

Tab 1	CS/SB 58 by JU, Rodriguez ; (Similar to CS/H 06517) Relief of Yeilyn Quiroz Otero by Miami-Dade County					
Tab 2	CS/SB 74 by JU, Rodriguez ; (Identical to CS/H 06521) Relief of Harry Augustin Shumow/Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital					
Tab 3	CS/SB 518 by CA, Brodeur ; (Identical to H 01555) Private Property Rights to Prune, Trim, and Remove Trees					
Tab 4	CS/SB 528 by JU, Polsky ; (Identical to CS/H 00265) Value of Motor Vehicles Exempt from Legal Process					
Tab 5	SB 614 by Garcia ; (Similar to CS/H 00721) Authorization of Restrictions Concerning Dangerous Dogs					
Tab 6	SB 730 by Harrell (CO-INTRODUCERS) Polsky ; (Similar to H 00459) Step-therapy Protocols					
Tab 7	CS/SB 804 by HP, Albritton ; (Similar to CS/CS/H 01239) Modernization of Nursing Home Facility Staffing					
308330	D	S		RC, Albritton	Delete everything after	02/22 08:23 AM
615290	AA	S		RC, Gibson	Delete L.70 - 230:	02/22 05:06 PM
612826	AA	S		RC, Albritton	Delete L.137:	02/22 12:50 PM
627240	A	S		RC, Gibson	Delete L.119 - 313:	02/22 08:31 AM
Tab 8	CS/CS/SB 974 by CA, JU, Gruters ; (Similar to H 00799) Sovereign Immunity					
801476	D	S	RCS	RC, Hutson	Delete everything after	02/23 04:07 PM
366398	AA	S	RCS	RC, Hutson	Delete L.35 - 37.	02/23 04:07 PM
845510	AA	S	RCS	RC, Hutson	Delete L.53 - 62:	02/23 04:07 PM
Tab 9	CS/SB 1016 by BI, Burgess ; (Similar to H 00335) Mortgage Payoff Letters					
Tab 10	CS/SB 1026 by BI, Cruz (CO-INTRODUCERS) Harrell ; (Similar to CS/H 01099) Living Organ Donors in Insurance Policies					
Tab 11	SM 1108 by Baxley ; (Similar to H 00791) China/Forced Organ Harvesting					
Tab 12	SB 1114 by Bradley (CO-INTRODUCERS) Garcia ; (Similar to H 00817) Emergency Medical Care and Treatment of Minors					
Tab 13	CS/SB 1244 by CJ, Gibson ; (Compare to CS/H 00913) Statutes of Limitations for Sexual Offenses					
Tab 14	CS/SB 1304 by JU, Gruters ; (Similar to H 01229) Public Records/Trust Proceedings					
227864	D	S	RCS	RC, Gruters	Delete everything after	02/23 04:58 PM
Tab 15	CS/SB 1352 by EE, Brodeur ; (Similar to CS/CS/H 00921) Limitations on Political Contributions					
335736	A	S	RCS	RC, Brodeur	Delete L.14 - 28:	02/23 05:02 PM
Tab 16	CS/SB 1408 by JU, Perry (CO-INTRODUCERS) Rouson, Book ; (Similar to 1ST ENG/H 01119) Grandparent Visitation Rights					
142966	A	S	RCS	RC, Perry	Delete L.26 - 27:	02/23 05:06 PM

Tab 17	CS/CS/SB 1614 by GO, TR, Harrell ; (Similar to CS/CS/CS/H 01121) Public Records/Motor Vehicle Crashes/Traffic Citations					
Tab 18	CS/SB 1664 by JU, Perry (CO-INTRODUCERS) Boyd ; (Similar to CS/H 01571) Unlawful Assemblies					
633174	D	S	RCS	RC, Perry	Delete everything after	02/23 05:12 PM
Tab 19	CS/SB 1702 by RI, Bradley (CO-INTRODUCERS) Rodriguez, Garcia ; (Compare to H 01391) Mandatory Building Inspections					
703878	PCS	S	RCS	RC		02/23 09:50 AM
Tab 20	CS/SB 1736 by CJ, Hooper ; (Similar to CS/H 00453) Records of Physical Examinations					
Tab 21	SB 7040 by AP ; (Similar to CS/H 07029) Time Limitations for Preadjudicatory Juvenile Detention Care					
793404	A	S	RS	RC, Stargel	Delete L.37 - 96:	02/23 05:50 PM
464134	SA	S	RCS	RC, Stargel	Delete L.37 - 152:	02/23 05:50 PM
467696	A	S	WD	RC, Brandes	Delete L.58 - 177:	02/23 05:50 PM
Tab 22	HB 539 by Trumbull ; (Identical to S 01324) Nursing Home Financial Reporting					
Tab 23	CS/HB 1467 by APC, Garrison (CO-INTRODUCERS) Fine, Latvala, Plakon, Sirois ; (Similar to CS/S 01300) K-12 Education					
745288	A	S		RC, Gruters	Delete L.43 - 290:	02/21 06:37 PM
801336	A	S		RC, Farmer	Delete L.96:	02/22 08:37 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES

Senator Passidomo, Chair
Senator Garcia, Vice Chair

MEETING DATE: Wednesday, February 23, 2022

TIME: 9:00 a.m.—2:00 p.m.

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Passidomo, Chair; Senator Garcia, Vice Chair; Senators Albritton, Baxley, Bean, Book, Boyd, Bracy, Brandes, Diaz, Farmer, Gibson, Gruters, Hutson, Mayfield, Powell, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 58 Judiciary / Rodriguez (Similar CS/H 6517)	Relief of Yeilyn Quiroz Otero by Miami-Dade County; Providing for the relief of Yeilyn Quiroz Otero by Miami-Dade County; providing for the appropriation of funds to Heather Hasandras, as guardian of the property of Yeilyn Quiroz Otero, to compensate Miss Quiroz Otero for injuries sustained as a result of the negligence of an employee of Miami-Dade County; requiring that the funds, less certain fees and costs, be placed in a special needs trust for the exclusive use and benefit of Miss Quiroz Otero; providing a limitation on compensation and the payment of attorney fees; providing legislative intent regarding the waiver of certain liens, etc. SM JU 02/07/2022 Fav/CS RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
2	CS/SB 74 Judiciary / Rodriguez (Identical CS/H 6521)	Relief of Harry Augustin Shumow/Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; Providing for the relief of Harry Augustin Shumow by the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the Public Health Trust of Miami-Dade County; providing a limitation on the payment of compensation and attorney fees, lobbying fees, and other costs or similar expenses, etc. SM JU 02/07/2022 Fav/CS RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
3	CS/SB 518 Community Affairs / Brodeur (Identical H 1555)	Private Property Rights to Prune, Trim, and Remove Trees; Revising conditions under which a local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property; specifying when a tree poses an unacceptable risk, etc. CA 01/18/2022 Fav/CS GO 02/10/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 23, 2022, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 528 Judiciary / Polsky (Identical CS/H 265)	Value of Motor Vehicles Exempt from Legal Process; Authorizing certain natural persons to exempt a specified amount of interest in a single motor vehicle from certain legal processes, etc. JU 02/07/2022 Fav/CS RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
5	SB 614 Garcia (Similar CS/H 721)	Authorization of Restrictions Concerning Dangerous Dogs; Authorizing certain housing authorities to adopt certain ordinances, rules, or policies relating to dangerous dogs; removing an exemption for local ordinances adopted before a specified date which pertain to dogs that have bitten or attacked persons or domestic animals, etc. CA 01/18/2022 Not Considered CA 01/25/2022 Favorable AG 02/10/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 15 Nays 0
6	SB 730 Harrell (Similar H 459)	Step-therapy Protocols; Revising the circumstances under which step-therapy protocols may not be required; requiring health insurers to publish on their websites and provide to their insureds specified information; requiring health maintenance organizations to publish on their websites and provide to their subscribers specified information; providing requirements for procedures for requests and appeals of denials of protocol exemptions, etc. BI 02/02/2022 Favorable HP 02/10/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
7	CS/SB 804 Health Policy / Albritton (Similar CS/H 1239)	Modernization of Nursing Home Facility Staffing; Specifying functions that do not constitute direct care staffing hours for purposes of required nursing home staffing ratios; revising nursing home staffing requirements; providing that eating assistance to residents provided by certain direct care staff counts toward certain minimum direct care staffing requirements; providing that an unsatisfied or undischarged adverse final judgment in connection with a nursing home facility becomes the responsibility and liability of a new owner if ownership of the facility is transferred, etc. HP 02/10/2022 Fav/CS RC 02/23/2022 Temporarily Postponed	Temporarily Postponed

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Wednesday, February 23, 2022, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/CS/SB 974 Community Affairs / Judiciary / Gruters (Similar H 799, CS/H 985)	Sovereign Immunity; Revising the statutory limits on liability for tort claims against the state and its agencies and subdivisions; specifying that only a subdivision of the state may agree to settle a claim made or judgment rendered against it in excess of the limits; prohibiting an insurance policy from conditioning the payment of benefits on the enactment of a claim bill; requiring the Department of Financial Services to adjust the limitations on tort liability every year after a specified date, etc. JU 01/31/2022 Fav/CS CA 02/08/2022 Fav/CS RC 02/23/2022 Fav/CS AP	Fav/CS Yeas 16 Nays 1
9	CS/SB 1016 Banking and Insurance / Burgess (Similar H 335, CS/CS/H 353)	Mortgage Payoff 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; providing that a corrected estoppel letter supersedes any previous 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. BI 02/08/2022 Fav/CS RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
10	CS/SB 1026 Banking and Insurance / Cruz (Similar CS/H 1099)	Living Organ Donors in Insurance Policies; Prohibiting insurers under specified policies from declining or limiting coverages and discriminating against persons based solely on their status as living organ donors, and from precluding insureds from donating organs; authorizing the Financial Services Commission to adopt rules and take actions to enforce specified laws, etc. BI 01/18/2022 Fav/CS HP 02/10/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
11	SM 1108 Baxley (Similar HM 791)	China/Forced Organ Harvesting ; Urging the President and Congress to condemn the People's Republic of China for its practice of forcibly removing human organs for transplant and to adopt certain legislation and policies that hold China accountable for such human rights violations, etc. HP 02/10/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 16 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, February 23, 2022, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 1114 Bradley (Similar H 817)	Emergency Medical Care and Treatment of Minors; Deleting the requirement that emergency medical care or treatment by physicians and emergency medical personnel without parental consent be provided only in specified settings, etc. JU 01/18/2022 Favorable HP 02/10/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 14 Nays 0
13	CS/SB 1244 Criminal Justice / Gibson (Compare CS/H 913, CS/CS/S 692, S 878)	Statutes of Limitations for Sexual Offenses; Eliminating statutes of limitations periods for prosecution of specified sexual offenses, etc. CJ 02/01/2022 Fav/CS CF 02/08/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
14	CS/SB 1304 Judiciary / Gruters (Similar H 1229, CS/CS/H 1363)	Public Records/Trust Proceedings; Making the identities of beneficiaries and specified individuals and certain documents in trust proceedings when a family trust company, licensed family trust company, or foreign licensed family trust company is a party confidential and exempt from public records requirements; requiring the court to seal any documents filed with the court in such proceedings; prohibiting the court from releasing to the public any of the sealed documents or information contained therein; providing a statement of public necessity, etc. JU 01/31/2022 Fav/CS GO 02/10/2022 Favorable RC 02/23/2022 Fav/CS	Fav/CS Yeas 15 Nays 2
15	CS/SB 1352 Ethics and Elections / Brodeur (Similar CS/H 921)	Limitations on Political Contributions; Defining the term "foreign national"; providing that a foreign national may not make or offer to make certain contributions or expenditures, etc. EE 02/01/2022 Fav/CS RC 02/23/2022 Fav/CS	Fav/CS Yeas 15 Nays 0
16	CS/SB 1408 Judiciary / Perry (Similar H 1119)	Grandparent Visitation Rights; Creating a presumption for maternal or paternal grandparent or stepgrandparent visitation of a child under certain circumstances; providing a burden for overcoming such presumption, etc. JU 01/24/2022 Fav/CS CF 02/08/2022 Favorable RC 02/23/2022 Fav/CS	Fav/CS Yeas 17 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

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Wednesday, February 23, 2022, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
17	CS/CS/SB 1614 Governmental Oversight and Accountability / Transportation / Harrell (Similar CS/CS/H 1121)	Public Records/Motor Vehicle Crashes/Traffic Citations; Revising agencies to which a public records exemption for certain motor vehicle crash reports applies; revising the types of crash reports that may be made immediately available to certain radio and television stations and newspapers; providing a public records exemption for certain electronic crash data; providing an exemption from public records requirements for driver information contained in a uniform traffic citation; providing for future legislative review and repeal of the exemption; providing statements of public necessity, etc. TR 01/18/2022 Fav/CS GO 02/10/2022 Fav/CS RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
18	CS/SB 1664 Judiciary / Perry (Similar CS/H 1571)	Unlawful Assemblies; Prohibiting a person or persons from picketing or protesting before or about the residence or dwelling of any person with specified intent; defining the term "dwelling"; providing criminal penalties, etc. JU 01/31/2022 Fav/CS CJ 02/08/2022 Favorable RC 02/23/2022 Fav/CS	Fav/CS Yeas 13 Nays 4
A proposed committee substitute for the following bill (CS/SB 1702) is expected to be considered:			
19	CS/SB 1702 Regulated Industries / Bradley (Compare H 1391, S 1780, S 7042)	Mandatory Building Inspections; Specifying that the purpose of a milestone inspection is not to determine compliance with the Florida Building Code; requiring owners of certain multifamily residential buildings to have milestone inspections performed at specified times; requiring the boards of administration for condominium and cooperative associations to arrange for milestone inspections of condominium buildings and cooperative buildings, respectively; requiring architects and engineers performing a milestone inspection to submit a sealed copy of the inspection report to certain entities, etc. CA 01/25/2022 Favorable RI 02/01/2022 Fav/CS RC 02/23/2022 Fav/CS	Fav/CS Yeas 17 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

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Wednesday, February 23, 2022, 9:00 a.m.—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
20	CS/SB 1736 Criminal Justice / Hooper (Similar CS/H 453)	Records of Physical Examinations; Authorizing a specified medical examination to serve as a certain required physical examination for firefighters; requiring an employing agency to maintain records of employee physical examinations for a specified period of time after employee separation from the agency; creating a presumption that applies to employees whose records are not maintained for that period of time, etc. CJ 01/25/2022 Fav/CS GO 02/10/2022 Favorable RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
21	SB 7040 Appropriations (Similar H 7029)	Time Limitations for Preadjudicatory Juvenile Detention Care; Authorizing a court to order a child placed on supervised release detention care to comply with specified conditions under certain circumstances; authorizing a court to order that a child be placed on supervised release detention care for any time period until the adjudicatory hearing is completed; prohibiting a child from being held in secure detention care for longer than a certain time period under certain circumstances; requiring a court to conduct a hearing to determine the continued need for secure detention care under specified circumstances, etc. RC 02/23/2022 Fav/CS	Fav/CS Yeas 11 Nays 6
22	HB 539 Trumbull (Identical S 1324, Compare H 1237, S 1596)	Nursing Home Financial Reporting; Requires nursing homes & their home offices to annually file with AHCA their audited actual experience for purposes of financial reporting. RC 02/23/2022 Favorable	Favorable Yeas 17 Nays 0
23	CS/HB 1467, 1st Eng. Appropriations Committee / Garrison (Similar CS/S 1300, Compare H 1409)	K-12 Education; Establishing term limits for school board members; deleting a requirement that district school boards maintain a specified list on their websites; requiring certain meetings relating to instructional materials to be noticed and open to the public; revising requirements for the department relating to the development of training programs for the selection of materials used in schools and library media centers; revising district school board requirements for the selection and adoption of certain materials, etc. RC 02/23/2022 Temporarily Postponed	Temporarily Postponed

Other Related Meeting Documents



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
2/2/22	SM	Favorable
2/7/22	JU	Fav/CS
2/23/22	RC	Favorable

February 2, 2022

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 58** – Judiciary Committee and Senator Ana Maria Rodriguez
HB 6517 – Representative Aloupis
Relief of Yeilyn Quiroz Otero by Miami-Dade County

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM BILL FOR \$3.8 MILLION. THE GUARDIAN OF THE PROPERTY OF YEILYN Q. OTERO, A MINOR, SEEKS DAMAGES FROM MIAMI-DADE COUNTY FOR PERSONAL INJURIES CAUSED BY THE NEGLIGENT OPERATION OF A POLICE CAR.

FINDINGS OF FACT:

Yeilyn Quiroz Otero is a 6-year-old paraplegic whose spine was severed in a 2016 car accident. A tracheostomy has been inserted into her windpipe to assist with her breathing. Because of the neurological damage to her spinal cord, her bladder and bowels do not function normally. Three adults contributed to the injuries Yeilyn sustained: Officer Daniel Escarra, the driver of a Miami-Dade police cruiser; Mr. Hector Meraz-Funez, the driver of the vehicle that carried Yeilyn when she was injured; and Fany Otero, Yeilyn's mother who did not place her 13-month-old daughter in a car seat.

Hurricane Matthew

On the evening of October 6, 2016, the outer bands of Hurricane Matthew were approaching Miami. In anticipation of the hurricane, Governor Rick Scott declared a state of emergency for Florida.¹ The mayor of Miami-Dade County

¹ Executive Order Number 16-230 signed on October 3, 2016.

declared a local state of emergency.² The hurricane was projected to make landfall in southeast Florida with high velocity winds. Members of the Miami-Dade police Special Patrol Bureau, which consists of specialized response units including the K-9 unit, marine patrol, and tactical units, were in a meeting mobilizing for the hurricane. Officer Daniel Escarra was in the meeting.

Emergency Announcement for Assistance

A Miami-Dade County police dispatcher interrupted the meeting with an emergency announcement that was transmitted over the officers' radios. She stated that a subject had jumped from a stolen vehicle and was running through a residential neighborhood. According to Police Officer Daniel Escarra, who was then a 23-year-veteran of the department, he could hear other officers "screaming" in the background that they needed a K-9 unit immediately. The officers were chasing the subject and attempting to set up a perimeter to contain him. The subject was reportedly holding his waistband as he ran which suggested to Officer Escarra that the subject may have been carrying a gun.

Officer Daniel Escarra

The dispatcher advised that a K-9 was needed immediately. A "Code 3" or "Level 3" emergency response was authorized.³ Officer Escarra responded by activating the lights and siren on his police car and began driving with his K-9 toward the neighborhood.

Hector Meraz-Funez

At that same time and in another part of town, Mr. Hector Meraz-Funez began driving his 1998 Audi A4 home from Wal-Mart. The car is a compact four-door sedan with five seats.⁴ Eight people were riding in the Audi: three adults and five children. According to the Miami-Dade Police Department

² The Miami-Dade County Declaration was signed by Mayor Carlos A. Gimenez on October 5, 2016.

³ According to the Department's Driving Procedures (Chapter 30 – Part 1- Response Modes) a "Code 3 Emergency" is "a situation or sudden occurrence which poses an actual threat of serious injury or loss of human life and which demands swift police action; e.g., seriously ill or injured person, shooting, sexual battery, etc." In Miami-Dade County's Notice of Serving Answers to Plaintiffs' Second Interrogatories, the defendant states that Officer Escarra was responding to an authorized Code 3 emergency.

⁴ See Cars.com, Research & Reviews, 1998 Audi A4, <https://www.cars.com/research/audi-a4-1998/> for a description of the car model.

Case Summary, Mr. Meraz-Funez did not have a valid Florida Driver License⁵ nor was he wearing a seatbelt.

Section 316.613(1)(a), Florida Statutes (2016), required each operator of a motor vehicle, while transporting a child up to 5 years or younger, to provide for the child's protection by properly using a crash-tested, federally approved child restraint device. If the child is "aged through 3 years," the restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

Fany Otero and Passengers

Yeilyn's mother, Fany Otero, was riding in the right front passenger seat holding Yeilyn in her lap.⁶ Yeilyn was not restrained in a car seat, and Ms. Otero was not wearing a seatbelt.

Maria Ortiz, an adult female and Fany Otero's sister, sat behind the driver accompanied by four children. She was not wearing a seatbelt nor were any of the children properly secured in restraint devices.⁷ One child in the back seat was placed in a child safety seat but it was not secured to the vehicle.⁸

The Collision

As Officer Escarra traveled south on NW 57th Avenue, Mr. Meraz-Funez traveled east on West Flagler Street. At 6:28 p.m., Officer Escarra and Mr. Meraz-Funez simultaneously entered the intersection of those streets. Mr. Meraz-Funez was attempting to make a left-hand turn in the intersection.

Their vehicles collided with tremendous force. Each car spun around and traveled some distance before coming to rest.⁹

⁵ Section 322.03(1), F.S. (2016), provides that a person may not drive a motor vehicle on a highway in this state unless he or she has a valid driver license.

⁶ This information was provided in a sworn statement given by Maria Ortiz, the adult passenger riding in the rear left passenger seat, to the Miami Dade Police Department detective while in the hospital after the accident. Yeilyn's location while traveling in the car is contradicted in a Miami-Dade County Memorandum, dated October 19, 2016, but it is unclear who provided that information to the police. However, in the special master hearing, the claimant's counsel confirmed Yeilyn's location in the car as being in the front passenger seat where she was held by her mother.

⁷ According to the Miami-Dade Police Department Case Summary, no one in the vehicle was wearing a seatbelt. However, in a sworn statement given to Miami-Dade Police Traffic Detective, Ms. Ortiz stated that she was wearing a seatbelt.

⁸ *Id.*

⁹ Reports state that Mr. Meraz-Funez intended to make a left turn in the intersection.

Internal data records from Officer Escarra's police cruiser demonstrate that the car had been traveling at 75 mph as he neared the intersection. At the moment of impact, crash data indicates that he applied his brakes but was still traveling at 58 mph. It is unknown how fast Mr. Meraz-Funez was traveling when he entered the intersection. Since the accident, he has remained unable to move and is unable to communicate.

All occupants in both vehicles were taken by ambulance to local hospitals. Yeilyn, who alone had life-threatening injuries, and two children were transported to Nicklaus Children's Hospital. The remaining five occupants were taken to Jackson Memorial Hospital Ryder Trauma Center. Officer Escarra was transported to Doctor's hospital, and his dog was taken to a veterinarian hospital.

Inoperative Traffic Signal at the Intersection

Under normal circumstances, traffic at that intersection is controlled by traffic signal lights. Unfortunately, at the time of the collision, the lights were not operating due to a power failure caused by approaching Hurricane Matthew. The skies were overcast but not dark. The weather was warm, rainy, and windy, and the roads were wet. It was still daylight.

Pursuant to section 316.1235, Florida Statutes (2016), when the traffic signals are not working, each driver at the intersection is required to stop before proceeding into the intersection. Neither driver abided by this statute. Both entered the intersection without stopping and the impact was horrific.

Litigation History

A lawsuit was filed in 2018 on behalf of Yeilyn Quiroz Otero and other passengers against Miami-Dade County.¹⁰ Yeilyn's case was settled through court-ordered mediation on February 26, 2021. Under the terms of the settlement agreement, Miami-Dade County did not admit fault, but it

¹⁰ The case was originally styled *Fanny Gonzalez-Otero, Maria Elena Ortiz, Belkys Gonzalez, Genesis Gonzalez, Jonathan Cordova, Sherlyn Cordova, and Yeilyn s. Quiroz-Otero, as individuals, v. Board of County Commissioners of Miami-Dade County, a political subdivision of the State of Florida, and Miami-Dade Police Department, Defendants*, Case No. 2018-03667-CA-01. The pleadings were later amended to add Hector Enrique Meraz-Funez as a defendant. When Heather Hasandras was appointed guardian for Yeilyn, on June 15, 2021, Heather Hasandras was substituted in place of Fany Otero, as guardian of the property of Y.Q.O., a minor.

agreed to pay the statutory cap of \$200,000, and it agreed not to contest a claim bill for the amount of \$3,800,000.

Claim Bill Hearing

A remote claim bill hearing was conducted on November 5, 2021, before the House and Senate special masters. A claim bill hearing is conducted “de novo” which means that the hearing is held anew, without giving consideration or deference to any previous assumptions, conclusions, or settlement agreements.

Francisco Maderal appeared on behalf of his client, Yeilyn Quiroz Otero, and presented the claimant’s case. Testimony supporting Yeilyn’s future living and medical care needs was presented by Anne Koerner, a life care plan advisor. Heather Hasandras, who is Yeilyn’s court-approved guardian of the property, answered questions about Yeilyn’s current circumstances and the future disbursement of funds held in trust on her behalf.

Richard Schevis, an attorney who represents the respondent Miami-Dade County, also appeared on behalf of his client. Because Miami-Dade County agreed that it would not oppose the claim bill, Mr. Schevis did not present any theories, arguments, witnesses, or evidence on the County’s behalf. He did not object to any portion of Mr. Maderal’s presentation. Mr. Schevis stated that the County supports the settlement agreement and the claim bill, but he was otherwise silent throughout the hearing.

CONCLUSIONS OF LAW:

Under the legal doctrine of *respondeat superior*, Miami-Dade County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment. Because Officer Escarra was operating a police vehicle in the course and scope of his employment at the time of the accident and because the vehicle was owned by Miami-Dade County, the County is responsible for any wrongful acts, including negligence, committed by Officer Escarra.

Elements of Negligence

When a plaintiff seeks to recover financial damages in a negligence action, he or she must prove that the injury was caused by the defendant’s negligence. Negligence is defined

as the failure to use reasonable care. It is the care that a reasonably careful person would use under like circumstances.¹¹

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff. The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.¹² Some explain the "greater weight of the evidence" concept to mean that, if each party's evidence is placed on a balance scale, the side that dips down, even by the smallest amount, has met the burden of proof by the greater weight of the evidence.

To establish liability, Yeilyn's attorney must prove these elements, by the greater weight of the evidence:

- (1) Duty -That the County owed a duty, or obligation, of care to her;
- (2) Breach -That the County breached that duty by not conforming to the standard required;
- (3) Causation -That the breach of the duty was the legal cause of Yeilyn's injury; and
- (4) Damages -That Yeilyn suffered actual harm or loss.

In this case, the County's liability depends on whether the County breached its duty of care to Yeilyn and whether that breach caused her damages. Stated slightly differently, the issues are whether the police officer negligently operated the police vehicle and whether that negligent operation caused Yeilyn's resulting physical injuries.

Duty

Officer Escarra's Duty to Exercise Reasonable Care

Officer Escarra was responsible for exercising the duty of reasonable care to others while driving his police vehicle. Even though Officer Escarra was driving an authorized emergency vehicle en route to an existing emergency, he was not absolved of his duty to exercise reasonable care to others.

¹¹ Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.

¹² Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.

The police department's Driving Procedures state that when responding in an emergency mode, the three primary elements that must be considered in every situation are "safety, expeditious arrival, and protection of life and property." The Driving Procedures further state that "extreme care and caution must be exercised whenever an emergency response is initiated."¹³

The posted speed limit on NW 57th Avenue was 40 miles per hour. In an emergency situation, internal department procedures authorize an emergency vehicle to exceed the speed limit by no more than 20 miles per hour.¹⁴ Accordingly, Officer Escarra was not authorized to exceed 60 miles per hour en route to the emergency.

As discussed above, the statutes prescribe driving procedures when a traffic signal is not operational in an intersection. Officer Escarra had a duty pursuant to section 316.1235, Florida Statutes (2016), to stop before proceeding through the intersection where the traffic lights were not working.

Breach

Based upon the facts stated above, it is evident that Officer Escarra breached the duty of care owed to Yeilyn.

Officer Escarra

Exceeded the Permissible Speed Limit

As noted above, Officer Escarra was authorized to drive at 60 miles per hour and no faster. However, the internal crash data retrieved from the police vehicle demonstrates that Mr. Escarra was traveling at 75 miles per hour as he approached the intersection. In a split second before the collision, he immediately applied his brakes and collided while traveling at 58 miles per hour. In his deposition testimony, Officer Escarra was surprised to learn that he had been driving at 75 miles per hour. The speed at which he was driving was not authorized, even under emergency circumstances, and was a breach of his duty.

¹³ Miami-Dade County, Chapter 30 – Part I – Driving Procedures; Response Modes, Responding in an Emergency Mode.

¹⁴ *Id.*

Section 316.072(5), Florida Statutes (2016), provides that the driver of an authorized emergency vehicle, when responding to an emergency call, may exceed the maximum speed limit as long as the driver does not endanger life or property. This exception does not relieve the driver “from the duty to drive with due regard for the safety of all persons” and the provision states that it does “not protect the driver from the consequences of his or her reckless disregard for the safety of others.”¹⁵

Failed to Stop at the Intersection Where the Traffic Lights Were Not Working

A video surveillance camera captured live footage of the accident. The video footage shows that Officer Escarra failed to stop at the inoperative traffic signal, which is a violation of section 316.1235, Florida Statutes. (2016). When the traffic lights in an intersection are not working, each driver must stop before determining it is safe to enter.¹⁶ He stated that he was not aware that he was entering an intersection because there were no lights signaling that it was an intersection.

Received a Disciplinary Report

The Special Patrol Bureau of Miami-Dade County issued a Disciplinary Action Report on October 25, 2016. The Crash Review Panel determined that the accident was preventable on Officer Escarra's part, and he received a written reprimand. While the report noted that his 14-year driving history in the K-9 unit was worthy of recognition and consideration, it stated that “the outcome of the crash cannot be overlooked.” The report further stated that the poor visibility, inclement weather, and non-operating traffic signal were more reasons for Officer Escarra to exercise greater caution. The report concluded that his actions were “neither intentional nor reckless, but rather an unintended consequence of timing and judgment.”

Comparative Negligence

Comparative negligence is the legal theory that a defendant may diminish his or her responsibility to an injured plaintiff by demonstrating that another person, sometimes the plaintiff and sometimes another defendant or even an unnamed party, was also negligent and that negligence contributed to the plaintiff's injuries. The goal of proving a successful

¹⁵ Section 316.072(5)(c), F.S. (2016).

¹⁶ See s. 316.123(2)(a), F.S. (2016).

comparative negligence defense is to hold other people responsible for the injuries they cause to a plaintiff. By apportioning damages among all who are at fault, it will ultimately reduce the amount of damages owed by a defendant.

If this case had proceeded to trial, it would likely have been disputed that Officer Escarra was solely at fault in the collision or solely responsible for Yeilyn's injuries and damages. The County raised the affirmative defense of comparative negligence in its Answer to the Plaintiffs' Second Amended Complaint in an effort to reduce Officer Escarra's liability in causing the accident and his responsibility for Yeilyn's damages.¹⁷ It is evident from the facts of the collision that Officer Escarra was not alone in breaching the duty of care owed to Yeilyn.

Mr. Hector Meraz-Funez

While the bill seeks damages solely from Miami-Dade County, it should be noted that the civil lawsuit was amended to add Mr. Meraz-Funez as a defendant who was also responsible for Yeilyn's injuries by negligently operating his vehicle.

It is apparent that Mr. Meraz-Funez¹⁸ also breached his duty to exercise reasonable care towards Yeilyn and was partially responsible for her injuries and damages. By violating four separate statutes, Mr. Meraz-Funez failed to operate his vehicle in a safe manner. It is not disputed that Mr. Meraz-Funez operated a vehicle without a valid driver's license.¹⁹ He violated section 316.126, Florida Statutes (2016), when he did not yield the right-of-way to the approaching emergency vehicle where the emergency lights and siren were activated.²⁰ Based upon the surveillance video, Mr. Meraz-Funez also proceeded into the intersection where the traffic signal was not operating. He did this without slowing or stopping in violation of the statute.²¹ It seems likely that Mr.

¹⁷ Section 768.81, F.S., is the comparative fault statute. The apportionment of damages is established in section 768.81(3), Florida Statutes.

¹⁸ No evidence was submitted to demonstrate that a blood alcohol test was ever administered to Mr. Meraz-Funez after the accident.

¹⁹ Section 322.03, F.S. (2016). If Mr. Meraz-Funez had possessed a driver license, there would at least be evidence that he was familiar with the rules for safely operating a vehicle at an intersection where the lights were not working and that a child car seat was required for Yeilyn and other small children in the car. However, driving without a license is not the same thing as driving negligently.

²⁰ Section 316.126, F.S. (2016).

²¹ Section 316.1235, F.S. (2016).

Meraz-Funez would have heard the siren or would have seen the approaching lights of the police car.

Finally, Mr. Meraz-Funez operated a vehicle in which children were not restrained by seat belts or by the use of child car seats as required by law.²² The use of a child car seat might well have prevented Yeilyn's injuries or significantly reduced them.

The child restraint statute, section 316.613, Florida Statutes (2016), also contains an evidentiary provision²³ which states:

"The failure to provide and use a child passenger restraint shall not be considered comparative negligence, nor shall such failure be admissible as evidence in the trial of any civil action with regard to negligence."

At first glance, this evidentiary provision would appear to prohibit the introduction into evidence of the fact that children were not properly restrained and bar a claim for comparative negligence.

However, the statute was construed by the Fifth District Court of Appeal in 2008 to clarify its application.²⁴ In *Quarantello v. Leroy*, a factual situation similar to this case, a court-appointed guardian filed a personal injury lawsuit against a child's grandmother to recover damages for the grandchild's injuries that were sustained in a car accident in which the child was thrown from a booster seat. The booster seat was designed for an older child and was not an appropriate device to insure the young child's safety. The child became a quadriplegic from the accident.

After noting that the statute was not a model of good legislative draftsmanship, and was poorly worded and ambiguous, the court construed the statute to mean that the Legislature only intended "to prohibit evidence of comparative negligence and evidence of negligence *that may be similarly used to reduce an injured child's recovery*."²⁵ The court held that the statute did not provide a grant of immunity to a

²² Section 316.613, F.S. (2016).

²³ Section 316.613(3), F.S. (2016).

²⁴ *Quarantello v. Leroy*, 977 So. 2d 648 (Fla. 5th DCA 2008). On appeal, the Florida Supreme court declined to accept jurisdiction and denied the petition for review. *Leroy v. Quarantello*, 987 So. 2d 1210 (Fla. 2008).

²⁵ *Quarantello* at 653.

caretaker who did not properly secure a child in a vehicle. The court concluded that the jury should be able to consider that evidence and give it whatever weight the jury felt was appropriate in determining the cause of a child's injuries and make an informed decision whether the injured child was due compensation from the defendant.

Accordingly, the statute as interpreted in *Quarantello* recognizes that fault and liability for damages to a child who should have been secured in a car seat are to be apportioned among those responsible. In this matter, the evidence showed that Officer Escarra, Mr. Meraz-Funez, and Ms. Otero all bear responsibility for Yeilyn's injuries.

Ms. Fany Otero

As Yeilyn's mother, Ms. Otero had a duty to exercise reasonable care to supervise and protect her daughter. Florida courts have recognized that the state imposes this responsibility upon parents whose children are too young to care for themselves.²⁶ In the case of *Machin v. Walgreen Co.*, the Third District Court of Appeal held that a person chargeable with a duty of care and caution toward a child must take the precautions available to them to protect the child. Accordingly, Ms. Otero had a "constant and continuous duty" to watch over, supervise, and protect Yeilyn who was too young to exercise judgment to care for herself.²⁷ Ms. Otero breached this duty of care to Yeilyn by not placing her in a car seat that could have prevented or reduced her injuries. Therefore, Ms. Otero is partially responsible for Yeilyn's injuries.²⁸

²⁶ *Ramos v. State*, 89 So. 3d 1119 (Fla. 1st DCA 2012).

