v. Rabadan*, 322 So. 3d 660 (Fla. 4th DCA 2021).

<sup>10</sup> Section 61.08(4), F.S. This triad was first enacted in 2010. Ch. 2010-199, Laws of Fla.

<sup>11</sup> *Taylor v. Davis*, 324 So. 3d 570 (Fla. 1st DCA 2021) (couple cohabitated for 24 years prior to 3 year marriage, court denied an award of permanent alimony because it was a short-term marriage).

<sup>12</sup> Section 61.08(1), F.S.

<sup>13</sup> Section 61.08(5), F.S.

- May not be modified.
- Terminates upon death or remarriage.

Rehabilitative alimony:<sup>14</sup>

- Is designed to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.
- May be awarded in a marriage of any term.
- Can be of any duration.
- May be modified based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.
- Does not automatically terminate upon remarriage.

Durational alimony:<sup>15</sup>

- Is designed to provide a party with economic assistance for a set period of time.
- May be awarded following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- May not exceed the length of the marriage.
- May be modified as to amount, based upon a substantial change in circumstances; but the length may not be modified except under exceptional circumstances.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

Permanent alimony:<sup>16</sup>

- Is designed to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage.
- May be awarded only after a finding that no other form of alimony is fair and reasonable under the circumstances of the parties, following a marriage of:
  - Long duration, if such an award is appropriate upon consideration of the ten factors by a preponderance of the evidence;
  - Moderate duration, if such an award is appropriate based upon clear and convincing evidence after consideration of the 10 factors; or
  - Short duration, if there are written findings of exceptional circumstances.
- Is not for a fixed period of time.
- May be modified or terminated based upon a substantial change in circumstances, including retirement of the obligor or upon the existence of a supportive relationship benefiting the obligee.
- Terminates upon the death of either party or upon the remarriage of the party receiving alimony.

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<sup>14</sup> Section 61.08(6), F.S.

<sup>15</sup> Section 61.08(7), F.S.

<sup>16</sup> Section 61.08(8), F.S.

***Modification or Termination of Alimony - In General***

Where allowed, either party may seek modification (up to termination) of an alimony award on the grounds of a substantial change in circumstances.<sup>17</sup> To obtain a modification of alimony, the party seeking modification must allege, and the trial court must find, that:

- There has been a substantial change in circumstances.
- The change was not contemplated at the time of the final judgment of dissolution.
- The change is sufficient, material, permanent, and involuntary.<sup>18</sup>

The mere existence of a substantial change in circumstances does not automatically lead to a modification or termination of alimony, it merely opens up the question of the appropriate amount of alimony based on the new situation and on the normal equitable factors, namely need and ability to pay. The court may modify support retroactively to the date of the filing of the motion.<sup>19</sup> If the parties to a dissolution of marriage settled the case and have designated alimony as non-modifiable in the marital settlement agreement, the court may not thereafter modify the alimony.<sup>20</sup>

***Modification Based on a Supportive Relationship***

To avoid termination of an alimony award because of remarriage, it was once common for an obligee former spouse to simply “live with” someone else in a committed but non-marital arrangement. Today, the existence of a supportive relationship between the obligee and a third party may be a substantial change in circumstances that warrants a modification (up to termination) of alimony. To modify alimony on an assertion of cohabitation between the obligee and a third party, the court must find:

- The existence of a supportive relationship between the obligee and a third party; and
- That the obligee lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.<sup>21</sup>

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.<sup>22</sup>

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<sup>17</sup> Section 61.14(1)(a), F.S.

<sup>18</sup> *Golson v. Golson*, 207 So. 3d 321, 325 (Fla. 5th DCA 2016); *Tanner v. Tanner*, 2021 WL 4877772 (Fla. 2nd DCA 2021).

<sup>19</sup> Section 61.14(1)(a), F.S.

<sup>20</sup> *Dills v. Perez*, 330 So.3d 989, 990 (Fla. 5th DCA 2021) (“[P]arties to a marital dissolution are free to enter into contractual agreements that include provisions no court of law could impose.”).

<sup>21</sup> Section 61.14(b), F.S.

<sup>22</sup> Section 61.14(1)(b)1., F.S.



### ***Modification of Alimony Based on Retirement***

Retirement of a party in a pending dissolution of marriage case falls within the “need and ability to pay” framework. Voluntary retirement may qualify as a substantial change in circumstances which warrants a modification or termination of an existing alimony award. It is an exception to the general rule that a substantial change in circumstances must result from an involuntary action.

Retirement, whether related to an initial award of alimony or as a substantial change in circumstances for modification, is not addressed in statute. In deciding whether to modify or terminate alimony based on retirement of the obligor, the courts look to whether the retirement is reasonable. There are no fixed standards for reasonable. The leading case in this area ruled:

In determining whether a voluntary retirement is reasonable, the court must consider the payor’s age, health, and motivation for retirement, as well as the type of work the payor performs and the age at which others engaged in that line of work normally retire. . . . [A] payor spouse should not be permitted to unilaterally choose voluntary retirement if this choice places the receiving spouse in peril of poverty. Thus, the court should consider the needs of the receiving spouse and the impact a termination or reduction of alimony would have on him or her. In assessing those needs, the court should consider any assets which the receiving spouse has accumulated or received since the final judgment as well as any income generated by those assets.<sup>23</sup>

### **Social Security Retirement Age**

The original Social Security Act of 1935 set the age for receiving full retirement benefits at 65.<sup>24</sup> Citing improvements in the health of older people and increases in average life expectancy as primary reasons for increasing the normal retirement age, Congress has increased the age for full retirement. On the effective date of this bill, the full retirement age for Social Security purposes will be 66 years and 6 months of age. It will increase gradually in the future until it reaches 67 years of age on January 1, 2027.<sup>25</sup>

The minimum age for claiming Social Security retirement benefits is 62. Benefits are reduced when a person elects to take early benefits.<sup>26</sup> The act increasing the age for full benefits did not change the minimum age for claiming benefits.

### **Timesharing with Minor Children**

Determination of a time-sharing schedule for minor children is of vital importance to the children and their parents. Time-sharing also affects the calculation of child support.

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<sup>23</sup> *Pimm v. Pimm*, 601 So. 2d 534, 537 (Fla. 1992).

<sup>24</sup> U.S. Social Security Administration, *Social Security Fact Sheet: Increase in Retirement Age*, <https://www.ssa.gov/pressoffice/IncRetAge.html> (last viewed Mar. 18, 2023).

<sup>25</sup> U.S. Social Security Administration, *Retirement Benefits*, <https://www.ssa.gov/benefits/retirement/planner/agereduction.html> (last viewed Mar. 18, 2023).

<sup>26</sup> *Id.*

***Timesharing - In General***

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”<sup>27</sup> Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.<sup>28</sup> In setting a time-sharing award, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.<sup>29</sup> In determining time-sharing with each parent, a court must consider the best interests of the child based on statutory factors, namely:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child’s school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.<sup>30</sup>

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.<sup>31</sup>

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<sup>27</sup> Section 61.13(2)(c)1., F.S.

<sup>28</sup> Section 61.13 (2)(c)2., F.S.

<sup>29</sup> Section 61.13(2)(c)1., F.S.

<sup>30</sup> Section 61.13(3), F.S.

<sup>31</sup> Section 61.13(3)(t), F.S.

### ***Modification of a Timesharing Award***

Times change and circumstances change. Just like alimony, timesharing with a minor child is subject to future modification by the court. Either party to a final judgment of dissolution or final order regarding timesharing and child support may seek modification of the timesharing or child support award on the grounds of a substantial change in circumstances.<sup>32</sup> The party seeking modification of a timesharing order must allege, and the trial court must find, that:

- Circumstances have substantially and materially changed since the original custody determination;
- The change was not reasonably contemplated by the parties; and
- The child's best interests justify changing custody.<sup>33</sup>

The court may modify support retroactively to the date of the filing of the motion.<sup>34</sup> Unlike alimony, timesharing is always modifiable while the child is a minor and the parties may not enter into an agreement that prohibits modification in the future.

## **III. Effect of Proposed Changes:**

### ***Alimony***

#### ***Forms of Alimony***

The bill eliminates permanent alimony as a form of alimony that a court may award. The bill also changes the statutory directions regarding the creation of a family law handbook to remove a reference to permanent alimony.

#### ***Criteria for an Award of Alimony***

The bill also authorizes the court to consider the adultery of either spouse, and any resulting economic impact that resulted from the adultery when determining the amount of alimony.

The bill requires the court to make written findings of fact regarding the basis for awarding the form and length of alimony, and must similarly make written findings why there is a lack of need or lack of ability to pay alimony. A court may award a combination of forms and payments necessary to provide greater economic assistance in order to allow the obligee to achieve self-support. The party seeking alimony has the burden of proving his or her need and the other party's ability to pay.

The bill amends the factors for consideration in determining the amount of an award of alimony as follows:

- In addition to considering the standard of living established during the marriage, the court must also consider the anticipated needs and necessities of life of each party after the final judgment.
- The mental condition of each party must be considered in addition to each party's age, physical and emotional condition, and whether either party is physically or mentally disabled.

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<sup>32</sup> Section 61.14(1)(a), F.S.

<sup>33</sup> *Korkmaz v. Korkmaz*, 200 So. 3d 263, 265 (Fla. Dist. Ct. App. 2016)

<sup>34</sup> Section 61.14(1)(a), F.S.

In regard to the disability, the court must consider if the resulting impact will affect the obligee's ability to provide for his or her own needs and the obligor's ability to pay and whether such condition is expected to be temporary or permanent.

- The income of each party; however, the liabilities distributed to each party no longer has to be considered.
- When considering the earning capacity, educational level, vocational skills, and employability of each party, the court must also consider the ability of either party to obtain the necessary skills or education to become self-supporting or to contribute to his or self-support.
- The court must also give special consideration to the need to care for a minor child whom the parties have in common and who has a mental or physical disability.
- The tax treatment factor and the "all other sources of income" factor are repealed.
- A court using the "any other factor necessary to do equity" factor must specify the other factor and the findings of fact justifying the factor. This may include a finding of a supportive relationship or a reasonable retirement, as discussed below.

If a court orders the obligor to purchase or maintain a life insurance policy or bond to secure the alimony award, the bill requires the court to make specific findings of special circumstances that warrant such purchase or maintenance. The court may apportion the cost to either or both parties based on need and ability to pay.

The bill changes the length of time married as a classification of a marriages being either short-term, moderate-term, or long-term. A short-term marriage is changed to 0-10 years, a moderate-term marriage is changed to 10-20 years, and a long-term marriage is changed to 20 or more years duration.

The bill limits the length of an alimony award:

- Bridge-the-gap alimony is not changed by the bill, and remains limited to 2 years.
- Rehabilitative alimony is limited to 5 years.
- No durational alimony may be awarded if the marriage lasted fewer than 3 years.<sup>35</sup>

Durational alimony may end upon retirement of the obligor (see discussion below). With two exceptions, durational alimony of a marriage of over 3 years is limited in duration to:

- 50 percent of the length of the marriage if the marriage was short-term.
- 60 percent of the length of the marriage if the marriage was moderate-term.
- 75 percent of the length of the marriage if the marriage was long-term.

The bill authorizes the court to extend the length of durational alimony beyond the maximum length above upon the consideration of four exceptional circumstances:

- The extent to which the obligee's age and employability limit the obligee's ability for self-support.
- The extent to which the obligee's available financial resources limit the obligee's ability for self-support.

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<sup>35</sup> The length of the marriage is calculated as follows: the time period starts on the date of the marriage, and ends on date of the filing of the petition for dissolution of the marriage.

- The extent to which the obligee is mentally or physically disabled or has been diagnosed with a mental or physical condition that has rendered, will render, him or her incapable of self-support.
- The extent to which the obligee is the caregiver to a mentally or physically disabled child, whether or not the child has attained the age of majority, who is common to the parties. This extension terminates when the child no longer needs caregiving by the obligee or upon the child's death.

The bill limits the amount of durational alimony to the lesser of the obligee's reasonable need or no more than 35 percent of the difference between the parties' net incomes.

#### ***Modification of an Existing Award of Alimony – Supportive Relationship***

The bill requires (as opposed to simply "may" in current law) a court to reduce or terminate alimony upon specific written findings that the obligee is in a supportive relationship with another person.

The obligor must prove, by a preponderance of the evidence that a supportive relationship existed or has existed in the 365 days before the filing of the petition for dissolution of marriage, separate maintenance, or supplemental petition for modification. If it is proven that a supportive relationship exists or has existed, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the court should not reduce or terminate an existing alimony award. The bill modifies the factors the court must consider in determining whether a supportive relationship exists as follows:

- Removes the requirement that the parties in the supportive relationship are residing together in a permanent place of abode.
- Adds that the court may consider whether the obligee and the other person have acquired or maintained a joint bank account or other financial accounts.
- Clarifies that the court must consider the extent to which the obligee and the other person have financially supported each other, including payment of the other's debts, expenses, or liabilities.
- Adds that a court must consider the extent to which the obligor has paid the existing alimony award or failed to do so and the existence and amount of any arrearage.
- Adds that a court may consider the extent to which the obligee or the other person has provided support to other family members.

#### ***Modification of an Existing Award of Alimony - Retirement***

The bill codifies the common law right to seek modification of an existing alimony award based on reasonable retirement of the obligor.

The bill allows a court to reduce or terminate an existing award of alimony upon specific, written findings of fact that the obligor has reached normal retirement age as defined by the Social Security Administration, or the customary age for his or her profession, and the obligor has made demonstrative and measurable efforts to retire or has actually retired. The obligor must prove, by a preponderance of the evidence, that his or her retirement reduces his or her ability to pay alimony. If the court determines that the obligor's retirement does reduce his or her ability to pay

alimony, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the alimony award should not be reduced or terminated.

The obligor may file a petition for modification of an existing award of alimony, no more than six months before an anticipated retirement, which shall be effective upon his or her reasonable and voluntary retirement as determined by the court. The court must make specific written findings supporting the decision to allow or disallow modification or termination based on retirement.

In determining whether to modify or terminate alimony based on the obligor's retirement, the court must consider the following factors:

- The age and health of the obligor.
- The nature and type of work performed by the obligor.
- The customary age of retirement in the obligor's profession.
- The obligor's motivation for retirement and the likelihood of returning to work.
- The needs of the obligee and the ability of the obligee to contribute toward his or her basic needs.
- The economic impact that a termination or reduction of alimony would have on the obligee.
- All the assets that the obligee and obligor accumulated or acquired prior to the marriage or following the entry of the final judgment as well as the obligor's and obligee's respective roles in the wasteful depletion of marital assets at the time of the entry of the final judgment.
- The income the obligee and the obligor earned during the marriage or following the entry of the final judgment.
- The Social Security benefits, retirement plan benefits, or pension benefits payable to the obligor and obligee following the entry of the final judgment.
- The obligor's compliance with the existing alimony obligation.

### **Timesharing with Minor Children**

The bill repeals a requirement that a party must show that a change in circumstance was unanticipated to modify a parenting plan and time-sharing schedule.

The bill also provides that a parent's relocation to a residence within 50 miles of the other parent is a substantial and material change in circumstances.

### **Effective Date**

The bill takes effect July 1, 2023. The provisions related to an award of alimony apply to all initial petitions for dissolution of marriage or support unconnected with dissolution of marriage pending or filed on or after July 1, 2023.

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

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in article VII, section 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

Indeterminate. CS/SB 1416 may reduce litigation costs by making alimony awards more predictable.

**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: 61.08, 61.13, 61.14, and 741.0306.

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

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

**CS by Fiscal Policy on March 23, 2023:**

The amendment made a technical change related to modification or termination of alimony based on a supportive relationship to conform with earlier language making modification or termination mandatory upon a finding of the existence of a supportive relationship.

**B. Amendments:**

None.

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

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By the Committee on Fiscal Policy; and Senator Gruters

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1 A bill to be entitled  
 2 An act relating to dissolution of marriage; amending  
 3 s. 61.08, F.S.; making technical changes; authorizing  
 4 the court to consider the adultery of either spouse  
 5 and any resulting economic impact in determining the  
 6 amount of alimony awarded; requiring the court to make  
 7 certain written findings in its awards of alimony;  
 8 authorizing the court to award a combination of forms  
 9 of alimony or forms of payment for certain purposes;  
 10 providing a burden of proof for the party seeking  
 11 support, maintenance, or alimony; requiring the court  
 12 to make written findings under certain circumstances;  
 13 revising factors that the court must consider in  
 14 determining the form or forms of support, maintenance,  
 15 or alimony; requiring the court to make specific  
 16 findings regarding the purchase or maintenance of a  
 17 life insurance policy or a bond to secure alimony;  
 18 authorizing the court to apportion costs of such  
 19 policies or bonds; modifying certain rebuttable  
 20 presumptions related to the duration of a marriage for  
 21 purposes of determining alimony; prohibiting the  
 22 length of an award of rehabilitative alimony from  
 23 exceeding a specified timeframe; revising a provision  
 24 authorizing the modification of rehabilitative alimony  
 25 upon completion of the rehabilitative plan; revising  
 26 provisions related to durational alimony; prohibiting  
 27 the length of an award of durational alimony from  
 28 exceeding specified timeframes; authorizing the court  
 29 to extend durational alimony under certain

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

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30 circumstances; specifying the calculation of  
 31 durational alimony; removing a provision authorizing  
 32 the court to award permanent alimony; providing  
 33 applicability; amending s. 61.13, F.S.; removing the  
 34 unanticipated change of circumstances requirement  
 35 regarding modifying a parenting plan and time-sharing  
 36 schedule; authorizing the court to consider a certain  
 37 relocation of a parent as a substantial and material  
 38 change for the purpose of a modification to the time-  
 39 sharing schedule, subject to a certain determination;  
 40 amending s. 61.14, F.S.; requiring the court to reduce  
 41 or terminate support, maintenance, or alimony under  
 42 certain circumstances; clarifying provisions relating  
 43 to supportive relationships; specifying burdens of  
 44 proof for the obligor and obligee when the court must  
 45 determine that a supportive relationship exists or has  
 46 existed and the extent to which an award of support,  
 47 maintenance, or alimony should be reduced or  
 48 terminated; requiring the court to make certain  
 49 written findings; revising the additional factors the  
 50 court must consider regarding supportive  
 51 relationships; revising construction and  
 52 applicability; authorizing the court to reduce or  
 53 terminate an award of support, maintenance, or alimony  
 54 upon specific written findings of fact regarding the  
 55 obligor's retirement; providing burdens of proof for  
 56 the obligor and obligee; requiring the court to make  
 57 written findings regarding specified factors when  
 58 deciding whether to reduce or terminate support,

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59 maintenance, or alimony; authorizing the obligor to  
 60 file a petition within a certain timeframe to modify  
 61 or terminate his or her support, maintenance, or  
 62 alimony obligation in anticipation of retirement;  
 63 requiring the court to consider certain factors and  
 64 make certain written findings; amending s. 741.0306,  
 65 F.S.; revising the information contained in a certain  
 66 family law handbook; conforming a provision to changes  
 67 made by the act; providing an effective date.