²⁷ *Machin v. Walgreen Co.*, 835 So. 2d 284 (2002). The mother brought an action on behalf of her daughter against a pharmacy that incorrectly dispensed the wrong medicine for the daughter. The court found that the mother was comparatively negligent in not checking the pharmacy's data sheet and the container of the medication before giving it to her daughter. The court upheld the lower court's judgment that assessed 45 percent comparative negligence against the mother.

²⁸ The law is somewhat complicated when the issue involves the comparative negligence of a parent who contributed to his or her child's injuries. While the parent's negligence may not be imputed or assigned to the child, if it is determined that one of the parents was negligent in causing the injury to the child, the parent's name may be added to the jury verdict form so that others will not be held responsible for that parent's proportion of fault. (Thomas D. Sawaya, *Personal Injury and Wrongful Death Actions*, s. 5:7, *Imputed Comparative Negligence* (2021 edition)).

Additionally, a defendant may reduce his or her liability in a negligence action by demonstrating that the actions of a third person, who might not be named as a party in the lawsuit, contributed to the injuries sustained by the plaintiff. A defendant who successfully argues this defense will reduce his or her responsibility by the amount of negligence assigned to the non-party. (Sawaya s. 5:5, *Comparative Negligence of Third Persons Who Are Not Parties to the Suit* (2021 edition)).

Similarly, case law allows the guardian of a child to name a parent as a defendant in a lawsuit. If a jury had found that Yeilyn's mother breached her duty of care to Yeilyn, the jury could have further apportioned fault among the three defendants in a manner that would have further reduced the damages that Miami-Dade County would have been responsible for paying to Yeilyn.

Causation

I find that the greater weight of the evidence demonstrates that Officer Escarra, as an agent of the County, failed to use reasonable care and is responsible, in part, for causing the injuries that Yeilyn sustained in the collision. Officer Escarra operated the police vehicle in a negligent manner and his actions were a legal or proximate cause of the accident. I also find that Mr. Meraz-Funez and Ms. Otero were comparatively negligent because they breached the duty of care owed to Yeilyn. As such, they contributed to Yeilyn's injuries and bear partial responsibility for her damages.

Damages

A plaintiff's damages are computed by adding these elements together:

Economic Damages:

- Past Medical Expenses
- Future Medical Expenses

Non-Economic Damages

- Past Pain and Suffering and Loss of Enjoyment of life
- Future Pain and Suffering and Loss of Enjoyment of Life

The claimant's attorney presented financial data and projected Yeilyn's total damages to be \$13,050,002.62

Economic Damages

Yeilyn's Past Medical Expenses - \$1,772,320.52

2016 - 2019

The medical bills submitted by the claimant's attorney are extensive. From the time of the accident on October 6, 2016,

through the last submitted medical record dated April 8, 2019, Yeilyn was hospitalized or received outpatient treatment at Nicklaus Children's Hospital at least 25 times. The medical records contain 7,841 pages of information. Because Yeilyn is a Medicaid recipient, the bills have been reduced and paid by Medicaid.²⁹ As a result, it does not appear that Yeilyn and her family have paid for any of the services incurred at Nicklaus Children's Hospital.

According to the claimant's attorney, two Medicaid liens were initially asserted by lienholders:

Equian	\$ 819,204.55
Conduent	<u>\$1,772,320.52</u>
Total	\$2,591,525.07

2020 Bills

The claimant's attorney submitted a list of Medicaid lien items that were paid for 2020 which show that Medicaid has paid an additional \$302,815.47 for Yeilyn's bills.

2021 Bills

No bills were submitted by the claimant's attorney for 2021.

Yeilyn's Future Medical Expenses - \$11,277,682.10

The vast majority of Yeilyn's economic damages are projected to come from future medical and living expenses. To support Yeilyn's future expenses, the claimant's attorney hired a physiatrist to establish Yeilyn's medical disabilities and future needs and a life care planner to calculate the costs for those needs.

Disability Rating by Dr. Craig Lichtblau, Physiatrist

Dr. Craig Lichtblau is a physiatrist³⁰ who performed a physical examination of Yeilyn on September 9, 2019, almost 3 years after the accident and more than 2 years before the hearing.

²⁹ It should be noted, in an abundance of transparency, that *before the accident, and in her first 10 months of life*, Yeilyn was hospitalized at Nicklaus Children's Hospital on five separate occasions totaling 25 days at a cost of \$159,049. The admissions appear to be due to asthma-related issues and were paid by Medicaid.

In the admissions that occurred after the accident, the records often note that Yeilyn has a history of asthma and the asthma was "poorly controlled." It would be virtually impossible to discern and apportion which of those hospitalizations were initially due to complications from Yeilyn's pre-existing asthma condition and which were the result of, or complicated by, the accident and the tracheostomy.

³⁰ A physiatrist is a physical medicine and rehabilitation physician. A physiatrist works to rehabilitate injured people and return them to their highest functioning level.

He has estimated that Yeilyn's life expectancy, because of the accident, is 35 years of age.

Dr. Lichtblau assigned to Yeilyn an American Medical Association impairment rating of 87–97 percent permanent partial impairment of the whole person based upon:

Complete Paraplegia	36 – 50 percent
Traumatic Brain Injury	21 – 35 percent
Neurogenic Bowel ³¹	21 – 50 percent
Neurogenic Bladder	21 – 30 percent
Gastrostomy ³²	10 – 15 percent
Open Tracheostomy	45 – 58 percent
Autonomic Dysreflexia ³³	11 – 20 percent

However, I was unable to find any evidence in the hospital records or home health care records to support the existence of a traumatic brain injury or gastrostomy. In contrast, Yeilyn is not reported to be developmentally delayed due to a traumatic brain injury, but is reported to be a verbal, expressive, fully mentally functioning young girl who interacts with visitors, moves about independently in her wheel chair, and plays games on an electronic tablet. Additionally, there was no evidence that she has had a permanent gastrostomy feeding tube. The home health care nurses' records from 2021 report that Yeilyn is fed a "regular diet" supplemented with two cans of Pediasure. No mention is made in the nurses' notes of the presence, or need for care, of a gastro feeding tube. Because of the lack of support for a traumatic brain injury and the presence of a gastrostomy, it appears that the impairment rating should be reduced for accuracy.

Life Care Plan by Ann Koerner

Ann Koerner is a consultant with National Care Advisors, a company that develops life care plans for injured people to substantiate their future needs. Although Ms. Koerner has never met or personally interviewed Yeilyn, Ms. Koerner

³¹ Neurogenic bowel means the loss of someone's normal bowel function, often caused by a spinal cord injury or other nerve-related condition. Source: <https://www.cedars-sinai.org/health-library/diseases-and-conditions/n/neurogenic-bowel.html>

³² A gastrostomy is a surgical opening made through the abdomen into the stomach. It provides a method to insert a gastrostomy tube to send nutrition directly to the stomach. Source: <https://kidshealth.org/en/parents/g-tube.html>

³³ Autonomic dysreflexia is a syndrome that develops in people with spinal cord injuries. It often results in uncontrolled hypertension or high blood pressure. Source: <https://emedicine.medscape.com/article/322809-overview>

assessed Yeilyn's current income and benefits and compiled an analysis of what she believes her future medical, nursing, transportation, and living care costs will be based upon information from Dr. Lichtblau.³⁴

Yeilyn's Current Benefits

Yeilyn currently receives \$794 each month for Supplemental Security Income. All of her medical needs are paid through Medicaid and will be until she turns 18 years of age. Medicaid services include medical care, dental services, diagnostic tests, possible surgical procedures, therapeutic evaluations, and outpatient therapy. Yeilyn currently lives in a home with her father and extended family. Medicaid has authorized payment, through a Children's Medicaid Services Waiver, for a skilled nurse, her primary caregiver, who is with her 24 hours each day.

According to Ms. Koerner, this waiver will end when Yeilyn turns 18 years old. At that time, the only available Medicaid service with 24-hour skilled nursing care is an assisted living facility. The claimant's attorney asserts that this is not an appropriate setting for an 18-year-old and will be a dramatic change in the assistance Yeilyn needs.

Ms. Koerner states:

"In the event that the current level of Medicaid benefits is no longer available to Yeilyn or does not continue to provide for the 24/7 skilled nursing care that she requires, the cost of 24/7 [licensed vocational nurse] level care, in her private family home, over her lifetime will, at a minimum, will approximately be \$6,676,967 (2021 dollars)."

The claimant's attorney estimates that Yeilyn's future medical damages will be \$11,277,682.10. He computed the following four elements for future medical damages:

³⁴While many items seem reasonable, some of Ms. Koerner's values seem quite generous. For example, her projection includes \$450,000 for the purchase of a wheelchair accessible home and an additional \$174,000 to cover the property taxes, insurance, and maintenance on the home over Yeilyn's life expectancy to age 35. If Yeilyn, at age 18, is moved into a facility, it is unclear what happens to title to the home. A wheelchair accessible van with modifications, that would be replaced every 7 years, is also included for \$172,500. An additional \$145,000 is allotted for insurance, maintenance, gas, AAA membership, a cell phone with AT&T, and a handicap parking permit. Approximately \$500 is allotted each month for maintenance on the van, an amount that appears quite liberal.

Medicaid Expenses (2020 Medicaid expenses multiplied by 12 years) ³⁵	\$3,633,785.64
Skilled Nursing Services (From age 18 – 35 years) ³⁶	\$2,856,928.73
Out-of-Pocket Skilled Nursing Services (From age 18 – 35)	\$3,591,000.00
Additional Out-of-pocket expenses	<u>\$1,195,967.73</u>
Total	\$11,277,682.10

Total Economic Damages

Past Medical Damages	\$1,772,320.52
Future Medical Damages	<u>\$11,277,682.10</u>
	\$13,050,002.62

Non-Economic Damages

Past and Future Pain and Suffering and Loss
Of Enjoyment of Life

At the special master hearing, the claimant's attorney did not provide a specific dollar amount for these categories. He noted that the Florida Standard Jury Instructions 501.2a³⁷ state that there is no exact standard for measuring these damages. The jury instructions state that the amount should be a "fair and just" amount in light of the evidence presented to the jury. He suggested that the amount could exceed \$5,000,000 or even \$10,000,000.

Conclusion

The settled claim amount of \$4,000,000 to be paid by the County seems reasonable based on the evidence presented, including the comparative negligence of Mr. Meraz-Funez and Ms. Otero, and in taking into consideration the unpredictable nature of juries.

³⁵ The 2020 Medicaid paid expenses for 2020, \$302,815.47 X 12 years, or ages 6 – 17 years. The claimant's attorney and Ms. Koerner stated that Yeilyn will no longer qualify for 24 hours per day care when she turns 18 year old.

³⁶ 2020 Medicaid paid expenses from age 18 – 35, or \$150,364.67 X 19 years.

³⁷ 501.2 Personal Injury and Property Damages: Elements.

Settlement Agreement

The parties agreed to settle this claim for:

(1) The \$200,000 statutory cap, which the County paid on August 11, 2021, to the Colson Hicks Eidson, P.A. Trust Account for the benefit of Yeilyn Q. Otero and

(2) The right to pursue a claim bill for \$3,800,000 which would not be contested by the Board of County Commissioners of Miami-Dade County.

Settlement Agreement Distribution

To understand what Yeilyn has received from the initial \$200,000 settlement and what she would receive if the \$3,800,000 claim bill should pass, it is necessary to explain two separate closing statements.

The Initial \$200,000 Settlement with Miami-Dade County

Pursuant to s. 409.910(11)(f), F.S., when there is a recovery in a tort action and Medicaid has provided medical goods and services to a plaintiff who is a Medicaid recipient, the amounts recovered are distributed as follows:

- First, the attorneys are authorized to take their attorney fees and taxable costs³⁸ from the gross proceeds.
- Second, one-half of the remaining recovery will be paid to the agency up to the total amount of assistance paid by Medicaid, and the remaining one-half is paid to the recipient. In other words, the lien holders and the client evenly split the proceeds after attorney fees and allowable costs are paid.

According to the statutory formula when a Medicaid lien is involved, the recovery in the initial settlement is as follows:

<u>Recovery</u>		<u>\$200,000</u>
Attorney Fees of 25%		
Colson Hicks Eidson	75%	\$37,500.00

³⁸ Taxable costs are limited to those costs as defined in the Florida Rules of Civil Procedure. See s. 409.910(11)(f)1., F.S.

Aigen Law Firm	25%	\$12,500.00
Total Attorney Fees		\$50,000.00

Costs Incurred		
Colson Hicks Eidson		\$12,256.41
Aigen Law Firm		<u>\$ 0</u>
Total Costs		\$12,256.41

[Medicaid Liens		
Equian (lien waived) ³⁹		\$819,204.55
Conduent ⁴⁰		\$1,772,320.52]

Therefore,	\$200,000.00 settlement
	\$50,000.00 attorney fees
	<u>\$12,256.41 costs</u>
	\$137,743.59

Pursuant to statute, the remaining \$137,743.59 was divided equally between Medicaid recovery and the client. The net recovery is:

Total Lien Proceeds	\$68,871.80
Yeilyn's Proceeds	\$68,871.80

The Proposed \$3,800,000 Settlement

<u>Recovery</u>	<u>\$3,800,000.00</u>

Attorney and Lobbying Fees of 25%	(\$950,000.00)

Colson Hicks Eidson	\$522,500.00
Aigen Law Firm	\$237,500.00
Ballard Partners, Lobbyist	<u>\$190,000.00</u>
	\$950,000.00

Costs Incurred	
Colson Hicks Eidson	\$12,272.05
Aigen Law Firm	<u>\$ 0</u>

³⁹ Equian was retained by WellCare, a Medicaid plan, to represent WellCare with its subrogation rights and recovery for the medical claims paid on Yeilyn's behalf. Correspondence was provided showing that Equian did not assert its lien in this settlement because the Agency for Health Care Administration lien (Conduent) exceeded what was recoverable in this case and the AHCA/Conduent lien took priority ahead of the Equian lien.

⁴⁰ Conduent Payment Integrity Solutions, a subcontractor to Health Management Systems, is the authorized agent of the Agency for Health Care Administration and operates the Florida Medicaid Casualty Recovery Program.

\$12,272.05 (\$12,272.05)

\$2,837,727.95

Medicaid Liens

Equian

\$819,204.55

Conduent

\$1,772,320.52

Pursuant to statute, the remaining \$2,837,727.95 is divided equally between Medicaid and the client.

Medicaid Liens

\$1,418,863.98

Yeilyn's Proceeds

\$1,418,863.98

Court Approval of Minor's Settlement

When a case involves a financial settlement for a minor, it requires court approval to ensure that the minor's interests are protected.⁴¹ The Circuit Court in Miami-Dade County approved the proposed settlement after receiving testimony from Jonathan Friedland, the guardian ad litem who determined that the proposed settlement was fair, a reasonable resolution of the matter, and was in Yeilyn's best interest, and from Heather Hasandras, the guardian of the property.⁴² The court authorized Heather Hasandras to collect the proceeds of the settlement and execute any instruments necessary to finalize the settlement. The court approved the distribution of funds as set forth in the closing statement and approved the allocation of Yeilyn's net proceeds into a special needs trust⁴³ created solely for Yeilyn's benefit.⁴⁴

A special needs trust, and in this case, a pooled special needs trust, is a legally recognized tool that creates a safe harbor⁴⁵ to protect the assets of mentally or physically disabled people. In order for Yeilyn to continue to qualify for Medicaid, the assets from a settlement must be protected, so that they will not be counted against her needs-based eligibility and disqualify her from receiving Medicaid in the future.

⁴¹ Section 744.387(3), F.S.

⁴² The hearing was held July 1, 2021. Case No. 2018-003667-CA-01.

⁴³ A special needs trust is a trust, or sheltered arrangement, established to protect the eligibility of a disabled person to receive government benefits that are need-based. Medicaid or Supplemental Security Income are common examples of need-based benefits paid by the government.

⁴⁴ The guardianship of the property was established in Case No. 2018-004040-GD-02.

⁴⁵ AGED Master Trust Declaration, Article 1.7.

The court authorized Ms. Hasandras to execute a Pooled Trust Joinder Agreement on October 15, 2021.⁴⁶ In this case, the Aged Pooled Special Needs Trust will be the trustee of the funds.⁴⁷ Ms. Hasandras must report the value of the pooled trust assets in an annual accounting to the court and the court will retain jurisdiction over the case.

ATTORNEY FEES:

Section 768.28, Florida Statutes, limits the claimant's attorney fees to 25 percent of the claimant's total recovery reached by any judgment or settlement in a sovereign immunity claim. The claimant's attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney and lobbyist fees. This translates into total attorney fees of \$50,000 in the initial \$200,000 settlement and \$950,000 in the \$3,800,000 claim bill, if the claim bill should pass, for a combined total of \$1,000,000. Lobbying fees of \$190,000 are included in the attorney fees for the claim bill, but not in the initial settlement.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 58 be reported FAVORABLY but that certain factual representations in the bill be amended for accuracy.

Respectfully submitted,

Eva M. Davis
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute replaces a provision of the underlying bill which limited attorney fees to 25 percent of the claim bill award with specific dollar amounts that may be used for attorney fees, lobbying fees, and costs.

⁴⁶ Upon Yeilyn's "demise" and after repayment of any Medicaid liens, Yeilyn's estate will be the beneficiary of the account.

⁴⁷ In the Master Trust Declaration, Article I.7 provides that purpose of the trust is to provide supplemental care to disabled beneficiaries and "is created with the express intent that the beneficiaries. . . qualify or continue to be eligible for needs-based governmental or quasi-governmental assistance, including Medicaid, SSI, housing assistance and other need-based programs."

By the Committee on Judiciary; and Senator Rodriguez

590-02783-22

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A bill to be entitled

An act for the relief of Yeilyn Quiroz Otero by Miami-Dade County; providing for the appropriation of funds to Heather Hasandras, as guardian of the property of Yeilyn Quiroz Otero, to compensate Miss Quiroz Otero for injuries sustained as a result of the negligence of an employee of Miami-Dade County; requiring that the funds, less certain fees and costs, be placed in a special needs trust for the exclusive use and benefit of Miss Quiroz Otero; requiring that any remaining funds in the trust upon the death of Miss Quiroz Otero revert to the Agency for Health Care Administration; providing a limitation on compensation and the payment of attorney fees; providing legislative intent regarding the waiver of certain liens; providing an effective date.

WHEREAS, on October 6, 2016, Yeilyn Quiroz Otero, then 1 year of age, was a passenger in a vehicle traveling eastbound on West Flagler Street in Miami approaching its intersection with SW 57th Avenue, and

WHEREAS, at the same time, a marked Miami-Dade Police Department vehicle driven by an employee of Miami-Dade County was traveling at 75 miles per hour southbound on SW 57th Avenue toward the same intersection, and

WHEREAS, the posted speed limit for vehicles traveling at that location on SW 57th Avenue was 40 miles per hour, and

WHEREAS, as the traffic signals at that intersection were inoperative, drivers approaching from all directions were

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subject to s. 316.1235, Florida Statutes, which requires that drivers in that circumstance stop in the manner indicated in s. 316.123(2), Florida Statutes, for approaching a stop intersection, and

WHEREAS, the Miami-Dade County employee failed to come to a stop or otherwise yield prior to entering the intersection, and

WHEREAS, as a result of the negligence of the Miami-Dade County employee, the marked Miami-Dade Police Department vehicle struck the vehicle in which Miss Quiroz Otero was a passenger, and

WHEREAS, Miss Quiroz Otero sustained severe injuries in the crash and was transported to the Nicklaus Children's Hospital, where she was treated for multiple traumatic injuries, including injuries to her liver, spine, and lungs, and

WHEREAS, Miss Quiroz Otero, through no fault of her own, will spend the remainder of her life as a paraplegic, and she has suffered, and will continue to suffer, mental pain and anguish and the loss of enjoyment of a normal childhood and life, and

WHEREAS, Miss Quiroz Otero relies exclusively on available public assistance to meet her needs, and the total Medicaid liens associated with her care and treatment related to her injuries as of July 1, 2021, totaled \$2,591,525.07, and

WHEREAS, since the crash, Miss Quiroz Otero has required costly continuous care and treatment, and she will require such care and treatment for the remainder of her life, and

WHEREAS, in resolving a civil action brought in the Circuit Court for the 11th Judicial Circuit, in and for Miami-Dade County, by the guardian of the property, Heather Hasandras, et

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al. v. Board of County Commissioners of Miami-Dade, Case No. 2018-03667-CA-01, the parties to the action signed a settlement agreement under the terms of which a total amount of \$4 million is to be paid to Miss Quiroz Otero, of which Miami-Dade County has paid \$200,000 pursuant to s. 768.28, Florida Statutes, and the remaining \$3.8 million of that settlement is conditioned upon passage of this claim bill, and

WHEREAS, Miami-Dade County has agreed that it would not oppose a claim bill being rendered against the county in this matter and would support any such bill, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise encumbered and draw a warrant in the sum of \$3.8 million payable to Heather Hasandras, as guardian of the property of Yeilyn Quiroz Otero, to be placed in a special needs trust created for the exclusive use and benefit of Yeilyn Quiroz Otero. The balance remaining after the payment of statutory attorney fees and costs must be used to purchase an appropriate structured financial plan, the proceeds of which must be deposited into a special needs trust created for the exclusive use and benefit of Miss Quiroz Otero. Upon the death of Miss Quiroz Otero, any funds remaining in the special needs trust after reimbursing Medicaid funds shall revert to the Agency for Health Care Administration.

Section 3. The amount paid by Miami-Dade County pursuant to

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s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Yeilyn Quiroz Otero. The total amount paid for attorney fees relating to this claim may not exceed \$760,000, the total amount paid for lobbying fees may not exceed \$190,000, and the total amount paid for costs or other similar expenses may not exceed \$12,272.05.

Section 4. Excluding the federal portions of any liens, Medicaid or otherwise, which the claimant must satisfy pursuant to s. 409.910, Florida Statutes, it is the intent of the Legislature that the lien interests relating to the care and treatment of Yeilyn Quiroz Otero are hereby waived and extinguished.

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



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5229

DATE	COMM	ACTION
2/2/22	SM	Favorable
2/7/22	JU	Fav/CS
2/23/22	RC	Favorable

February 2, 2022

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 74** – Judiciary Committee and Senator Ana Maria Rodriguez
HB 6521 – Representative Patt Maney
Relief of Harry Augustin Shumow

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$5,000,000. THIS AMOUNT IS THE REMAINING BALANCE OF A \$5,300,000 SETTLEMENT AGREEMENT REGARDING ALLEGED NEGLIGENCE OF MEDICAL STAFF AT JACKSON MEMORIAL HOSPITAL, OPERATED BY THE MIAMI-DADE PUBLIC HEALTH TRUST, A SUBDIVISION OF THE STATE OF FLORIDA.

FINDINGS OF FACT:

Events at Jackson Memorial Hospital

On August 22, 2017, 6-year-old Harry Augustin Shumow (Gus) presented to Joe DiMaggio Children's Hospital with lethargy, dehydration, diarrhea, vomiting, clenched jaw, and a fever.¹ Gus was thought to be experiencing liver failure² and was subsequently transferred to the pediatric intensive care unit (PICU) at Holtz Children's Hospital, a pediatric hospital within the Jackson Memorial Hospital

¹ Bonfiglio, M.D., Richard Paul, Physical Medicine and Rehabilitation Evaluation for Harry Shumow at p. 5 (April 8, 2021).

² Claimant's expert, Dr. Stephen Deputy, testified that Gus was transferred to JMH because Joe DiMaggio medical staff believed Gus may need a liver transplant and JMH was capable of evaluating his transfer suitability, whereas Joe DiMaggio Children's Hospital was not. See Special Master Hearing at 2:40:54-2:41:20.

(JMH) system, where he was treated for hepatitis, acute kidney injury, and encephalopathy.³ Once there, Gus tested positive for Influenza A, and a baseline MRI revealed that Gus had suffered several small strokes,⁴ possibly due to dehydration resulting from rhabdomyolysis.⁵ On August 28, 2017, due to concerns of microangiopathy,⁶ doctors performed a biopsy of Gus's left kidney.⁷

Over the course of approximately the next two weeks, Gus began to slowly recover cognitive and physical function.⁸ He began to smile, recognize his family members, speak, and exhibit gradual motor improvements.⁹ His liver function and renal function also improved substantially over this time.¹⁰

On September 8, 2017, at approximately 3:26 AM, medical staff attending to Gus ordered a complete blood count¹¹ (CBC) from the hospital's lab.¹² At approximately 6:50 a.m., Ms. Mona Lisa Pierre, a lab tech employed by JMH and on duty at the time, performed an analysis of the blood specimen drawn for the CBC.¹³ The analysis

³ Agency for Health Care Administration, Hospital Adverse Incident Report (hereinafter, The AHCA Report) at p. 6, (October 10, 2017).

⁴ *Id.*

⁵ Rhabdomyolysis (often called "rhabdo") is a serious medical condition that can be fatal or result in permanent disability. Rhabdo occurs when damaged muscle tissue releases its proteins and electrolytes into the blood. These substances can damage the heart and kidneys and cause permanent disability or even death. The Center for Disease Control and Prevention, Rhabdomyolysis, available at <https://www.cdc.gov/niosh/topics/rhabdo/default.html> (last visited November 22, 2021).

⁶ Microangiopathy, also known as small vessel disease, is a condition in which the walls of the small arteries in the heart are not working properly. This reduces the flow of oxygen-rich blood to the heart, causing chest pain (angina), shortness of breath, and other signs and symptoms of heart disease. The Mayo Clinic, Small Vessel Disease, available at <https://www.mayoclinic.org/diseases-conditions/small-vessel-disease/symptoms-causes/syc-20352117> (last visited November 22, 2021).

⁷ The AHCA Report at p. 6.

⁸ Special Master Hearing at 2:45:05-2:46:06.

⁹ *Id.*

¹⁰ *Id.* at 2:46:58-2:47:52.

¹¹ A complete blood count (CBC) is a blood test used to evaluate overall health and detect a wide range of disorders, including anemia, infection and leukemia. A complete blood count test measures several components and features of blood, including red blood cells, white blood cells, hemoglobin, hematocrit, and platelets. The Mayo Clinic, Complete Blood Count (CBC), available at <https://www.mayoclinic.org/tests-procedures/complete-blood-count/about/pac-20384919> (last visited November 22, 2021).

¹² JMH Clinical Laboratory/Hematology Records at p. 1.

¹³ The AHCA Report at pp. 4-6.

resulted in a hemoglobin¹⁴ (HGB) value of 3.4.¹⁵ An HGB value of less than 6 is considered a “critical” or “panic” value, per the JMH Pathology Policies and Procedures Manual (JMH Manual).¹⁶ Critical values must be reported to the patient’s attending physician or their designee within 30 minutes of obtaining such values.¹⁷ The 3.4 HGB reading also represented a decrease from the most recently obtained HGB value¹⁸ of more than 25 percent.

Ms. Pierre ran the sample again at 6:52 AM, resulting in an HGB value of 3.3. Ms. Pierre proceeded to recheck the sample again at 7:18 AM and again at 7:44 AM, resulting in HGB values of 3.2 and 3.3, respectively.¹⁹ Ms. Pierre believed the blood sample was contaminated and advised a PICU nurse that the lab had been canceled but did not indicate a reason for cancellation, instead suggesting a blood redraw be performed to obtain a new sample. Ms. Pierre did not advise anyone of the critical HGB value.

The next scheduled CBC blood draw occurred at 2:09 PM that afternoon, and the specimen, analyzed by a different lab tech now on duty, yielded an HGB value of 2.5.²⁰ The second lab tech immediately notified a PICU nurse, and another CBC blood draw was ordered to confirm the result.²¹ An abdominal ultrasound was ordered at 3:30 PM due to Gus complaining of abdominal pain and nausea.²² The ultrasound was initiated at 4:20 PM, and at 4:37 PM, following the results of the next CBC panel (which revealed an HGB value of 2.4), a blood transfusion was ordered.²³

¹⁴ Hemoglobin (Hb or Hgb) is a protein in red blood cells that carries oxygen throughout the body. A low hemoglobin count is generally defined as less than 13.5 grams of hemoglobin per deciliter (135 grams per liter) of blood for men and less than 12 grams per deciliter (120 grams per liter) for women. In children, the definition varies with age and sex. The threshold differs slightly from one medical practice to another. The Mayo Clinic, Low Hemoglobin Count, available at <https://www.mayoclinic.org/symptoms/low-hemoglobin/basics/definition/sym-20050760> (last visited November 22, 2021).

¹⁵ JMH Lab Results for Harry Shumow, Sample No. L2970061660, dated September 8, 2017.

¹⁶ JMH Pathology Services Policy and Procedure Manual, Notification of Critical Values at p. 4.

¹⁷ *Id.*

¹⁸ The most recently obtained HGB value was 8.1. See The AHCA Report at p. 4.

¹⁹ JMH Clinical Laboratory/Hematology Records at pp. 1-4.

²⁰ The AHCA Report at p. 4.

²¹ *Id.*

²² JMH Patient Safety Work Product Timeline for events of September 8, 2017 at p. 3.

²³ *Id.*

The ultrasound ultimately revealed that Gus had been bleeding internally following his earlier kidney biopsy.²⁴ Gus went into cardiac arrest, and although he was ultimately resuscitated by JMH medical staff, the resuscitation process took roughly 1 hour and 11 minutes.²⁵ By the time Gus stabilized, he had suffered severe hypoxic ischemic encephalopathy, a type of brain injury caused by impaired cerebral blood flow and oxygen delivery to the brain.²⁶

JMH performed an internal Root Cause Analysis following the incident. The analysis determined the primary cause of Gus's injuries to be Ms. Pierre's failure to adhere to JMH Manual guidelines.²⁷ In addition to the internal analysis, the AHCA Report similarly stated that Gus's injury was caused by Ms. Pierre's failure to report a change of 25% from the immediately preceding HGB value.²⁸

At the final hearing, Gus's attorney presented MRIs taken before and after Gus's cardiac arrest for comparison. Dr. Stephen Russell Deputy, a practicing physician board certified in neurology and specializing in pediatric neurology, testified that a comparison of the MRIs shows damage to various regions of Gus's brain consistent with severe dystonia, incontinence, and several other conditions Gus is currently experiencing. The MRIs following the cardiac arrest showed significant injury to the basal ganglia, a region of the brain largely responsible for motor skills.²⁹ Dr. Deputy opined that this is a direct result of the cardiac arrest, and that significant rehabilitative progress among patients with neurological injuries similar to those Gus experienced is generally limited to the three months immediately following the date of injury.³⁰

²⁴ The AHCA Report at p. 4.

²⁵ *Id.*

²⁶ Deputy, M.D., Stephen, Report and Opinions Concerning Harry Shumow at p. 11 (May 28, 2021).

²⁷ JMH Root Cause Analysis and Action Plan at p. 3

²⁸ The AHCA Report at p. 6.

²⁹ Special Master Hearing at 2:56:00-2:59:00.

³⁰ Special Master Hearing at 2:47:50-2:48:00.

Dr. Deputy explained that Gus currently suffers from dystonia³¹ and quadriplegic dystonic cerebral palsy.³² He opined that both are permanent conditions that will affect him for the rest of his life,³³ and that Gus likely would have made a full recovery from his original illnesses but for the hemorrhagic stroke caused by the cardiac arrest.³⁴

Gus's Current Condition

At the time of the incident Gus was 6 years old. He is now 10 years old and lives with his mother, Rose, who cares for Gus and his two siblings full time. On October 22, 2019, Rose's husband and Gus's father, Moses Shumow, was killed in a bicycle accident. Following Moses's death, Rose and the children moved to Largo to be closer to her family, and she is now the sole guardian and caretaker of Gus and his siblings.

At the final hearing, Rose detailed the various medications, therapies, and other treatments that she and others provide to Gus. Rose homeschools Gus and takes him to numerous physical therapy appointments, as well as appointments for a dystonia recovery program, targeted development intervention,³⁵ and a number of other therapies.³⁶ She also takes him to appointments with several specialists and his primary care physician. Rose previously worked as a master's level librarian before Gus's accident, however she is not currently employed as all of her available time is spent taking care of Gus and her other two children.

³¹ Dystonia is a movement disorder in which muscles contract involuntarily, causing repetitive or twisting movements. The Mayo Clinic, Dystonia, available at <https://www.mayoclinic.org/diseases-conditions/dystonia/symptoms-causes/syc-20350480> (last visited November 22, 2021).

³² Dystonic cerebral palsy is a condition that causes increased muscle tone and uncontrollable, involuntary posture and movement. American Academy for Cerebral Palsy and Developmental Medicine. (2018), Dystonia in Cerebral Palsy, available at <https://www.aacpdm.org/publications/care-pathways/dystonia-in-cerebral-palsy> (last visited November 22, 2021).

³³ Special Master Hearing at 2:58:40-3:03:56.

³⁴ Special Master Hearing at 2:55:10-2:55:35.

³⁵ Targeted Development Intervention is a therapy program developed by the National Association for Child Development that utilizes a number of therapeutic techniques catered to the individual patient, with the goal of accelerating neurological development and function. The National Association for Child Development, *The Importance of TDI Targeted Development Intervention*, available at <http://www.nacd.org/the-importance-of-tdi-targeted-developmental-intervention/> (last visited November 22, 2021).

³⁶ Special Master Hearing at 40:05-48:00.

Dr. Richard Paul Bonfiglio, a physician board certified in physical medicine and rehabilitation, testified at the final hearing regarding Gus's condition. He evaluated Gus in person on April 8, 2021 and explained that Gus has global developmental delays and cannot walk independently or produce words, however he is aware of his environment and can engage with others.³⁷ Dr. Bonfiglio stated that while Gus has made progress with the therapies and care that he has received and will likely continue to do so, it is very unlikely Gus will ever be independent with day-to-day activities, and will require assistance and supervision 24 hours a day for the remainder of his life.³⁸

Settlement and Estimated Economic Losses

The parties have entered into a settlement agreement for a total of \$5,300,000.³⁹ The source of funds for the settlement are as follows: The Public Health Trust has a self-insured retention of \$1,000,000 and an excess insurance policy through Aon UK Limited.⁴⁰ The sovereign immunity cap of \$300,000 has been paid through the self-insured retention, an additional \$700,000 will be paid from the remainder of the self-insured retention, and the remaining \$4,000,000 falls under the excess insurance policy.⁴¹

All proceeds of the settlement agreement are to be invested in a structured settlement/annuity and held in a special needs trust (SNT) that has been established for Gus's benefit. The proceeds are to be disbursed from the SNT in accordance with the details of the structured settlement/annuity and terms of the SNT.⁴² The full amount (\$300,000) of the respondent's statutory limit has been paid into Gus's SNT.

Gus's attorney submitted a future needs analysis based on a life care plan developed for Gus.⁴³ The future needs

³⁷ Special Master Hearing at 2:15:32-2:16:35.