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

71 Section 1. Section 61.08, Florida Statutes, is amended to  
 72 read:

73 61.08 Alimony.—

74 (1) (a) In a proceeding for dissolution of marriage, the  
 75 court may grant alimony to either party in the form or forms of  
 76 temporary, which alimony may be bridge-the-gap, rehabilitative,  
 77 or durational alimony, as is equitable or permanent in nature or  
 78 any combination of these forms of alimony. In an any award of  
 79 alimony, the court may order periodic or lump sum payments or  
 80 payments in lump sum or both. The court may consider the  
 81 adultery of either spouse and any resulting economic impact in  
 82 determining the amount of alimony, if any, to be awarded.

83 (b) The court shall make written findings of fact regarding  
 84 the basis for awarding a form or any combination of forms of  
 85 alimony, including the type of alimony and the length of time  
 86 for which the alimony is awarded. The court may award a  
 87 combination of forms of alimony or forms of payment, including

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88 lump sum payments, to provide greater economic assistance in  
 89 order to allow the obligee to achieve self-support ~~The court may~~  
 90 ~~consider the adultery of either spouse and the circumstances~~  
 91 ~~thereof in determining the amount of alimony, if any, to be~~  
 92 ~~awarded. In all dissolution actions, the court shall include~~  
 93 ~~findings of fact relative to the factors enumerated in~~  
 94 ~~subsection (2) supporting an award or denial of alimony.~~

95 (2) (a) In determining whether to award support,  
 96 maintenance, or alimony ~~or maintenance~~, the court shall first  
 97 make a specific, factual determination as to whether the either  
 98 party seeking support, maintenance, or alimony has an actual  
 99 need for it ~~alimony or maintenance~~ and whether the other either  
 100 party has the ability to pay support, maintenance, or alimony ~~or~~  
 101 ~~maintenance.~~ The party seeking support, maintenance, or alimony  
 102 has the burden of proving his or her need for support,  
 103 maintenance, or alimony and the other party's ability to pay  
 104 support, maintenance, or alimony.

105 (b) When determining a support, maintenance, or alimony  
 106 claim, the court shall include written findings of fact relative  
 107 to the factors provided in subsection (3) supporting an award or  
 108 denial of support, maintenance, or alimony, unless the denial is  
 109 based upon a failure to establish a need for or ability to pay  
 110 support, maintenance, or alimony. However, the court shall make  
 111 written findings of fact as to the lack of need or lack of  
 112 ability to pay in denying a request for support, maintenance, or  
 113 alimony.

114 (3) If the court finds that the ~~a~~ party seeking support,  
 115 maintenance, or alimony has a need for it ~~alimony or maintenance~~  
 116 and that the other party has the ability to pay support,

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117 ~~maintenance, or~~ alimony ~~or maintenance~~, then in determining the  
 118 proper form or forms ~~type and amount of support, maintenance, or~~  
 119 alimony ~~or maintenance~~ under subsections (5)-(8), or a deviation  
 120 therefrom, the court shall consider all of the following  
 121 relevant factors, including, but not limited to:

122 (b)-(a) The standard of living established during the  
 123 marriage and the anticipated needs and necessities of life for  
 124 each party after the entry of the final judgment.

125 (a)-(b) The duration of the marriage.

126 (c) The age, and the physical, mental, and emotional  
 127 condition of each party, including whether either party is  
 128 physically or mentally disabled and the resulting impact on  
 129 either the obligee's ability to provide for his or her own needs  
 130 or the obligor's ability to pay alimony and whether such  
 131 conditions are expected to be temporary or permanent.

132 (d) The ~~financial~~ resources and income of each party,  
 133 including the income generated from both nonmarital and the  
 134 marital assets and liabilities distributed to each.

135 (e) The earning capacities, educational levels, vocational  
 136 skills, and employability of the parties, including the ability  
 137 of either party to obtain the necessary skills or education to  
 138 become self-supporting or to contribute to his or her self-  
 139 support prior to the termination of the support, maintenance, or  
 140 alimony award and, when applicable, the time necessary for  
 141 either party to acquire sufficient education or training to  
 142 enable such party to find appropriate employment.

143 (f) The contribution of each party to the marriage,  
 144 including, but not limited to, services rendered in homemaking,  
 145 child care, education, and career building of the other party.

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146 (g) The responsibilities each party will have with regard  
 147 to any minor children whom the parties ~~they~~ have in common, with  
 148 special consideration given to the need to care for a child with  
 149 a mental or physical disability.

150 (h) ~~The tax treatment and consequences to both parties of~~  
 151 ~~any alimony award, including the designation of all or a portion~~  
 152 ~~of the payment as a nontaxable, nondeductible payment.~~

153 ~~(i) All sources of income available to either party,~~  
 154 ~~including income available to either party through investments~~  
 155 ~~of any asset held by that party.~~

156 ~~(j)~~ Any other factor necessary for to de equity and justice  
 157 between the parties, which shall be specifically identified in  
 158 the written findings of fact. This may include a finding of a  
 159 supportive relationship as provided for in s. 61.14(1)(b) or a  
 160 reasonable retirement as provided for in s. 61.14(1)(c)1.

161 (4)(3) To the extent necessary to protect an award of  
 162 alimony, the court may order the obligor ~~any party who is~~  
 163 ~~ordered to pay alimony~~ to purchase or maintain a life insurance  
 164 policy or a bond, or to otherwise secure such alimony award with  
 165 any other assets that which may be suitable for that purpose.  
 166 The court must make specific findings that there are special  
 167 circumstances that warrant the purchase or maintenance of a life  
 168 insurance policy or a bond to secure the alimony award. If the  
 169 court orders a party to purchase or maintain a life insurance  
 170 policy or a bond, the court may apportion the costs of such  
 171 insurance or bond to either or both parties based upon a  
 172 determination of the ability of the obligee and obligor to pay  
 173 such costs.

174 (5)(4) For purposes of determining alimony, there is a

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rebuttable presumption that a short-term marriage is a marriage having a duration of less than 10 7 years, a moderate-term marriage is a marriage having a duration between 10 and 20 ~~of greater than 7 years but less than 17~~ years, and a long-term marriage is a marriage having a duration of 20 ~~17~~ years or longer ~~greater~~. The length of a marriage is the period of time from the date of marriage until the date of filing of an action for dissolution of marriage.

(6) (5) Bridge-the-gap alimony may be awarded to provide support to assist a party in making the ~~by providing support to~~ allow the party to make a transition from being married to being single. Bridge-the-gap alimony assists ~~is designed to assist~~ a party with legitimate identifiable short-term needs, ~~and~~ The length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the obligee party receiving alimony. An award of bridge-the-gap alimony is ~~shall~~ not be modifiable in amount or duration.

(7) (a) (6) (a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or
2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan ~~which shall be~~ included as a part of any order awarding rehabilitative alimony.

(c) The length of an award of rehabilitative alimony may

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not exceed 5 years.

(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan if the plan is completed before the length of the award of rehabilitative alimony expires.

(8) (a) (7) ~~Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis.~~ An award of durational alimony terminates upon the death of either party or upon the remarriage of the obligee party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14. Durational alimony may not be awarded following a marriage lasting less than 3 years. However, The length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage except as set forth in this subsection.

(b) An award of durational alimony may not exceed 50 percent of the length of a short-term marriage, 60 percent of the length of a moderate-term marriage, or 75 percent of the length of a long-term marriage. Under exceptional circumstances, the court may extend the term of durational alimony by a showing of clear and convincing evidence that it is necessary after application of the factors in subsection (3) and upon

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consideration of all of the following additional factors:

1. The extent to which the obligee's age and employability limit the obligee's ability for self-support, either in whole or in part.

2. The extent to which the obligee's available financial resources limit the obligee's ability for self-support, either in whole or in part.

3. The extent to which the obligee is mentally or physically disabled or has been diagnosed with a mental or physical condition that has rendered, or will render, him or her incapable of self-support, either in whole or in part.

4. The extent to which the obligee is the caregiver to a mentally or physically disabled child, whether or not the child has attained the age of majority, who is common to the parties. Any extension terminates upon the child no longer requiring caregiving by the obligee, or upon death of the child, unless one of the other factors in this paragraph apply.

(c) The amount of durational alimony is the amount determined to be the obligee's reasonable need, or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less. Net income shall be calculated in conformity with s. 61.30(2) and (3), excluding spousal support paid pursuant to a court order in the action between the parties.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be~~

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~~awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.

(10) (a) With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance, on or after that date, of one or both parties before the court having jurisdiction for the purpose of modifying or

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enforcing the order or in any other proceeding related to the order, or upon the application of either party, unless the provisions of paragraph (c) or paragraph (d) applies apply, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d) 1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must shall provide, or be deemed to provide, that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies apply, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments must shall be directed to the depository.

3. In IV-D cases, the IV-D agency has shall have the same rights as the obligee in requesting that payments be made through the depository.

(11) The court shall apply this section to all initial petitions for dissolution of marriage or support unconnected

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with dissolution of marriage pending or filed on or after July 1, 2023.

Section 2. Paragraph (c) of subsection (2) and subsection (3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial and, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. Except as otherwise provided in this paragraph, there is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The following evidence creates a rebuttable presumption of detriment to the child:

a. A parent has been convicted of a misdemeanor of the

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first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

3. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those responsibilities

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between the parties based on the best interests of the child.

Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

4. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

5. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court shall consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

6. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner

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of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interests ~~interest~~ of the child must ~~shall~~ be the primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial and ~~material, and unanticipated~~ change in circumstances and a determination that the modification is in the best interests of the child. If the parents of a child are residing greater than 50 miles apart at the time of the entry of the last order establishing time sharing and a parent moves within 50 miles of the other parent, then that move may be considered a substantial and material change in circumstances for the purpose of a modification to the time-sharing schedule, so long as there is a determination that the modification is in the best interests of the child. Determination of the best interests of the child must ~~shall~~ be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

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(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.



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(l) The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect

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the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Section 3. Present paragraphs (c) and (d) of subsection (1) of section 61.14, Florida Statutes, are redesignated as paragraphs (d) and (e), respectively, a new paragraph (c) is added to that subsection, and paragraph (b) of that subsection is amended, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court must ~~may~~ reduce or terminate an award of support, maintenance, or alimony upon specific written findings by the court that ~~since the granting of a divorce and the award of alimony~~ a supportive relationship has existed between the obligee and a person who is not related to the obligee by consanguinity or affinity with whom the obligee resides. ~~On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists.~~

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2. In determining the nature of the relationship between an obligee and another person and the extent to which an ~~whether an existing~~ award of support, maintenance, or alimony should be reduced or terminated because of the existence of a ~~an alleged~~ supportive relationship between an obligee and a person who is not related by consanguinity or affinity, the court shall make written findings of fact and with whom the obligee resides, the court shall elicit the nature and extent of the relationship in question. The burden is on the obligor to prove, by a ~~preponderance of the evidence, that a supportive relationship exists or has existed in the 365 days before the filing of the petition for dissolution of marriage, separate maintenance, or supplemental petition for modification. If a supportive relationship is proven to exist or to have existed, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the court should not deny or reduce an initial award of support, maintenance, or alimony or reduce or terminate an existing award of support, maintenance, or alimony. The court shall consider and make written findings of fact regarding all relevant facts in s. 61.08(3) and give consideration, without limitation, to circumstances, including, but not limited to, the following additional factors, in determining the relationship of an obligee to another person:~~

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

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b. The period of time that the obligee has resided with the other person ~~in a permanent place of abode.~~

c. The extent to which the obligee and the other person have pooled their assets or income, acquired or maintained a joint bank account or other financial accounts, or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has financially supported the other, in whole or in part, including payment of the other's debts, expenses, or liabilities.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's business entity ~~company~~ or employer.

g. The extent to which ~~Whether~~ the obligee and the other person have worked together to acquire any assets ~~create~~ or to enhance the anything of value of any assets.

h. The extent to which ~~Whether~~ the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. The extent to which ~~Evidence in support of a claim that~~ the obligee and the other person have an express or implied agreement regarding property sharing or financial support.

j. The extent to which the obligor has paid the existing alimony award or failed to do so and the existence and amount of any arrearage ~~Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.~~

k. The extent to which ~~Whether~~ the obligee and the other

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person have provided support to the children or other family members of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes ~~only~~ that relationships ~~do~~ exist that provide financial or economic support equivalent to a marriage and that support, maintenance, or alimony must be modified or terminated if such a relationship is proven to exist ~~terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph.~~ The existence of a conjugal relationship, ~~though it may be relevant to the nature and extent of the relationship,~~ is not necessary for the application of ~~the provisions of~~ this paragraph.

(c)1. The court may reduce or terminate an award of support, maintenance, or alimony upon specific, written findings of fact that the obligor has reached normal retirement age as defined by the Social Security Administration or the customary retirement age for his or her profession and that the obligor has taken demonstrative and measurable efforts or actions to retire or has actually retired. The burden is on the obligor to prove, by a preponderance of the evidence, that his or her retirement reduces his or her ability to pay support, maintenance, or alimony. If the court determines that the obligor's retirement has reduced or will reduce the obligor's ability to pay, the burden shifts to the obligee to prove, by a preponderance of the evidence, that the obligor's support, maintenance, or alimony obligation should not be terminated or

594-02964-23

20231416c1

reduced.

2. In determining whether an award of support, maintenance, or alimony should be reduced or terminated because of the obligor's voluntary retirement, the court shall give consideration to, and make written findings of fact regarding the following factors:

a. The age and health of the obligor.

b. The nature and type of work performed by the obligor.

c. The customary age of retirement in the obligor's profession.

d. The obligor's motivation for retirement and likelihood of returning to work.

e. The needs of the obligee and the ability of the obligee to contribute toward his or her own basic needs.

f. The economic impact that a termination or reduction of alimony would have on the obligee.

g. All assets of the obligee and the obligor accumulated or acquired prior to the marriage, during the marriage, or following the entry of the final judgment as well as the obligor and obligee's respective roles in the wasteful depletion of any marital assets received by him or her at the time of the entry of the final judgment.

h. The income of the obligee and the obligor earned during the marriage or following the entry of the final judgment.

i. The social security benefits, retirement plan benefits, or pension benefits payable to the obligor and the obligee following the final judgment of dissolution.

j. The obligor's compliance, in whole or in part, with the existing alimony obligation.

594-02964-23

20231416c1

639       3. In reasonable anticipation of retirement, but not more  
640 than 6 months before retirement, the obligor may file a petition  
641 for modification of his or her support, maintenance, or alimony  
642 obligation, which shall be effective upon his or her reasonable  
643 and voluntary retirement as determined by the court pursuant to  
644 the factors in subparagraph 2. The court shall give  
645 consideration to, and make written findings of fact regarding,  
646 the factors in subparagraph 2. and s. 61.08(3) when granting or  
647 denying the obligor's petition for modification; when  
648 confirming, reducing, or terminating the obligor's alimony  
649 obligation; and when granting or denying any request for  
650 modification, the date of filing of the obligor's modification  
651 petition, or other date post-filing as equity requires, giving  
652 due regard and consideration to the changed circumstances or the  
653 financial ability of the parties.

654       Section 4. Paragraph (f) of subsection (3) of section  
655 741.0306, Florida Statutes, is amended to read:

656       741.0306 Creation of a family law handbook.—

657       (3) The information contained in the handbook or other  
658 electronic media presentation may be reviewed and updated  
659 annually, and may include, but need not be limited to:

660       (f) Alimony, including temporary, durational, ~~permanent~~  
661 rehabilitative, and lump sum.

662       Section 5. This act shall take effect July 1, 2023.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JOE GRUTERS**

22nd District

**COMMITTEES:**

Regulated Industries, *Chair*  
Appropriations  
Appropriations Committee on Agriculture,  
Environment, and General Government  
Appropriations Committee on Health  
and Human Services  
Commerce and Tourism  
Community Affairs  
Transportation

**SELECT COMMITTEE:**

Select Committee on Resiliency

**JOINT COMMITTEE:**

Joint Committee on Public Counsel Oversight,  
*Alternating Chair*

March 27, 2023

The Honorable Debbie Mayfield, Chair  
Committee on Rules  
402 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Mayfield:

I am writing to request that Senate Bill 1416, Dissolution of Marriage to be placed on the agenda of the next Rules committee meeting.

SB 1416 provides divorcing families with more predictability and consistency throughout the state as to the outcomes of their particular situation by creating clear, definitive parameters within which a court has discretion to make determinations regarding the amount and duration of alimony

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: Philip Twogood, Staff Director  
Shasta W. Kruse, Deputy Staff Director

**REPLY TO:**

- ☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- ☐ 316 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**KATHLEEN PASSIDOMO**  
President of the Senate

**DENNIS BAXLEY**  
President Pro Tempore

The Florida Senate

# APPEARANCE RECORD

Deliver both copies of this form to  
Senate professional staff conducting the meeting

4-5-23

Meeting Date

Rules

Committee

1416

Bill Number or Topic

Amendment Barcode (if applicable)

Name Cynthia Lus

Phone 850-259-6023

Address 6142 Redberry Dr.

Email clul2011@yahoo.com

Street

Gulf Breeze FL 32563

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☐ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate  
**APPEARANCE RECORD**

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Meeting Date

4/5/23  
Rules  
Committee

1416  
Bill Number or Topic

Amendment Barcode (if applicable)

Name

Sue Savage

Phone

Address

Street

Private

Email

SSavage755@Ab1.com

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

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S-001 (08/10/2021)

April 5, 2023

Meeting Date

**APPEARANCE RECORD**

SB 1416

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Joyce Tindall

Phone

850-559-8018

Address

5157 Holly Fern Trace

Street

Email

jettarisen@gmail.com

Tallahassee FL

City

State

32312

Zip

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**I am appearing without  
compensation or sponsorship.☐I am a registered lobbyist,  
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The Florida Senate

**APPEARANCE RECORD**

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4-5-23

Meeting Date

Rules

Committee

SB 1414

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Camille Fireash

Phone

850 686-1452

Address

5789 Truluck Rd

Email

PRIVATE

Street

Milton

State

FL

Zip

32570

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
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(travel, meals, lodging, etc.),  
sponsored by:

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The Florida Senate

**APPEARANCE RECORD**

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SB1416

Bill Number or Topic

Amendment Barcode (if applicable)

4/5/2023

Meeting Date

Rules

Committee

Name

Monielle Fournier

Phone

Address

Street

Email

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☐

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☒

I am appearing without  
compensation or sponsorship.

☐

I am a registered lobbyist,  
representing:

☐

I am not a lobbyist, but received  
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**APPEARANCE RECORD**

4/5/2023

Meeting Date

1416

Bill Number or Topic

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Leisa Atthey

Phone

[Handwritten symbol]

Address

Street

Email

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information**OR**Waive Speaking: ☐ In Support ☐ Against**PLEASE CHECK ONE OF THE FOLLOWING:**I am appearing without  
compensation or sponsorship.I am a registered lobbyist,  
representing:I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

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S-001 (08/10/2021)

4/5/23

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

SB 1416

Bill Number or Topic

**Rules**

Committee

Amendment Barcode (if applicable)

Name **Phil Wartenberg**

Phone **(813) 272-5351**

Address **800 E. Twiggs St., Rm. 404**  
Street  
**Tampa** **FL** **33602**  
City State Zip

Email **philip.wartenberg@fljud13.org**

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without compensation or sponsorship.

☐ I am a registered lobbyist, representing:

☒ I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

**Family Law Section FL Bar**

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S-001 (08/10/2021)

APRIL 5, 2023

The Florida Senate

# APPEARANCE RECORD

SB 1416

Meeting Date

RULES

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

TERRANCE POWER

Phone

813-281-0707

Address

1608 SHADY OAKS DR

Email

Street

OLDSMAR FL 34677

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

FLORIDA FAMILY FAIRNESS

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

**APPEARANCE RECORD**

4-25-23

Meeting Date

1416

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

SARAH Holmes

Phone

850 - 690 - 0867

Address

Private

Email

mermaid@gmail.com

Street

Orlando

FL

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

**OR**

Waive Speaking:

☐

In Support

☒

Against

**PLEASE CHECK ONE OF THE FOLLOWING:**☒I am appearing without  
compensation or sponsorship.☐I am a registered lobbyist,  
representing:☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

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S-001 (08/10/2021)



April 5, 2023

Meeting Date

Rules

Committee

The Florida Senate  
**APPEARANCE RECORD**

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1416

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Nelson Diaz**

Phone **305-421-6304**

Address **9155 S. Dadeland Blvd Suite 1716**

Email **diaz@thesoutherngroup.com**

Street

**Miami**

City

**FL**

State

**33156**

Zip

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**

☐ I am appearing without  
compensation or sponsorship.

☒ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

**Florida Family Fairness**

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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S-001 (08/10/2021)

April 5, 2023

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

1416

Bill Number or Topic

Rules

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Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name **Michel Buhler, Florida Family Fairness**

Phone **305-796-4215**

Address **815 Malaga Ave**

Street

Email

**Coral Gables**

**FL**

**33134**

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.



I am a registered lobbyist,  
representing:



I am not a lobbyist, but received  
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S-001 (08/10/2021)



4/5/23

Meeting Date

The Florida Senate  
**APPEARANCE RECORD**

Deliver both copies of this form to  
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1416

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Josh Heath, Fair Parenting for  
Florida's Children

Phone

Address

Street

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

**OR**

Waive Speaking: ☒ In Support ☐ Against

**PLEASE CHECK ONE OF THE FOLLOWING:**



I am appearing without  
compensation or sponsorship.



I am a registered lobbyist,  
representing:



I am not a lobbyist, but received  
something of value for my appearance  
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S-001 (08/10/2021)

‘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 Rules

---

BILL: SB 1442

INTRODUCER: Senator Collins and others

SUBJECT: Terrorism

DATE: April 4, 2023

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	<b>Favorable</b>
2. Cellon	Stokes	CJ	<b>Favorable</b>
3. Bond	Twogood	RC	<b>Favorable</b>

---

## I. Summary:

SB 1442 expands the fugitive disentitlement doctrine to collection activities related to a private civil action related to terrorism. The bill provides that a fugitive from justice who is a judgment debtor in a civil action relating to an act of terrorism may not use the resources of the state in defending against collection proceedings related to the judgment. Additionally, in such collection proceedings no party may demand a jury trial.

The bill takes effect upon becoming law, and its provisions apply to pending cases.

## II. Present Situation:

It may seem that the court’s entry of a final judgment is the culmination of a civil case. It often is not. A final civil judgment awarding money damages does not automatically put money in the hands of the prevailing party, referred to as the judgment creditor. A final judgment merely gives the judgment creditor the legal right to seek out assets of the judgment debtor and forcibly sell or transfer those assets to or for the judgment creditor. This is commonly referred to as the collections process.

### Civil Judgment Collections Process

There are several means for a judgment debtor to forcibly attempt to collect the judgment. The primary means of collection are:

- Execution – An “execution” is the lawful seizure of property owned by the judgment debtor to be sold at public auction. The net proceeds of an execution on property are paid to the judgment creditor to be applied against the debt. Execution applies to real property and personal property. Execution and sale are conducted by the sheriff.<sup>1</sup>

---

<sup>1</sup> The civil execution process is governed by ch. 56, F.S.

- Garnishment – A “garnishment” is the seizure of monies owed to the judgment debtor, which money is then paid to the judgment creditor to be applied against the debt. Common targets of a garnishment are bank accounts and wages.<sup>2</sup>
- Proceedings Supplementary – Proceedings supplementary is a collections tool created by statute. When any judgment creditor holds an unsatisfied judgment or judgment lien, the judgment creditor may file a motion asking for proceedings supplementary. In the proceeding, the court may issue a Notice to Appear to the judgment debtor or to any person alleged to be holding property of the judgment debtor, or to any person who may have property that was fraudulently transferred by the judgment debtor to that third party. After hearing, the court may order the sheriff to execute on property found to be owned by the judgment debtor, or found to have been fraudulently conveyed by the judgment debtor, for sale for the benefit of the judgment creditor.<sup>3</sup>

While collection actions are primarily focused on assets of the judgment debtor, there may be occasions where property titled or held in the name of another may be seized in payment of the judgment. This occurs where the judgment debtor has fraudulently transferred the property to a third party in an attempt to thwart collection of the judgment. Florida has adopted the Uniform Fraudulent Transfer Act to address these situations.<sup>4</sup>

In some postjudgment proceedings, any party may demand a jury trial. Section 56.18, F.S., provides that the portion of a proceedings supplementary process that determines whether property is subject to execution, and the value of the property, is to be tried by jury, unless waived by the parties. Section 77.08, F.S., allows either party in a garnishment action the right to demand a jury trial. The statutory right to a jury trial applies to a civil action attempting to collect a judgment related to an act of terrorism.<sup>5</sup>

“Terrorism” or “terrorist activity” as defined in s. 775.30, F.S., mean an activity that:

- Involves:
  - A violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
  - A violation of s. 815.06, F.S. (offenses against computer users); and
- Is intended to:
  - Intimidate, injure, or coerce a civilian population;
  - Influence the policy of a government by intimidation or coercion; or
  - Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

A person who commits the offenses specified in s. 775.30(2), F.S., in furtherance of intimidating or coercing the policy of a government, or in furtherance of affecting the conduct of a government by mass destruction, assassination, or kidnapping, commits the crime of terrorism, a first degree felony.<sup>6</sup>

---

<sup>2</sup> The garnishment process is generally governed by ch. 77, F.S.

<sup>3</sup> Section 56.29, F.S.

<sup>4</sup> Chapter 726, F.S.

<sup>5</sup> *Stansell v. Revolutionary Armed Forces of Columbia*, 45 F.4th 1340 (11th Cir. 2022).

<sup>6</sup> A first degree felony is punishable by up to 30 years’ imprisonment and a \$10,000 fine.

A person who commits a violation of s. 775.30(2), F.S., which results in death or serious bodily injury commits a life felony.<sup>7</sup>

### **Civil Remedy for Victims of Acts of Terrorism**

Section 772.13, F.S., creates a civil remedy for victims of acts of terrorism or facilitating or furthering terrorism. A person who is injured by an act of terrorism, or by an act facilitating or furthering terrorism, has a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$1,000 and reasonable attorney fees and court costs in the trial and appellate courts. A similar civil cause of action for acts of terrorism is created in federal law at 18 U.S.C. s. 2333.

### **Fugitive Disentitlement Doctrine**

The fugitive disentitlement doctrine initially arose in the criminal context, contemplating the dismissal of an absconding criminal appellant's appeal. It reflects the inherent authority of the courts to place conditions on the exercise of their jurisdiction. In one sense, the doctrine is a tool of case management, justifying the dismissal of certain cases from a court docket. Over time it has been extended to civil cases.<sup>8</sup> The doctrine generally prohibits a person from using the resources of the courts in furtherance of a legal claim upon a finding that such person, evading prosecution for crime, purposely leaves the jurisdiction of the court or otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.

The doctrine currently applies to civil forfeiture actions related to a criminal action, in both federal and state law.<sup>9</sup> The doctrine prohibits a fugitive from proceeding as a plaintiff in a civil action.<sup>10</sup> It is unclear whether the doctrine applies to civil collection actions where a fugitive is a judgment debtor.

## **III. Effect of Proposed Changes:**

The bill expands the fugitive disentitlement doctrine to collection activities related to a private civil action related to an act of terrorism. Specifically, the bill provides that in any postjudgment execution proceedings to enforce a judgment entered under state or federal laws creating a civil cause of action for a victim of terrorism:

- There is no right to a jury trial under s. 56.18 or s. 77.08; F.S., and
- A defendant or a person may not use the resources of the courts of this state in furtherance of a defense or objection to postjudgment collection proceedings if the defendant or person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state or the United States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the defendant or person.

---

<sup>7</sup> A life felony is punishable by up to life imprisonment or a term of years not exceeding life and a \$15,000 fine. Sections 775.082 and 775.083, F.S.