³⁸ Special Master Hearing at 2:20:15-2:21:45.

³⁹ Release of All Claims, Rose Shumow Et Al v. Miami-Dade Public Health Trust, Case No. 2019-015810-CA-01 (Fla. 11th Circ. Ct.) (September 23, 2021).

⁴⁰ Letter from Claimant's Attorney to Special Masters at p. 5 (October 4, 2021).

⁴¹ *Id.*

⁴² Amended Interim Closing Statement submitted by claimant's attorney on November 3, 2021; Claimant's attorney also submitted documentation from each creditor to corroborate the status and values of the liens.

⁴³ Future Needs Analysis for Harry (Gus) Shumow, (October 29, 2021).

analysis produced an estimated total of lifetime costs exclusive of those costs delineated in the life care plan that are likely to be covered by government benefits, including Medicaid and the Medicaid Home and Community Based Services waiver.⁴⁴ The analysis estimated the total lifetime cost of Gus's needs not covered by such collateral sources to be approximately \$6,200,963.99.⁴⁵ After reviewing the life care plan and future needs analysis, Dr. Bonfiglio opined that the treatments and medications listed in the plans are medically necessary, both for maintaining Gus's current health and for preventing additional complications from occurring.⁴⁶ He also testified that the various therapies Gus currently receives are important to Gus's ongoing rehabilitation.⁴⁷

Liens

Several creditors have asserted liens on proceeds due to Gus from the settlement.⁴⁸ AvMed has asserted a medical lien of \$824,962.20, which has conditionally been reduced to \$250,000 upon passage of the claim bill. Harvard Pilgrim has asserted two medical liens, one of \$67,090.58 and another of \$2,479.76. Both of these liens have been reduced to \$0. Mass Health has asserted a medical lien of \$1,079.37. CMS has asserted a medical lien of \$32,674.74, which has been reduced to \$10,000. The total outstanding amount⁴⁹ of the liens is \$266,377.13.

Litigation History

Moses and Rose filed a case in Miami-Dade County seeking relief on behalf of Gus as a result of the incident at JMH.⁵⁰ Prior to trial, the parties arrived at a mediated settlement agreement⁵¹ and the case was subsequently closed.

⁴⁴ Gus is Medicaid eligible until age 21; at that time, Gus will likely be eligible for the Medicaid Home and Community Based Services Waiver for individuals with disabilities.

⁴⁵ The future needs analysis assumed a life expectancy of 65.9 years. At the final hearing, Dr. Bonfiglio opined that this is a reasonable assumption if Gus continues to receive the ongoing care that he has to this point.

⁴⁶ Special Master Hearing at 2:24:00-2:24:57.

⁴⁷ Special Master Hearing 2:27:45-2:28:15.

⁴⁸ *Id.* at p. 2.

⁴⁹ This calculation assumes a negotiated final amount of \$250,000 for the AvMed lien.

⁵⁰ *Rose Shumow Et Al v. Miami-Dade Public Health Trust*, Case No. 2019-015810-CA-01 (Fla. 11th Circ. Ct.).

⁵¹ Special Master Hearing at 16:59:00-17:25:00.

The respondent did not admit liability or responsibility for the incident but did reach a mediated settlement agreement of \$5,300,000.⁵² As part of the agreement, the respondent agreed to not support or oppose the bill, and did not present a case or argument at the special master hearing.⁵³

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

As a result of section 768.28(5), Florida Statutes, the hospital's liability for medical malpractice claims or judgments is limited to \$200,000 per claim or judgment and \$300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

JMH is a public hospital operated by the Miami-Dade Public Health Trust.⁵⁴ Additionally, the hospital or trust, under the doctrine of *respondeat superior*, is responsible for the medical negligence of its employees.⁵⁵ Ms. Pierre was acting within the scope of her employment with JMH while analyzing Gus's blood samples.

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.⁵⁶

Duty

In cases involving the negligence of medical personnel, the duty of care owed is the level of care, skill, and treatment which, in light of all surrounding circumstances, is recognized

⁵² Order Granting Plaintiff's Motion to Approve Minor Settlement and Dismissing Case, Rose Shumow Et Al v. Miami-Dade Public Health Trust, Case No. 2019-015810-CA-01 (Fla. 11th Circ. Ct.).

⁵³ Mediation Settlement Agreement at p. 2.

⁵⁴ *Public Health Trust Bylaws and Rules and Regulations of the Medical Staff*, available at <https://storage.googleapis.com/jackson-library/Credentialing/2015-05-26-medical-staff-bylaws-final.PDF>

⁵⁵ *Roessler v. Novak*, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).

⁵⁶ *Williams v. Davis*, 974 So.2d 1052, at 1056–1057 (Fla. 2007).

as acceptable and appropriate by reasonably prudent similar health care providers.⁵⁷

The JMH Manual clearly delineated the duties owed by JMH laboratory personnel. Specifically, any change in HGB levels that deviate by 25% or more from those derived in the previous blood sample must be reported to a person in charge after investigation and verification of the results. Lab personnel are also required to report critical values to an attending physician or designee within 30 minutes of obtaining such values.⁵⁸

Additionally, Gus's attorney submitted a Verified Affidavit from Dr. Aaron Zucker, a physician board certified in pediatrics with a subspecialty in pediatric critical care, following the final hearing. The Verified Affidavit stated that Ms. Pierre had a duty to do the following:

- Notify Gus's supervising physician that the 3:26 AM CBC resulted in a HGB level of 3.4; and
- Notify a person in charge that 3:26 AM CBC resulted in a HGB level that had changed by more than 25% from the immediately preceding CBC.⁵⁹

Breach

If the duty of care required JMH laboratory personnel to follow up on any critically low values and report them to a person in charge within 30 minutes, Ms. Pierre clearly breached her duty. Ms. Pierre rejected Gus's blood specimen because she believed the sample was contaminated. The JMH Manual details specific criteria for specimen rejection, and a belief that a specimen is contaminated is not among the listed criteria.⁶⁰ By improperly rejecting the sample and failing to notify proper personnel of an HGB value that was both critical, per JMH pathology guidelines, and that represented a change greater than 25% from the immediately preceding HGB value, Ms. Pierre breached her duty to Gus.

⁵⁷ Section 766.102(1), F.S.

⁵⁸ The JMH Manual defines a critical HGB value as less than 6.

⁵⁹ Zucker, M.D., Aaron, Declaration of Aaron Zucker, MD. (November 15, 2021).

⁶⁰ See JMH Pathology Services Policy and Procedure Manual, Specimen Rejection Criteria.

Causation

Dr. Deputy testified that Gus's healing trajectory during the period between his admission to JMH and the events of September 8, 2017, was such that he would have made a full recovery with regard to his mental status but for the events of September 8, 2017.⁶¹

Additionally, Dr. Zucker's Verified Affidavit stated that if Ms. Pierre had followed the JMH Manual guidelines by reporting the panic HGB levels, Gus's medical team likely would have been able to timely diagnose and treat his severe anemia, and Gus ultimately would not have suffered the hemorrhagic stroke that resulted in his cardiac arrest and subsequent injuries.⁶²

The testimony of multiple experts, the JMH Root Cause Analysis, and the AHCA Report all show that Ms. Pierre's actions were a direct and proximate cause of Gus's injuries. Ms. Pierre's failure to report the critical HGB value caused Gus's anemia to go undiagnosed for roughly eight hours. Had Ms. Pierre reported the critical HGB value of 3.4 to a person in charge, Gus's medical team would have been able to order a blood transfusion quickly enough to prevent the cardiac arrest that caused Gus's injuries.

Damages

As a result of the cardiac arrest, doctors indicated Gus suffered traumatic brain and spinal cord injuries. Multiple experts opined that Gus's injuries are permanent and he will require 24-hour supervision and assistance for life. Doctors expect Gus to live into his seventies with proper medical and therapeutic care.

Given the submissions and testimony from various experts, including the life care plan and special needs analysis, the undersigned finds the preponderance of evidence demonstrates \$5.3 million is a reasonable amount of damages.

⁶¹ Special Master Hearing at 2:50:00-2:50:57.

⁶² Zucker, M.D., Aaron, Declaration of Aaron Zucker, MD. (November 15, 2021).

ATTORNEY FEES:

Language in the bill states attorney fees may not exceed 25 percent of the amount awarded. Gus's attorney indicated attorney fees will be 20 percent, and lobbying fees will amount to 5 percent, of the total funds awarded through the claim bill.⁶³

RECOMMENDATIONS:

Based on the foregoing, the undersigned recommends that Senate Bill 74 be reported FAVORABLY.

Respectfully submitted,

Peter Delia
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute replaces a provision of the underlying bill which limited attorney fees to 25 percent of the claim bill award with specific dollar amounts that may be used for attorney fees, lobbying fees, and costs.

⁶³ Amended Interim Closing Statement submitted by claimant's attorney on November 3, 2021. (noting total attorney's/lobbying fees of \$1,325,000.00).

By the Committee on Judiciary; and Senator Rodriguez

590-02782-22

202274c1

A bill to be entitled

An act for the relief of Harry Augustin Shumow by the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the Public Health Trust of Miami-Dade County; providing a limitation on the payment of compensation and attorney fees, lobbying fees, and other costs or similar expenses; providing an effective date.

WHEREAS, on August 22, 2017, 6-year-old Harry Augustin Shumow, suffering from dehydration, fever, and lethargy, was diagnosed with acute liver failure, hypoglycemia, dehydration, and hypotension, as well as early signs of acute kidney injury, and

WHEREAS, Harry was admitted to Jackson Memorial Hospital and from approximately August 24, 2017, to September 8, 2017, showed steady and significant physical, cognitive, and neurological improvements, and

WHEREAS, on September 8, 2017, when a lab technician tested Harry's hemoglobin levels, they had decreased significantly overnight, signaling the possibility of severe anemia, and

WHEREAS, mistakenly attributing the significant change in hemoglobin levels to sample contamination, the lab technician canceled the lab results and requested blood be redrawn from Harry, and

WHEREAS, when Harry's blood was retested approximately 12 hours later, the hemoglobin levels were even lower than the

Page 1 of 3

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first test, and it was discovered that Harry had been bleeding internally from an earlier kidney biopsy procedure, and

WHEREAS, shortly thereafter, exhibiting low blood pressure and a slowed heart rate, Harry went into cardiac arrest and did not fully recover until approximately 1 hour later, and

WHEREAS, as a result of prolonged oxygen deprivation from the cardiac arrest, Harry suffered severe hypoxic ischemic encephalopathy, a type of brain injury, which resulted in significant neurological disabilities that left Harry quadriplegic, unable to verbally communicate, epileptic, and subject to painful involuntary muscle spasms, among other things, and

WHEREAS, Moses and Rose Shumow, as parents and natural guardians of Harry, filed a lawsuit in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County under case number 2019-15810-CA-01, alleging that the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital, through its employees, was the direct and proximate cause of the injuries to Harry, and

WHEREAS, the Public Health Trust of Miami-Dade County has agreed to settle Harry Augustin Shumow's claim for \$5.3 million, \$300,000 of which will be paid by the Public Health Trust of Miami-Dade County pursuant to the statutory limits of liability in s. 768.28, Florida Statutes, and the remaining \$5 million of which is conditioned upon the Legislature's passage of a claim bill, NOW, THEREFORE,

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

Page 2 of 3

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

590-02782-22

202274c1

59 Section 1. The facts stated in the preamble to this act are
60 found and declared to be true.

61 Section 2. The Public Health Trust of Miami-Dade County,
62 d/b/a Jackson Memorial Hospital, is authorized and directed to
63 appropriate from funds not otherwise encumbered and to draw a
64 warrant in the sum of \$5 million payable to the special needs
65 trust created for the exclusive use and benefit of Harry
66 Augustin Shumow as compensation for injuries and damages
67 sustained.

68 Section 3. The amount paid by the Public Health Trust of
69 Miami-Dade County pursuant to s. 768.28, Florida Statutes, and
70 the amount awarded under this act are intended to provide the
71 sole compensation for all present and future claims arising out
72 of the factual situation described in this act which resulted in
73 injuries and damages to Harry Augustin Shumow. The total amount
74 paid for attorney fees relating to this claim may not exceed \$1
75 million, the total amount paid for lobbying fees may not exceed
76 \$250,000, and the total amount paid for costs or other similar
77 expenses may not exceed \$133,344.06.

78 Section 4. This act shall take effect upon becoming a law.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 518

INTRODUCER: Community Affairs Committee and Senator Brodeur

SUBJECT: Private Property Rights to Prune, Trim, and Remove Trees

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hunter	Ryon	CA	Fav/CS
2. Ponder	McVane	GO	Favorable
3. Hunter	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 518 amends s. 163.045, F.S., which prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from a certified arborist or a licensed landscape architect, that the tree *presents a danger* to persons or property. (emphasis added). The bill amends this provision to provide that a local government may not burden a property owner's rights to prune, trim, or remove trees on his or her own property if the tree "poses an unacceptable risk" to persons or property. Under the bill, a tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate as outlined in Best Management Practices – Tree Risk Assessment, Second Edition (2017).

The bill defines "documentation" to mean an onsite tree risk assessment performed in accordance with the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017). Documentation must be signed by an arborist certified by the International Society of Arboriculture (ISA) or Florida licensed landscape architect. The bill also defines the term "residential property" as a single-family detached building located on an existing lot, actively used for single-family residential purposes, and which is either an existing conforming use or a legally recognized nonconforming use following the local jurisdiction's applicable land development regulations.

The bill may have an indeterminate fiscal impact on local governments.

The bill takes effect on July 1, 2022.

II. Present Situation:

Home Rule Powers and Preemption

The Florida Constitution

The State Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, section 1 of the State Constitution, endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

Counties

A county without a charter has power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.¹ Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.² General law authorizes counties "the power to carry on county government"³ and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."⁴

Municipalities

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.⁵ Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,⁶ acknowledges these constitutional grants of police powers and better defines municipal powers of self-government.⁷ Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the State Constitution, general and special law, and a charter for the county in which the municipality is located.⁸

¹ FLA. CONST. art. VIII, s. 1(f).

² *Id.* at (g).

³ Section 125.01(1), F.S.

⁴ *Id.* at (w).

⁵ FLA. CONST. art. VIII, s. 2.

⁶ Section 166.011, F.S.

⁷ Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at: <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General%20Publications&FileName=2017-2018%20Local%20Government%20Formation%20Manual%20Final%20Pub.pdf> (last visited Dec. 9, 2021).

⁸ Section 166.021(4), F.S.

State Preemption

Although local governments have broad home rule powers, the state legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law.⁹ Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁰ In cases where the Legislature expressly preempts an area or forbids local governments from certain actions, there is no problem with ascertaining what the Legislature intended.¹¹ On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme.¹² Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area to the state, and there are strong public policy reasons for doing so.¹³ In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.¹⁴

Local Tree Pruning, Trimming, and Removal Regulations

Florida counties and municipalities have the home rule power to enact ordinances related to tree removal and management. These ordinances regulate how private property owners manage the landscape on their private property. Tree management ordinances address various aspects of land use, including the species used in a given area. Some tree management ordinances require a property owner to receive a permit or pay a fee before pruning, trimming, or removing a tree from their private property.

For example, in Broward County, removing any historical tree¹⁵ without first obtaining approval from the Board of County Commissioners is prohibited. Broward County also outlaws removing any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.¹⁶ Furthermore, municipalities within Broward County have enforced their tree preservation regulations in addition to Broward County's tree regulations.¹⁷

⁹ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹⁰ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹¹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹² See *GLA & Assocs. Inc. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).

¹³ *Id.*

¹⁴ *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So.2d 587, 591 (Fla. 2d DCA 1992) (“If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.”)

¹⁵ Ch. 27, art. XIV, s. 404, Broward County Code of Ordinances (2018), defines a “historical tree” as a particular tree or group of trees, which has historical value because of its unique relationship to the history of the region, state, nation or world as designated by the Board of County Commissioners.

¹⁶ *Id.* at s. 405. Nuisance trees are exempt from the prohibitions in the tree preservation ordinances. *Id.* at 406. A “nuisance tree” is defined to be one of 10 identified trees including the *Schinus terebinthifolius* (Brazilian pepper tree/Florida holly). *Id.* at 404.

¹⁷ *Id.* at s. 407. Municipalities may regulate exclusively within their jurisdictions upon certification by Broward County with some exceptions.

Similarly, Orange County requires a permit or authorization to remove a protected tree¹⁸ unless an exception applies. The law does not restrict tree trimming or maintenance but encourages property owners to practice proper trimming habits that avoided the need for "severe" trimming of any tree.¹⁹ Municipalities within Orange County are also allowed to provide tree regulations within their jurisdictions.²⁰

Section 163.045, F.S. – Tree Pruning, Trimming, or Removal on Residential Property

During the 2019 Regular Session, the Legislature created s. 163.045, F.S., which prohibits local governments from requiring "a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property." Additionally, a local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.²¹ These 2019 provisions do not apply to the exercise of authority for mangrove protection pursuant to ss. 403.9321-403.9333, F.S.²²

The subject matter of s. 163.045, F.S., has been the subject of litigation on several occasions since its enactment. Courts have grappled with the statute's express language and whether local governments maintain some residual authority to regulate tree management on private property.²³

Tree Risk Assessment Standards

In 2017, the International Society of Arboriculture (ISA) and the American National Standard Institute (ANSI) produced the first national standards to address tree risk assessment. The ANSI standards represent the industry criteria for performing tree care operations. The standards can be used for general familiarity with professional requirements and preparation of tree care contract specifications. These standards are published in Best Management Practices - Tree Risk

¹⁸ Protected trees are native trees in certain zones and include Red maple, Red buckeye, and Pignut hickory trees. See Ch. 15, Art. VIII, ss. 283 and 301(e), Orange County Code of Ordinances (2018).

¹⁹ Ch. 15, Art. VIII, s. 278, Orange County Code of Ordinances (2018).

²⁰ *Id.*

²¹ Section 163.045(2), F.S.

²² *Id.* at (3). Florida has three native species of mangrove trees growing along its coastline, which can be harmed or killed if not trimmed properly. The "1996 Mangrove Trimming and Preservation Act" (Act) requires the Department of Environment Protection (DEP) to regulate the trimming and alteration of mangroves statewide, except where DEP has delegated its authority to local governments that meet certain requirements and request such delegation. The Act prohibits mangrove trimming or alteration without a permit issued by DEP or a delegated local government, unless the trimming or alteration falls within certain exceptions. See Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, "Introduction," 4, available at https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited Dec 9, 2021).

²³ For example, a recent decision ruled in favor of property owners in Pensacola seeking to remove a live oak tree from their property based upon the opinion of a certified arborist that the "location of the tree puts homes and the occupants at risk of severe damage and safety" when the tree fails. *Vickery v. City of Pensacola*, No. 1D19-4344, 2022 WL 480742 (Fla 1 DCA Feb. 16, 2022); see also *Schuh v. City of St. Petersburg*, 2019 WL 10784582, No. 18-007493-CI. (Fla.Cir.Ct. 6th Jud.Cir., Pinellas County) (Plaintiffs alleged that before altering their landscape in any way—including pruning, trimming, or removing trees—the City requires notification, an application, and approval in violation of s. 163.045, F.S.).

Assessment, Second Edition.²⁴ The stated purpose of Best Management Practices - Tree Risk Assessment, Second Edition is to serve as a guide for arborists to assess tree risk as accurately and consistently as possible, to evaluate that risk, and to recommend measures that achieve an acceptable level of risk.²⁵

Best Management Practices - Tree Risk Assessment, Second Edition covers topics arborists should include in tree risk assessments including:²⁶

- Risk Assessment Basics;
- Levels and Scope of Tree Risk Assessment;
- Assessing Targets, Sites, and Trees;
- Tree Risk Categorization;
- Risk Mitigation: Preventive and Remedial Actions;
- Risk Reporting;
- Tree Related Conflicts That Can Be a Source of Risk;
- Loads on Trees;
- Structural Defects and Conditions That Affect Likelihood of Failure;
- Response Growth; and
- Description of Selected Types of Advanced Tree Risk Assessments.

III. Effect of Proposed Changes:

Section 1 amends s. 163.045, F.S., to define the following terms:

- "Documentation" means an onsite assessment performed in accordance with the tree risk assessment procedures outlined in best Management Practices – Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect and signed by the certified arborist or licensed landscape architect.
- "Residential property" means a single-family, detached building detached building located on a lot actively used for single-family residential purposes, and which is either an existing conforming use or a legally recognized nonconforming use under the local jurisdiction's applicable land development regulations

Before a residential property owner may prune, trim, or remove a tree pursuant to s. 163.045, F.S., the bill requires an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect to certify that a tree poses "an unacceptable risk" to persons or property. A tree poses an unacceptable risk to persons or property if removal is the only means of practically mitigating the risk below moderate, Best Management Practices - Tree Risk Assessment, Second Edition (2017).

The bill takes effect July 1, 2022.

²⁴ See ISA, Best Management Practices - Tree Risk Assessment, Second Edition (2017), available at: <https://www.isa-arbor.com/store/product/324> (last visited Jan. 19, 2022).

²⁵ *Id.*

²⁶ *Id.*

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

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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:

The private sector may avoid future fines and legal costs associated with a local government's implementation of s. 163.055, F.S., due the specificity provided in the bill.

C. Government Sector Impact:

Local governments may avoid future legal costs associated with potential lawsuits filed to challenge a local government's implementation of s. 163.045, F.S., due to the specificity provided in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.045 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 Community Affairs on January 18, 2022:

The CS modifies the definitions of “documentation” and “residential property” and changes the title of the bill from “an act relating to residential home protection” to “an act relating to private property rights to prune, trim, and remove trees.”

- B. **Amendments:**

None.

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

By the Committee on Community Affairs; and Senator Brodeur

578-02092-22

2022518c1

A bill to be entitled

An act relating to private property rights to prune, trim, and remove trees; amending s. 163.045, F.S.; defining terms; revising conditions under which a local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property; specifying when a tree poses an unacceptable risk; providing an effective date.

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

Section 1. Section 163.045, Florida Statutes, is amended to read:

163.045 Tree pruning, trimming, or removal on residential property.—

(1) For purposes of this section, the term:

(a) "Documentation" means an onsite assessment performed in accordance with the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017) by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect and signed by the certified arborist or licensed landscape architect.

(b) "Residential property" means a single-family, detached building located on a lot that is actively used for single-family residential purposes and that is either a conforming use or a legally recognized nonconforming use in accordance with the local jurisdiction's applicable land development regulations.

578-02092-22

2022518c1

(2) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner ~~possesses~~ obtains documentation from an arborist certified by the ~~ISA International Society of Arboriculture~~ or a Florida licensed landscape architect that the tree ~~poses an unacceptable risk, presents a danger~~ to persons or property. A tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as determined by the tree risk assessment procedures outlined in Best Management Practices - Tree Risk Assessment, Second Edition (2017).

(3) ~~(2)~~ A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.

(4) ~~(3)~~ This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

Section 2. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 10, 2022

I respectfully request that **Senate Bill 518**, relating to **Private Property Rights to Prune, Trim, and Remove Trees**, be placed on the:

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

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

Senator Jason Brodeur
Florida Senate, District 9

SB518 Summary

This bill prohibits a local government from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from a certified arborist or a licensed landscape architect, that the tree presents a danger to persons or property. The bill amends this provision to provide that a local government may not burden a property owner's rights to prune, trim, or remove trees on his or her own property if the tree "poses an unacceptable risk" to persons or property. The bill also defines the term "residential property" as a single-family detached building located on an existing lot, actively used for single-family residential purposes, and which is either an existing conforming use or a legally recognized nonconforming use following the local jurisdiction's applicable land development regulations.

2/23/2022

Meeting Date

Rules

Committee

The Florida Senate
APPEARANCE RECORD

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

SB 518

Bill Number or Topic

Amendment Barcode (if applicable)

Name Diana Ferguson Phone 850-681-6788

Address 119 S Monroe Street Suite 202 Email DFerguson@rutledge-ecenia.com

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:

**American Society of Landscape
Architects Florida 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. [2020-2022 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

518

Bill Number or Topic

2-23-22

Meeting Date

Rules

Committee

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

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Phone 727.421.6902

Address P.O. Box 2020

Email travis@moore-relations.com

Street

St. Petersburg FL

33731

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:

Community Associations Institute

☐

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

2/23/22

APPEARANCE RECORD

SB 518

Meeting Date

Bill Number or Topic

Rules

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Committee

Amendment Barcode (if applicable)

Name **Rebecca O'Hara** Phone _____

Address **PO Box 1757** Email _____

Street

Tallahassee **FL** **32302**

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 League of Cities

☐ 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)

02/23/2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

518

Bill Number or Topic

Rules

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

Committee

Amendment Barcode (if applicable)

Name **Edward G. Labrador**

Phone **(850) 922-4300**

Address **100 S. Monroe Street**
Street

Email **elabrador@fl-counties.com**

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:

FL Association of Counties

☐ 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

2/23/22

Meeting Date

518

Bill Number or Topic

Rules

Committee

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

Amendment Barcode (if applicable)

Name

Jim Spratt

Phone

850-228-1296

Address

119 S Monroe St

Email

Jim@magnoliastrategiesllc.com

Street

TLH

City

FL

State

32309

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 Chapter - International Society of
Arboreculture

☐

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/SB 528

INTRODUCER: Judiciary Committee and Senator Polsky

SUBJECT: Value of Motor Vehicles Exempt from Legal Process

DATE: February 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 528 creates an exemption that will protect an individual debtor's interest in a single motor vehicle, up to \$5,000 in value, in actions arising under the federal Bankruptcy Code. This provision applies to any bankruptcy action that is filed on or after July 1, 2022.

II. Present Situation:

The Florida Constitution protects a homestead, used as a residence, and personal property which does not exceed \$1,000, from the forced sale by creditors.¹ The purpose of the homestead exemption is a matter of public policy - to maintain the home as a shelter for a family and prevent the family from becoming dependent on public assistance.²

In a similar manner, the Florida Statutes protect certain assets from the claims of creditors. Chapter 222 exempts, or protects, the following items:

- A life insurance policy.³
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract.⁴
- Disability income benefits.⁵

¹ FLA. CONST. art. X, s. 14.

² 28A Fla. Jur 2d Homesteads s. 3. (2021).

³ Section 222.13(1), F.S.

⁴ Section 222.14, F.S.

⁵ Section 222.18, F.S.

- Pension money and funds placed in certain tax-exempt accounts.⁶
- Assets held in qualified tuition programs, health savings and medical savings accounts, Coverdell education savings accounts which are also known as an educational IRA, and hurricane savings accounts.⁷
- Certain wages, unless the person has agreed in writing to waive the exemption.⁸
- Personal property when properly inventoried and filed with a court.⁹
- Professionally prescribed health aids for the debtor or his or her dependent.¹⁰
- Items exempted under the federal Bankruptcy Reform Act of 1978 including a social security benefit, unemployment compensation, or a local public assistance benefit; a veterans' benefit; a disability, illness, or unemployment benefit; alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and his or her dependent; and payments under a stock bonus, pension, profitsharing, annuity, or similar plan under specified circumstances.¹¹
- A debtor's interest in a single motor vehicle which does not exceed \$1,000 in value.¹²

III. Effect of Proposed Changes:

The bill amends s. 222.25, F.S. by creating a new exemption from claims of creditors in bankruptcy proceedings. Under the exemption, a debtor may exempt from creditors' claims his or her interest in a single motor vehicle, the value of which may not exceed \$5,000. The exemption applies to bankruptcy proceedings initiated on or after July 1, 2022.

The bill takes effect on July 1, 2022.

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.

⁶ Section 221.21, F.S.

⁷ Section 222.22, F.S.

⁸ Section 222.11, F.S.

⁹ Section 222.061, F.S.

¹⁰ Section 222.25, F.S.

¹¹ Section 222.201, F.S. and 11 U.S. Code s. 522(d)(10).

¹² Section 222.25(1), F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By increasing the value of a debtor's motor vehicle that is protected in a federal bankruptcy proceeding, a debtor would be able to maintain an asset of greater value and possibly greater dependability to him or her.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 222.25 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 Judiciary on February 7, 2022:

The committee substitute limits the maximum exemption amount for a single motor vehicle to \$5,000 in bankruptcy proceedings that are filed on or after July 1, 2022. For cases involving attachment, garnishment, or other legal process, the amount a debtor may protect in a single motor vehicle remains at a maximum value of \$1,000.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Polsky

590-02790-22

2022528c1

A bill to be entitled

An act relating to the value of motor vehicles exempt from legal process; amending s. 222.25, F.S.; authorizing certain natural persons to exempt a specified amount of interest in a single motor vehicle from certain legal processes; providing applicability; providing an effective date.

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

Section 1. Section 222.25, Florida Statutes, is amended to read:

222.25 Other individual property of natural persons exempt from legal process.—

(1) The following property is exempt from attachment, garnishment, or other legal process:

(a) ~~(1)~~ A debtor's interest, not to exceed \$1,000 in value, in a single motor vehicle as defined in s. 320.01(1) ~~s. 320.01~~.

(b) ~~(2)~~ A debtor's interest in any professionally prescribed health aids for the debtor or a dependent of the debtor.

(c) ~~(3)~~ A debtor's interest in a refund or a credit received or to be received, or the traceable deposits in a financial institution of a debtor's interest in a refund or credit, pursuant to s. 32 of the Internal Revenue Code of 1986, as amended. This exemption does not apply to a debt owed for child support or spousal support.

(d) ~~(4)~~ A debtor's interest in personal property, not to exceed \$4,000, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the

Page 1 of 2

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

590-02790-22

2022528c1

State Constitution. This exemption does not apply to a debt owed for child support or spousal support.

(2) Notwithstanding paragraph (1)(a), an individual debtor under the federal Bankruptcy Code may exempt a debtor's interest, not to exceed \$5,000 in value, in a single motor vehicle as defined in s. 320.01(1). This subsection applies to any bankruptcy action filed on or after July 1, 2022.

Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations Subcommittee on Education
Community Affairs
Education
Ethics and Elections
Judiciary

SENATOR TINA SCOTT POLSKY

29th District

February 11, 2022

Chair Kathleen Passidomo
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Passidomo,

I respectfully request that you place CS/SB 528, relating to Value of Motor Vehicles Exempt from Legal Process, on the agenda of the Committee on Rules, at your earliest convenience.

Florida law protects certain assets from legal process so they remain beyond a creditor's reach, including vehicles. SB 528 increases the maximum value of a motor vehicle that may be exempted from legal process in a bankruptcy case from \$1,000 to \$5,000. The current maximum amount has been in place since the statute was created in 1993.

Increasing this amount makes Florida more in line with most states and more importantly helps debtors get back to work and maintain a level of productivity that they would be without if they had no vehicle.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

A handwritten signature in dark ink, appearing to read "Tina S. Polsky".

Senator Tina S. Polsky
Florida Senate, District 29

cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- ☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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 614

INTRODUCER: Senator Garcia

SUBJECT: Authorization of Restrictions Concerning Dangerous Dogs

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hunter	Ryon	CA	Favorable
2. Becker	Becker	AG	Favorable
3. Hunter	Phelps	RC	Favorable

I. Summary:

SB 614 makes two changes to Florida’s “Dangerous Dogs” law. First, the bill incorporates “public housing authorities” into the statute that authorizes counties and municipalities to address safety and welfare concerns caused by attacks on persons or domestic animals by dogs by ordinance, provided such regulation is not specific to the breed of the dog. Thus, the bill authorizes a public housing authority to enact a rule or a policy to address dangerous dogs, but such rule or policy may not be breed specific. This change effectively nullifies any existing restrictions imposed by housing authorities pertaining to specific breeds of dogs on housing authority property.

Second, 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 regulations and restrictions on owners of “pit bull dogs.”

The bill takes effect October 1, 2022.

II. Present Situation:

Dangerous Dogs

Part II of ch. 767, F.S., outlines the state’s “Dangerous Dogs” provisions, originally enacted in 1990.¹ 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 of the owners to confine and properly train and control their dogs; that existing laws

¹ Ch. 90-180, L.O.F.

inadequately address this growing problem; and that it is appropriate and necessary to impose uniform requirements on the owners of dangerous dogs.”²

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.³

Process for Classification of Dogs as Dangerous

An animal control officer or employee is typically the person who would investigate an incident involving a dog. In areas unserved by an animal control authority, the sheriff assumes the duties required of an animal control officer.⁴

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.⁵ 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.⁶ 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.⁷

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.⁸

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.⁹ The animal control authority must provide written notice of sufficient cause and

² Section 767.10, F.S.

³ 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. Section 767.11(3), F.S.

⁴ Section 767.11(5) and (6), F.S.

⁵ Section 767.12(1), F.S.

⁶ Section 767.12(1)(a), F.S.

⁷ Section 767.12(1)(b), F.S.

⁸ Section 767.12(2)(a-b), F.S.

⁹ Section 767.12(3), F.S.

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 7 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 5 days after receiving the request for hearing.¹⁰ If a hearing is not timely requested the authority's determination becomes final.

Local Government Regulation of Dangerous Dogs

Current law authorizes local governments to place further restrictions and additional requirements on owners of dogs that have bitten or attacked persons or domestic animals.¹¹ 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, 1990.¹² 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 a specific breed of dog.¹³ Florida is one of twenty-one states that prohibit local governments from enacting breed specific ordinances.¹⁴

Because of the 1990 grandfather provision, Miami-Dade County¹⁵ and the City of Sunrise¹⁶ 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 should be 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.¹⁷

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-income¹⁸ but 40 percent of public housing units that become available in

¹⁰ Section 767.12(3), F.S.

¹¹ Section 767.14, F.S.

¹² Section 767.14, F.S.

¹³ What Is Breed-Specific Legislation?, ASPCA, available at: <https://www.asPCA.org/improving-laws-animals/public-policy/what-breed-specific-legislation> (last visited Feb. 9, 2022).

¹⁴ What Is Breed-Specific Legislation? ASPCA, available at: <https://www.asPCA.org/improving-laws-animals/public-policy/what-breed-specific-legislation> (last visited Feb. 9, 2022).

¹⁵ Ord. No. 89-22, § 2, 4-4-89

¹⁶ Ord. No. 251-A, § 2(4-17), 5-2-89

¹⁷ Official election records available at <https://enr.electionsfl.org/DAD/3042/Summary/> (last visited Feb. 9, 2022).

¹⁸ Low income is defined as earning at or below 80% of area median income for these purposes, Congressional Research Service, Overview of Federal Housing Assistance Programs and Policy, available at: <https://crsreports.congress.gov/product/pdf/RL/RL34591> (last visited Feb. 9, 2022).

a year must be given to families that are extremely low-income.¹⁹ 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.²⁰ 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).²¹ 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.²²

There are 99 active HUD-registered PHAs in Florida,²³ of which 91 are special districts.²⁴ 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.²⁵ 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.²⁶

Pet Regulation in Public Housing Authorities

HUD regulations permit public housing tenants to own common household pets.²⁷ However, HUD allows local PHAs to enforce reasonable restrictions on the types of common household pets allowed in their rules and policies.²⁸ 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.²⁹

¹⁹ Extremely low income is defined as earning at or below the greater of 30% of area median income or the federal poverty guidelines. Congressional Research Service, Overview of Federal Housing Assistance Programs and Policy, available at: <https://crsreports.congress.gov/product/pdf/RL/RL34591> (last visited Feb. 9, 2022).

²⁰ *Id.*

²¹ *Id.*

²² Center on Budget and Policy Priorities, Policy Basics: Public Housing, available at: <https://www.cbpp.org/research/public-housing> (last visited Feb. 9, 2022).

²³ HUD, Public Housing Authority Contact Information, available at: https://www.hud.gov/sites/dfiles/PIH/documents/PHA_Contact_Report_FL.pdf (last visited Feb. 9, 2022).

²⁴ Florida Department of Economic Opportunity, Official List of Special Districts Online, available at: <http://specialdistrictreports.floridajobs.org/webreports/sumfunctionlist.aspx> (last visited Feb. 9, 2022).

²⁵ *Id.*

²⁶ Section 421.08, F.S.

²⁷ See HUD Public Housing Occupancy Guidebook, Pet Ownership in Public Housing, December 2020, available at: <https://www.hud.gov/sites/dfiles/PIH/documents/PHOGPetOwnership.pdf> (last visited Feb. 9, 2022).

²⁸ 24 CFR § 5.318(a); § 960.707(b)

²⁹ 24 CFR § 960.707(a)

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.³⁰

Currently, some PHAs include provisions in their policies prohibiting pets based on breed, behavior, or training of the pet.³¹ 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.³²

III. Effect of Proposed Changes:

The bill amends s. 767.14, F.S., to authorize PHAs to adopt rules or policies imposing restrictions or further requirements on owners of dogs deemed dangerous, as defined by Florida law, as long as such requirements are not specific to breed. This provision is current law for local governments. This change effectively nullifies any existing restrictions imposed by housing authorities pertaining to specific breeds 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 government ordinances currently in place.

The bill takes effect on October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁰ 7 24 CFR § 960.707

³¹ See e.g., Tampa Housing Authority, <https://www.thafl.com/Departments/Real-Estate-Development/library/PHA-PLAN.pdf> (last visited Jan. 3, 2022) (forbidding "Pit bull, Rottweiler, German Shepherd, Chow, Doberman Pinscher or any species considered vicious, intimidating, or kept for the purpose of training for fighting or wagering of bets"); St. Petersburg Housing Authority, https://www.stpeteha.org/plugins/show_image.php?id=1912 (last visited Feb. 9, 2022) (prohibiting "any animal deemed to be potentially harmful to the health or safety of others, including attack or fight trained dogs . . . 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 (last visited Feb. 9, 2022) (prohibiting "vicious or intimidating pets. Dog breeds including pitbull, rottweiler, Doberman, are considered vicious or intimidating breeds").

³² See s. 767.11(1), F.S.

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.

By Senator Garcia

37-00747B-22

2022614__

A bill to be entitled

An act relating to the authorization of restrictions concerning dangerous dogs; amending s. 767.14, F.S.; authorizing certain housing authorities to adopt certain ordinances, rules, or policies relating to dangerous dogs; removing an exemption for local ordinances adopted before a specified date which pertain to dogs that have bitten or attacked persons or domestic animals; 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 housing authority created by or pursuant to s. 421.04, s. 421.27, or s. 421.28 from adopting an ordinance, a rule, or a policy 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 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, 2022.

The Florida Senate

APPEARANCE RECORD

SB 614

2/23/22

Meeting Date

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

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

Name Kate MacFall

Phone 850 508-1001

Address 1206 Walter Dr.

Email kmacfall@ksos.org

Street

Tallah

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,
representing:

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

Humane Society of the United States

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

2/23/22

Meeting Date

S 614

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name Kelsey Gilmore-Futeral

Phone 843 323 7000

Address 5001 Angel Canyon Rd

Email kfuteral@bestfriends.org

Kanab

City

UT

State

84741

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:

Best Friends
Animal Society

☐

I am not a lobbyist, but received
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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 730

INTRODUCER: Senators Harrell and Polsky

SUBJECT: Step-therapy Protocols

DATE: February 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Favorable
2.	Brown	Brown	HP	Favorable
3.	Johnson	Phelps	RC	Favorable

I. Summary:

SB 730 establishes standards for processing step-therapy protocol exemptions. A step-therapy protocol is a written protocol used by a health insurer (insurer) or a health maintenance organization (HMO) that specifies the order in which certain medical procedures, treatments, or prescription drugs must be used to treat a condition. A protocol exemption is a determination by an insurer or HMO to authorize the use of an alternate procedure, treatment, or prescription drug to treat a condition of an insured or subscriber rather than the procedure, treatment, or drug indicated by the step-therapy protocol.

SB 730 provides that an insurer or HMO must prescribe the manner, form, and timeframe in which an insured or subscriber may request a protocol exemption. Further, SB 730 requires the insurer or HMO to authorize or deny a protocol exemption in a reasonable amount of time. If the insurer or HMO denies the protocol exemption, the insurer or HMO must provide the insured or subscriber with a written response and the procedure for appealing a denial. The bill provides insurers and HMOs with wide discretion in meeting these requirements.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Insurers use many cost containment and utilization review strategies to manage medical and drug spending and patient safety. For example, health plans may place utilization management requirements on the use of certain medical treatments or drugs. Under a prior authorization requirement, for example, an insured's or subscriber's coverage may require that a health care provider must seek authorization from the insurer or HMO before the insurer or HMO becomes obligated to pay for a specified diagnostic or therapeutic treatment or specified prescription

drugs under the patient's coverage.¹ In some cases, health plans may require an insured or subscriber to use a step-therapy protocol for drugs or a medical treatment, which requires the insured or subscriber to try one drug or medical procedure for treatment first to treat the medical condition before the insurer or HMO will authorize coverage for a different drug, procedure, or treatment for that condition.²

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, HMOs, and other risk-bearing entities.³ The Florida Insurance Code (code) requires insurers and HMOs to provide cost containment measures. Section 627.4234, F.S., requires a health insurance policy or health care services plan, which provides medical, hospital, or surgical expense coverage delivered or issued for delivery in this state, to include one or more specified procedures or provisions to contain costs or cost increases.

Prior Authorization

Any "health insurer" (health insurer, HMO, Medicaid managed care plan), or pharmacy benefit manager on behalf of the health insurer, that does not use an online prior authorization form must use a standardized form adopted by the Financial Services Commission (FSC) to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit.⁴ The form must include all clinical documentation necessary for the health insurer to make a decision.

Step-Therapy Protocols

The code⁵ prohibits insurers or HMOs issuing comprehensive major medical health coverage from requiring an insured or subscriber to complete a step-therapy protocol for a certain prescription drug if the following conditions are met:

- The insured or subscriber has previously been approved to receive the drug through a step-therapy protocol imposed by an insurer that issued major medical coverage to the insured; and,
- The insured or subscriber provides documentation that an insurer or HMO made payment for the drug on the insured's behalf within the past 90 days.

However, this provision does not require an insurer or an HMO to add a drug to its drug formulary or cover a drug not currently covered in order to comply with the step-therapy restriction.⁶

¹ JAMA Health Forum. 2021;2(5):e210859.doi.

² HEALTH AFFAIRS 40, No. 11 (2021) 1749-1757.

³ Section 20.121(3), F.S. the Office of Insurance Regulation is an office within the FSC. The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking.

⁴ Section 627.42392, F.S.

⁵ Sections 627.4293 and 641.31(46), F.S.

⁶ *Id.*

Federal Patient Protection and Affordable Care Act

The federal Patient Protection and Affordable Care Act (PPACA)⁷ requires insurers and HMOs to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates essential health benefits⁸ and other provisions.

The PPACA requires insurers and HMOs that offer qualified health plans (plans) to provide 10 categories of essential health benefits (EHB), which includes prescription drugs.⁹ For purposes of complying with the federal EHB requirements for prescription drugs, plans must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan.¹⁰

State and Federal Transparency Provisions Relating to Benefits, Coverage Exceptions, and Appeals for Insureds and Subscribers

Benefits

Insurers and HMOs are required to provide an outline of coverage or other information describing the benefits, coverages, exclusions, and limitations of a policy or contract.¹¹ Further, each contract, certificate, or member handbook of an HMO must delineate the services for which a subscriber is entitled and any limitations under the contract.¹²

Access to Formulary Drug List and any Restrictions

A plan is required to publish on its website a current and complete list of all covered drugs on its formulary drug list, including any tiered structure and any restrictions on the way a drug can be obtained, in a manner that is easily accessible to insureds or subscribers, prospective insureds or subscribers, the state, and the public.¹³

Request for Prescription Drug Exception¹⁴

Federal rules establish a uniform exceptions process for insurers and HMOs (plans) that allows an insured or subscriber, or their prescribing physician, to request and gain access to clinically

⁷ The Patient Protection and Affordable Care Act (Pub. L. No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.

⁸ 42 U.S.C. s.18022.

⁹ See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* <https://www.cms.gov/ccio/resources/data-resources/ehb.html> (last viewed Jan. 28, 2022) for Florida's benchmark plan.

¹⁰ 45 C.F.R. 156.122(a)

¹¹ Section 627.642, F.S.

¹² Section 641.31(4), F.S.

¹³ 45 C.F.R. s. 156.122(d).

¹⁴ 45 C.F.R. s. 156.122(c).

appropriate drugs not otherwise covered by the insurer or HMO (request for exception).¹⁵ If a plan denies a request for a standard exception or an expedited exception request, the plan must have a process for the insured or subscriber to request the original exception request and subsequent denial of such request be reviewed by an independent review organization.

Standard exception request. A plan must have a process for an insured or subscriber or his or her prescribing physician to request a standard review of a decision that a drug is not covered by the plan. A plan must make its determination on a standard exception and notify the insured or subscriber and the prescribing physician of the coverage determination no later than 72 hours following receipt of the request. A plan that grants a standard exception request must provide coverage of the non-formulary drug for the duration of the prescription, including refills.

Expedited exception request. A plan must have a process for an insured or subscriber or his or her prescribing physician to request an expedited review based on exigent circumstances. Exigent circumstances exist when an enrollee is suffering from a health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a non-formulary drug. A plan must make its coverage determination on an expedited review request based on exigent circumstances and notify the enrollee or the prescribing physician of its coverage determination no later than 24 hours following receipt of the request. A plan that grants an exception based on exigent circumstances must provide coverage of the non-formulary drug for the duration of the exigency.

Internal Claim Appeals and External Review Program¹⁶

Plans must implement an internal appeals and independent external review process for claims that are denied. Generally, an insured or subscriber may file an internal appeal with the plan within 180 days of receipt of the notice of a denied claim.¹⁷ If an insured or subscriber requests an internal appeal of a denied claim, the plan must provide a written determination of the decision within the following time:

- Within 30 days, if it is a request for prior authorization.
- Within 60 days, if the services have already been received.
- Within 72 hours or less for urgent care cases.¹⁸

An insured or subscriber must file a written request for an external review within four months after the date of receipt of the notice or final determination from the plan.¹⁹

¹⁵ The exception process applies to drugs that are not included on the formulary drug list of the plan. The internal and external appeals process prescribed in 45 C.F.R. s. 147.136 applies if an enrollee receives an adverse benefit determination for a drug that is included on the plan's formulary drug list.

¹⁶ 45 C.F.R. s. 147.136. The rules apply to non-grandfathered plans, which include health insurance policies that were first sold or significantly modified in certain ways after March 23, 2010.

¹⁷ See Healthcare.gov, *Appealing a health plan decision-Internal appeals*, available at <https://www.healthcare.gov/appeal-insurance-company-decision/internal-appeals/> (last visited Jan. 29, 2022). A claim is a request for coverage.

¹⁸ *Id.*

¹⁹ See Healthcare.gov, *Appealing a health plan decision-External Review*, available at <https://www.healthcare.gov/appeal-insurance-company-decision/external-review/> (last visited Jan. 28, 2022).

A 2021 report analyzed claims denials and appeals in PPACA marketplace plans.²⁰ Of all denials with reasons reported for 2019, about 18 percent were denied because the claim was for an excluded service; about nine percent were denied due to prior authorization or lack of referral; and less than one percent were denied based on medical necessity. The remaining plan-reported denials (72 percent) were denied for other reasons.²¹

Florida State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with s. 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a PBM for the state employees' prescription drug program pursuant to s. 110.12315, F.S. As a group plan, the program must comply with federal regulations of internal appeal and external review programs for drug exceptions and benefit disputes.

III. Effect of Proposed Changes:

Sections 1 and 2 amend ss. 627.42393 and 641.31, F.S., respectively. The bill defines in those sections of statute the terms “protocol exemption” and “step-therapy protocol.”

The bill requires an insurer or HMO to publish on its website and provide to an insured or subscriber (or his or her health care provider) written procedures for requesting a protocol exemption or an appeal of an insurer or HMO's denial of a protocol exemption request. At a minimum, the procedure must include:

- The manner in which the insured or subscriber may request a protocol exemption, including a form for making the request.
- The manner and timeframe in which the insurer or HMO must authorize or deny a protocol exemption request, including the requirement that such response must occur within a “reasonable time.”
- The manner and the timeframe in which an insured or subscriber may appeal a denial of an insurer or HMO protocol exemption request.

An authorization of a protocol exemption request must specify the approved drug, procedure, or course of treatment. A denial must include a written explanation of the reason for the denial and the procedure for appealing the denial. An insurer or HMO may request relevant medical records in support of a protocol exemption request.

Section 3 provides an effective date of July 1, 2022.

²⁰ Kaiser Family Foundation, Claims Denials and Appeals in ACA Marketplace Plans (Jan. 20, 2021) available at <https://www.kff.org/private-insurance/issue-brief/claims-denials-and-appeals-in-aca-marketplace-plans/> (last visited Jan. 28, 2022). The federal government requires HealthCare.gov plans or marketplace plans to report reasons for claims denials at the plan level.

²¹ *Id.*

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:

Currently, insurers and HMOs must comply with federal regulations that prescribe uniform time, notice, and protocol to process drug exceptions and benefit denials and appeals for insureds and subscribers. The provisions of the bill are not consistent with the provisions of the federal rules. That inconsistency may cause confusion for treating physicians, insureds, and subscribers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill requires insurers and HMOs to publish and provide a protocol exemption procedure to insureds and subscribers. The bill provides wide discretion for an insurer or HMO in establishing timeframes and the manner to review, deny, and appeal step-therapy exceptions for a procedure, treatments, or prescription drugs. For instance, the bill does not specify:

- The manner in which an insurer must allow the protocol exemption requests to be made, only that the insurer or HMO provide a form for making the request.
- The content of the form used to request a protocol exemption.

- What is “reasonable” in terms of the timeframe in which the insurer must authorize or deny a protocol exemption request.
- The manner and timeframe for appealing the insurer’s or HMO’s denial of a protocol exemption request.

This lack of specificity is in contrast to current federal rules, which establish a uniform exceptions process – including internal and external appeals – for health plans that allow an insured or subscriber, or his or her prescribing physician, to request and gain access to clinically appropriate drugs not otherwise covered by the insurer or HMO (request for exception). Existing federal rules also provide an expedited process for requesting and appealing denied covered benefits and drug exceptions that an insurer or HMOs must use when an insured or subscriber is suffering from a health condition that may seriously jeopardize his or her life, health, or ability to regain maximum function.

The federal regulations also provide the process and specific timelines and manner for an insurer or HMO to authorize or deny benefits, as well as an internal appeal process and external review process for an insured or subscriber.

It is unclear under the bill whether an insurer or HMO must establish an expedited process for the drug exception requests or the internal and external appeals process for covered benefits. Federal regulations may preempt these provisions of the bill if an insurer or HMO prescribes a process that does not comply with the minimum federal protections for drug exceptions and benefit determinations. A state may determine that a plan of an insurer or HMO satisfies the requirements of Title 45 s. 156.122(c), relating to drug exception requests, if the plan has a process to allow an enrollee to request and gain access to clinically appropriate drugs not otherwise covered by the plan that is compliant with the state’s applicable coverage appeals laws and regulations, which must be at least as stringent as the requirements of (c) and include:

- An internal review;
- An external review;
- The ability to expedite the reviews; and
- Timeframes that are the same or shorter than the timeframes under (c).²²

It is unclear how the OIR would enforce the provisions of the bill since the provisions do not expressly require the Office of Insurance Regulation to ensure plans are complying with minimum federal requirements.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 627.42393 and 641.31 of the Florida Statutes.

²² 45 CFR 156.22(c)(4)

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Harrell

25-00777A-22

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A bill to be entitled

An act relating to step-therapy protocols; amending s. 627.42393, F.S.; revising the circumstances under which step-therapy protocols may not be required; defining terms; requiring health insurers to publish on their websites and provide to their insureds specified information; providing requirements for procedures for requests and appeals of denials of protocol exemptions; providing requirements for authorizations and denials of protocol exemption requests; authorizing health insurers to request specified documentation under certain circumstances; amending s. 641.31, F.S.; revising the circumstances under which step-therapy protocols may not be required; defining terms; requiring health maintenance organizations to publish on their websites and provide to their subscribers specified information; providing requirements for procedures for requests and appeals of denials of protocol exemptions; providing requirements for authorizations and denials of protocol exemption requests; authorizing health maintenance organizations to request specified documentation under certain circumstances; providing an effective date.

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

Section 1. Section 627.42393, Florida Statutes, is amended to read:

Page 1 of 6

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

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627.42393 Step-therapy protocol.—

(2)(1) In addition to the protocol exemptions granted pursuant to subsection (3), a health insurer issuing a major medical individual or group policy may not require a step-therapy protocol under the policy for a covered prescription drug requested by an insured if:

(a) The insured has previously been approved to receive the prescription drug through the completion of a step-therapy protocol required by a separate health coverage plan; and

(b) The insured provides documentation originating from the health coverage plan that approved the prescription drug as described in paragraph (a) indicating that the health coverage plan paid for the drug on the insured's behalf during the 90 days immediately before the request.

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

(a) "Health coverage plan" means any of the following which is currently or was previously providing major medical or similar comprehensive coverage or benefits to the insured:

1.(a) A health insurer or health maintenance organization.

2.(b) A plan established or maintained by an individual employer as provided by the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406.

3.(c) A multiple-employer welfare arrangement as defined in s. 624.437.

4.(d) A governmental entity providing a plan of self-insurance.

(b) "Protocol exemption" means a determination by a health insurer to authorize the use of another prescription drug, medical procedure, or course of treatment prescribed or

Page 2 of 6

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

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recommended by the treating health care provider for the insured's condition rather than the one specified by the health insurer's step-therapy protocol.

(c) "Step-therapy protocol" means a written protocol that specifies the order in which certain prescription drugs, medical procedures, or courses of treatment must be used to treat an insured's condition.

(3)(a) A health insurer shall publish on its website and provide to an insured in writing a procedure for the insured and his or her health care provider to request a protocol exemption or an appeal of the health insurer's denial of a protocol exemption request. The procedure must include, at a minimum:

1. The manner in which the insured or health care provider may request a protocol exemption, including a form to request the protocol exemption.

2. The manner and timeframe in which the health insurer must authorize or deny a protocol exemption request, including the requirement that such response must occur within a reasonable time.

3. The manner and timeframe in which the insured or health care provider may appeal the health insurer's denial of a protocol exemption request.

(b) An authorization of a protocol exemption request must specify the approved prescription drug, medical procedure, or course of treatment. A denial of a protocol exemption request must include a written explanation of the reason for the denial, the clinical rationale that supports the denial, and the procedure for appealing the health insurer's denial.

(c) A health insurer may request relevant medical records

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in support of a protocol exemption request.

~~(4)(3)~~ This section does not require a health insurer to add a drug to its prescription drug formulary or to cover a prescription drug that the insurer does not otherwise cover.

Section 2. Subsection (46) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

~~(46)(b)~~ ~~(46)(a)~~ In addition to the protocol exemptions granted under paragraph (c), a health maintenance organization issuing major medical coverage through an individual or group contract may not require a step-therapy protocol under the contract for a covered prescription drug requested by a subscriber if:

1. The subscriber has previously been approved to receive the prescription drug through the completion of a step-therapy protocol required by a separate health coverage plan; and

2. The subscriber provides documentation originating from the health coverage plan that approved the prescription drug as described in subparagraph 1. indicating that the health coverage plan paid for the drug on the subscriber's behalf during the 90 days immediately before the request.

~~(a)(b)~~ As used in this subsection, the term:

1. "Health coverage plan" means any of the following which previously provided or is currently providing major medical or similar comprehensive coverage or benefits to the subscriber:

~~a.1-~~ A health insurer or health maintenance organization. ~~+~~

~~b.2-~~ A plan established or maintained by an individual employer as provided by the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406. ~~+~~

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117 ~~c.3-~~ A multiple-employer welfare arrangement as defined in
 118 s. 624.437, ~~or~~

119 ~~d.4-~~ A governmental entity providing a plan of self-
 120 insurance.

121 2. "Protocol exemption" means a determination by a health
 122 maintenance organization to authorize the use of another
 123 prescription drug, medical procedure, or course of treatment
 124 prescribed or recommended by the treating health care provider
 125 for the subscriber's condition rather than the one specified by
 126 the health maintenance organization's step-therapy protocol.

127 3. "Step-therapy protocol" means a written protocol that
 128 specifies the order in which certain prescription drugs, medical
 129 procedures, or courses of treatment must be used to treat a
 130 subscriber's condition.

131 (c)1. A health maintenance organization shall publish on
 132 its website and provide to a subscriber in writing a procedure
 133 for the subscriber and his or her health care provider to
 134 request a protocol exemption or an appeal of the health
 135 maintenance organization's denial of a protocol exemption
 136 request. The procedure must include, at a minimum:

137 a. The manner in which the subscriber or health care
 138 provider may request a protocol exemption, including a form to
 139 request the protocol exemption.

140 b. The manner and timeframe in which the health maintenance
 141 organization must authorize or deny a protocol exemption
 142 request, including the requirement that such response must occur
 143 within a reasonable time.

144 c. The manner and timeframe in which the subscriber or
 145 health care provider may appeal the health maintenance

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146 organization's denial of a protocol exemption request.

147 2. An authorization of a protocol exemption request must
 148 specify the approved prescription drug, medical procedure, or
 149 course of treatment. A denial of a protocol exemption request
 150 must include a written explanation of the reason for the denial,
 151 the clinical rationale that supports the denial, and the
 152 procedure for appealing the health maintenance organization's
 153 denial.

154 3. A health maintenance organization may request relevant
 155 medical records in support of a protocol exemption request.

156 ~~(d)(e)~~ This subsection does not require a health
 157 maintenance organization to add a drug to its prescription drug
 158 formulary or to cover a prescription drug that the health
 159 maintenance organization does not otherwise cover.

160 Section 3. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

February 10, 2022

Senator Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Passidomo,

I respectfully request that **SB 730 – Step Therapy** be placed on the next available agenda for the Rules Committee Meeting.

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 blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: John Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

COMMITTEES:

Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health
and
Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

REPLY TO:

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- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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2/23/22

Meeting Date

730

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Chris Nuland

Phone

904-233-3051

Address

4427 Herschel St

Email

nulandlaw@aol.com

Street

Jacksonville, FL

32210

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 Chapter, American College of Physicians

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

2-23-22

Meeting Date

Rule 3

Committee

730

Bill Number or Topic

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Amendment Barcode (if applicable)

Name

Jarrod Fowler

Phone

850-224-6496

Address

1430 Pittsford Dr. E

Email

Jfowler@flmedassoc.org

Street

Tallahassee FL

32302

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 Medical
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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

February 23, 2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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SB 730

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name **Chris Lyon**

Phone **850-22-5702**

Address **315 S. Calhoun St., Suite 830**

Email **clyon@llw-law.com**

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:

**Florida Osteopathic Medical
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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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2/23/22

Meeting Date

SB 730

Bill Number or Topic

Senate Rules

Committee

Amendment Barcode (if applicable)

Name Amanda Fraser

Phone 850 556 1401

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:

American Diabetes
Assoc.

☐ 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/SB 804

INTRODUCER: Health Policy Committee and Senator Albritton

SUBJECT: Modernization of Nursing Home Facility Staffing

DATE: February 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 804 makes several changes to Florida statutes related to nursing home staffing and changes of ownership.

Nursing Home Staffing

CS/SB 804 amends multiple sections of the Florida Statutes to modify nursing home staffing requirements. The bill modifies the definition of “resident care plan” and defines the terms “direct care staff” and “facility assessment.” The bill allows the currently required 3.6 hours of direct care to be met with direct care staff rather than requiring it be met by certified nursing assistant (CNA) and nurse staffing. The bill also reduces the requirement that a nursing home provide a minimum of 2.5 hours of CNA staffing per resident per day to 2.0 hours of staffing per resident per day.

The bill specifies that staffing requirements in the section are minimum requirements and that complying with the minimum requirements is not admissible as evidence of compliance with certain federal regulations. The bill also specifies that the required 3.6 weekly average of direct care staffing hours (but not the 2.0 hours of daily CNA staffing or the 1.0 hours of daily nurse staffing) includes hours provided by paid feeding assistants who have completed a feeding assistant training program, that staffing hours do not include time spent on certain administrative tasks, and that nursing assistants employed under CNA training and personal care attendant

programs¹ may count toward providing such hours of care. The bill requires nursing homes to document compliance with staffing standards and to maintain records for five years and report staffing in accordance with specified federal law.

The bill repeals a \$1,000 fine for a nursing home that has failed to comply with minimum staffing requirements.

The bill reworks a provision in law that prevents a nursing home from accepting new residents if the nursing home is not compliant with state minimum staffing requirements.

The bill establishes a Nursing Home Sustainability Task Force that is required to review, analyze, and make recommendations specific to the sustainability of the state's nursing home model to the Agency for Health Care Administration (AHCA), the Governor, and the Legislature by January 1, 2025.

Changes of Ownership and Other Provisions

CS/SB 804 also revises provisions in s. 400.024, F.S., related to changes of ownership in nursing homes. The bill specifies that any unsatisfied or undischarged adverse final judgment of a nursing home that is changing ownership becomes the responsibility and liability of the new owner. Additionally, the bill requires a nursing home to provide notice to any claimant² after the licensee or controlling interest files a change of ownership application and to allow such claimant 30 days to file an objection to the change of ownership. The AHCA must consider any objection when making its decision to approve or deny the change of ownership application.

Additionally, the bill specifies that annual financial reports filed by nursing homes with the AHCA are not exempt from public records requirements and may be discoverable and admissible in a civil or administrative action.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Nursing Homes

Nursing homes in Florida are licensed under Part II of ch. 400, F.S., and provide 24 hour a day nursing care, case management, health monitoring, personal care, nutritional meals and special diets, physical, occupational, and speech therapy, social activities and respite care for those who

¹ These include CNAs in training and those who have preliminarily passed the certification exam; CNAs certified or registered in other states who have no findings of abuse, neglect, or exploitation; and personal care attendants. See s. 400.211(2), F.S.

² The bill defines a claimant as a resident, the resident's family, or the resident's personal representative who has notified the licensee or facility of a potential claim by notice of intent letter or who has initiated an action, claim, or arbitration proceeding against the licensee or facility.

are ill or physically infirm.³ Currently there are 705 nursing homes licensed in Florida.⁴ Of the 705 licensed nursing homes, 669 are certified to accept Medicare or Medicaid and consequently must follow federal Centers for Medicare & Medicaid Services (CMS) requirements for nursing homes.⁵

Direct Care Staff

Federal law defines “direct care staff” as those individuals who, through interpersonal contact with nursing home residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. Direct care staff does not include individuals whose primary duty is maintaining the physical environment of the long-term care facility (for example, housekeeping).⁶

Direct care staff are the primary providers of paid, hands-on care for more than 13 million elderly and disabled Americans. They assist individuals with a broad range of support, including preparing meals, helping with medications, bathing, dressing, getting about (mobility), and getting to planned activities on a daily basis.⁷

Direct care staff fall into three main categories tracked by the U.S. Bureau of Labor Statistics: Nursing Assistants (usually known as Certified Nursing Assistants or CNAs), Home Health Aides, and Personal Care Aides:

- Nursing Assistants or Nursing Aides generally work in nursing homes, although some work in assisted living facilities, other community-based settings, or hospitals. They assist residents with activities of daily living (ADLs) such as eating, dressing, bathing, and toileting. They also perform clinical tasks such as range-of motion exercises and blood pressure readings.
- Home Health Aides provide essentially the same care and services as nursing assistants, but they assist people in their homes or in community settings under the supervision of a nurse or therapist. They may also perform light housekeeping tasks such as preparing food or changing linens.
- Personal Care Aides work in either private or group homes. They have many titles, including personal care attendant, home care worker, homemaker, and direct support professional. (The latter work with people with intellectual and developmental disabilities.) In addition to providing assistance with ADLs, these aides often help with housekeeping chores, meal preparation, and medication management. They also help individuals go to work and remain

³ AHCA webpage, nursing homes, available at https://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/Nursing_Homes.shtml (last visited Feb. 11, 2022).

⁴ Florida Health Finder Report, available at <https://www.floridahealthfinder.gov/facilitylocator/ListFacilities.aspx> (last visited Feb. 11, 2022).

⁵ *Id.*

⁶ 42 CFR s. 483.70(q)(1)

⁷ Khatutsky, et al., *Understanding Direct Care Workers: a Snapshot of Two of America’s Most Important Jobs, Certified Nursing Assistants and Home Health Aides*, (March 2011), available at <https://aspe.hhs.gov/basic-report/understanding-direct-care-workers-snapshot-two-americas-most-important-jobs-certified-nursing-assistants-and-home-health-aides#intro> (last visited on Feb. 4, 2022).

engaged in their communities. A growing number of these workers are employed and supervised directly by consumers.⁸

The federal government requires training only for nursing assistants and home health aides who work in Medicare-certified and Medicaid-certified nursing homes and home health agencies. Such training includes training on residents' rights; abuse, neglect, and exploitation; quality assurance; infection control; and compliance and ethics; and specifies that direct care staff must be trained in effective communications.⁹

Federal Requirement for a Nursing Home Facility Assessment

Federal law in 42 CFR s. 483.70(e) requires that a nursing home conduct and document a facility-wide assessment to determine what resources are necessary to care for its residents competently during both day-to-day operations and emergencies. Facilities must review and update this assessment at least annually or whenever there is an actual or planned change that would require a substantial modification of any part of the assessment. The assessment must include:

- The facility's resident population, including, but not limited to:
 - Both the number of residents and the facility's resident capacity;
 - The care required by the resident population considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity, and other pertinent facts that are present within that population;
 - The staff competencies that are necessary to provide the level and types of care needed for the resident population;
 - The physical environment, equipment, services, and other physical plant considerations that are necessary to care for this population; and
 - Any ethnic, cultural, or religious factors that may potentially affect the care provided by the facility, including, but not limited to, activities and food and nutrition services.
- The facility's resources, including but not limited to:
 - All buildings and/or other physical structures and vehicles;
 - Equipment (medical and non-medical);
 - Services provided, such as physical therapy, pharmacy, and specific rehabilitation therapies;
 - All personnel, including managers, staff (both employees and those who provide services under contract), and volunteers, as well as their education and/or training and any competencies related to resident care;
 - Contracts, memoranda of understanding, or other agreements with third parties to provide services or equipment to the facility during both normal operations and emergencies; and
 - Health information technology resources, such as systems for electronically managing patient records and electronically sharing information with other organizations.
- A facility-based and community-based risk assessment, utilizing an all-hazards approach.

⁸ Paraprofessional Healthcare Institute, *Who are Direct Care Workers?*, Feb. 2011, available at: <https://phinational.org/wp-content/uploads/legacy/clearinghouse/NCDCW%20Fact%20Sheet-1.pdf> (last visited on Feb. 4, 2022).

⁹ 42 CFR s. 483.95

Florida Nursing Home Staffing Standards

Section 400.23(3), F.S., requires the Agency for Health Care Administration to adopt rules providing minimum staffing requirements for nursing home facilities.¹⁰ The requirements must include:

- A minimum weekly average of 3.6 hours of direct care per resident per day provided by a combination of certified nursing assistants and licensed nursing staff. A week is defined as Sunday through Saturday.
- A minimum of 2.5 hours of direct care per resident per day provided by certified nursing assistant staff. A facility may not staff at a ratio of less than one certified nursing assistant per 20 residents.
- A minimum of 1.0 hour of direct care per resident per day provided by licensed nursing staff. A facility may not staff at a ratio of less than one licensed nurse per 40 residents.
- Nursing assistants employed under s. 400.211(2), F.S.,¹¹ may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.
- Each nursing home facility must document compliance with staffing standards and post daily the names of staff on duty for the benefit of facility residents and the public.
- Licensed nurses may be used to meet staffing requirements for CNAs if the licensed nurses are performing the duties of a CNA and the facility otherwise meets minimum staffing requirements for licensed nurses.
- Paid feeding assistants and non-nursing staff providing eating assistance to residents do not count toward compliance with minimum staffing standards.

Nursing Homes with Unsatisfied Judgments or Settlement Agreements

Section 400.024, F.S., establishes restrictions on nursing homes that have had an adverse final judgment against a licensee which arises from an award pursuant to s. 400.023, F.S.,¹² including an arbitration award, for a claim of negligence or a violation of residents' rights, in contract or tort, or from noncompliance with the terms of a settlement agreement as determined by a court or arbitration panel, which arises from a claim pursuant to s. 400.023, F.S.

Section 400.024, F.S., requires that the nursing home must pay the judgment creditor the entire amount of the judgment, award, or settlement and all accrued interest within 60 days after the date such judgment, award, or settlement becomes final and subject to execution unless otherwise mutually agreed to in writing by the parties. If the nursing home does not pay the judgment, then the statute establishes that such failure is additional grounds that may be used by the AHCA for revoking a license or for denying a renewal application or a related party change of ownership application. The section deems that the AHCA is notified of an unsatisfied judgment or settlement when a certified copy of the judgment and a certified copy of a valid

¹⁰ These requirements apply to all nursing homes, s. 400.23(5), F.S., provides additional requirements specific to nursing homes that treat persons under the age of 21.

¹¹ *Supra* n. 1.

¹² Establishing requirements for civil lawsuits against nursing homes.

judgment lien certificate, filed in accordance with ss. 55.202¹³ and 55.203¹⁴, F.S., are served to the AHCA by a process server or received by certified mail, return receipt requested.

Within 60 days after receiving such documents, the AHCA must notify the nursing home by certified mail, return receipt requested, that it is subject to disciplinary action unless, within 30 days after the date of mailing the notice, the nursing home:

- Shows proof that the unsatisfied judgment or settlement has been paid in the amount specified;
- Shows proof of the existence of a payment plan mutually agreed upon by the parties in writing;
- Furnishes the AHCA with a copy of a timely filed notice of appeal;
- Furnishes the AHCA with a copy of a court order staying execution of the final judgment; or
- Shows proof by submitting an order from a court or arbitration panel that is overseeing any action seeking indemnification from an insurance carrier or other party, that the licensee believes is required to pay the award.