<sup>8</sup> [https://www.justice.gov/sites/default/files/civil/legacy/2014/10/17/March\\_2013.pdf](https://www.justice.gov/sites/default/files/civil/legacy/2014/10/17/March_2013.pdf).

<sup>9</sup> 28 U.S.C s. 2466; s. 896.106, F.S.

<sup>10</sup> *Jaffe v. Snow*, 610 So. 2d 482 (Fla. 5th DCA 1992).

Additionally, this provision applies to any entity that is owned or controlled by a person to whom this applies.

The bill is effective upon becoming law, and it applies to any judgment collectible under state law and to any civil action pending or filed on or after the effective date.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

The right to a jury trial is at Art. I, s. 22 of the State Constitution. In civil law, the right only applies to an action at law, not an action for equity. Postjudgment collections activities are equitable in nature, and thus the constitutional right to a jury does not apply.<sup>11</sup>

Bills related to the fugitive disentitlement doctrine relate only to remedies or procedure, and thus may constitutionally affect pending civil proceedings.<sup>12</sup>

#### **V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

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<sup>11</sup> 381651 *Alberta, Ltd., v. 279298 Alberta, Ltd.*, 675 So.2d 1385 (Fla. 4th DCA 1996).

<sup>12</sup> *Tejada v. In re Forfeiture of The Following Described Prop., \$406,626.11 In U.S. Currency*, 820 So. 2d 385, 390 (Fla. 3rd DCA 2002).

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 772.13 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 Collins

14-01146C-23

20231442\_\_

A bill to be entitled

An act relating to terrorism; amending s. 772.13, F.S.; specifying that there is no right to a jury trial under specified provisions and that neither defendants nor certain persons may use the resources of the courts of this state in furtherance of a defense or objection to postjudgment collection proceedings in any postjudgment execution proceedings to enforce certain judgments; providing applicability; providing a directive to the Division of Law Revision; providing an effective date.

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

Section 1. Subsection (6) is added to section 772.13, Florida Statutes, to read:

772.13 Civil remedy for terrorism or facilitating or furthering terrorism.—

(6) (a) In any postjudgment execution proceedings to enforce a judgment entered under this section or under 18 U.S.C. s. 2333 or a substantially similar law of the United States or of any state or territory of the United States:

1. There is no right to a jury trial under s. 56.18 or s. 77.08; and

2. A defendant or a person may not use the resources of the courts of this state in furtherance of a defense or objection to postjudgment collection proceedings if the defendant or person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state or the United

Page 1 of 2

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

14-01146C-23

20231442\_\_

States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the defendant or person. This subparagraph applies to any entity that is owned or controlled by a person to whom this paragraph applies.

(b) Paragraph (a) applies to any judgment collectible under state law and to any civil action pending or filed on or after the effective date of this act.

Section 2. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it appears in this act with the date this act becomes a law.

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

Page 2 of 2

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

# APPEARANCE RECORD

SB 1442

Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date

Rules

Committee

Name

Tom Howes Hayes

Phone

Address

3630 S. Tropical Trail

Email

Street

Merritt Island FL

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

## PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without compensation or sponsorship.



I am a registered lobbyist, representing:



I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)



The Florida Senate

# APPEARANCE RECORD

5 APR 23

Meeting Date

RULES

Committee

SB 1442

Bill Number or Topic

Amendment Barcode (if applicable)

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Name NEWT PORTER

Phone \_\_\_\_\_

Address 9655 S. DIXIE HWY #208

Email \_\_\_\_\_

Street

MIAMI

City

FL

State

33156

Zip

Speaking: ☒ For ☐ Against ☐ Information **OR** Waive Speaking: ☐ In Support ☐ Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without  
compensation or sponsorship.

☐ I am a registered lobbyist,  
representing:

☐ I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

## APPEARANCE RECORD

4.5.23

1442

Meeting Date

Bill Number or Topic

Rules

Deliver both copies of this form to  
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name

Barney Bishop II

Phone

850.510.9922

Address

1454 Vieux Carre Dr

Email

Barney@BarneyBishop.com

Street

Tall

FL

32308

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

## PLEASE CHECK ONE OF THE FOLLOWING:

☐I am appearing without  
compensation or sponsorship.☒I am a registered lobbyist,  
representing:Fla. Smart  
Justice Alliance☐I am not a lobbyist, but received  
something of value for my appearance  
(travel, meals, lodging, etc.),  
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1616

INTRODUCER: Senator Martin

SUBJECT: Public Records/Transportation and Protective Services

DATE: April 4, 2023

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>McVaney</u>	<u>Twogood</u>	<u>RC</u>	<b>Pre-meeting</b>

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**I. Summary:**

SB 1616 exempts from public records copying and inspection requirements those records held by a law enforcement agency relating to transportation and protective services provided for the Governor, the Governor's immediate family, visiting governors and the governors' families, and other persons as requested by certain state officials. The exemption applies to records held by a law enforcement agency before, on, or after the bill becoming a law.

The bill makes findings, as required by the State Constitution, that the new exemption from public records disclosure is a public necessity. Two-thirds vote of both the House and the Senate is required for final passage.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

The bill is not expected to impact state or local government revenues or expenditures.

The bill is effective upon becoming law.

**II. Present Situation:**

**Transportation and Protective Services**

Subsection 943.68(1), F.S., requires the Florida Department of Law Enforcement (DLE) to provide and maintain the security of the Governor, the Governor's immediate family, and the Governor's office and mansion.

Subsection 943.68(5), F.S., allows the DLE to provide security and transportation to visiting governors and their families upon the request of the Governor.

Subsection 943.68(6), F.S., requires the DLE to provide security or transportation services to other persons when requested by the Governor, Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Supreme Court. The requesting party must certify that such services are in the best interests of the state. The persons that may be afforded these services are limited to persons (a) who are visiting the state and the primary purpose of the visit is for a significant public purpose or (b) for whom the failure to provide such services could result in a clear and present danger to the personal safety of the persons or others or could result in public embarrassment for the state.

Subsection 943.68(9), F.S., requires the DLE to submit an annual report to the Governor, the Legislature, and the Cabinet detailing all transportation and protective services provided for the preceding fiscal year. The report must include a detailed accounting of the cost of such transportation and protective services, including the names of persons provided such services and the nature of the state business performed.

As the DLE and other law enforcement agencies perform these transportation and protective services, reports are submitted detailing security, operational, and logistical plans; risk, vulnerability, or threat assessments; and travel records of the protectee and the protective detail. Knowledge of such information may increase the risks involved in providing such services.

### **Access to Public Records - Generally**

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

## **Executive Agency Records – The Public Records Act**

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>5</sup>

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>9</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup>

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<sup>5</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> Section 119.07(1)(a), F.S.

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.<sup>11</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>13</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>14</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>16</sup> with specified exceptions.<sup>17</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>18</sup> In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>19</sup>
- The release of sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>20</sup> or
- It protects trade or business secrets.<sup>21</sup>

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<sup>11</sup> See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>12</sup> See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

<sup>16</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

<sup>17</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b)1., F.S.

<sup>20</sup> Section 119.15(6)(b)2., F.S.

<sup>21</sup> Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.<sup>22</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>23</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>24</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 943.68, F.S., to exempt from public record copying and inspection requirements records held by a law enforcement agency related to transportation and protective services of the Governor and the Governor's immediate family, of visiting governors and their families as requested by the Governor, and other persons as requested by certain state officers.

The section provides for repeal of the exemption on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** provides a statement of public necessity as required by the Florida Constitution. The public necessity statement provides that the disclosure of records relating to the transportation and protection services may endanger the protected person, the families, and members of the protective detail.

**Section 3** provides that the bill takes effect upon becoming a law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

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

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<sup>22</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>23</sup> See generally s. 119.15, F.S.

<sup>24</sup> Section 119.15(7), F.S.

**B. Public Records/Open Meetings Issues:****Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for travel and protective services records held by a law enforcement agency, thus, the bill will require a two-thirds vote to be enacted.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

**Scope of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect records relating to the protective and transportation services provided to certain persons and their families and held by a law enforcement agency. The bill only exempts records related to those services. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

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

None.

**B. Private Sector Impact:**

None.



C. Government Sector Impact:

The bill is not expected to impact state and local government revenues and expenditures.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 943.68 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.



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LEGISLATIVE ACTION

Senate

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House

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The Committee on Rules (Martin) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (10) is added to section 943.68,  
Florida Statutes, and subsections (1), (5), and (6) of that  
section are republished, to read:

943.68 Transportation and protective services.—

(1) The department shall provide and maintain the security  
of the Governor, the Governor's immediate family, and the  
Governor's office and mansion and the grounds thereof.



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(5) The department is authorized to provide security or transportation to visiting governors and their families upon request by the Governor.

(6) The department shall provide security or transportation services to other persons when requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Supreme Court, subject to certification by the requesting party that such services are in the best interest of the state. The requesting party may delegate certification authority to the executive director of the department. The requesting party shall limit such services to persons:

(a) Who are visiting the state; for whom such services are requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Supreme Court; and for whom the primary purpose of the visit is for a significant public purpose; or

(b) For whom the failure to provide security or transportation could result in a clear and present danger to the personal safety of such persons or to the safety of other persons or property within this state or could result in public embarrassment to the state.

(10) (a) Records held by a law enforcement agency relating to security or transportation services provided under subsection (1), subsection (5), or subsection (6) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to records held by a law enforcement agency before, on, or after the effective date of this act.