If the AHCA is placed on notice and such proof is not provided by the nursing home, the AHCA must issue an emergency order pursuant to s. 120.60, F.S., declaring that the facility lacks financial ability to operate and a notice of intent to revoke or deny a license. Additionally, if the AHCA is put on notice and:

- The license is subject to renewal, the AHCA may deny the license renewal unless compliance with s. 400.024, F.S. is achieved; and
- A change of ownership application for the facility at issue is submitted by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, the AHCA must deny the change of ownership application unless compliance with s. 400.024, F.S. is achieved.

Nursing Home Financial Reports

Currently, nursing homes are required to submit financial data to the AHCA pursuant to s. 408.061(5)-(6), F.S. These provisions were added in 2021 by SB 2518 (ch. 2021-41, L.O.F.) and mirror provisions in current law that require other health care facilities to submit such data.¹⁵ Prior to July 1, 2021, nursing homes were exempt from this reporting requirement.

A nursing home must report, within 120 days after the end of its fiscal year, its actual financial experience for that fiscal year, including expenditures, revenues, and statistical measures. Such data may be based on internal financial reports that are certified to be complete and accurate by the chief financial officer of the nursing home. This actual experience must include the fiscal year-end balance sheet, income statement, statement of cash flow, and statement of retained earnings and must be submitted to the AHCA in addition to the information filed in the uniform system of financial reporting. However, unlike other health care facilities, data submitted by nursing homes is not required to be audited.

¹³ Related to judgments, orders, and decrees; lien on personal property.

¹⁴ Related to judgment lien certificates; content, filing, and indexing.

¹⁵ See s. 408.061(4), F.S.

III. Effect of Proposed Changes:

CS/SB 804 amends ss. 400.021, 400.23 and 400.141, F.S., to modify nursing home staffing requirements. The bill amends the definition of “resident care plan” to specify that the plan must be comprehensive and person-centered and developed in accordance with 42 CFR s. 483.21(b). The bill also defines the terms:

- “Direct care staff” to mean individuals who, through interpersonal contact with residents or resident care management, provide care and services to allow residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being. The term does not include individuals whose primary duty is maintaining the physical environment of the facility, including, but not limited to, food preparation, laundry, and housekeeping. The term includes, but is not limited to, disciplines and professions that must be reported in accordance with 42 C.F.R. s. 483.70(q) and all of the following:
 - Licensed nurses.
 - Certified nursing assistants.
 - Physical therapy staff.
 - Occupational therapy staff.
 - Speech therapy staff.
 - Respiratory therapy staff.
 - Activities staff.
 - Social services staff.
 - Mental health service workers.
- “Facility assessment” to mean a process to determine the staff competencies that are necessary to provide the level and types of care needed for the facility’s resident population considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity, and other pertinent factors that are present within that resident population. The definition also specifies that additional requirements for conducting a facility assessment must be performed in accordance with 42 CFR s. 483.70(e).

The bill makes the following changes regarding minimum staffing requirements for nursing homes:

- Reduces from 2.5 to 2.0 the number of hours of direct care that must be provided by a CNA per resident per day. Hours provided by nursing assistants who are employed under s. 400.211(2), F.S.,¹⁶ still qualifies under the bill.
- Repeals the requirement that 3.6 hours of direct care per resident per day must be provided by a CNA or a licensed nurse and instead may be provided by any direct care staff.
- Allows hours of eating assistance provided by paid feeding assistants or direct care staff, other than CNAs, who have completed the feeding assistant training program established under s. 400.141(1)(v), F.S., to qualify towards fulfilling the 3.6 hour requirement detailed above.
- Repeals a \$1,000 fine for a nursing home that has failed to comply with minimum staffing requirements
- Specifies that time spent on nursing administration, staff development, staffing coordination, and the administrative portion of the minimum data set and care plan coordination for Medicaid, does not qualify as direct care.

¹⁶ *Id.*

- Specifies that the staffing requirements in s. 400.23(3)(b), F.S., are minimum nurse staffing requirements for nursing home facilities and that evidence that a facility complied with the minimum direct care staffing requirements is not admissible as evidence of compliance with the nursing services requirements under 42 CFR s. 483.35¹⁷ or 42 CFR s. 483.70.¹⁸

The bill reworks a provision in law that prevents a nursing home from accepting new residents if the nursing home is not compliant with state minimum staffing requirements. Current law in s. 400.141(1)(n)1., F.S., provides that a nursing home may not accept new residents if the facility has failed to meet minimum state staffing requirements for two consecutive days until such time as the facility has met state minimum-staffing requirements for six consecutive days. The current law provision does not require any action by the AHCA to trigger the moratorium, meaning the nursing home must execute the moratorium on its own, and a moratorium can be triggered by failures to comply with either the state minimum-required hours of direct care, CNA care, and nursing care per resident per day; or the requirement that the a nursing home meet specified state minimum ratios of CNAs to residents and nurses to residents.¹⁹ If a nursing home fails to execute the moratorium it is subject to a \$1,000 fine.

The bill, instead of automatically establishing a moratorium preventing a nursing home from accepting new residents if it is not compliant with minimum staffing requirements, amends this provision to authorize the AHCA to impose the moratorium on a nursing home accepting new residents if the nursing home is not compliant with direct care hours required per resident per day for 48 consecutive hours. Additionally, by specifying that the moratorium may be imposed for failure to comply with “minimum hours of direct care” requirements, the bill prevents the AHCA from imposing a moratorium for any failure of a nursing home to meet minimum staff ratio requirements.²⁰ The bill specifies that the moratorium remains in place until the nursing home is able to document compliance with minimum direct care hours required per resident per day.

The bill specifies that each nursing home must determine its direct care staffing needs based on its facility assessment and the individual needs of each resident based on the resident’s care plan. Additionally each nursing home must maintain records of staffing for five years and report staffing in accordance with 42 C.F.R. s. 483.70(q). The bill amends current posting requirements to require that a nursing home post only the names of CNAs and licensed nurses, rather than all staff, who are on duty for the benefit of facility residents and the public.

The bill establishes the Nursing Home Sustainability Task Force, which must review, analyze, and make recommendations specific to the sustainability of the state’s model of providing quality nursing home care. The task force must consist of representatives of nursing home providers and other interested stakeholders. The task force must review all areas of the provision of health care services to residents, regulation, liability, licensing, quality initiatives, and the availability of quality, affordable, and accessible health care. The task force must make any recommendations to the AHCA, the Governor, and the Legislature by January 1, 2025.

¹⁷ Relating to the provision of nursing services and establishing staff requirements for nursing homes.

¹⁸ Relating to the administration of nursing homes.

¹⁹ See 400.23(3)(b)1.a.-c., F.S. Current law requires that a nursing may not staff below one CNA per 20 residents and one licensed nurse per 40 residents.

²⁰ *Id.*

Change of Ownership

CS/SB 804 amends s. 400.024, F.S., relating to nursing homes that fail to satisfy judgments against them in order to specify that, should a nursing home with an unsatisfied or undischarged adverse final judgment against it be allowed by the AHCA to change ownership, the adverse final judgement becomes the responsibility and liability of the new owner. Additionally, when a change of ownership application is filed for a facility that has an unsatisfied judgment by a person or entity identified as having a controlling interest in the licensee, or by a related party, the bill provides that:

- The licensee or transferor must provide written notice of the filing of the application to each pending claimant²¹ or the claimant's attorney of record, if applicable, within 14 days after the date the application is filed with the AHCA. The written notice must be provided by certified mail, return receipt requested, or other method that provides verification of receipt.
- A claimant has 30 days after the date of receipt of the written notice to object to the application if the claimant has reason to believe that the approval of the application would facilitate a fraudulent transfer or allow the transferor to avoid financial responsibility for the claimant's pending claim.
- The AHCA must consider any objection brought under this provision of the bill in its decision to approve or deny an application for change of ownership under this part and part II of ch. 408, F.S.
- If a claim is pending in arbitration at the time that the application for change of ownership is filed, the claimant may file a petition to enjoin the transfer in circuit court.

Financial Filings

CS/SB 804 also amends s. 400.0234, F.S., to specify that forms filed with the AHCA pursuant to s. 408.061(5)-(6), F.S., which requires a nursing home to report its actual financial experience for that fiscal year, are not confidential or exempt from the public records requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may be discoverable and admissible in a civil action under part II of ch. 400, F.S., or an administrative action under part II of ch. 400, F.S., or part II of chapter 408, F.S.

The bill makes other conforming and cross-reference changes.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ The bill defines a "claimant" as a resident or the resident's family or personal representative who has notified the licensee or facility of a potential claim by notice of intent letter or who has initiated an action, claim, or arbitration proceeding against the licensee or facility.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article III, Section 6, of the State Constitution requires that “every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” CS/SB 804 is entitled “An act relating to the modernization of nursing home facility staffing.”

However, sections 3 and 4 the bill amend provisions relating to financial forms filed by nursing homes and nursing homes that have failed to satisfy a judgment or settlement, respectively. Neither of these sections directly relate to nursing home facility staffing and, as such, may be found to be outside of the scope of the bill as established in the bill’s title.

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

None.

B. Private Sector Impact:

SB 804 may have an indeterminate positive fiscal impact on nursing homes that are authorized to use staff other than CNAs to fulfill staffing requirements and due to the reduction of CNA hours that are required to be provided.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

CS/SB 804 creates a new definition for “direct care staff” in section 2 of the bill and limits the application of this definition to s. 400.23(3), F.S. However, the bill uses the defined term when amending s. 400.141, F.S., in section 5 of the bill. The bill should be amended to apply the definitions to the instance where the defined term is used in section 5 of the bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.23 and 400.141.

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 Health Policy on February 11, 2022:

The CS:

- Modifies the definition of “resident care plan” in s. 400.021, F.S., to tie it to federal requirements in 42 CFR s. 483.21(b);
- Eliminates definitions for “average monthly hours of direct care per resident per day” and “non-nursing direct care staff” and adds a definition for “facility assessment;”
- Requires each facility to determine its direct care staffing needs based on the facility assessment and the individual needs of each resident;
- Reduces required hours of direct care provided by CNAs from 2.5 to 2.0 per resident per day, but reverts to current law the requirement that such direct care be provided by CNAs;
- Requires staffing data to be maintained for five years, rather than 18 months as required by the underlying bill (by a reference to 42 CFR s. 483.35(g));
- Specifies that the bill’s staffing requirements are minimum requirements and that compliance with the requirements is not admissible as evidence of compliance with specified federal requirements;
- Specifies that feeding assistance provided by CNAs does not count toward the 2.0 required hours of CNA direct care;
- Specifies that annual nursing home financial reports submitted to the AHCA are not exempt from public records requirements;
- Provides certain additional requirements for unpaid judgment or settlement agreements related changes of ownership of nursing homes;
- Allows the AHCA to impose a moratorium on a nursing home which has failed to comply with specified staffing requirements for 48 consecutive hours until such time as the nursing home is able to document compliance and strikes a \$1,000 fine for such noncompliance; and
- Establishes a Nursing Home Sustainability Task Force.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Albritton) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (18) of section 400.021, Florida
Statutes, is amended to read:

400.021 Definitions.—When used in this part, unless the
context otherwise requires, the term:

(18) “Resident care plan” means a written, comprehensive
person-centered care plan developed in accordance with 42 C.F.R.
s. 483.21(b) by an interdisciplinary team within 7 days after



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completion of a comprehensive assessment and with participation
by the resident or the resident's designee. The resident care
plan must be reviewed and revised after each comprehensive
assessment, which may be a new admission assessment, an annual
assessment, or an assessment after a significant change in
status, and after a quarterly review assessment. A care plan
includes measurable objectives and timeframes to meet the
resident's medical, nursing, mental, and psychosocial needs and
preferences, and must describe the services to be furnished,
~~maintained, and reviewed not less than quarterly by a registered~~
~~nurse, with participation from other facility staff and the~~
~~resident or his or her designee or legal representative, which~~
~~includes a comprehensive assessment of the needs of an~~
~~individual resident; the type and frequency of services required~~
~~to provide the necessary care for the resident to attain or~~
~~maintain the resident's highest practicable physical, mental,~~
~~and psychosocial well-being; a listing of services provided~~
~~within or outside the facility to meet those needs; and an~~
~~explanation of service goals.~~

Section 2. Subsection (3) of section 400.23, Florida
Statutes, is amended to read:

400.23 Rules; evaluation and deficiencies; licensure
status.—

(3)(a)1. As used in this subsection, the term:

a. "Direct care staff" means persons who, through
interpersonal contact with residents or resident care
management, provide care and services to allow residents to
attain or maintain the highest practicable physical, mental, and
psychosocial well-being, including, but not limited to,



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disciplines and professions that must be reported in accordance with 42 C.F.R. s. 483.70(q) in the categories of direct care services of nursing, dietary, therapeutic, and mental health. The term does not include a person whose primary duty is maintaining the physical environment of the facility, including, but not limited to, food preparation, laundry, and housekeeping.

b. "Facility assessment" means a process, performed in accordance with 42 C.F.R. s. 483.70(e), to determine the staff competencies necessary to provide the level and types of care needed for the facility's resident population, considering the types of diseases, conditions, physical and cognitive disabilities, overall acuity, and other factors pertinent to that resident population.

2. For purposes of this subsection, direct care staffing hours do not include time spent on nursing administration, activities program administration, staff development, staffing coordination, and the administrative portion of the minimum data set and care plan coordination for Medicaid.

(b)1. Each facility must determine its direct care staffing needs based on the facility assessment and the individual needs of a resident based on the resident's care plan. At a minimum, ~~staffing~~ ~~The agency shall adopt rules providing minimum staffing requirements for nursing home facilities. These requirements must include the following,~~ for each facility:

a. A minimum weekly average of ~~certified nursing assistant and licensed nursing staffing combined~~ of 3.6 hours of direct care by direct care staff per resident per day. As used in this ~~subparagraph~~ ~~sub-subparagraph~~, a week is defined as Sunday through Saturday.



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b. A minimum ~~certified nursing assistant staffing~~ of 2.0
2.5 hours of direct care by a certified nursing assistant per
resident per day. A facility may not staff below one certified
nursing assistant per 20 residents.

c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of
direct care by a licensed nurse per resident per day. A facility
may not staff below one licensed nurse per 40 residents.

2. Nursing assistants employed under s. 400.211(2) may be
included in computing the hours of direct care provided by
certified nursing assistants and may be included in computing
the staffing ratio for certified nursing assistants if their job
responsibilities include only nursing-assistant-related duties.

3. Each nursing home facility must document compliance with
staffing standards as required under this paragraph and post
daily the names of licensed nurses and certified nursing
assistants ~~staff~~ on duty for the benefit of facility residents
and the public. Facilities must maintain the records documenting
compliance with minimum staffing standards for a period of 5
years and must report staffing in accordance with 42 C.F.R. s.
483.70(q).

4. The agency must ~~shall~~ recognize the use of licensed
nurses for compliance with minimum staffing requirements for
certified nursing assistants if the nursing home facility
otherwise meets the minimum staffing requirements for licensed
nurses and the licensed nurses are performing the duties of a
certified nursing assistant. Unless otherwise approved by the
agency, licensed nurses counted toward the minimum staffing
requirements for certified nursing assistants must exclusively
perform the duties of a certified nursing assistant for the



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entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for certified and licensed nursing staff. The hours of a licensed nurse with dual job responsibilities may not be counted twice.

5. Evidence that a facility complied with the minimum direct care staffing requirements under subparagraph 1. is not admissible as evidence of compliance with the nursing services requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s. 483.70.

(c)(b) Paid feeding assistants and direct care nonnursing staff, other than certified nursing assistants and licensed nurses, who have successfully completed the feeding assistant training program under s. 400.141(1)(v) and who provide providing eating assistance to residents shall not count toward compliance with overall direct care minimum staffing hours but not the hours of direct care required for certified nursing assistants or licensed nurses. Time spent by certified nursing assistants or licensed nurses on providing eating assistance to residents shall count toward the hours of direct care required for certified nursing assistants or licensed nurses standards.

(d)(e) Licensed practical nurses licensed under chapter 464 who provide are providing nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such facilities



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in accordance with rules adopted by the Board of Nursing.

(e) The agency may adopt rules to implement this subsection.

Section 3. Present subsection (2) of section 400.0234, Florida Statutes, is redesignated as subsection (3), and a new subsection (2) is added to that section, to read:

400.0234 Availability of facility records for investigation of resident's rights violations and defenses; penalty.—

(2) Information submitted pursuant to s. 408.061(5) and (6) is discoverable and admissible in a civil action or an administrative action under this part or part II of chapter 408.

Section 4. Subsection (4) of section 400.024, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

400.024 Failure to satisfy a judgment or settlement agreement; required notification to claimants.—

(4) ~~If,~~ After the agency is placed on notice pursuant to subsection (2), the following applies and:

(a) If the license is subject to renewal, the agency may deny the license renewal unless compliance with this section is achieved. ~~;~~ ~~and~~

(b) If a change of ownership application for the facility at issue is filed ~~submitted~~ by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, the agency shall deny the change of ownership application unless compliance with this section is achieved.

(c) If an adverse final judgment under subsection (1) is entered but payment is not yet due and a change of ownership



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application for the facility at issue is submitted by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, the adverse final judgment becomes the responsibility and liability of the transferee if the agency approves the change of ownership application.

(5) If a change of ownership application for the facility at issue is filed by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, then:

(a) The licensee or transferor must provide written notice of the filing of the application to each pending claimant or the claimant's attorney of record, if applicable. The written notice must be provided within 14 days after the date the application is filed with the agency.

(b) The written notice must be provided by certified mail, return receipt requested, or other method that provides verification of receipt.

(c) A claimant has 30 days after the date of receipt of the written notice to object to the application if the claimant has reason to believe that the approval of the application would facilitate a fraudulent transfer or allow the transferor to avoid financial responsibility for the claimant's pending claim.

(d) The agency must consider any objection brought pursuant to this subsection in its decision to approve or deny an application for change of ownership under this part and part II of chapter 408.

(e) If a claim is pending in arbitration at the time that the application for change of ownership is filed, the claimant



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may file a petition to enjoin the transfer in circuit court.

(f) As used in this subsection, the term "claimant" means a resident or the resident's family or personal representative who has notified the licensee or facility of a potential claim by written notice of intent or who has initiated an action, claim, or arbitration proceeding against the licensee or facility.

Section 5. Paragraphs (g), (n), and (r) of subsection (1) of section 400.141, Florida Statutes, are amended to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(g) If the facility has a standard license, exceeds the minimum required hours of direct care provided by licensed nurses nursing and certified nursing assistants ~~assistant-direct care~~ per resident per day, and is part of a continuing care facility licensed under chapter 651 or is a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share programming and staff. At the time of inspection, a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to



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violate the staffing ratios required under s. 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with the minimum staffing ratios must be based on the total number of residents receiving direct care services, regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This paragraph does not restrict the agency's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine compliance with this provision.

(n) Comply with state minimum-staffing requirements:

1. A facility that has failed to comply with state minimum-staffing requirements for 48 ~~2~~ consecutive hours ~~days~~ is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for 6 consecutive days. For the purposes of this subparagraph, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. Failure by the facility to impose such an admissions moratorium is subject to a \$1,000 fine.

2. A facility that does not have a conditional license may be cited for failure to comply with the standards in s. 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and c.~~ only if it has failed to meet those standards for 48 ~~on 2~~ consecutive hours ~~days~~ or if it has failed to meet at least 97 percent of those standards on any one day.



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244 3. A facility that has a conditional license must be in
245 compliance with the standards in s. 400.23(3)(b) ~~s. 400.23(3)(a)~~
246 at all times.

247 (r) Maintain in the medical record for each resident a
248 daily chart of direct care ~~certified nursing assistant~~ services
249 provided to the resident. The direct care staff ~~certified~~
250 ~~nursing assistant who is~~ caring for the resident must complete
251 this record by the end of his or her shift. This record must
252 indicate assistance with activities of daily living, assistance
253 with eating, and assistance with drinking, and must record each
254 offering of nutrition and hydration for those residents whose
255 plan of care or assessment indicates a risk for malnutrition or
256 dehydration.

257 Section 6. This act shall take effect upon becoming a law.

258
259 ===== T I T L E A M E N D M E N T =====
260 And the title is amended as follows:

261 Delete everything before the enacting clause
262 and insert:

263 A bill to be entitled
264 An act relating to nursing homes; amending s. 400.021,
265 F.S.; revising the definition of the term "resident
266 care plan"; amending s. 400.23, F.S.; defining the
267 terms "direct care staff" and "facility assessment";
268 specifying functions that do not constitute direct
269 care staffing hours for purposes of required nursing
270 home staffing ratios; revising nursing home staffing
271 requirements; requiring nursing home facilities to
272 maintain staffing records for a specified time and



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report staffing information consistent with federal law; providing that evidence of compliance with state minimum staffing requirements is not admissible as evidence for compliance with specified provisions of federal law; providing that eating assistance to residents provided by certain direct care staff counts toward certain minimum direct care staffing requirements; authorizing the Agency for Health Care Administration to adopt rules; amending s. 400.0234, F.S.; providing that certain information submitted to the agency is discoverable and admissible in civil and administrative proceedings; amending s. 400.024, F.S.; providing that an unsatisfied or undischarged adverse final judgment in connection with a nursing home facility becomes the responsibility and liability of a new owner if ownership of the facility is transferred; requiring a licensee to provide written notice to any pending claimants or their attorneys of record within a specified timeframe after filing a change of ownership application with the agency; providing requirements for the notice; providing that claimants may object to the application within a specified timeframe under certain circumstances; requiring the agency to consider any such objections in its decision; providing for the filing of such objections in circuit court under certain circumstances; defining the term "claimant"; amending s. 400.141, F.S.; conforming cross-references and provisions to changes made by the act; revising provisions related to



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302 facilities that fail to comply with minimum staffing
303 requirements; providing an effective date.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment to Amendment (308330)

Delete lines 70 - 230
and insert:

b. A minimum ~~certified nursing assistant staffing~~ of 2.5
hours of direct care by a certified nursing assistant per
resident per day. A facility may not staff below one certified
nursing assistant per 20 residents.

c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of
direct care by a licensed nurse per resident per day. A facility
may not staff below one licensed nurse per 40 residents.



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2. Nursing assistants employed under s. 400.211(2) may be included in computing the hours of direct care provided by certified nursing assistants and may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.

3. Each nursing home facility must document compliance with staffing standards as required under this paragraph and post daily the names of licensed nurses and certified nursing assistants ~~staff~~ on duty for the benefit of facility residents and the public. Facilities must maintain the records documenting compliance with minimum staffing standards for a period of 5 years and must report staffing in accordance with 42 C.F.R. s. 483.70(q).

4. The agency must ~~shall~~ recognize the use of licensed nurses for compliance with minimum staffing requirements for certified nursing assistants if the nursing home facility otherwise meets the minimum staffing requirements for licensed nurses and the licensed nurses are performing the duties of a certified nursing assistant. Unless otherwise approved by the agency, licensed nurses counted toward the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of a certified nursing assistant for the entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of documenting compliance with minimum staffing requirements for



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certified and licensed nursing staff. The hours of a licensed nurse with dual job responsibilities may not be counted twice.

5. Evidence that a facility complied with the minimum direct care staffing requirements under subparagraph 1. is not admissible as evidence of compliance with the nursing services requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s. 483.70.

(c) ~~(b)~~ Paid feeding assistants and direct care nonnursing staff, other than certified nursing assistants and licensed nurses, who have successfully completed the feeding assistant training program under s. 400.141(1)(v) and who provide
~~providing~~ eating assistance to residents shall ~~not~~ count toward compliance with overall direct care minimum staffing hours but not the hours of direct care required for certified nursing assistants or licensed nurses. Time spent by certified nursing assistants or licensed nurses on providing eating assistance to residents shall count toward the hours of direct care required for certified nursing assistants or licensed nurses ~~standards.~~

(d) ~~(c)~~ Licensed practical nurses licensed under chapter 464 who provide ~~are providing~~ nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such facilities in accordance with rules adopted by the Board of Nursing.

(e) The agency may adopt rules to implement this subsection.

Section 3. Present subsection (2) of section 400.0234, Florida Statutes, is redesignated as subsection (3), and a new subsection (2) is added to that section, to read:

400.0234 Availability of facility records for investigation



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of resident's rights violations and defenses; penalty.—

(2) Information submitted pursuant to s. 408.061(5) and (6) is discoverable and admissible in a civil action or an administrative action under this part or part II of chapter 408.

Section 4. Subsection (4) of section 400.024, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

400.024 Failure to satisfy a judgment or settlement agreement; required notification to claimants.—

(4) ~~If,~~ After the agency is placed on notice pursuant to subsection (2), the following applies and:

(a) If the license is subject to renewal, the agency may deny the license renewal unless compliance with this section is achieved. ~~;~~ ~~and~~

(b) If a change of ownership application for the facility at issue is filed ~~submitted~~ by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, the agency shall deny the change of ownership application unless compliance with this section is achieved.

(c) If an adverse final judgment under subsection (1) is entered but payment is not yet due and a change of ownership application for the facility at issue is submitted by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, the adverse final judgment becomes the responsibility and liability of the transferee if the agency approves the change of ownership application.

(5) If a change of ownership application for the facility



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at issue is filed by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, then:

(a) The licensee or transferor must provide written notice of the filing of the application to each pending claimant or the claimant's attorney of record, if applicable. The written notice must be provided within 14 days after the date the application is filed with the agency.

(b) The written notice must be provided by certified mail, return receipt requested, or other method that provides verification of receipt.

(c) A claimant has 30 days after the date of receipt of the written notice to object to the application if the claimant has reason to believe that the approval of the application would facilitate a fraudulent transfer or allow the transferor to avoid financial responsibility for the claimant's pending claim.

(d) The agency must consider any objection brought pursuant to this subsection in its decision to approve or deny an application for change of ownership under this part and part II of chapter 408.

(e) If a claim is pending in arbitration at the time that the application for change of ownership is filed, the claimant may file a petition to enjoin the transfer in circuit court.

(f) As used in this subsection, the term "claimant" means a resident or the resident's family or personal representative who has notified the licensee or facility of a potential claim by written notice of intent or who has initiated an action, claim, or arbitration proceeding against the licensee or facility.

Section 5. Paragraphs (g), (n), and (r) of subsection (1)



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of section 400.141, Florida Statutes, are amended to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(g) If the facility has a standard license, exceeds the minimum required hours of direct care provided by licensed nurses nursing and certified nursing assistants ~~assistant-direct care~~ per resident per day, and is part of a continuing care facility licensed under chapter 651 or is a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share programming and staff. At the time of inspection, a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with the minimum staffing ratios must be based on the total number of residents receiving direct care services, regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This paragraph does not restrict the agency's authority under federal or state law



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to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine compliance with this provision.

(n) Comply with state minimum-staffing requirements:

1. The agency shall impose a moratorium on new admissions
for a facility that has failed to comply with state minimum-
staffing requirements for 48 2 consecutive hours ~~days is~~
~~prohibited from accepting new admissions~~ until the facility has



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Albritton) recommended the following:

Senate Amendment to Amendment (308330)

Delete line 137
and insert:
is discoverable and may be admissible in a civil action or an



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LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Gibson) recommended the following:

Senate Amendment

Delete lines 119 - 313
and insert:

b. A minimum ~~certified nursing assistant staffing~~ of 2.5 hours of direct care by a certified nursing assistant per resident per day. A facility may not staff below a ratio of one certified nursing assistant per 20 residents.

c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of direct care by a licensed nurse per resident per day. A facility may not staff below a ratio of one licensed nurse per 40



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residents.

2. Nursing assistants employed under s. 400.211(2) may be included in computing the hours of direct care provided by certified nursing assistants and may be included in computing the staffing ratio for certified nursing assistants if their job responsibilities include only nursing-assistant-related duties.

3. Each nursing home facility must document compliance with staffing standards as required under this paragraph and post daily the names of licensed nurses and certified nursing assistants ~~staff~~ on duty for the benefit of facility residents and the public. Facilities must maintain the records documenting compliance with minimum staffing standards for a period of 5 years and must report staffing in accordance with 42 C.F.R. s. 483.70(q).

4. The agency must ~~shall~~ recognize the use of licensed nurses for compliance with minimum staffing requirements for certified nursing assistants if the nursing home facility otherwise meets the minimum staffing requirements for licensed nurses and the licensed nurses are performing the duties of a certified nursing assistant. Unless otherwise approved by the agency, licensed nurses counted toward the minimum staffing requirements for certified nursing assistants must exclusively perform the duties of a certified nursing assistant for the entire shift and not also be counted toward the minimum staffing requirements for licensed nurses. If the agency approved a facility's request to use a licensed nurse to perform both licensed nursing and certified nursing assistant duties, the facility must allocate the amount of staff time specifically spent on certified nursing assistant duties for the purpose of



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documenting compliance with minimum staffing requirements for certified and licensed nursing staff. The hours of a licensed nurse with dual job responsibilities may not be counted twice.

5. The nurse staffing requirements imposed in this paragraph are minimum nurse staffing requirements for nursing home facilities. Evidence that a facility complied with the minimum direct care staffing requirements under subparagraph 1. is not admissible as evidence of compliance with the nursing services requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s. 483.70.

(c) ~~(b)~~ Paid feeding assistants and direct care staff, other than certified nursing assistants, who have successfully completed the feeding assistant training program under s. 400.141(1)(v) and who provide ~~nonnursing staff providing~~ eating assistance to residents shall ~~not~~ count toward compliance with overall direct care minimum staffing hours but not the hours of direct care required for certified nursing assistants or licensed nurses standards.

(d) ~~(c)~~ Licensed practical nurses licensed under chapter 464 who provide ~~are providing~~ nursing services in nursing home facilities under this part may supervise the activities of other licensed practical nurses, certified nursing assistants, and other unlicensed personnel providing services in such facilities in accordance with rules adopted by the Board of Nursing.

(e) The agency may adopt rules to implement this subsection.

Section 3. Present subsection (2) of section 400.0234, Florida Statutes, is redesignated as subsection (3), and a new subsection (2) is added to that section, to read:



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400.0234 Availability of facility records for investigation of resident's rights violations and defenses; penalty.—

(2) Forms filed with the agency pursuant to s. 408.061(5) and (6) are not confidential or exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be discoverable and admissible in a civil action under this part or an administrative action under this part or part II of chapter 408.

Section 4. Subsection (4) of section 400.024, Florida Statutes, is amended to read:

400.024 Failure to satisfy a judgment or settlement agreement.—

(4) ~~If,~~ After the agency is placed on notice pursuant to subsection (2), the following applies and:

(a) If the license is subject to renewal, the agency may deny the license renewal unless compliance with this section is achieved.~~;~~ ~~and~~

(b) If a change of ownership application for the facility at issue is filed ~~submitted~~ by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, the unsatisfied or undischarged adverse final judgment under subsection (1) becomes the responsibility and liability of the transferee, and the agency shall deny the change of ownership application unless compliance with this section is achieved.

(c) If a change of ownership application for the facility at issue is filed by the licensee, by a person or entity identified as having a controlling interest in the licensee, or by a related party, then:



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1. The licensee or transferor must provide written notice of the filing of the application to each pending claimant or the claimant's attorney of record, if applicable, within 14 days after the date the application is filed with the agency.

2. The written notice must be provided by certified mail, return receipt requested, or other method that provides verification of receipt.

3. A claimant has 30 days after the date of receipt of the written notice to object to the application if the claimant has reason to believe that the approval of the application would facilitate a fraudulent transfer or allow the transferor to avoid financial responsibility for the claimant's pending claim.

4. The agency must consider any objection brought pursuant to this subsection in its decision to approve or deny an application for change of ownership under this part and part II of chapter 408.

5. If a claim is pending in arbitration at the time that the application for change of ownership is filed, the claimant may file a petition to enjoin the transfer in circuit court.

6. As used in this paragraph, "claimant" means a resident or the resident's family or personal representative who has notified the licensee or facility of a potential claim by notice of intent letter or who has initiated an action, claim, or arbitration proceeding against the licensee or facility.

Section 5. Paragraphs (g), (n), and (r) of subsection (1) of section 400.141, Florida Statutes, are amended to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all



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applicable standards and rules of the agency and shall:

(g) If the facility has a standard license, exceeds the minimum required hours of direct care provided by licensed nurses nursing and certified nursing assistants ~~assistant-direct care~~ per resident per day, and is part of a continuing care facility licensed under chapter 651 or is a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share programming and staff. At the time of inspection, a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(b) ~~s. 400.23(3)(a)~~. Compliance with the minimum staffing ratios must be based on the total number of residents receiving direct care services, regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This paragraph does not restrict the agency's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine



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compliance with this provision.

(n) Comply with state minimum-staffing requirements:

1. The agency shall impose a moratorium on new admissions for a facility that has failed for 48 consecutive hours to comply with the minimum hours of direct care required to be provided by a licensed nurse or certified nursing assistant. The moratorium must be imposed until the facility is able to document compliance with the minimum direct care hours required per resident per day for licensed nurses and certified nursing assistants ~~state minimum-staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum-staffing requirements for 6 consecutive days.~~ For the purposes of this subparagraph, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. ~~Failure by the facility to impose such an admissions moratorium is subject to a \$1,000 fine.~~

2. A facility that has a standard ~~does not have a conditional~~ license may be cited for failure to comply with the standards in s. 400.23(3)(b)1.b. and c. ~~s. 400.23(3)(a)1.b. and c.~~ ~~only if it has failed to meet those standards on 2 consecutive days or if it has failed to meet at least 97 percent of those standards on any one day.~~

3. A facility that has a conditional license must be in compliance with the standards in s. 400.23(3)(b) ~~s. 400.23(3)(a)~~ at all times.

(r) Maintain in the medical record for each resident a daily chart of direct care ~~certified nursing assistant~~ services



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provided to the resident. The direct care staff ~~certified~~
~~nursing assistant who is~~ caring for the resident must complete
this record by the end of his or her shift. This record must
indicate assistance with activities of daily living, assistance
with eating, and assistance with drinking, and must record each
offering of nutrition and hydration for those residents whose
plan of care or assessment indicates a risk for malnutrition or
dehydration.

Section 6. Nursing Home Sustainability Task Force.—There is
created the Nursing Home Sustainability Task Force. The task
force shall review, analyze, and make recommendations specific
to the sustainability of the state's model of providing quality
nursing home care. The task force shall consist of
representatives of nursing home providers, nurses, certified
nursing assistants, and aging advocates and other interested

By the Committee on Health Policy; and Senator Albritton

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1 A bill to be entitled
 2 An act relating to modernization of nursing home
 3 facility staffing; amending s. 400.021, F.S.; revising
 4 the definition of the term "resident care plan";
 5 amending s. 400.23, F.S.; defining the terms "direct
 6 care staff" and "facility assessment"; specifying
 7 functions that do not constitute direct care staffing
 8 hours for purposes of required nursing home staffing
 9 ratios; revising nursing home staffing requirements;
 10 requiring nursing home facilities to maintain staffing
 11 records for a specified time and report staffing
 12 information consistent with federal law; providing
 13 construction; providing that evidence of compliance
 14 with state minimum staffing requirements is not
 15 admissible as evidence for compliance with specified
 16 provisions of federal law; providing that eating
 17 assistance to residents provided by certain direct
 18 care staff counts toward certain minimum direct care
 19 staffing requirements; authorizing the Agency for
 20 Health Care Administration to adopt rules; amending s.
 21 400.0234, F.S.; providing that certain forms filed
 22 with the agency are not confidential or exempt and may
 23 be discoverable and admissible in civil or
 24 administrative proceedings; amending s. 400.024, F.S.;
 25 providing that an unsatisfied or undischarged adverse
 26 final judgment in connection with a nursing home
 27 facility becomes the responsibility and liability of a
 28 new owner if ownership of the facility is transferred;
 29 requiring a licensee to provide written notice to any

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

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30 pending claimants or their attorneys of record within
 31 a specified timeframe after filing a change of
 32 ownership application with the agency; providing
 33 requirements for the notice; providing that claimants
 34 may object to the application within a specified
 35 timeframe under certain circumstances; requiring the
 36 agency to consider any such objections in its
 37 decision; providing for the filing of such objections
 38 in circuit court under certain circumstances; defining
 39 the term "claimant"; amending s. 400.141, F.S.;
 40 conforming cross-references and provisions to changes
 41 made by the act; revising provisions related to
 42 moratoriums on new admissions for facilities that fail
 43 to comply with minimum staffing requirements; deleting
 44 a certain fine; creating the Nursing Home
 45 Sustainability Task Force; providing duties and
 46 membership of the task force; requiring the task force
 47 to submit its recommendations to the agency, the
 48 Governor, and the Legislature by a specified date;
 49 amending s. 651.118, F.S.; making a technical change;
 50 providing an effective date.

51
 52 Be It Enacted by the Legislature of the State of Florida:

53
 54 Section 1. Subsection (18) of section 400.021, Florida
 55 Statutes, is amended to read:

56 400.021 Definitions.—When used in this part, unless the
 57 context otherwise requires, the term:

58 (18) "Resident care plan" means a written, comprehensive

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59 person-centered care plan developed in accordance with 42 C.F.R.
 60 s. 483.21(b) which is, ~~maintained, and~~ reviewed at least ~~not~~
 61 ~~less than~~ quarterly by a registered nurse, with participation
 62 from other facility staff and the resident or his or her
 63 designee or legal representative. The resident care plan must
 64 include, ~~which includes~~ a comprehensive assessment of the needs
 65 of an individual resident; the type and frequency of services
 66 required to provide the necessary care for the resident to
 67 attain or maintain the highest practicable physical, mental, and
 68 psychosocial well-being; a listing of services provided within
 69 or outside the facility to meet those needs; and an explanation
 70 of service goals.

71 Section 2. Subsection (3) of section 400.23, Florida
 72 Statutes, is amended to read:

73 400.23 Rules; evaluation and deficiencies; licensure
 74 status.—

75 (3)(a)1. As used in this subsection, the term:

76 a. "Direct care staff" means individuals who, through
 77 interpersonal contact with residents or resident care
 78 management, provide care and services to allow residents to
 79 attain or maintain the highest practicable physical, mental, and
 80 psychosocial well-being. The term includes, but is not limited
 81 to, disciplines and professions that must be reported in
 82 accordance with 42 C.F.R. s. 483.70(q) in the following
 83 categories of direct care services:

84 (I) Physician.

85 (II) Nursing.

86 (III) Pharmacy.

87 (IV) Dietary.

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88 (V) Therapeutic.

89 (VI) Dental.

90 (VII) Podiatry.

91 (VIII) Mental health.

92
 93 The term does not include individuals whose primary duty is
 94 maintaining the physical environment of the facility, including,
 95 but not limited to, food preparation, laundry, and housekeeping.

96 b. "Facility assessment" means a process to determine the
 97 staff competencies that are necessary to provide the level and
 98 types of care needed for the facility's resident population
 99 considering the types of diseases, conditions, physical and
 100 cognitive disabilities, overall acuity, and other pertinent
 101 factors that are present within that resident population.
 102 Additional requirements for conducting a facility assessment
 103 must be performed in accordance with 42 C.F.R. s. 483.70(e).

104 2. For purposes of this subsection, direct care staffing
 105 hours do not include time spent on nursing administration, staff
 106 development, staffing coordination, and the administrative
 107 portion of the minimum data set and care plan coordination for
 108 Medicaid.

109 (b)1. Each facility must determine its direct care staffing
 110 needs based on the facility assessment and the individual needs
 111 of each resident based on the resident's care plan. At a
 112 minimum, staffing ~~The agency shall adopt rules providing minimum~~
 113 ~~staffing requirements for nursing home facilities. These~~
 114 requirements must include, for each facility:

115 a. A minimum weekly average of ~~certified nursing assistant~~
 116 ~~and licensed nursing staffing combined~~ of 3.6 hours of direct

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care per resident per day. As used in this ~~subparagraph~~ ~~sub-~~
~~subparagraph~~, a week is defined as Sunday through Saturday.

b. A minimum ~~certified nursing assistant staffing~~ of 2.0
2.5 hours of direct care ~~by a certified nursing assistant~~ per
 resident per day. A facility may not staff below a ratio of one
 certified nursing assistant per 20 residents.

c. A minimum ~~licensed nursing staffing~~ of 1.0 hour of
 direct care by a licensed nurse per resident per day. A facility
 may not staff below a ratio of one licensed nurse per 40
 residents.

2. Nursing assistants employed under s. 400.211(2) may be
included in computing the hours of direct care provided by
certified nursing assistants and may be included in computing
 the staffing ratio for certified nursing assistants if their job
 responsibilities include only nursing-assistant-related duties.

3. Each nursing home facility must document compliance with
 staffing standards as required under this paragraph and post
 daily the names of licensed nurses and certified nursing
assistants ~~staff~~ on duty for the benefit of facility residents
 and the public. Facilities must maintain the records documenting
compliance with minimum staffing standards for a period of 5
years and must report staffing in accordance with 42 C.F.R. s.
483.70(g).

4. The agency ~~must~~ ~~shall~~ recognize the use of licensed
 nurses for compliance with minimum staffing requirements for
 certified nursing assistants if the nursing home facility
 otherwise meets the minimum staffing requirements for licensed
 nurses and the licensed nurses are performing the duties of a
 certified nursing assistant. Unless otherwise approved by the

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agency, licensed nurses counted toward the minimum staffing
 requirements for certified nursing assistants must exclusively
 perform the duties of a certified nursing assistant for the
 entire shift and not also be counted toward the minimum staffing
 requirements for licensed nurses. If the agency approved a
 facility's request to use a licensed nurse to perform both
 licensed nursing and certified nursing assistant duties, the
 facility must allocate the amount of staff time specifically
 spent on certified nursing assistant duties for the purpose of
 documenting compliance with minimum staffing requirements for
 certified and licensed nursing staff. The hours of a licensed
 nurse with dual job responsibilities may not be counted twice.

5. The nurse staffing requirements imposed in this
paragraph are minimum nurse staffing requirements for nursing
home facilities. Evidence that a facility complied with the
minimum direct care staffing requirements under subparagraph 1.
is not admissible as evidence of compliance with the nursing
services requirements under 42 C.F.R. s. 483.35 or 42 C.F.R. s.
483.70.

(c) ~~(b)~~ Paid feeding assistants and direct care staff, other
than certified nursing assistants, who have successfully
completed the feeding assistant training program under s.
400.141(1)(v) and who provide ~~nonnursing staff providing~~ eating
assistance to residents shall ~~not~~ count toward compliance with
overall direct care minimum staffing hours but not the hours of
direct care required for certified nursing assistants or
licensed nurses ~~standards~~.

(d) ~~(c)~~ Licensed practical nurses licensed under chapter 464
who ~~provide~~ ~~are providing~~ nursing services in nursing home

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175 facilities under this part may supervise the activities of other
 176 licensed practical nurses, certified nursing assistants, and
 177 other unlicensed personnel providing services in such facilities
 178 in accordance with rules adopted by the Board of Nursing.

179 (e) The agency may adopt rules to implement this
 180 subsection.

181 Section 3. Present subsection (2) of section 400.0234,
 182 Florida Statutes, is redesignated as subsection (3), and a new
 183 subsection (2) is added to that section, to read:

184 400.0234 Availability of facility records for investigation
 185 of resident's rights violations and defenses; penalty.—

186 (2) Forms filed with the agency pursuant to s. 408.061(5)
 187 and (6) are not confidential or exempt from the provisions of s.
 188 119.07(1) and s. 24(a), Art. I of the State Constitution and may
 189 be discoverable and admissible in a civil action under this part
 190 or an administrative action under this part or part II of
 191 chapter 408.

192 Section 4. Subsection (4) of section 400.024, Florida
 193 Statutes, is amended to read:

194 400.024 Failure to satisfy a judgment or settlement
 195 agreement.—

196 (4) ~~ff~~, After the agency is placed on notice pursuant to
 197 subsection (2), the following applies and:

198 (a) If the license is subject to renewal, the agency may
 199 deny the license renewal unless compliance with this section is
 200 achieved. ~~and~~

201 (b) If a change of ownership application for the facility
 202 at issue is filed ~~submitted~~ by the licensee, by a person or
 203 entity identified as having a controlling interest in the

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204 licensee, or by a related party, the unsatisfied or undischarged
 205 adverse final judgment under subsection (1) becomes the
 206 responsibility and liability of the transferee, and the agency
 207 shall deny the change of ownership application unless compliance
 208 with this section is achieved.

209 (c) If a change of ownership application for the facility
 210 at issue is filed by the licensee, by a person or entity
 211 identified as having a controlling interest in the licensee, or
 212 by a related party, then:

213 1. The licensee or transferor must provide written notice
 214 of the filing of the application to each pending claimant or the
 215 claimant's attorney of record, if applicable, within 14 days
 216 after the date the application is filed with the agency.

217 2. The written notice must be provided by certified mail,
 218 return receipt requested, or other method that provides
 219 verification of receipt.

220 3. A claimant has 30 days after the date of receipt of the
 221 written notice to object to the application if the claimant has
 222 reason to believe that the approval of the application would
 223 facilitate a fraudulent transfer or allow the transferor to
 224 avoid financial responsibility for the claimant's pending claim.

225 4. The agency must consider any objection brought pursuant
 226 to this subsection in its decision to approve or deny an
 227 application for change of ownership under this part and part II
 228 of chapter 408.

229 5. If a claim is pending in arbitration at the time that
 230 the application for change of ownership is filed, the claimant
 231 may file a petition to enjoin the transfer in circuit court.

232 6. As used in this paragraph, "claimant" means a resident

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or the resident's family or personal representative who has notified the licensee or facility of a potential claim by notice of intent letter or who has initiated an action, claim, or arbitration proceeding against the licensee or facility.

Section 5. Paragraphs (g), (n), and (r) of subsection (1) of section 400.141, Florida Statutes, are amended to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(g) If the facility has a standard license, exceeds the minimum required hours of direct care provided by licensed nurses ~~nursing~~ and certified nursing assistants ~~assistant direct care~~ per resident per day, and is part of a continuing care facility licensed under chapter 651 or is a retirement community that offers other services pursuant to part III of this chapter or part I or part III of chapter 429 on a single campus, be allowed to share programming and staff. At the time of inspection, a continuing care facility or retirement community that uses this option must demonstrate through staffing records that minimum staffing requirements for the facility were met. Licensed nurses and certified nursing assistants who work in the facility may be used to provide services elsewhere on campus if the facility exceeds the minimum number of direct care hours required per resident per day and the total number of residents receiving direct care services from a licensed nurse or a certified nursing assistant does not cause the facility to violate the staffing ratios required under s. 400.23(3)(b) ~~or 400.23(3)(a)~~. Compliance with the minimum staffing ratios must

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be based on the total number of residents receiving direct care services, regardless of where they reside on campus. If the facility receives a conditional license, it may not share staff until the conditional license status ends. This paragraph does not restrict the agency's authority under federal or state law to require additional staff if a facility is cited for deficiencies in care which are caused by an insufficient number of certified nursing assistants or licensed nurses. The agency may adopt rules for the documentation necessary to determine compliance with this provision.

(n) Comply with state minimum-staffing requirements:

1. The agency may impose a moratorium on new admissions for a facility that has failed for 48 consecutive hours to comply with the minimum hours of direct care required to be provided by a licensed nurse or certified nursing assistant. The moratorium may be imposed until the facility is able to document compliance with the minimum direct care hours required per resident per day for licensed nurses and certified nursing assistants ~~state minimum staffing requirements for 2 consecutive days is prohibited from accepting new admissions until the facility has achieved the minimum staffing requirements for 6 consecutive days~~. For the purposes of this subparagraph, any person who was a resident of the facility and was absent from the facility for the purpose of receiving medical care at a separate location or was on a leave of absence is not considered a new admission. ~~Failure by the facility to impose such an admissions moratorium is subject to a \$1,000 fine.~~

2. A facility that has a standard ~~does not have a conditional~~ license may be cited for failure to comply with the

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standards in s. 400.23(3)(b)1.b. and c. ~~e. 400.23(3)(a)1.b. and~~
~~e.~~ only if it has failed to meet those standards on 2
 consecutive days ~~or if it has failed to meet at least 97 percent~~
~~of those standards on any one day.~~

3. A facility that has a conditional license must be in
 compliance with the standards in s. 400.23(3)(b) ~~s. 400.23(3)(a)~~
 at all times.

(r) Maintain in the medical record for each resident a
 daily chart of direct care ~~certified nursing assistant~~ services
 provided to the resident. The direct care staff ~~certified~~
~~nursing assistant who is~~ caring for the resident must complete
 this record by the end of his or her shift. This record must
 indicate assistance with activities of daily living, assistance
 with eating, and assistance with drinking, and must record each
 offering of nutrition and hydration for those residents whose
 plan of care or assessment indicates a risk for malnutrition or
 dehydration.

Section 6. Nursing Home Sustainability Task Force.—There is
 created the Nursing Home Sustainability Task Force. The task
 force shall review, analyze, and make recommendations specific
to the sustainability of the state's model of providing quality
nursing home care. The task force shall consist of
representatives of nursing home providers and other interested
stakeholders. The task force shall review all areas of the
provision of health care services to residents, regulation,
liability, licensing, quality initiatives, and the availability
of quality, affordable, and accessible health care. The task
force shall make any recommendations to the Agency for Health
Care Administration, the Governor, the President of the Senate,

Page 11 of 12

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

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and the Speaker of the House of Representatives by January 1,
2025.

Section 7. Subsection (6) of section 651.118, Florida
 Statutes, is amended to read:

651.118 Agency for Health Care Administration; certificates
 of need; sheltered beds; community beds.—

(6) Unless the provider already has a component that is to
 be a part of the continuing care facility and that is licensed
 under chapter 395, part II of chapter 400, or part I of chapter
 429 at the time of construction of the continuing care facility,
 the provider must construct the non-nursing ~~nursing~~ home
 portion of the facility and the nursing home portion of the
 facility at the same time. If a provider constructs less than
 the number of residential units approved in the certificate of
 authority, the number of licensed sheltered nursing home beds
 shall be reduced by a proportionate share.

Section 8. This act shall take effect upon becoming a law.

Page 12 of 12

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

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 974

INTRODUCER: Rules Committee; Community Affairs Committee; Judiciary Committee; and Senator Gruters

SUBJECT: Sovereign Immunity

DATE: February 24, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Fav/CS
2. Hackett	Ryon	CA	Fav/CS
3. Bond	Phelps	RC	Fav/CS
4. _____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 974 increases the limits of the state's waiver of sovereign immunity for some public entities. The limits are increased from \$200,000 per injured person and \$300,000 per incident to \$400,000 per person and \$600,000 per incident for the state, state agencies, and a county or municipality with a population in excess of 250,000, and are increased to \$300,000 per person and \$400,000 per incident for a county or municipality with a population between 50,000 and 250,000. The bill allows sovereign entities other than the state or a state agency to voluntarily pay a claim in excess of the limits without the need for a claim bill.

The bill also provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute.

The bill appears to have a significant indeterminate negative fiscal impact on state and local governments.

The bill is effective October 1, 2022, and applies to any claim accruing on or after that date.

II. Present Situation:

Sovereign immunity is defined as: “A government’s immunity from being sued in its own courts without its consent.”¹ The doctrine had its origin with the judge-made law of England. The basis of the existence of the doctrine of sovereign immunity in the United States was explained as follows:

A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.²

The State Constitution authorizes the Legislature to enact laws that permit suits against the state and its subdivisions. Currently, tort suits against the state and its subdivisions are allowed, but collectability of judgments is limited to \$200,000 per person and \$300,000 per incident. Damaged persons seeking to recover amounts in excess of the limits may request that the Legislature enact a claim bill.

Florida Sovereign Immunity Law

Florida has adopted the common law of England as it existed on July 4, 1776.³ This adoption of English common law includes the doctrine of sovereign immunity. The doctrine of sovereign immunity was in existence centuries before the Declaration of Independence.⁴

The Legislature was first expressly authorized to waive the state’s sovereign immunity under s. 19, Art. IV, State Const. (1868).⁵ The Legislature again was expressly authorized to waive the state’s sovereign immunity under s. 13, Art. X, State Const. (1968). Section 13, Art. X, State Const. (1968) states:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Although the first general waiver of the state’s sovereign immunity was not adopted until 1969, “one . . . could always petition for legislative relief by means of a claims bill.”⁶ The first claim bill was passed by the Legislative Council of the Territory of Florida in 1833.⁷ The claim bill authorized payment to a person who supplied labor and building materials for the first permanent capitol building.⁸

¹ BLACK’S LAW DICTIONARY (8th ed. 2004).

² *Cauley v. City of Jacksonville*, 403 So. 2d 379, 381 (Fla. 1981) (quoting *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907)).

³ Section 2.01, F.S. English common law that is inconsistent with state or federal law is not included.

⁴ *North Carolina Dept. of Transp. v. Davenport*, 432 S.E.2d 303, 305 (N.C. 1993).

⁵ Section 19, Art. VI, State Const. (1868), states: “Provision may be made by general law for bringing suit against the State as to all liabilities now existing or hereafter originating.”

⁶ *Cauley*, 403 So. 2d at note 5.

⁷ D. Stephen Kahn, *Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy*, THE FLORIDA BAR JOURNAL, 23 (April, 1988).

⁸ *Id.*

Statutory Waivers of Sovereign Immunity

The 1969 Legislature enacted s. 768.15, F.S., the state's first general waiver of sovereign immunity.⁹ The 1969 Legislature also adopted another law that provided for the repeal of s. 768.15, F.S., after a year in effect.¹⁰

In 1973, the Legislature again adopted a law that acted as a general waiver to the state's sovereign immunity.¹¹ The statute, s. 768.28, F.S., was modeled after the Federal Tort Claims Act and remains substantially the same today. Section 768.28(1), F.S. (1973), states:

In accordance with s. 13, Art. X, state constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts, but only to the extent specified in this act. Actions at law against the state or any of its agencies or subdivisions to recover damages in tort for money damages against the state or its agencies or subdivisions for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of his office or employment under circumstances in which the state or such agency or subdivision, if a private person, would be liable to the claimant in accordance with the general laws of this state, may be prosecuted subject to the limitations specified in this act.

Under s. 768.28(5), F.S. (1973), the collectability of tort judgments against the state was limited to \$50,000 per person and \$100,000 per incident. Attorney fees were also limited to 25 percent of the proceeds of judgments or settlements.¹² In 1981, the Legislature increased the amount of damages that could be collected to \$100,000 per person and \$200,000 per incident.¹³ In 2010, the Legislature increased the limits to \$200,000 per person and \$300,000 per incident.¹⁴

Cost of Florida's Waiver of Sovereign Immunity

The exact cost of the state's waiver of sovereign immunity under s. 768.28, F.S., is unknown. No centralized location exists for local government entities, such as cities, counties, school boards, sheriff's offices, special districts, and other entities to record the value of the total claims paid under the current sovereign immunity waiver. Information documenting the cost of the sovereign immunity waiver to state government entities is available from the Division of Risk Management (Division). The Division provides general liability insurance to state agencies up to the amount of the sovereign immunity waiver.¹⁵ The Division also settles and defends tort suits filed against the agencies.

⁹ Chapter 69-116, Laws of Fla.

¹⁰ Chapter 69-357, Laws of Fla.

¹¹ Chapter 73-313, Laws of Fla.

¹² Section 768.28(8), F.S. (1973).

¹³ Chapter 81-317, Laws of Fla.

¹⁴ Chapter 2010-26, Laws of Fla.

¹⁵ Section 284.30, F.S.

In Fiscal Year 2020-21, the Division paid \$4,189,287 for the resolution of 2,588 general liability claims.¹⁶ Additionally, the Division provides auto liability insurance to state agencies for claims arising out of the use of state vehicles. In Fiscal Year 2020-21, the Division paid \$5,884,341 for the resolution of 478 automobile liability claims.¹⁷

Claim Bill Process

Persons who wish to seek the payment of claims in excess of the statutory limits must have a state legislator introduce a claim bill in the Legislature, which must pass both houses. Once a claim bill is filed, the presiding officer of each house of the Legislature may refer the bill to a Special Master, as well as to one or more committees, for review. Senate and House Special Masters typically hold a joint hearing to determine whether the elements of negligence have been satisfied: duty, breach, causation, and damages.

III. Effect of Proposed Changes:

The bill changes the limits of the waiver of sovereign immunity for a claim accruing on or after October 1, 2022, as follows:

- For the state, a state agency, a county or municipality with a population in excess of 250,000 persons, including the constitutional officers of such county, the limits are increased to \$400,000 per person injured and \$600,000 per incident.
- For a county or municipality with a population between 50,000 and 250,000 persons, including the constitutional officers of such county, the limits are increased to \$300,000 per person injured and \$400,000 per incident.
- For a county or municipality of less than 50,000 persons, or for a state university, public college, subdivision of the state, or any other entity covered by sovereign immunity not within the two categories above, the current limits of \$200,000 per person injured and \$300,000 per incident apply.

If multiple sovereign entities are liable, the total liability for all of the entities may not exceed the amount for the entity with the highest liability limit.

The bill provides that a claim, other than one against the state or a state agency, may be voluntarily paid by an entity in excess of the limits without the need for a claim bill. The bill repeals the current law requirement that payment above the caps may only be made without a claim bill if paid within policy limits.

The bill provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute.

The bill is effective October 1, 2022. The bill applies to claims accruing on or after October 1, 2022.

¹⁶ Department of Financial Services, Division of Risk Management, *Fiscal Year 2021 Annual Report*, at 24 (2021).

¹⁷ *Id.* at 22.

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:

Those individuals obtaining judgments from or settlements with the state and its agents and subdivisions may receive additional compensation because of the increase in the liability limits for claims arising on or after October 1, 2022. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

C. Government Sector Impact:

The potential fiscal impact of increasing the liability limits of state and local governments will be contingent upon the number of claims filed and the value of those claims. The state and its subdivisions may experience an increase in insurance premiums for liability coverage, or may see an increase in self-insurance costs, in response to the increase in liability limits. There is typically a significant time lag from injury to case resolution that will delay the fiscal impact of the bill in the short term.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.28 of the Florida Statutes.

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

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

CS/CS/CS by Rules on February 23, 2022:

The CS changes the limits of the waiver of sovereign immunity from a fixed amount applicable to all sovereign entities to a scaled level based on the type of entity; removes from the bill a restriction on claim bill requirements in insurance policies; removes future CPI increases; and adds that the bill only applies to claims accruing on or after October 1, 2022.

CS/CS by Community Affairs on February 8, 2022:

The CS changes the limits of the waiver of sovereign immunity to \$1 million per injured person with a \$3 million limit per incident. A claim may be voluntarily paid in excess of the limits without the need for a claim bill. An insurance policy may not condition the payment of benefits on the enactment of a claim bill.

The CS provides that the annual adjustment of the waiver amount will start July 1, 2023, rather than July 1, 2032.

The CS further provides that there is no statute of limitations or statute of repose on a civil action against the state or a local government where the plaintiff was younger than 16 years of age at the time of the injury and the injury involved a violation of the sexual battery statute. This section applies to those claims that would not have been time barred on or before July 1, 2010.

CS by Judiciary on January 31, 2022:

The CS changes the liability limits, changes the inflation adjustment period, and provides that inflationary adjustments are rounded to the nearest \$10,000. The CS also removes provisions for retroactivity, the ability of an entity to voluntarily pay a claim above the limits without a claim bill, the prohibition on claim bill clauses in insurance contracts, and the extension of a statute of limitations.

B. Amendments:

None.



801476

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5), paragraph (a) of subsection (6),
and subsection (14) of section 768.28, Florida Statutes, are
amended to read:

768.28 Waiver of sovereign immunity in tort actions;
recovery limits; civil liability for damages caused during a
riot; limitation on attorney fees; statute of limitations;
exclusions; indemnification; risk management programs.—



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(5)(a)1. The state and its agencies and subdivisions ~~are~~ shall be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability ~~does~~ shall not include punitive damages or interest for the period before judgment. ~~Neither~~ The total liability of the state, ~~nor~~ its agencies, and its ~~or~~ subdivisions shall be liable to pay a claim or a judgment is limited to the amounts specified in this subparagraph:

a. For a county or municipality that has a population of 50,000 or less, including any constitutional officer of such county, \$200,000 per claim and \$300,000 per occurrence.

b. For state universities, public colleges, subdivisions, and other entities with sovereign immunity that are not a state agency, county, county constitutional officer, or municipality, \$200,000 per claim and \$300,000 per occurrence.

c. For a county or municipality that has a population of more than 50,000 and up to 250,000, including any constitutional officer of such county, \$300,000 per claim and \$400,000 per occurrence.

d. For the state or a state agency or a county or a municipality having a population of more than 250,000, including any constitutional officer of such county, \$400,000 per claim and \$600,000 per occurrence.

e. Regardless of the entity responsible, for a single occurrence that results in more than 10 deaths, \$3 million in economic damages.

If more than one governmental entity is responsible for the damages, the total liability for all of the entities to pay a



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claim or judgment may not exceed the amount for the entity having the highest liability limit.

2. A claim may be settled and paid within the amounts authorized by this paragraph, and a judgment may be entered in excess of the amounts in this paragraph. However, ~~the by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$300,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to \$200,000 or \$300,000, as the case may be; and that portion of a the judgment that exceeds the these amounts authorized may be reported to the Legislature, and but may be paid in part or in whole only by further act of the Legislature.~~

(b) Notwithstanding the limited waiver of sovereign immunity under paragraph (a) ~~provided herein~~, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment entered ~~rendered~~ against it without further action by the Legislature, but the state or agency or subdivision thereof ~~does shall not waive be deemed to have waived~~ any defense of sovereign immunity or ~~increase to have increased~~ the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the amounts specified in paragraph (a) ~~\$200,000 or \$300,000 waiver provided above.~~

(c) The limitations of liability set forth in this subsection ~~shall~~ apply to the state and its agencies and



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subdivisions whether or not the state or its agencies or
subdivisions possessed sovereign immunity before July 1, 1974.

(d) ~~(b)~~ A municipality has a duty to allow the municipal law
enforcement agency to respond appropriately to protect persons
and property during a riot or an unlawful assembly based on the
availability of adequate equipment to its municipal law
enforcement officers and relevant state and federal laws. If the
governing body of a municipality or a person authorized by the
governing body of the municipality breaches that duty, the
municipality is civilly liable for any damages, including
damages arising from personal injury, wrongful death, or
property damages proximately caused by the municipality's breach
of duty. The sovereign immunity recovery limits in paragraph (a)
do not apply to an action under this paragraph.

(6) (a) An action may not be instituted on a claim against
the state or one of its agencies or subdivisions unless the
claimant presents the claim in writing to the appropriate
agency, and also, except as to any claim against a municipality,
county, or the Florida Space Authority, presents such claim in
writing to the Department of Financial Services, within 3 years
after such claim accrues and the Department of Financial
Services or the appropriate agency denies the claim in writing;
except that, if:

1. Such claim is for contribution pursuant to s. 768.31, it
must be so presented within 6 months after the judgment against
the tortfeasor seeking contribution has become final by lapse of
time for appeal or after appellate review or, if there is no
such judgment, within 6 months after the tortfeasor seeking
contribution has either discharged the common liability by



801476

99 payment or agreed, while the action is pending against her or
100 him, to discharge the common liability; ~~or~~

101 2. Such action is for wrongful death, the claimant must
102 present the claim in writing to the Department of Financial
103 Services within 2 years after the claim accrues; or

104 3. Such action arises from a violation of s. 794.011
105 involving a victim who was younger than the age of 16 at the
106 time of the act, the claimant may present the claim in writing
107 at any time pursuant to s. 95.11(9).

108 (14) Every claim against the state or one of its agencies
109 or subdivisions for damages for a negligent or wrongful act or
110 omission pursuant to this section shall be forever barred unless
111 the civil action is commenced by filing a complaint in the court
112 of appropriate jurisdiction within 4 years after such claim
113 accrues; except that:

114 (a) An action for contribution must be commenced within the
115 limitations provided in s. 768.31(4); ~~and~~

116 (b) An action for damages arising from medical malpractice
117 or wrongful death must be commenced within the limitations for
118 such actions in s. 95.11(4); and

119 (c) An action arising from acts constituting a violation of
120 s. 794.011 involving a victim who was younger than the age of 16
121 at the time of the act may be commenced at any time pursuant to
122 s. 95.11(9).

123 Section 2. Sections 45.061, 110.504, 111.071, 163.01,
124 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31,
125 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056,
126 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009,
127 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,



801476

589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295,
944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34,
1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida
Statutes, are reenacted for the purpose of incorporating the
amendments made by this act to s. 768.28, Florida Statutes, in
references thereto.

Section 3. This act applies to claims accruing on or after
October 1, 2022.

Section 4. This act shall take effect October 1, 2022.

===== 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 sovereign immunity; amending s.
768.28, F.S.; increasing the statutory limits on
liability for tort claims against the state and its
agencies and subdivisions; revising exceptions
relating to instituting actions on claims against the
state or one of its agencies and to the statute of
limitations for such claims; reenacting ss. 45.061,
110.504, 111.071, 163.01, 190.043, 213.015, 252.51,
252.89, 252.944, 260.0125, 284.31, 284.38, 322.13,
337.19, 341.302, 373.1395, 375.251, 381.0056, 393.075,
395.1055, 403.706, 409.993, 455.221, 455.32, 456.009,
456.076, 471.038, 472.006, 497.167, 513.118, 548.046,
556.106, 589.19, 723.0611, 760.11, 766.1115, 766.112,
768.1355, 768.295, 944.713, 946.5026, 946.514, 961.06,



801476

157 1002.33, 1002.333, 1002.34, 1002.55, 1002.83, 1002.88,
158 1006.24, and 1006.261, F.S., to incorporate the
159 amendments made to s. 768.28, F.S., in references
160 thereto; providing applicability; providing an
161 effective date.



366398

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (801476)

Delete lines 35 - 37.



845510

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
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The Committee on Rules (Hutson) recommended the following:

Senate Amendment to Amendment (801476) (with title amendment)

Delete lines 53 - 62

and insert:

~~\$300,000, as the case may be; and that~~ portion of the judgment that exceeds these amounts may be reported to the Legislature, and ~~but~~ may be paid in part or in whole ~~only~~ by further act of the Legislature.

(b) Notwithstanding the limited waiver of sovereign immunity provided in paragraph (a), a ~~herein, the state or an~~



845510

~~agency or subdivision of the state thereof~~ may agree, ~~within the~~
~~limits of insurance coverage provided,~~ to settle a claim made or
a judgment rendered against it in excess of the waiver provided
in paragraph (a) without further action by the Legislature., ~~but~~
The state or agency or subdivision thereof

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

And the title is amended as follows:

Delete line 146

and insert:

agencies and subdivisions; revising authorizations
relating to settlements of claims made or judgments
rendered in excess of the sovereign immunity limits;
revising exceptions

By the Committees on Community Affairs; and Judiciary; and
Senator Gruters

578-02848-22

2022974c2

A bill to be entitled

An act relating to sovereign immunity; amending s. 768.28, F.S.; revising the statutory limits on liability for tort claims against the state and its agencies and subdivisions; specifying that only a subdivision of the state may agree to settle a claim made or judgment rendered against it in excess of the limits; prohibiting an insurance policy from conditioning the payment of benefits on the enactment of a claim bill; requiring the Department of Financial Services to adjust the limitations on tort liability every year after a specified date; requiring the department to publish the adjusted limitations on its website; revising exceptions relating to instituting actions on claims against the state or one of its agencies and to the statute of limitations for such claims; providing applicability; reenacting ss. 45.061, 110.504, 111.071, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056, 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, F.S., to incorporate the amendments made to s. 768.28, F.S., in references thereto; providing an effective date.

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

578-02848-22

2022974c2

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

Section 1. Subsection (5), paragraph (a) of subsection (6), and subsection (14) of section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.—

(5) (a) The state and its agencies and subdivisions are ~~shall be~~ liable for tort claims in the same manner and to the same extent as a private individual under like circumstances, but liability does ~~shall~~ not include punitive damages or interest for the period before judgment. ~~Neither~~ The state, ~~nor~~ its agencies, and its ~~or~~ subdivisions are not ~~shall be~~ liable to pay a claim or a judgment by any one person which exceeds the sum of \$1 million ~~\$200,000~~ or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of \$3 million ~~\$300,000~~. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this ~~section~~ act up to \$1 million or \$3 million, as applicable. ~~The \$200,000 or \$300,000, as the case may be, and that~~ portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature.

(b) Notwithstanding the limited waiver of sovereign immunity provided in paragraph (a), a ~~herein, the state or an~~

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

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59 ~~agency or subdivision of the state thereof~~ may agree, ~~within the~~
 60 ~~limits of insurance coverage provided,~~ to settle a claim made or
 61 a judgment rendered against it in excess of the waiver provided
 62 in paragraph (a) without further action by the Legislature, ~~but~~
 63 The state or an agency or a subdivision thereof ~~may shall~~ not be
 64 deemed to have waived any defense of sovereign immunity or to
 65 have increased the limits of its liability as a result of its
 66 obtaining insurance coverage for tortious acts in excess of the
 67 ~~\$200,000 or \$300,000~~ waiver provided in paragraph (a) above. An
 68 insurance policy may not condition the payment of benefits, in
 69 whole or in part, on the enactment of a claim bill.

70 (c) The limitations of liability set forth in this
 71 subsection ~~shall~~ apply to the state and its agencies and
 72 subdivisions whether or not the state or its agencies or
 73 subdivisions possessed sovereign immunity before July 1, 1974.

74 (d) Beginning January 1, 2023, and on January 1 every 10
 75 years thereafter, the Department of Financial Services shall
 76 adjust the limitations of liability in this subsection, rounded
 77 to the nearest \$10,000, to reflect changes in the Consumer Price
 78 Index for the Southeast or a successor index as calculated by
 79 the United States Department of Labor. After each adjustment,
 80 the department must publish the adjusted liability limitation
 81 amounts on its website.

82 (e) (b) A municipality has a duty to allow the municipal law
 83 enforcement agency to respond appropriately to protect persons
 84 and property during a riot or an unlawful assembly based on the
 85 availability of adequate equipment to its municipal law
 86 enforcement officers and relevant state and federal laws. If the
 87 governing body of a municipality or a person authorized by the

578-02848-22

2022974c2

88 governing body of the municipality breaches that duty, the
 89 municipality is civilly liable for any damages, including
 90 damages arising from personal injury, wrongful death, or
 91 property damages proximately caused by the municipality's breach
 92 of duty. The sovereign immunity recovery limits in paragraph (a)
 93 do not apply to an action under this paragraph.