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(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that records held by a law enforcement agency relating to security or transportation services provided under s. 943.68(1), (5), or (6), Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Information obtained by a law enforcement agency authorized by law to provide security or transportation services to persons, including the Governor, the Governor's immediate family, visiting governors and their families, the Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Supreme Court, or for persons for whom such services are requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Supreme Court, the disclosure of which could endanger the protected person, should not be disclosed to the public. The disclosure of such records, including security, operational, and logistical plans; risk, vulnerability, and threat assessments; travel information relating to the protected person and law enforcement agents and personnel providing the security or transportation services; and identifying information of sworn and nonsworn personnel engaged in a security or transportation services operation or detail could reveal the means and methods of providing the required security or



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transportation services and could impair the ability of the law enforcement agency to ensure the safety and security of the protected person. The disclosure of such records could also endanger the law enforcement agents and personnel providing the security or transportation services. The Legislature finds that the safety and security of persons authorized protection under s. 943.68(1), (5), or (6), Florida Statutes, as well as the safety and security of law enforcement agents and personnel providing the security or transportation services, outweigh any public benefit that may be derived from the disclosure of such records. Therefore, it is a public necessity that records held by a law enforcement agency relating to security or transportation services provided under s. 943.68(1), (5), or (6), Florida Statutes, be made exempt from public records requirements.

Section 3. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 4. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to public records; amending s. 943.68,  
F.S.; providing an exemption from public records  
requirements for records held by a law enforcement  
agency relating to certain security or transportation



306640

99           services; providing for retroactive application;  
100         providing for legislative review and repeal of the  
101         exemption; providing a statement of public necessity;  
102         providing a directive to the Division of Law Revision;  
103         providing an effective date.

By Senator Martin

33-01002B-23

20231616\_\_

A bill to be entitled

An act relating to public records; amending s. 943.68, F.S.; providing an exemption from public records requirements for records relating to transportation and protective services of specified persons provided by law enforcement agencies; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (10) is added to section 943.68, Florida Statutes, and subsections (1), (5), and (6) of that section are republished, to read:

943.68 Transportation and protective services.—

(1) The department shall provide and maintain the security of the Governor, the Governor's immediate family, and the Governor's office and mansion and the grounds thereof.

(5) The department is authorized to provide security or transportation to visiting governors and their families upon request by the Governor.

(6) The department shall provide security or transportation services to other persons when requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Supreme Court, subject to certification by the requesting party that such services are in the best interest of the state. The requesting party may delegate certification

33-01002B-23

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authority to the executive director of the department. The requesting party shall limit such services to persons:

(a) Who are visiting the state; for whom such services are requested by the Governor, the Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Supreme Court; and for whom the primary purpose of the visit is for a significant public purpose; or

(b) For whom the failure to provide security or transportation could result in a clear and present danger to the personal safety of such persons or to the safety of other persons or property within this state or could result in public embarrassment to the state.

(10) (a) Records held by a law enforcement agency related to transportation and protective services provided under subsections (1), (5), and (6) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to records held by a law enforcement agency before, on, or after the effective date of the exemption.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that records pertaining to transportation and protective services provided by the Department of Law Enforcement and other law enforcement agencies as required pursuant to s. 943.68, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the

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59 State Constitution. Records obtained by a law enforcement agency  
 60 authorized by law to provide transportation and protective  
 61 services to individuals, including to the Governor, the  
 62 Governor's immediate family, visiting governors and their  
 63 families, the Lieutenant Governor, a member of the Cabinet, the  
 64 Speaker of the House of Representatives, the President of the  
 65 Senate, or the Chief Justice of the Supreme Court; or for those  
 66 whom such services are requested by the Governor, the Lieutenant  
 67 Governor, a member of the Cabinet, the Speaker of the House of  
 68 Representatives, the President of the Senate, or the Chief  
 69 Justice of the Supreme Court; the disclosure of which could  
 70 endanger the protected person and his or her family members,  
 71 should be protected from public records requirements and not be  
 72 disclosed to the public. The disclosure of records such as  
 73 security, operational, or logistical plans; risk, vulnerability,  
 74 or threat assessments; travel records related to the protected  
 75 person and assigned agents of the protective detail; and  
 76 identifying information of sworn and non-sworn personnel engaged  
 77 in a transportation or protective services operation or detail  
 78 could reveal the means and methods of providing the required  
 79 transportation and protective services and could impair the  
 80 ability of the law enforcement agency to ensure the safety and  
 81 security of the protected individuals. The disclosure of such  
 82 records could also endanger the law enforcement agents  
 83 responsible for providing the protection. The Legislature finds  
 84 that the safety and security of individuals authorized to have  
 85 protection pursuant to s. 943.68(1), (5), and (6), Florida  
 86 Statutes, as well as the safety and security of agents providing  
 87 the transportation and protective services, outweigh any public

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

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88 benefit that may be derived from the disclosure of these  
 89 records. Therefore, it is a public necessity that records held  
 90 by a law enforcement agency related to transportation and  
 91 protective services provided under s. 943.68(1), (5), and (6),  
 92 Florida Statutes, be made exempt from public disclosure.

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

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





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Criminal Justice, *Chair*  
Appropriations  
Appropriations Committee on Criminal and Civil  
Justice  
Appropriations Committee on Health and  
Human Services  
Community Affairs  
Environment and Natural Resources  
Ethics and Elections

### SELECT COMMITTEE:

Select Committee on Resiliency

**SENATOR JONATHAN MARTIN**

33rd District

March 28, 2023

The Honorable Debbie Mayfield  
Senate Rules Committee, Chair  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

**RE: SB 1616 - An act relating to Public Records/Transportation and Protective Services**

Dear Chair Mayfield:

Please allow this letter to serve as my respectful request to place SB 1616, relating to Public Records/Transportation and Protective Services, on the next committee agenda.

SB 1616 creates a public records exemption records held by a law enforcement agency relating to security and transportation services provided under the authority of s. 943.68, F.S.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Martin", with a stylized flourish at the end.

Jonathan Martin  
Senate District 33

Cc: Philip Twogood, Staff Director  
Cynthia Futch, Administrative Assistant

### REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**KATHLEEN PASSIDOMO**  
President of the Senate

**DENNIS BAXLEY**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Committee on Education, *Vice Chair*  
Commerce and Tourism  
Education Postsecondary  
Education Pre-K -12  
Finance and Tax  
Fiscal Policy  
Regulated Industries  
Rules

**SENATOR SHEVRIN D. "SHEV" JONES**

District 34

April 3, 2023

Hon. Debbie Mayfield  
Chair, Florida Senate Committee on Rules  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Grall,

I respectfully request an excused absence from the meeting of the Committee on Rules scheduled for this Wednesday, April 5, 2023.

Thank you in advance for your consideration of this request. If I may be of assistance to answer any questions, comments, or concerns, please do not hesitate to contact me or my office.

Sincerely,

A handwritten signature in blue ink, appearing to be "Shev" followed by a stylized "Jones".

Shevrin D. "Shev" Jones  
Florida State Senator – Senate District 34

A handwritten signature in blue ink, appearing to be "Dennis Baxley".

### REPLY TO:

- ☐ Capitol Office, 218 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 • (850) 487-5034
- ☐ District Office, 606 NW 183rd Street, Miami Gardens, FL 33169 • (305) 493-6002

Website: [www.flsenate.gov/Senators/S34](http://www.flsenate.gov/Senators/S34)

**KATHLEEN PASSIDOMO**  
President of the Senate

**DENNIS BAXLEY**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice

Children, Families, and Elder Affairs

Commerce and Tourism

Governmental Oversight and Accountability

Military and Veterans Affairs, Space,

and Domestic Security

### JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining

**SENATOR VICTOR M. TORRES, JR.**  
25th District

March 30th, 2023

Debbie Mayfield, Chair  
Rules  
404 S Monroe Street  
Tallahassee, FL 32399

RE: Request for excusal from April 5th committee meeting

Dear Chair:

Due to a previously scheduled medical appointment, I am unable to attend the April 5th meeting of the Rules Committee. Please accept this letter as a formal request for excusal of this absence. Please let me know if you have any questions or need any additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Victor M. Torres, Jr.".

Victor M. Torres, Jr.  
Florida State Senator  
District 25

A handwritten signature in blue ink, appearing to read "Philip Twogood".