94 (6) (a) An action may not be instituted on a claim against
 95 the state or one of its agencies or subdivisions unless the
 96 claimant presents the claim in writing to the appropriate
 97 agency, and also, except as to any claim against a municipality,
 98 county, or the Florida Space Authority, presents such claim in
 99 writing to the Department of Financial Services, within 3 years
 100 after such claim accrues and the Department of Financial
 101 Services or the appropriate agency denies the claim in writing;
 102 except that, if:

103 1. Such claim is for contribution pursuant to s. 768.31, it
 104 must be so presented within 6 months after the judgment against
 105 the tortfeasor seeking contribution has become final by lapse of
 106 time for appeal or after appellate review or, if there is no
 107 such judgment, within 6 months after the tortfeasor seeking
 108 contribution has either discharged the common liability by
 109 payment or agreed, while the action is pending against her or
 110 him, to discharge the common liability; ~~or~~

111 2. Such action is for wrongful death, the claimant must
 112 present the claim in writing to the Department of Financial
 113 Services within 2 years after the claim accrues; or

114 3. Such action arises from a violation of s. 794.011
 115 involving a victim who was younger than the age of 16 at the
 116 time of the act, the claimant may present the claim in writing

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2022974c2

at any time pursuant to s. 95.11(9).

(14) Every claim against the state or one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after such claim accrues; except that:

(a) An action for contribution must be commenced within the limitations provided in s. 768.31(4); ~~and~~

(b) An action for damages arising from medical malpractice or wrongful death must be commenced within the limitations for such actions in s. 95.11(4); and

(c) An action arising from acts constituting a violation of s. 794.011 involving a victim who was younger than the age of 16 at the time of the act may be commenced at any time pursuant to s. 95.11(9). This paragraph applies only to claims that would not have been time barred on or before July 1, 2010, under s. 95.11(9).

Section 2. Sections 45.061, 110.504, 111.071, 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38, 322.13, 337.19, 341.302, 373.1395, 375.251, 381.0056, 393.075, 395.1055, 403.706, 409.993, 455.221, 455.32, 456.009, 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106, 589.19, 723.0611, 760.11, 766.1115, 766.112, 768.1355, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333, 1002.34, 1002.55, 1002.83, 1002.88, 1006.24, and 1006.261, Florida Statutes, are reenacted for the purpose of incorporating the amendments made by this act to s. 768.28, Florida Statutes, in references thereto.

Page 5 of 6

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

578-02848-22

2022974c2

Section 3. This act shall take effect October 1, 2022.

Page 6 of 6

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 17, 2022

I respectfully request that **Senate Bill #974**, relating to Sovereign Immunity, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Problem Addressed:

Increases the limits of the state's waiver of sovereign immunity.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: John B. Phelps, Staff Director
Tom Yeatman, Deputy Staff Director
Cynthia Futch, Committee Administrative Assistant

Feb. 23, 2022

Meeting Date

Rules

Committee

Name **William Cotterall**

Address **218 S. Monroe St.**
Street

Tallahassee
City

FL
State

32301
Zip

Phone **850-224-9403**

Email **wcotterall@myfja.org**

The Florida Senate
APPEARANCE RECORD

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

CS/CS/SB 974

Bill Number or Topic

366398

Amendment Barcode (if applicable)

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 Justice 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)

Feb. 23, 2022

Meeting Date

Rules

Committee

Name

William Cotterall

Phone

850-224-9403

Address

218 S. Monroe St.

Email

wcotterall@myfja.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:

Florida Justice 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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

CS/CS/SB 974

Bill Number or Topic

845510

Amendment Barcode (if applicable)

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2-23-22

Meeting Date

Rules

Committee

The Florida Senate

APPEARANCE RECORD

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SB 974

801476

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

Chris Doolin

Phone

850-508-5492

Address

1018 Thomasville Road 102B

Email

cdoolin@doolinand
9550C.

Street

Tallah.

Fla

3230

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:

SMALL COUNTIES & SMALL SCHOOL DISTRICTS

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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2-23-22

Meeting Date

Rules

Committee

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name Darryl Taylor

Phone 950-674-5927 Ext 28

Address 20859 Central Ave E Rm G-20

Email darryl.taylor@BlounttownFL
Schools.org

Blountstown

City

FL

State

32424

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

2/23/22

Meeting Date

974

Bill Number or Topic

Deliver both copies of this form to
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801476

Amendment Barcode (if applicable)

Committee

Name Cameron Carstus

Phone 314-517-8937

Address 8195 Charming Forest

Email ccarstus86@gmail.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:

☐ 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

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2/23/22

Meeting Date

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Committee

Name

Kyle Peodie, Superintendent

Address

Liberty County School District

Street

Bristol

City

FL

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)

The Florida Senate

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2-23-22

Meeting Date

Rules

Committee

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

Brian Morgan

Phone

850-547-9341

Address

701 E Pennsylvania

Email

Brian.Morgan@HDSB.org

Street

Bonifay

FL

32425

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)

2/23/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

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974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Committee

Name

Hunter Nolen

Phone

850-482-1200

Address

2903 Jefferson Street

Email

hunter.nolen@jcsb.org

Street

Marianna

City

FL

State

32446

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

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2-23-22

Meeting Date

Rules

Committee

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

Mickey Hudson

Phone

880-638-6131

Address

753 West Blvd

Email

mickey.hudson@paec.org

Street

Chipley

City

FL

State

32428

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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Bill Number or Topic

801476

Amendment Barcode (if applicable)

2/23/22

Meeting Date

Committee

Name

Kyle Newsom

Phone

850-~~20~~638-6222

Address

652 Third St

Email

Kyle.newsom@uscschools.com

Street

Chipley

City

FL

State

32428

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

Deliver both copies of this form to
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2/23/22

Meeting Date

Rules

Committee

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

Bob Harris

Phone

850-272-0720

Address

2618 Centennial Place

Email

bharris@lawfla.com

Street

TLH

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:

Panhandle Area
Educational Consortium



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)

2/23/2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Committee

Name Shannon Venable

Phone _____

Address 85 School Road
Street

Email svenable@franklincountyschools.org

Eastpoint
City

FL
State

32328
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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2/23/2022

Meeting Date

Rules

Committee

974

~~801476~~

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

Eydie Tricquet

Phone

850-342-0100

Address

1490 W. Washington Street

Email

eydie.tricquet@jeffersonschool.edu

Street

Monticello

City

FL

State

32344

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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2/23/22

Meeting Date

974

Bill Number or Topic

Rules

Committee

801476

Amendment Barcode (if applicable)

Name

Brian Moore

Phone

850-459-1600

Address

208 S. Monroe St.

Email

bmoore@fadss.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:

Florida Association
of District School Superintendents
(FADSS)

☐

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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2/23/22

Meeting Date

Rules

Committee

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

David Cruz

Phone

701-3076

Address

P.O. Box 1757

Email

DCruz@fccities.com

Street

Tallahassee

FL

32302

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 League of Cities

☐

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

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

02/29/2022

Meeting Date

Rules

Committee

CS/CS/57974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name MICHAEL BEEDIE

Phone (950) 461-2687

Address 107 MIRACLE STRIP PARK SU
Street

Email MBEEDIE@FWB.ORG

FORT WALTON BEACH FL

City

State

32548

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)

02/23/2022

Meeting Date

Rules

Committee

Name

Edward G. Labrador

Address

100 S. Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

The Florida Senate

APPEARANCE RECORD

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

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Phone

(850) 922-4300

Email

elabrador@fl-counties.com

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:

FL Association of Counties



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)

2/23/22

Meeting Date

Rules

Committee

The Florida Senate

APPEARANCE RECORD

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

SB 974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

Jessica Janasiewicz

Heartland
Education
consortium

Phone

850-567-7174

Address

119 S. Monroe St. suite 202

Email

jessica@rutledge-ecenia.com

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:

☐

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

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

2.23.2022

Meeting Date

Rules

Committee

974

Bill Number or Topic

801476

Amendment Barcode (if applicable)

Name

William Lerge

Phone

850 509 0756

Address

210 South Monroe St.

Email

william@fljustice.org

Street

Tallahassee

FL.

323-1

City

State

Zip

Speaking:

☐ For



☐ 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 Justice Reform
Institute



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

SB 994

2-23-22

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

Chris Doolin

Phone

850-508-5492

Address

1018 Thomasville Rd 102B

Email

cdoolin@doolinandassoc.com

Street

Tall

City

Fla.

State

32303

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:

Small Counties & Small School Districts

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)

2/23/2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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

974

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Shannon Venable

Phone

Address

85 School Road

Email

svenable@franklincountyschools.org

Street

Eastpoint

FL

32328

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)

2/23/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

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

974

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Kyle Newsom

Phone

850-638-6222

Address

652 Third St

Email

Kyle.newsom@uxschools.com

Street

Chipley

City

FL

State

32428

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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2/23/22

Meeting Date

Ruler

Committee

974

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Bob Harris

Phone

222-0720 (850)

Address

2418 Centennial Place

Email

bharris@lawfls.com

Street

FL

City

State

32308

Zip

indicated support to Chair

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:

Panhandle Area
Educational Consortium

☐

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

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

2/23/22

Meeting Date

Rules

Committee

974

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Kyle Peddie, Superintendent

Phone

Address

Liberty County School District

Street

Bristol

City

FL

State

32305

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

indicated support to Chair

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

Deliver both copies of this form to
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2/23/22

Meeting Date

974

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Cameron Carstens

Phone 314-517-8937

Address 8195 Charrington Forest Blvd.
Street

Email ccarstens86@gmail.com

Tallahassee FL 32312
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

indicated support to Chair

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

2-23-22

Meeting Date

974

Bill Number or Topic

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

Rules

Committee

Amendment Barcode (if applicable)

Name

Darryl Taylor

Phone

850-674-5927 Ext 28

Address

20559 Central Ave E Rm-G-20

Email

darryl.taylor@calhounflschools.org

Street

Blountstown

FL

32424

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☒

Against

indicated support to Chair

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

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Phone

Address

Street

City

State

Zip

Email

indicated support to Chair

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)

2/23/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

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

974

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Hunter Nolen

Phone

850-482-1200

Address

2903 Jefferson Street

Email

hunter.nolen@josh.org

Street

Marianna

City

FL

State

92446

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☒

Against

indicated support to Chair

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

974

Bill Number or Topic

2-23-22

Meeting Date

Rules

Committee

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

Amendment Barcode (if applicable)

Name

Mickey Hudson

Phone

850-638-6131

Address

753 West Blvd

Email

mickey.hudson@paec.org

Street

Chipley

City

FL

State

32428

Zip



indicated support to Chair

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

2/23/2022

Meeting Date

Rules Committee

Committee

974

Bill Number or Topic

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

Amendment Barcode (if applicable)

Name Eydie Tricquet

Phone 850-345-0100

Address 1490 W. Washington

Email eydie.tricquet@jeffersonschooldistrict.org

Monticello

FL

32344

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☐ In Support ☒ Against

indicated support to Chair

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)

2/23/2022

Meeting Date

Rules

Committee

The Florida Senate
APPEARANCE RECORD

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

SB 974

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Devon West

Phone

954-789-9293

Address

100 S. Andrews Ave.

Email

dewest@broward.org

Street

Ft. Lauderdale, FL 33301

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:

Broward County

☐

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)

02.23.22

Meeting Date

APPEARANCE RECORD

974

Bill Number or Topic

Rules

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

Committee

Amendment Barcode (if applicable)

Name

William Large

Phone

850-222-0170

Address

210 South Monroe Street

Email

William@fljustice.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:

Florida Justice Reform Institute

☐ 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

SB 974

Bill Number or Topic

2/23/22

Meeting Date

Rules

Committee

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

Amendment Barcode (if applicable)

Name

Adi B.

Phone

Address

1581 La Maderia Dr. SW

Email

Street

Palm Bay

FL

32908

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.

**This information was not
read into the record by the Chair**

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/SB 1016

INTRODUCER: Banking and Insurance Committee, and Senator Burgess

SUBJECT: Mortgage Payoff Letters

DATE: February 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	Fav/CS
2.	<u>Schrader</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1016, makes significant revisions to Florida law regarding estoppel letters provided by mortgagees and mortgage servicers under ch. 701, Florida Statutes (F.S.). Specifically, SB 1016:

- Reduces from 14 days to 10 days the timeframe during which a mortgagee or mortgage servicer must respond to an estoppel letter request.
- Allows mortgagees and mortgage servicers to send corrected estoppel letters which supersede previous letters, subject to specified conditions.
- 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.
- Specifies that within 60 days after the mortgage loan has been paid pursuant to the estoppel letter, the mortgagee or mortgage servicer must execute 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. 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.
- Revises the definition of an estoppel letter.
- Provides for retroactive application to existing mortgage contracts.

The effective date of the bill is October 1, 2022.

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.¹ 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, home owners association fees, and outstanding claims or deposits due to tenants. These types of letters are often sought prior to closing on a real estate transaction as part of due diligence to confirm proper amounts due that can affect the settlement of said transaction.

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).² 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.³ 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. 701.04(s), F.S., specifically states that a homeowners' association "waives the right to collect any moneys owed

¹ *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).

² 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.

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

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." Sections 718.116(8)(c), and 719.108(6)(c), F.S., provide similar language regarding estoppel certificates for any unpaid condominium association assessments and unpaid rents, and assessments due to cooperatives (i.e. co-ops), respectively.⁴ A mortgagee is not 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.⁵

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."
- "All payoff figures are subject to final verification of the mortgage lender. We may adjust any portion of this payoff statement, at any time, for the following reasons, including but not limited to: escrow disbursements made on behalf of the loan holder(s), fee advances, items returned by your financial institution including previously made payments, additional fees or charges, and any good faith and/or inadvertent clerical errors."
- "We will not be bound by errors and/or omissions contained herein."
- "Agent hereby reserves the right to adjust Payoff Amount or the Per Diem Amount in the event that we discover a mathematical, typographical, bookkeeping or clerical error."
- "Borrower forever releases and discharges Agent, the Lenders, and their respective officers, directors, employees, agents, representatives, successors and assigns...from any and all claims, causes of action, damages and liabilities of any nature whatsoever, known or unknown, which such person ever had, now has or might hereafter have

⁴ Section 701.116(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 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."

⁵ *But see, Rissman on Behalf of Rissman Inv. Co. v. Kilbourne*, 643 So. 2d 1136, 1139 (Fla. 1st DCA 1994), where the 1st 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.

against [the parties] which relates, directly or indirectly, to any of the Loan Documents or the Loan.”⁶

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.⁷

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.⁸ 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.”⁹ The Court further acknowledged that their previous pronouncements regarding the retroactivity of procedural laws have been less than precise and have been unclear.¹⁰

Courts, however, have invalidated the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties.¹¹ 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.¹² Florida’s contracts clause states that “no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.”¹³ Regarding the impairment of an existing contract by the retroactive application of a statute, the Supreme Court, in *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 780 (Fla. 1979) stated that it is a “well-accepted principle that

⁶ See Email from Melissa Murphy, Executive Vice President, Chief Legal Officer & General Counsel, The Fund (Feb. 4, 2022, 11:46 EST) (on file with the Senate Banking and Insurance Committee), which provided samples of escrow letters that were sent to Florida borrowers.

⁷ *Id.*

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

⁹ *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).

¹⁰ *Love*, *supra* note **Error! Bookmark not defined.** at 184.

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

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

¹³ Art. I, s. 10, Fla. Const.

virtually no degree of contract impairment is tolerable.” However, the *Pomponio* court did state that such a principle does allow for some impairment. In determining the degree to which such impairment is tolerable, the court weighed “the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy.” Essentially, the court established a balancing test asking “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.”

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;¹⁴
- 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 from an estoppel letter must be sent to the mortgagee or mortgage servicer, 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 said 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.¹⁵

¹⁴ 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.

¹⁵ 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.

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). Such letters 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.

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.¹⁶ 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 also bill 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 and have the instrument acknowledged, or proven, 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.¹⁷

¹⁶ Any attempt to do so is void and unenforceable under the provisions of the bill.

¹⁷ 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 they can attempt to collect from the borrower or their successors or assigns.

Finally, the section makes conforming changes to provisions involving the cancellation of liens and judgments under the section.

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 an effective date of October 1, 2022, and also states that the provisions of the bill apply to all mortgages existing as of that date and entered into on or after that date, as well as to all loans secured by such mortgages.

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 mortgage contracts. Though the bill does clearly state the Legislature’s intention that the bill’s provisions be retroactively applied, and gives the justifications for doing so, it is unclear whether such justifications would satisfy the balancing test adopted by the Florida Supreme Court in *Pomponio*.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will likely lead to fewer irregularities in real estate closings since the bill creates additional incentive for the mortgagee or mortgage servicer to provide accurate information in estoppel letters. In regards to consumers, the bill will prevent the accrual of interest and potential fees while the mortgagee or mortgage servicer and the mortgagor work through any dispute regarding funds due to the mortgagee or mortgage servicer over and above that provided in the estoppel letter. The bill will also likely reduce issues with titles during the pendency of such disputes by requiring the mortgagee or mortgage servicer to deem such mortgage satisfied.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Proposed s. 701.04(2)(b), F.S., authorizes a lender, under certain conditions and after the satisfaction of a mortgage, to seek recovery of a shortfall from the mortgagor, or the mortgagor's successors or assigns. However, if the mortgage has been satisfied, it is unclear who the mortgagor's assigns would be, at least in regards to the property subject to the satisfied mortgage.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 701.04 and 701.041 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 Banking and Insurance on February 8, 2022:**

The committee substitute:

- Clarifies that a mortgage servicer may send the estoppel letter required by s. 701.04, F.S.
- Requires the mortgagee or mortgage servicer to notify a mortgagor of an estoppel letter request when such request is not made by the mortgagor.
- Revises the information that must be included in an estoppel letter.
- Excepts mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded, from a prohibition that a mortgagee or mortgage servicer may not qualify, reserve the right to change, or condition or disclaim the reliance of others on an estoppel letter said mortgagee or mortgagor has sent.
- Revises certain rights and defenses of parties relating to estoppel letters.

- Revises the timeframe by which a corrected estoppel letter may be received by the mortgagor in order for such correction to be effective.
- Revises the requirements of the provision in the bill which specify that a mortgagee or mortgage servicer must accept a payment made in compliance with an effective estoppel letter and must apply such payment to the balance of the mortgage.
- Revises the requirements for sending a request for an estoppel letter and when such letter has is deemed received.
- Revises how, and the deadline for when, an estoppel letter is sent by a mortgagee or mortgage servicer.
- Clarifies recording requirements for satisfaction of mortgages.
- Revises an attorney fee provision to make it only apply to actions regarding mortgages instead of mortgages, liens, and judgments.
- Revises the definition of “estoppel letter.”
- Makes technical changes..

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Burgess

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A bill to be entitled

An act relating to mortgage payoff letters; amending s. 701.04, F.S.; revising the timeframe within which a mortgagee or mortgage servicer must send or cause to be sent an estoppel letter containing specified information; revising the circumstances under which a copy of the instrument showing title in the property or other lawful authorization must be included in a request for an estoppel letter; 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; authorizing the mortgagee or mortgage servicer to send a corrected estoppel letter under certain circumstances; providing that a corrected estoppel letter supersedes any previous estoppel letter under certain circumstances; prohibiting the mortgagee or mortgage servicer from denying the accuracy of certain information provided in an estoppel letter under certain circumstances; providing construction; 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; providing methods for sending a written request for an estoppel letter and for sending an estoppel letter; providing that the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service; requiring the mortgagee or

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mortgage servicer to take certain actions within a specified time after the unpaid balance of a loan properly secured by a mortgage has been fully paid or paid pursuant to an estoppel letter; authorizing reasonable attorney fees and costs; providing that certain persons may still be personally liable after the recording of a release of a mortgage; amending s. 701.041, F.S.; revising the definition of the term "estoppel letter"; conforming provisions to changes made by the act; providing legislative findings; providing for retroactive applicability; providing an effective date.

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

Section 1. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) (a) Within 10 ~~14~~ days after receipt of the written request of a mortgagor, 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, the ~~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,

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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, 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~~

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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.

2. If the person who requested the original estoppel letter under subparagraph (f) 1. 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 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 that 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

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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;

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. falls on a Saturday, Sunday, or legal holiday under the laws of this state or the United States, the request for an estoppel letter is considered timely received by

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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; 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 legal holiday under the laws of this state or 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~~.

(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

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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 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 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.

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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 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

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233 further finds that estoppel letters increasingly contain
234 conditional language disclaiming the ability of an owner to rely
235 on the stated loan payoff amounts, extending even to the return
236 of such payments submitted by owners, creating unnecessary
237 delays in the efficient operation of this state's real estate
238 market, which is a vital economic contributor to this state, and
239 imposing needless costs and burdens on property owners and
240 buyers. In addition, the Legislature finds that real estate
241 lending, mortgages, real estate transactions, and estoppel
242 letters are extensively regulated under both Florida and federal
243 law. The Legislature finds and determines that this act makes
244 changes to state law that appropriately balance the parties'
245 interests, are reasonable and necessary to serve and achieve an
246 important state interest, are necessary for the prosperity and
247 welfare of the state and its property owners and inhabitants,
248 and must be applied to existing mortgages in order to provide
249 effective relief.

250 Section 4. This act shall take effect October 1, 2022, and
251 applies to all mortgages existing as of that date and entered
252 into on or after that date, as well as to all loans secured by
253 such mortgages.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 15, 2022

I respectfully request that **Senate Bill # 1016**, relating to Mortgage Payoff Letters, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Danny", is written above a horizontal line.

Senator Danny Burgess
Florida Senate, District 20

Feb. 23, 2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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

SB 1016

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name **Warren Husband**

Phone **(850) 205-9000**

Address **PO Box 10909**

Street

Email

Tallahassee

FL

32302

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:

**Attorneys' Title Fund Services,
LLC**

☐ 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

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2-23-22

Meeting Date

Rules

Committee

SB 1016

Bill Number or Topic

Amendment Barcode (if applicable)

Name

DAVID DANIEL

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For

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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:

Agents Section -

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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

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2-23-22

Meeting Date

Rules

Committee

1016

Bill Number or Topic

Amendment Barcode (if applicable)

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State

32303

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:

Old Republic Title

☐

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/SB 1026

INTRODUCER: Banking and Insurance Committee, and Senator Cruz

SUBJECT: Living Organ Donors in Insurance Policies

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Schrader	Knudson	BI	FAV/CS
2. Rossitto-Van Winkle	Brown	HP	Favorable
3. Schrader	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1026 creates s. 626.97075, F.S., which revises Florida's Unfair Insurance Trade Practices law¹ and several parts of Florida's Insurance Rates and Contracts law.² The bill makes it unlawful to discriminate against living organ donors in specific types of insurance coverage. The insurance types impacted by the bill are: life insurance, including industrial life insurance³ and group life insurance;⁴ credit life insurance and credit disability insurance;⁵ and long-term care insurance.⁶

¹ Part IX, ch. 626, F.S.

² Chapter 627, F.S.

³ Section 627.502, F.S. defines industrial life insurance as that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words "industrial policy" or "weekly premium policy" or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

⁴ Group life insurance is a type of life insurance policy insuring the lives of more than one individual. Pursuant to s. 627.551, F.S., groups eligible for such coverage include employee, debtor, labor union, and trustee groups, among others.

⁵ Section 627.677, F.S., defines "credit life insurance" as insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction and defines "credit disability insurance as: insurance under which a borrower of money or a purchaser or a lessee of goods is insured in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness.

⁶ Section 627.9404, F.S., defines a "long-term care insurance policy" as an insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

The Florida Office of Insurance Regulation

The Office of Insurance Regulation (OIR) licenses and regulates the activities of life, health, property, and casualty insurers, health maintenance organizations (HMOs), and other risk-bearing entities. The OIR is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.⁷

Organ Donation

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient) to save the life of, or enhance the life of, the organ recipient. Transplantation is generally necessary because the recipient's organ has failed or has been damaged by disease or injury. Transplantable organs include the kidneys, liver, heart, lungs, pancreas and intestine.⁸ Certain tissue is also transplantable and includes skin used as a temporary dressing for burns, serious abrasions and other exposed areas; heart valves used to replace defective valves; tendons used to repair torn ligaments on knees or other joints; veins used in cardiac bypass surgery; corneas used to restore sight; and bone used in orthopedic surgery to facilitate healing of fractures or prevent amputation.⁹

A single person can save up to eight lives through organ donation, and dozens more lives may be improved through tissue donation. Nearly 120,000 children and adults are presently awaiting potentially life-saving organ transplants and every day 22 people die awaiting organ transplant.¹⁰ While most organ and tissue donations occur after the donor has died, some organs and tissues can be donated while the donor is alive, such as a kidney or part of a liver or lung.¹¹ There are approximately as many living donors every year as there are deceased donors and only about three in every 1,000 people actually become donors—despite 169 million in the United States being registered.¹² According to United Network for Organ Sharing (UNOS), between 2017 and 2021, there were an average of 6,539 living donor transplants per year in the United States.¹³

⁷ Section 20.121(3), F.S.

⁸ Donate Life Florida, *Frequently Asked Questions*, available at <https://www.donateliflorida.org/categories/donation/> (last visited Feb. 2, 2022).

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *How Donation Works*, available at <https://organdonor.gov/about/process.html> (last visited Feb. 2, 2022).

¹² *Id.*

¹³ UNOS, *Living Donation*, available at <https://unos.org/transplant/living-donation/> (last visited Feb. 2, 2022).

Organ Donation, Procurement, and Transplant Process

Established by the National Organ Transplant Act (NOTA) of 1984, the Organ Procurement and Transplantation Network (OPTN) is a public-private partnership that links all professionals involved in the nation's donation and transplant system.¹⁴ The UNOS, a private, non-profit organization serves as the OPTN under contract with the U.S. Department of Health and Human Services.¹⁵ UNOS coordinates how donor organs are matched and allocated to patients on the waiting list.¹⁶ Non-profit, federally designated organ procurement organizations (OPOs) work closely with UNOS, hospitals, and transplant centers to facilitate the organ donation and transplantation process.¹⁷

Potential Financial Impacts Relating to Organ Donation

The buying and selling of organs is unlawful under the National Organ Transplant Act of 1984.¹⁸ However, certain organ donor expenses relating to transplant may be paid for by the recipient (or their insurer). Generally, an organ donor and their family are not charged for the medical care required to donate an organ.¹⁹ Costs related to living or deceased donation are paid by the recipient, usually through insurance.²⁰ Typically, any cost that falls outside of the transplant center's donor evaluation or actual surgery, such as travel, lodging, lost wages, and other non-medical expenses, is borne by the living donor or recipient.²¹ In addition, treatment for conditions discovered during the evaluation portion of the donation process and some post-donation follow-up expenses are not covered. UNOS also warns potential donors that "living donation may have a negative impact on the ability to obtain, maintain, or afford health, disability and life insurance."²²

Obtaining and Affording Insurance

In 2014, the *American Journal of Transplantation* published a study of 1,046 donors who underwent living kidney donation at Johns Hopkins Hospital. Of these donors, 25 percent of those who reporting attempting to obtain new or revise life insurance policies post-procedure reported difficulty in doing so. The difficulties reported included outright denials in obtaining coverage, higher premiums, and the notation of a pre-existing condition relating to the kidney donation. The same survey also noted that of the surveyed donors who reported attempting to

¹⁴ U.S. Department of Health and Human Services, *Organ Procurement and Transplantation Network – About the OPTN*, available at <https://optn.transplant.hrsa.gov/governance/about-the-optn/> (last visited Feb. 2, 2022).

¹⁵ *Id.* and About UNOS, *Who we are*, available at <https://unos.org/about/> (last visited Feb. 2, 2022).

¹⁶ U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *The Organ Transplant Process*, available at <https://organdonor.gov/about/process/transplant-process.html> (last visited Feb. 2, 2022).

¹⁷ Donate Life Florida, *Organ Procurement Organizations and Transplant Centers*, available at <https://www.donateliflorida.org/local-resources/transplant-centers/> (last visited Feb. 2, 2022).

¹⁸ National Organ Transplant Act, 42 U.S.C. s. 274.

¹⁹ Health Resources Services Administration, *Organ Donation Frequently Asked Questions*, available at <https://www.organdonor.gov/learn/faq> (last visited Jan. 13, 2022).

²⁰ *Id.*

²¹ UNOS, *Living Donation Costs*, available at <https://transplantliving.org/financing-a-transplant/living-donation-costs/> (last visited Feb. 2, 2022).

²² *Id.*

obtain new or revise health insurance policies post-procedure, 7 percent reported difficulties in doing so.²³

Another study, also published in the *American Journal of Transplantation* (in 2007), which reviewed 23 different studies over a 35-year period, concluded that a significant number of living kidney donors do encounter difficulties in obtaining or maintaining insurance (with anywhere between 3 to 11 percent of those surveyed reporting difficulties). That same study also found that insurability issues caused significant stress for between 11 and 13 percent of kidney donors and that “insurability may negatively influence one’s decision to become a living organ donor.”²⁴ This same study also found that these insurability issues are not isolated to kidney donors.²⁵ The National Kidney Foundation also advises potential donors, in accessing the risk of donation, that “some donors have reported difficulty in getting, affording, or keeping disability or life insurance.”

There is some evidence that these increased difficulties and costs in obtaining life insurance is not always based on the actual additional loss risk that organ donation presents. A 2015 study of living kidney donors found that such donation “does not appear to increase long-term mortality compared with controls;” however, the study did advise that it was limited in scope and more research was needed.²⁶ A study of living kidney donors in Korea, published in 2019, found that, “the risk of all-cause mortality was comparable between live kidney donors and matched non-donor healthy controls with similar health status.”²⁷ A 2012 study of live liver donors found that while 90-day mortality rates were elevated for such donors, the rates of long-term mortality were essentially the same for live liver donors, for live kidney donors, and for healthy controls.²⁸

III. Effect of Proposed Changes:

CS/SB 1026 creates s. 626.97075, F.S., within Florida’s Unfair Trade Practices law (part IX of ch. 626). The section creates a definition of “policy” as a life insurance policy, including those for industrial life insurance and group life insurance; a credit life insurance and credit disability insurance policy; and a long-term care insurance policy. The section specifies that an insurer may not, in a policy, as defined by the section:

- Decline or limit coverage of a person solely due to that person’s status as a living organ donor;

²³ B.J. Boyarsky, et al, *Experiences Obtaining Insurance After Live Kidney Donation*, 14(9) AM J TRANSPLANT. 2168-72 (2014), available at https://www.researchgate.net/publication/263969706_Experiences_Obtaining_Insurance_After_Live_Kidney_Donation, (last visited Feb. 2, 2022).

²⁴ R.C. Yang, et al, *Insurability of Living Organ Donors: A Systematic Review*, 7(6) AM J TRANSPLANT. 1547-48 (2007), available at <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1600-6143.2007.01793.x> (last visited Feb. 2, 2022).

²⁵ Id. and Nissing MH & Hayashi PH, *Right hepatic lobe donation adversely affects donor life insurability up to one year after donation*, 11 LIVER TRANSPL 843–847 (2005), available at <https://aasldpubs.onlinelibrary.wiley.com/doi/pdfdirect/10.1002/lt.20411> (last visited Feb. 2, 2022).

²⁶ K.L. Lentine & A. Patel, *Risks and outcomes of living donation*, 19(4) ADV CHRONIC KIDNEY DIS. 220-8 (2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4447489/> (last visited Feb. 2, 2022).

²⁷ Y. Kim, et al, *Long-term Mortality Risks Among Living Kidney Donors in Korea*. 75(6) Am J Kidney Dis. 925 (2019), available at [https://www.ajkd.org/article/S0272-6386\(19\)31104-7/fulltext](https://www.ajkd.org/article/S0272-6386(19)31104-7/fulltext) (last visited Feb. 2, 2022).

²⁸ A.D. Muzaale, et al, *Estimates of early death, acute liver failure, and long-term mortality among live liver donors*, 142(2) Gastroenterology 273-80 (2012), available at [https://www.gastrojournal.org/article/S0016-5085\(11\)01576-9/pdf](https://www.gastrojournal.org/article/S0016-5085(11)01576-9/pdf) (last visited Feb. 2, 2022).

- Preclude an insured person from donating all, or part of, an organ as a condition to continuing to receive coverage under that person's insurance policy; or
- Otherwise discriminate in the offering, issuance, cancellation, coverage, premium, or any other condition of a person's policy without any additional actuarial risk, and based solely on that person's status as a living organ donor.

The bill also grants the FSC the authority to adopt rules and enforce these prohibitions.

Section 626.9521, F.S., specifies penalties for violations of part IX of ch. 626, F.S. A violation of s. 626.97075, F.S., as created by the bill, would subject a person to a fine of up to \$5,000 for each nonwillful violation and up to \$40,000 for each willful violation. Insurers violating the proposed section may be fined an aggregate amount of up to \$20,000 for all nonwillful violations arising out of the same action or an aggregate amount of up to \$200,000 for all willful violations arising out of the same action. These specified fines may be imposed in addition to any specified penalty elsewhere in law.

The bill provides an effective date of July 1, 2022.

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:

Passage of this bill should have minimal fiscal impact on insurers. Given the apparent minimal to no impact on long term mortality for the living donation of organs, the passage of this bill should have little impact on risk carried by insurers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 626.97075 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 Banking and Insurance on January 18, 2022:**

The CS deletes all provisions in SB 1026 relating to health insurance; group, blanket, and franchise health insurance; health maintenance contracts provided by health maintenance organizations; and prepaid health contracts. The CS also deletes redundant portions of the underlying bill which placed into individual insurance chapters the prohibitions specified in Section 1 of the bill (which creates a new section under Florida's Unfair Insurance Trade Practices law).

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Cruz

597-02089-22

20221026c1

A bill to be entitled

An act relating to living organ donors in insurance policies; creating s. 626.97075, F.S.; defining the term "policy"; prohibiting insurers under specified policies from declining or limiting coverages and discriminating against persons based solely on their status as living organ donors, and from precluding insureds from donating organs; authorizing the Financial Services Commission to adopt rules and take actions to enforce specified laws; providing an effective date.

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

Section 1. Section 626.97075, Florida Statutes, is created to read:

626.97075 Life insurance, disability insurance, and long-term care insurance; discrimination against living organ donors prohibited.—

(1) As used in this section, the term "policy" means any of the following:

(a) An individual or group life insurance policy.

(b) An industrial life insurance policy, as the term "industrial life insurance" is defined in s. 627.502(1).

(c) A credit life insurance or credit disability insurance policy, as defined in s. 627.677(1) and (2), respectively.

(d) A long-term care insurance policy as defined in s. 627.9404(1).

(2) Notwithstanding any other law, an insurer may not,

Page 1 of 2

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

597-02089-22

20221026c1

under a policy:

(a) Decline or limit coverage of a person solely due to his or her status as a living organ donor;

(b) Preclude an insured from donating all or part of an organ as a condition to continuing to receive coverage under the policy; or

(c) Otherwise discriminate in the offering, issuance, cancellation, coverage, premium, or any other condition of the policy for a person without any additional actuarial risk and based solely on his or her status as a living organ donor.