C: Philip Twogood, Staff Director  
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817

404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)



101 Church Street,



226 Senate Building,

Kathleen Passidomo  
President of the Senate

Dennis Baxley  
President Pro Tempore

# CourtSmart Tag Report

**Room:** KB 412

**Case No.:** -

**Type:**

**Caption:** Senate Rules Committee

**Judge:**

**Started:** 4/5/2023 11:03:17 AM

**Ends:** 4/5/2023 12:18:43 PM

**Length:** 01:15:27

11:03:16 AM Chair Mayfield calls meeting to order  
11:03:20 AM Roll call  
11:03:34 AM Quorum is announced  
11:04:09 AM Senators Torres and Jones are excused  
11:04:19 AM Pledge of Allegiance  
11:04:39 AM Chair with opening comments  
11:05:02 AM TP'd Bills Tab 8 (SB 1002), Tab 10 (SB 1220), Tab 4 (CS/SB 626), Tab 15 (SB 1616)  
11:05:30 AM Tab 13 CS/SB 1416 Dissolution of Marriage  
11:05:46 AM Senator Gruters explains the bill  
11:08:14 AM Senator Burgess  
11:08:44 AM Senator Gruters  
11:09:50 AM Senator Book  
11:10:29 AM Senator Gruters  
11:10:54 AM Appearance Forms  
11:11:05 AM Cynthia Lus speaks  
11:14:24 AM Sue Savage speaks  
11:17:17 AM Joyce Tindall speaks  
11:20:40 AM Camille Fiveash speaks  
11:23:58 AM Senator Book  
11:24:10 AM Ms. Fiveash  
11:24:41 AM Senator Book  
11:24:42 AM Ms. Fiveash  
11:24:49 AM Murielle Fournier speaks  
11:28:37 AM Leisa Athey speaks  
11:31:46 AM Phil Wartenberg, Family Law Section FL Bar, speaks  
11:33:54 AM Terrance Power, Florida Family Fairness, waives  
11:33:58 AM Sarah Holmes waives  
11:34:02 AM Nelson Diaz, Florida Family Fairness, waives  
11:34:06 AM Michel Buhler, Florida Family Fairness, waives  
11:34:11 AM Josh Heath, Fair Parenting for Florida's Children, waives  
11:34:15 AM Debate  
11:34:28 AM Senator Gruters closes on the bill  
11:35:34 AM Roll call  
11:36:22 AM CS/SB 1416 is reported favorably  
11:36:29 AM Tab 9 CS/CS/SB 1068 Drones  
11:36:39 AM Senator Collins explains the bill  
11:38:21 AM Amendment Barcode 185836  
11:38:25 AM Senator Collins explains the amendment  
11:39:13 AM Questions  
11:39:20 AM Appearance Form  
11:39:22 AM Jeff Branch, Florida League of Cities, waives  
11:39:31 AM Debate  
11:39:38 AM Senator Collins waives close  
11:39:44 AM Amendment is adopted  
11:39:45 AM Back on the Bill  
11:39:46 AM Questions  
11:39:53 AM Appearance Forms  
11:39:54 AM Jeff Branch, Florida League of Cities, waives  
11:40:07 AM Ken Williams speaks  
11:43:33 AM Dr. Rich Templin, Florida AFL-CIO, speaks  
11:44:18 AM Micka Davis speaks  
11:45:19 AM Mary Candace Harvey waives

11:45:23 AM Nancy Luna waives  
11:45:27 AM Jimmy Card, Drone Up, waives  
11:45:33 AM Donna Pixey waives  
11:45:38 AM Joseph Groover waives  
11:45:42 AM Gabriel Thomas waives  
11:45:50 AM Tatiana Finlay waives  
11:45:55 AM Tatishka Thomas waives  
11:46:00 AM Jeremy Childress waives  
11:46:04 AM Keith Hamrah waives  
11:46:10 AM Jovan Rodriguez waives  
11:46:17 AM Charles Tribble waives  
11:46:21 AM Pamela Burrell-Tomlinson waives  
11:46:26 AM Lorraine Boone waives  
11:46:30 AM Ashley Page waives  
11:46:33 AM Kim Katz waives  
11:46:38 AM Brian Antoine waives  
11:46:43 AM Sheryl Posey waives  
11:46:48 AM Willie Kitchi waives  
11:46:53 AM Gretchen Robinson waives  
11:46:57 AM James Totten waives  
11:47:01 AM Rick Myers waives  
11:47:08 AM Christopher Jones waives  
11:47:10 AM Debate  
11:47:24 AM Senator Collins closes on the bill  
11:48:11 AM Roll call  
11:48:53 AM CS/CS/CS/SB 1068 is reported favorably  
11:49:00 AM Tab 14 SB 1442 Terrorism  
11:49:08 AM Senator Collins explains the bill  
11:50:29 AM Questions  
11:50:35 AM Appearance Forms  
11:50:36 AM Tom Howse speaks  
11:55:17 AM Chair Mayfield  
11:55:33 AM Newt Porter speaks  
11:56:12 AM Chair Mayfield  
11:56:21 AM Mr. Porter  
11:56:23 AM Chair Mayfield  
11:56:25 AM Mr. Porter  
11:56:27 AM Barney Bishop, Fla. Smart Justice Alliance, waives  
11:56:33 AM Debate  
11:56:40 AM Senator Boyd  
11:57:30 AM Chair Mayfield  
11:57:41 AM Senator Collins closes on the bill  
11:58:25 AM Roll call  
11:59:03 AM SB 1442 is reported favorably  
11:59:11 AM Tab 2 CS/SB 384 Violent Offenses Committed Against Criminal Defense Attorneys  
11:59:29 AM Senator Bradley explains the bill  
12:00:35 PM Questions  
12:00:38 PM Appearance Form  
12:00:39 PM Barney Bishop, Fla. Smart Justice Alliance, waives  
12:00:43 PM Debate  
12:00:50 PM Senator Bradley waives close  
12:00:51 PM Roll call  
12:01:29 PM CS/SB 384 is reported favorably  
12:01:34 PM Tab 5 SB 662 Student Online Personal Information Protection  
12:01:42 PM Senator Bradley explains the bill  
12:01:45 PM Questions  
12:02:46 PM Appearance Forms  
12:02:49 PM Dannie McMillon, Florida PTA, waives  
12:02:53 PM Barney Bishop, Fla. Smart Justice Alliance, waives  
12:02:55 PM Debate  
12:03:02 PM Senator Bradley closes on the bill  
12:03:04 PM Roll call

12:03:40 PM SB 662 is reported favorably  
12:03:46 PM Tab 7 SB 942 Authorization of Restrictions Concerning Dogs  
12:03:53 PM Senator Calatayud explains the bill  
12:04:47 PM Questions  
12:04:56 PM Appearance Forms  
12:04:57 PM Travis Moore, Animal Legal Defense Fund, waives  
12:05:01 PM Sandy Golding, Best Friends Animal Society, waives  
12:05:06 PM Kate MacFall, Humane Society United States, waives  
12:05:12 PM Kelsey Gilmore-Futeral, Best Friends Animal Society, waives  
12:05:20 PM Jack Cory, FIX Florida, waives  
12:05:27 PM Debate  
12:05:34 PM Senator Calatayud waives close  
12:05:36 PM Roll call  
12:06:15 PM SB 942 is reported favorably  
12:06:22 PM Tab11 CS/SB 1332 Missing Persons  
12:06:33 PM Senator Martin explains the bill  
12:07:40 PM Questions  
12:07:43 PM Appearance Forms  
12:07:44 PM Dannie McMillon, Florida PTA, waives  
12:07:47 PM Barney Bishop, Fla. Smart Justice Alliance, waives  
12:07:51 PM Debate  
12:07:57 PM Senator Martin waives close  
12:07:59 PM Roll call  
12:08:38 PM CS/SB 1332 is reported favorably  
12:08:44 PM Tab 3 CS/SB 408 Fire Sprinkler System Project Planning  
12:08:54 PM Senator Perry explains the bill  
12:09:15 PM Questions  
12:09:21 PM Appearance Forms  
12:09:23 PM Chief Jim Millican, FL Fire Chiefs Association, waives  
12:09:28 PM Daniel Olson, Florida Fire Sprinkler Association, waives  
12:09:33 PM Edward Briggs, American Fire Sprinkler Association-FL Chapter, waives  
12:09:42 PM Debate  
12:09:46 PM Senator Perry waives close  
12:09:48 PM Roll call  
12:10:26 PM CS/SB 408 is reported favorably  
12:10:31 PM Tab 6 SB 708 Estoppel Letters  
12:10:40 PM Senator Burgess explains the bill  
12:11:41 PM Questions  
12:11:46 PM Appearance Forms  
12:11:48 PM Scott Merritt, Florida Land Title Association, waives  
12:11:52 PM Debate  
12:12:06 PM Senator Burgess waives close  
12:12:10 PM Roll call  
12:12:46 PM SB 708 is reported favorably  
12:12:51 PM Tab 12 SB 1396 Elderly Affairs  
12:12:59 PM Senator Garcia explains the bill  
12:14:00 PM Questions  
12:14:04 PM Appearance Forms  
12:14:05 PM Tyler Jefferson, Department of Elder Affairs, waives  
12:14:08 PM Chante Jones, AARP Florida, waives  
12:14:14 PM Barney Bishop, Fla. Smart Justice Alliance, waives  
12:14:22 PM Debate  
12:14:29 PM Senator Osgood  
12:15:18 PM Senator Garcia waives close  
12:15:20 PM Roll call  
12:15:59 PM SB 1396 is reported favorably  
12:16:04 PM Tab 1 CS/SB 196 Guidance Services on Academic and Career Planning  
12:16:17 PM Senator Hutson explains the bill  
12:16:27 PM Questions  
12:16:30 PM Appearance Forms  
12:16:33 PM Richard Reeves, WIN Learning, waives  
12:16:37 PM Sarah Katherine Massey, Florida Chamber of Commerce, waives

<b>12:16:43 PM</b>	Chris Stranburg, Americans for Prosperity, waives
<b>12:16:50 PM</b>	Damaris Allen waives
<b>12:16:55 PM</b>	Debate
<b>12:17:01 PM</b>	Senator Hutson waives close
<b>12:17:04 PM</b>	Roll call
<b>12:17:42 PM</b>	CS/SB 196 is reported favorably
<b>12:17:46 PM</b>	Vote After Motions
<b>12:17:52 PM</b>	Senator Book
<b>12:18:03 PM</b>	Senator DiCeglie
<b>12:18:10 PM</b>	Senator Yarborough
<b>12:18:26 PM</b>	Without Objection
<b>12:18:30 PM</b>	Senator Simon moves to adjourn
<b>12:18:36 PM</b>	Meeting Adjourned