(3) The commission may adopt rules and take actions necessary to enforce this section.

Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

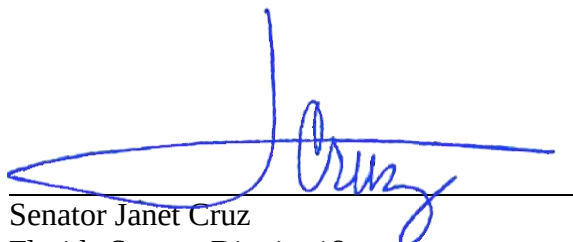
Subject: Committee Agenda Request

Date: February 10, 2022

I respectfully request that **Senate Bill # 1026**, relating to Living Organ Donors in Insurance Policies, be placed on the:

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

SB 1026 seeks to prohibit insurance companies from denying coverage or increasing premiums for living organ donors based solely on their status as a living organ donor.



Senator Janet Cruz
Florida Senate, District 18

The Florida Senate

APPEARANCE RECORD

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

2/23/2022
Meeting Date

CS/SB 1026
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name Bob Reynolds

Phone 850 509-4340

Address P.O. Box 4369

Email RRRASSOCIATES@EARTHlink.NET

Street

TALL. FLA 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:

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

FRESENIUS MEDICAL CARE

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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CS/SB 1026

Bill Number or Topic

2/23/2022

Meeting Date

Committee

Amendment Barcode (if applicable)

Name

LOUIS BETZ

Phone

813-963-2900

Address

P.O. Box 274108

Email

LBETZ@GMAIL.COM

Street

TAMPA, FLA 33688

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:

MORE TRANSPLANTS MORE LIFE, INC

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

Deliver both copies of this form to
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2/23/2022

Meeting Date

Rules

Committee

SB 1026

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Tasha Carter

Phone

(350) 413-2868

Address

200 East Gaines Street

Email

tasha.carter@myfloridacfo.com

Street

Tallahassee, Florida

32399

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:

Office of the Insurance Consumer Advocate

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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2/23/22

Meeting Date

Rules

Committee

1026

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Toni Large

Phone

850-556-1461

Address

1100 Brockwood Dr.

Email

toniclargestrategies.com

Street

Tallahassee, FL

City

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:

☐

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

Florida Society of Nephrology

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

Deliver both copies of this form to
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2/23/22
Meeting Date
Rules
Committee

1026
Bill Number or Topic

Name Ron Watson Phone 850 567-1202
Amendment Barcode (if applicable)

Address 9114 Seafair Lane Email Watson.Strategies@comcast.net
Street
Tallahassee FL 32317
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 Renal Association (FRA)

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.

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: SM 1108

INTRODUCER: Senator Baxley

SUBJECT: China/Forced Organ Harvesting

DATE: February 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Looke	Brown	HP	Favorable
2.	Looke	Phelps	RC	Favorable

I. Summary:

SM 1108 provides whereas clauses and resolves the Legislature of the State of Florida to urge the U.S. President and Congress to condemn the People's Republic of China for its practice of forcibly removing human organs for transplant and to adopt legislation and policies that:

- Prohibit collaboration between the American medical and pharmaceutical companies and any Chinese counterparts linked to forced organ harvesting;
- Ban individuals who have participated in unethical removal of human tissues and organs from entering the U.S.; and
- Provide for prosecution of such individuals.

The memorial specifies that copies be sent to the U.S. President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and to each member of the Florida delegation of Congress.

II. Present Situation:

The Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China

In December of 2018 the Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China (Tribunal) began the first of two public hearings on forced organ harvesting in China, the second of which was held in April of 2019.¹ In the hearings, which were held in London, England, the Tribunal heard evidence from numerous witnesses and experts detailing the practice in China of harvesting organs from prisoners of conscience without consent.² The Tribunal was commissioned by the International Coalition to End Transplant Abuse in China, which is a not-for-profit coalition of lawyers, academics, ethicists, medical professionals,

¹ China Tribunal: Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, available at <https://chinatribunal.com/> (last visited Jan. 20, 2022).

² Id.

researchers, and human rights advocates dedicated to ending what they assert to have been, and to be, the practice of forced organ harvesting in China.³ The Tribunal itself was made up of seven members of the public who were asked to volunteer on the Tribunal due to their diverse backgrounds and expertise.⁴

After the first set of hearings, the Tribunal issued an interim judgement in December of 2018, and then, after the second set of hearings, a short form of the final judgement in June of 2019 and the full final judgement in March of 2020.⁵ The Tribunal states that it considered evidence in many forms pointing to:

- That there were extraordinarily short waiting times (promised by Chinese doctors and hospitals) for organs to be available for transplantation;
- That there was torture of Falun Gong and Uyghurs;
- That there was accumulated numerical evidence (excluding spurious Chinese data) which indicated:
 - The number of transplant operations performed; and
 - The impossibility of there being anything like sufficient ‘eligible donors’ under the recently formed Chinese voluntary donor scheme for that number of transplant operations;
- That there was a massive infrastructure development of facilities and medical personnel for organ transplant operations, often started before any voluntary donor system was even planned; and
- That there was direct and indirect evidence of forced organ harvesting.⁶

The Tribunal also drew the ultimate conclusion that

Forced organ harvesting has been committed for years throughout China on a significant scale and that Falun Gong practitioners have been one – and probably the main – source of organ supply. The concerted persecution and medical testing of the Uyghurs is more recent and it may be that evidence of forced organ harvesting of this group may emerge in due course. The Tribunal has had no evidence that the significant infrastructure associated with China’s transplantation industry has been dismantled and absent a satisfactory explanation as to the source of readily available organs concludes that forced organ harvesting continues till today.⁷

Falun Gong

Falun Gong, also known as Falun Dafa, is an ancient Chinese meditation practice, or gigong, which seeks to nurture the mind and body through the mixture of Buddhist beliefs, slow movements, and martial-art-type exercises, while emphasizing the fundamental principles of

³ Judgement, The Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, 3/1/2020, p. 10, available at https://chinatribunal.com/wp-content/uploads/2020/03/ChinaTribunal_JUDGMENT_1stMarch_2020.pdf (last visited Jan. 20, 2022).

⁴ Id. p. 12 at f.n. 19

⁵ Supra n. 1

⁶ Short Form of the China Tribunal’s Judgement, 6/17/19, available at https://chinatribunal.com/wp-content/uploads/2020/02/China-Tribunal-SHORT-FORM-CONCLUSION_Final.pdf (last visited Jan. 20, 2022).

⁷ Id.

“truth, benevolence, and forbearance.” Literally, “Falun Gong” means “Cultivation of the Wheel of Law,” while “Falun Dafa” translates to “Great Wheel of Buddha’s Law.” Falun Gong was introduced in China in 1992 by Li Hongzhi, one of many gigong masters who sought to gain followers by promoting his own variety of gigong.⁸

Li’s quick success resulted in Falun Gong’s transformation into an international phenomenon, attracting millions of people in over 40 countries. Such widespread popularity has generated concern within the Chinese government. Fearing the potential influence such a popular movement could have within China, the Chinese government has characterized Falun Gong as an evil cult and has carried out an extensive campaign to eliminate the group’s presence from Chinese society.⁹

III. Effect of Proposed Changes:

SM 1108 provides whereas clauses pointing to a number of sources of condemnation of China for forced organ harvesting, as well as indicating that China has systematically persecuted people who follow Falun Gong. Based on the findings indicated by the whereas clauses, SM 1108 resolves the Legislature of the State of Florida to urge the U.S. President and Congress to condemn the People’s Republic of China for its practice of forcibly removing human organs for transplant and to adopt legislation and policies that:

- Prohibit collaboration between the American medical and pharmaceutical companies and any Chinese counterparts linked to forced organ harvesting;
- Ban individuals who have participated in unethical removal of human tissues and organs from entering the U.S.; and
- Provide for prosecution of such individuals.

The memorial specifies that copies be sent to the U.S. President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, and to each member of the Florida delegation of Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ Human Rights Brief: Volume 9, Issue 1, Erin Chlopak, American University Washington College of Law, 2001, available at <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1435&context=hrbrief> (last visited Jan. 20, 2022).

⁹ Id.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates one new non-statutory section of Florida law.

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 Baxley

12-01204-22

20221108__

Senate Memorial

A memorial to the President and Congress of the United States, urging the President and Congress to condemn the People's Republic of China for its practice of forcibly removing human organs for transplant and to adopt certain legislation and policies that hold China accountable for such human rights violations.

WHEREAS, for nearly two decades, the communist regime of the People's Republic of China has engaged in the vile practice of forcibly removing human organs for transplant, and

WHEREAS, on June 17, 2019, the Independent Tribunal Into Forced Organ Harvesting from Prisoners of Conscience in China released its final judgment finding that China's communist regime, for decades, has practiced systematic forced organ removal from prisoners of conscience, including Falun Gong practitioners, Tibetan Buddhists, House Church Christians, and the Uyghurs, and

WHEREAS, China has welcomed an influx of transplant tourism whereby individuals critically in need of transplants pay thousands of dollars for one of the 60,000 to 90,000 transplant surgeries conducted each year, with the number of transplants far exceeding the number of voluntary organ donations in the country, and

WHEREAS, a transplant patient in the United States is typically placed on the waiting list for an organ that may not be available for months, Chinese hospitals schedule transplants of major organs within 2 weeks, suggesting nefarious foreknowledge regarding the circumstances surrounding the

Page 1 of 3

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

12-01204-22

20221108__

donation of these organs, and

WHEREAS, in July 1999, the Chinese Communist Party launched an intensive, nationwide persecution of Falun Gong, a spiritual practice centered on the values of truthfulness, compassion, and tolerance, and

WHEREAS, in 2015, Freedom House, a nonprofit, nongovernmental organization, reported that Falun Gong practitioners are the primary victims of forced organ removal and face an elevated risk of dying or being killed while imprisoned, and

WHEREAS, on July 20, 2020, then-Secretary of State Michael R. Pompeo denounced 21 years of persecution of Falun Gong practitioners by China's communist regime, and

WHEREAS, the United Nations Committee Against Torture and the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment have called on the Chinese government to account for the sources of organs used in its transplant practices, and

WHEREAS, several organizations have called for the imposition of sanctions on Chinese medical authorities for China's transplant practices, and

WHEREAS, the parliaments of Canada and the European Union, as well as the United States House of Representatives Committee on Foreign Affairs, have adopted resolutions condemning organ harvesting from prisoners of conscience, and

WHEREAS, it is imperative to join the international outcry against this major violation of human rights by the People's Republic of China, NOW, THEREFORE,

Page 2 of 3

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

12-01204-22

20221108__

59 Be It Resolved by the Legislature of the State of Florida:

60
61 That the President and Congress of the United States are
62 urged to condemn the People's Republic of China for its practice
63 of forcibly removing human organs for transplant and to adopt
64 legislation and policies that prohibit collaboration between
65 American medical and pharmaceutical companies and any Chinese
66 counterparts linked to forced organ harvesting, that ban
67 individuals who have participated in the unethical removal of
68 human tissues and organs from entering the United States, and
69 that provide for the prosecution of such individuals.

70 BE IT FURTHER RESOLVED that copies of this memorial be
71 dispatched to the President of the United States, to the
72 President of the United States Senate, to the Speaker of the
73 United States House of Representatives, and to each member of
74 the Florida delegation to the United States Congress.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Community Affairs
Criminal Justice
Health Policy
Judiciary
Rules

SENATOR DENNIS BAXLEY

12th District

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

February 10, 2022

The Honorable Senator Kathleen Passidomo
400 Senate Office Building
Tallahassee, FL 32399

Dear Chair Passidomo,

I would like to request SM 1108 China Forced Organ Harvesting Memorial be heard in the next Rules Committee meeting.

This bill is urging the President and Congress to condemn the People's Republic of China for its practice of forcibly removing human organs for transplant and to adopt certain legislation and policies that hold China accountable for such human rights violations.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
Senate District 12

DKB/dd

cc: John Phelps, Staff Director

REPLY TO:

- ☐ 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- ☐ 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- ☐ 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: www.flsenate.gov

Wilton Simpson
President of the Senate

Aaron Bean
President Pro Tempore

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 1114

INTRODUCER: Senator Bradley

SUBJECT: Emergency Medical Care and Treatment of Minors

DATE: February 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.	Smith	Brown	HP	Favorable
3.	Davis	Phelps	RC	Favorable

I. Summary:

SB 1114 broadens an exception to the general rule that medical treatment cannot be rendered without a patient's consent. Under current law, parental consent is required for a physician to provide emergency medical care to a minor outside of a hospital or college health service. Similarly, parental consent is required for paramedics and other emergency medical services personnel to perform emergency care outside of a prehospital setting such as at an accident scene or in an ambulance.

The bill deletes restrictions on location, thereby allowing, in practice, physicians and emergency medical personnel to provide emergency medical care or treatment to a minor at any location without the consent of the minor's parents under specified conditions when parental consent cannot be immediately obtained.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Emergency Medical Care or Treatment of Minors Without Parental Consent

Physicians and Osteopathic Physicians

Section 743.064(1), F.S., establishes limited circumstances under which emergency medical care or treatment may be given to minors without parental consent. Parental consent is not required if a minor has been injured in an accident or is suffering from an acute illness, disease, or condition and a physician¹ or osteopathic physician² believes, within a reasonable degree of medical certainty, that a delay in initiating or providing the emergency care or treatment would endanger

¹ Licensed under ch. 458, F.S.

² Licensed under ch. 459, F.S.

the health or physical well-being of the minor. Under this section, such emergency care or treatment may be administered only in a licensed hospital or in a college health service.

Paramedics, Emergency Medical Technicians, and Other Emergency Personnel

Similarly, paramedics, emergency medical technicians, and other emergency medical services personnel may provide emergency medical care or treatment to a minor without parental consent if the care is rendered in a “prehospital”³ setting and rendered in a manner consistent with ch. 401, F.S., the Medical Telecommunications and Transportation chapter.

Prerequisites for Authorization

Such physicians and emergency personnel may provide emergency medical care or treatment without parental consent when:

- The minor’s condition has rendered him or her unable to provide the identity of his or her parents, guardian, or legal custodian, and no one who accompanies the minor to the hospital knows that information; or
- The parents, guardian, or legal custodian cannot be immediately located by phone at their residence or business.⁴

Essential Updates to Medical Records

After emergency care or treatment is administered to the minor, the health care provider must notify the minor’s parents, guardian, or legal custodian of the provision of medical care or treatment as soon as possible. The hospital records must reflect why the hospital was unable to obtain consent before treatment and contain a statement from the attending physician that the emergency care or treatment was necessary for the minor’s health or physical well-being. The hospital records must then be open for inspection by the person who is legally responsible for the minor.⁵

Parents’ Bill of Rights

General Overview

In 2021, the Legislature passed the “Parents’ Bill of Rights” act that is now contained in ch. 1014, F.S.⁶ The bill of rights provides that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. In addition to listing parental rights relating to a child’s education, the law includes requirements for obtaining parental consent before health care services may be provided to a minor child.

It should be noted that the provisions contained in the Parents’ Bill of Rights do not apply to abortion, which are governed by ch. 390, F.S.⁷

³ The term “prehospital” is not defined in the statutes.

⁴ Section 743.064(2), F.S.

⁵ Section 743.064(3), F.S.

⁶ Chapter 2021-199, Laws of Fla.

⁷ See section 1014.06(3), F.S.

Criminal Penalties and Exceptions

Section 1014.06(1), F.S., states that, *except as otherwise provided by law*, a health care practitioner or his or her employee, “may not provide or solicit or arrange to provide health care services or prescribe medicinal drugs to a minor child without first obtaining *written* parental consent.”

Section 1014.06(2), F.S., states that, *except as otherwise provided by law or by a court order*, a provider “may not allow a medical procedure to be performed on a minor child in its facility without first obtaining *written* parental consent.”⁸ A health care practitioner or other person who violates these provisions is subject to disciplinary action, as applicable, and commits a first degree misdemeanor. A first degree misdemeanor is punishable by a term of imprisonment not to exceed one year and a fine that may not exceed \$1,000.⁹

Potential Complications of Construing the Emergency Treatment of Minors Provisions with the Parents’ Bill of Rights

Before the Parents’ Bill of Rights was enacted in 2021 and excluding abortion regulations,¹⁰ the statutes did not expressly criminalize the rendering of medical care to minors without parental consent.¹¹ In *Brown v. Wood*,¹² however, the court acknowledged that a plaintiff may bring an action for negligence or assault and battery against a physician who did not obtain the informed consent of a parent before performing an operation on a minor child.

Depending on how the two “except as otherwise provided” provisions of the Parents’ Bill of Rights are interpreted, it is unclear if physicians and osteopathic physicians could be subjected to criminal penalties for providing emergency care or treatment to a minor. If the provision of emergency medical care on a minor without parental consent as permitted in s. 743.064, F.S., constitutes an exception to the Parents’ Bill of Rights, then there is no criminal risk for the medical professional who provides emergency treatment in a licensed hospital or college health service. However, the provision of emergency medical care to a minor outside of those locations could be subject to a criminal penalty.

III. Effect of Proposed Changes:

SB 1114 will, in practice, allow physicians and emergency medical personnel to provide emergency medical care or treatment to a minor at any location without the consent of the minor’s parents under specified conditions when parental consent cannot be immediately obtained. The bill removes the restrictions on the locations where emergency medical care or treatment may be rendered for a minor without parental consent.

⁸ Section 1014.06(3), F.S., states that this section does not apply to abortion, which is governed by chapter 390.

Section 1014.06(4), F.S., states that this section does not apply to services provided by a clinical laboratory, unless the services are delivered through a direct encounter with the minor at the clinical laboratory facility.

⁹ See s. 775.082(4)(a), F.S., for penalties and s. 775.083(1)(d), F.S., for fines.

¹⁰ See s. 390.01114, F.S.

¹¹ Arguably, the provision of medical care without consent constitutes the criminal offense of battery. Section 784.03(1), F.S., states that battery includes situations in which a person “[a]ctually and intentionally touches or strikes another person against the will of the other.”

¹² *Brown v. Wood*, 202 So. 2d 125 (Fla. 2d DCA 1967).

Physicians and Osteopathic Physicians

Under the bill, the emergency medical care or treatment location is not restricted for physicians and osteopathic physicians to a licensed hospital or a college health service. Before rendering emergency aid, such physicians must determine that the minor has been injured in an accident or is suffering from an acute illness, disease, or condition, and he or she believes, with a reasonable degree of medical certainty, that delaying in initiating or providing emergency medical care or treatment will endanger the minor's health or well-being.

Paramedics, Emergency Medical Technicians, and Other Emergency Medical Services Personnel

Under the bill, paramedics, emergency medical technicians, and other emergency medical services personnel are not limited to rendering aid in a prehospital setting. Such emergency personnel must render emergency medical care consistent with the provisions of ch. 401, F.S., the Medical Telecommunications and Transportation chapter.

Additional Requirements for Rendering Emergency Care or Treatment

Under the bill, current law would continue to prohibit such physicians and emergency medical personnel from rendering treatment to a minor without parental consent unless: the minor's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the minor to the hospital; or the parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business. Additionally, the parents must be notified as soon as possible after the emergency care or treatment has been administered.

Under current law, hospital records must reflect the reason such consent was not initially obtained and must contain a statement by the attending physician that immediate emergency medical care or treatment was necessary for the patient's health or physical well-being. The hospital records must be open for inspection by the person legally responsible for the minor. The bill removes the reference to "hospital records" and replaces the term with "patient records" to conform to changes made by the bill.

The bill deletes the phrase "hospital, or college health service" in s. 743.064(4), F.S., for the purpose of conforming to other changes made by the bill.

The bill provides an effective date of July 1, 2022.

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:

The Department of Health reports that SB 1114 will have no impact on the department.¹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 743.064 of the Florida Statutes.

¹³ Florida Department of Health, *Senate Bill 1114 Agency Analysis*, Jan. 10, 2022. (on file with the Senate Health Policy Committee).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Bradley

5-01013-22

20221114__

A bill to be entitled

An act relating to emergency medical care and treatment of minors; amending s. 743.064, F.S.; deleting the requirement that emergency medical care or treatment by physicians and emergency medical personnel without parental consent be provided only in specified settings; making technical and conforming changes; providing an effective date.

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

Section 1. Section 743.064, Florida Statutes, is amended to read:

743.064 Emergency medical care or treatment to minors without parental consent.—

(1) The absence of parental consent notwithstanding, a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 may render emergency medical care or treatment to any minor who has been injured in an accident or who is suffering from an acute illness, disease, or condition if, within a reasonable degree of medical certainty, delay in initiation or provision of emergency medical care or treatment would endanger the health or physical well-being of the minor, ~~and provided such emergency medical care or treatment is administered in a hospital licensed by the state under chapter 395 or in a college health service.~~ Emergency medical care or treatment may also be rendered ~~in the prehospital setting~~ by paramedics, emergency medical technicians, and other emergency medical services personnel, provided that such care is rendered

5-01013-22

20221114__

consistent with ~~the provisions of~~ chapter 401. These persons shall follow the general guidelines and notification provisions of this section.

(2) This section shall apply only when parental consent cannot be immediately obtained for one of the following reasons:

(a) The minor's condition has rendered him or her unable to reveal the identity of his or her parents, guardian, or legal custodian, and such information is unknown to any person who accompanied the minor ~~to the hospital.~~

(b) The parents, guardian, or legal custodian cannot be immediately located by telephone at their place of residence or business.

(3) Notification shall be accomplished as soon as possible after the emergency medical care or treatment is administered. The patient ~~hospital~~ records shall reflect the reason such consent was not initially obtained and shall contain a statement by the attending physician that immediate emergency medical care or treatment was necessary for the patient's health or physical well-being. The patient ~~hospital~~ records shall be open for inspection by the person legally responsible for the minor.

(4) ~~A~~ No person as delineated in subsection (1) ~~may not,~~ ~~hospital, or college health service shall~~ incur civil liability by reason of having rendered emergency medical care or treatment pursuant to this section, provided such treatment or care was rendered in accordance with acceptable standards of medical practice.

Section 2. This act shall take effect July 1, 2022.



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 10, 2022

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

Dear Chair Passidomo:

I respectfully request that CS/SB 1114 be placed on the committee's agenda at your earliest convenience. This bill relates to treatment of emergency medical care and treatment of minors. CS/SB 1114 clarifies in section 743.064 by allowing physicians to provide emergency medical treatment to minors anywhere such treatment is needed – not just in hospitals and college health services.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Bradley". The signature is fluid and cursive, with a long, sweeping line extending from the end of the name.

Jennifer Bradley

cc: John B. Phelps, Staff Director
Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

2/23/2022

Meeting Date

Senate Rules Committee

Committee

The Florida Senate

APPEARANCE RECORD

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

SB 1114 - Emergency Medical Care and Treatment of Minors

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Cora Merritt**

Phone **850-758-5209**

Address **6535 Nemours Parkwat**

Email **cora.merritt@nemours.org**

Street

Orlando

City

FL

State

32827

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:

Nemours Children's Health

☐ 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

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2/23/22

Meeting Date

1114

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name

Chris Nuland

Phone

904-233-3051

Address

4427 Herschel St

Email

nulandlaw@aol.com

Street

Jacksonville, FL

32210

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 Chapter, American College of Physicians

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

2-23-22

Meeting Date

1114

Bill Number or Topic

Rules

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

Committee

Amendment Barcode (if applicable)

Name

Tarrod Fowler

Phone

350-224-6496

Address

1430 Piedmont Dr. E

Email

tfowler@flmd.org

Street

Tallahassee

State

FL

Zip

32308

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 Medical
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)

February 23, 2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

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

SB 1114

Bill Number or Topic

Rules

Committee

Amendment Barcode (if applicable)

Name **Chris Lyon**

Phone **850-22-5702**

Address **315 S. Calhoun St., Suite 830**

Email **clyon@llw-law.com**

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:

**Florida Osteopathic Medical
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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1244

INTRODUCER: Criminal Justice Committee and Senator Gibson

SUBJECT: Statutes of Limitations for Sexual Offenses

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Jones	CJ	Fav/CS
2. Moody	Cox	CF	Favorable
3. Stokes	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1244 amends s. 775.15, F.S., to provide that there is no time limitation for the prosecution of:

- Any offense in ch. 794, F.S., relating to sexual battery, with specified exceptions;
- Section 800.04(7)(a)3., F.S., relating to certain acts of lewd or lascivious exhibition; or
- Section 827.071(2) or (3), F.S., relating to use of a child in a sexual performance or promoting a sexual performance of a child.

The bill provides that the exceptions to time limitations apply to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

Section 775.15, F.S., sets forth time limitations for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in this section. The general time limitations for the prosecution of offenses are based upon the degree of offense, however there are multiple exceptions to the general time limitations.

The bill is effective July 1, 2022.

II. Present Situation:

Statute of Limitations

Historical Perspective

At common law, there was no time limitation under which a criminal charge was barred from prosecution. Time limitations for criminal prosecutions exist only as a creation of statute and are considered to be acts of grace by the State.¹

In *State v. Hickman*, the court stated:

The only purpose of a Statute limiting the time within which a criminal charge may be prosecuted is to protect every person from being interminably under the threat or cloud of possible criminal prosecution, which otherwise might be indefinitely delayed until the time when defense witnesses might die, disappear or otherwise become unavailable, judges would change office, or innumerable other time hazards might develop, which could conceivably defeat, or at least hamper, an otherwise good defense.²

Since the creation of statutes of limitation, courts have held that:

- Generally, the statute of limitation that was in effect when a crime was committed controls.³
- Statutes of limitation in criminal cases should be construed liberally in favor of the defendant.⁴
- The Legislature may apply time limitations retroactively without violating the ex post facto clause of the State Constitution⁵ if the Legislature makes the change before the prosecution is barred under the old statute and clearly demonstrates that the new statute applies to cases pending when the extension takes effect.⁶
- Courts have recently upheld extensions of time limitations for sexual battery when the amendment takes effect before the case was procedurally barred.⁷

¹ *State v. Hickman*, 189 So. 2d 254, 261-62 (Fla. 2d DCA 1966).

² *Id.*

³ *Beyer v. State*, 76 So.3d 1132, 1134 (Fla. 4th DCA 2012).

⁴ *Id.*

⁵ FLA. CONST. art. I, s. 10.

⁶ *Schargschwerdt v. Kanerek*, 553 So.2d 218, 220 (Fla. 4th DCA 1989), citing *Andrews v. State*, 392 So.2d 270 (Fla. 2d DCA 1980), rev. denied, 399 So.2d 114 (Fla. 1981); See also *United States v. Richardson*, 512 F. 2d 105, 106 (3rd Cir. 1975); *Smith v. State*, 213 So.3d 722, 1740 (Fla. 2017).

⁷ *Brown v. State*, 179 So. 3d 466, 468 (Fla. 4th DCA 2015) (The court affirmed the conviction for one count of sexual battery on a victim less than 16 years of age. The abuse occurred between May 1997 and July 1998. The abuse was reported November 15, 1999. The State brought charges against the defendant in 2011. The Statute of limitation in effect at the time of the offense would have barred prosecution in November 2003; however, the Legislature amended the statute of limitations in October 2003 to provide no time limitation for the offense for which the defendant was charged. Because the case was not barred at the time the amended statute of limitations went into effect, the court held that the statute of limitation was properly extended and did not violate the ex post facto clause).

Existing Provisions

Section 775.15, F.S., sets forth time limitations, also referred to as statutes of limitation, for the prosecution of crime. Prosecution is barred if it is not commenced within the time limitations provided in this section. The time limitation for prosecuting a criminal case begins to run on the day after the offense is committed, unless otherwise stated. An offense is deemed to have been committed when either every element of the offense has occurred or, if it plainly appears that the legislative purpose is to prohibit a continuing course of conduct, at the time when the course of conduct or the defendant's complicity therein is terminated.⁸

In part, s. 775.15, F.S., provides time limitations for initiating a criminal prosecution for a felony offense. The general provisions provide that there is:

- No time limitation for prosecuting a capital felony, a life felony, a felony resulting in death.⁹
- A 4-year time limitation for prosecuting a first degree felony.¹⁰
- A 3-year time limitation for prosecuting a second or third degree felony.¹¹

However, a number of exceptions to the time limitation provisions mentioned above exist. Many of these exceptions are specific to certain offenses or types of victims. These exceptions apply, in part, to violations of s. 794.011, F.S., relating to sexual battery, and violations of s. 800.04, F.S., relating to lewd and lascivious offenses. These exceptions include:

- No time limitation for prosecuting:
 - A first or second degree felony sexual battery when the victim is under 18 years of age and he or she reports the crime to law enforcement within 72 hours provided the offense was not barred from prosecution on or before December 31, 1984;¹²
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003;¹³
 - Any felony sexual battery when the victim is younger than 16 years of age provided the offense was not barred from prosecution on or before July 1, 2010;¹⁴
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours;¹⁵
 - Any sexual battery offense, when the victim is younger than 18 years of age when the offense was committed, and the offense was committed on or after July 1, 2020.¹⁶
 - A violation of s. 800.04(4) or (5), F.S., relating to lewd or lascivious battery or molestation, when the victim was under 16 years of age at the time of the offense, and the offense was not barred from prosecution on or before October 1, 2014. This exception to

⁸ Section 775.15(3), F.S.

⁹ Section 775.15(1), F.S.

¹⁰ Section 775.15(2)(a), F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ Section 775.15(2)(b), F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine and a third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹² Section 775.15(13)(a), F.S.

¹³ Section 775.15(13)(b), F.S.

¹⁴ Section 775.15(13)(c), F.S.

¹⁵ Section 775.15(14)(a), F.S.

¹⁶ Section 775.15(20), F.S.

- the time limitation does not apply if the offender is less than 18 years of age and no more than 4 years older than the victim.¹⁷
- There is an eight-year time limitation on prosecuting a first or second degree felony sexual battery when the victim is 16 years of age or older at the time of the offense provided the offense was not barred from prosecution on or before July 1, 2015, except for:
 - A first or second degree felony sexual battery when the victim is 16 years of age or older and reports the crime to law enforcement within 72 hours; or
 - A first degree felony sexual battery when the victim is younger than 18 years of age provided the offense was not barred from prosecution on or before October 1, 2003.¹⁸

In addition to the time periods prescribed in this section, the prosecution for specific enumerated offenses,¹⁹ including sexual battery, and lewd or lascivious offenses, may be prosecuted at any time after the date on which the offender's identity is established, or should have been established through the exercise of due diligence, through the analysis of deoxyribonucleic acid (DNA) evidence collected at the time of the original investigation. The DNA sample for these prosecutions must be available for testing by the accused.²⁰ This exception applies to offenses that are not otherwise barred on or after July 1, 2006.^{21, 22}

Another exception provides that the applicable period of limitation does not begin to run until the victim of a sexual battery, lewd or lascivious offense, or other specified offense reaches the age of 18 years or the violation is reported to a law enforcement or governmental agency, whichever occurs first. This provision only applies to a victim who was younger than 18 years of age at the time of the offense.²³

Sexually Related Offenses

Sexual Battery

Chapter 794, F.S., contains numerous sections of law relating to sexual battery. Felony crimes contained in the chapter include:

- Section 794.011, F.S., provides that “sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.²⁴ Sexual battery offenses are categorized by certain factors including the

¹⁷ Section 775.15(18), F.S.

¹⁸ Section 775.15(14)(b), F.S.

¹⁹ Section 775.15(16)(a), F.S., applies these provisions to the following offenses: aggravated battery or any felony battery offense under ch. 784, F.S.; kidnapping offenses under s. 787.01, F.S., or false imprisonment offenses under s. 787.02, F.S.; sexual battery offenses under ch. 794, F.S.; lewd or lascivious offenses under s. 800.04, F.S., s. 825.1025, F.S., or s. 847.0135(5), F.S.; burglary offenses under s. 810.02, F.S.; robbery offenses under s. 812.13, F.S., s. 812.131, F.S., or s. 812.135, F.S.; carjacking offenses under s. 812.133, F.S.; or aggravated child abuse under s. 827.03, F.S.

²⁰ Section 775.15(16)(a), F.S.

²¹ Section 775.15(16)(b), F.S.

²² *Bryson v. State*, 42 So. 3d 852 (Fla. 1st DCA 2010) (holding that the appellants prosecution was not barred, and that s. 775.15(16), F.S., could be applied because appellant's case was not barred at the time that section was enacted).

²³ Section 775.15(13)(a), F.S.

²⁴ Section 794.011(1)(h), F.S.

offender's age, the victim's age, and specified circumstances. Generally, absent any specified circumstances, a sexual battery is a second degree felony.²⁵

- Section 794.08, F.S., provides criminal penalties related to female genital mutilation.²⁶
- Section 794.05, F.S., provides that a person who is 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a second degree felony.²⁷

Chapter 794, F.S., also contains the following misdemeanor crimes:

- Section 794.024, F.S., provides that it is a second degree misdemeanor²⁸ for a public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of specified offenses to willfully and knowingly disclose that information, except to specified persons or entities.²⁹
- Section 794.027, F.S., provides that it is a first degree misdemeanor³⁰ to observe the commission of a sexual battery and fail to seek assistance.³¹
- Section 794.03, F.S., provides that it is a second degree misdemeanor, except in certain circumstances, for a person to print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense under ch. 794, F.S.
- Section 794.075, F.S., provides that it is a second degree misdemeanor for a first offense, and a first degree misdemeanor for a second or subsequent offense, for a designated sexual predator to possess a drug for the purpose of treating erectile dysfunction.

Additionally, ch. 794, F.S., provides various sections of law relating to sexual battery but do not contain misdemeanor or felony offenses. For example, s. 794.026, F.S., provides a victim with a civil cause of action against a person or entity who communicates to others, prior to open judicial proceedings, the name, address, or other specific identifying information about the victim of any sexual offense under ch. 794 or ch. 800, F.S.

Lewd and Lascivious Offenses

Section 800.04, F.S., contains numerous offenses relating to lewd or lascivious offenses committed on or in the presence of a person younger than 16 years of age.

Section 800.04(7)(a), F.S., provides that a person commits a lewd or lascivious exhibition when he or she, in the presence of a victim who is younger than 16 years of age, intentionally:

²⁵ The maximum term of imprisonment for a second degree felony is 15 years imprisonment and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁶ Currently, the general time limitations contained in s. 775.15(1), F.S., apply to s. 794.08, F.S.

²⁷ Currently, the general time limitations contained in s. 775.15(1), F.S., apply to s. 794.05, F.S.

²⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding \$500. Sections 775.082 and 775.083, F.S.

²⁹ Section 794.024, F.S., specific offenses include a violation of ch. 794, ch. 800, ss. 827.03, 827.04, or 827.071, F.S.; specified persons or entities include a person assisting in the investigation or prosecution of the alleged offense, the defendant, the defendant's attorney, a person specified in a court order, an organization authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim.

³⁰ A first degree misdemeanor is punishable by up to a year in county jail and a fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

³¹ Section 794.027, F.S.

- Masturbates;³²
- Exposes the genitals in a lewd or lascivious manner;³³ or
- Commits any other sexual act that does not involve actual physical or sexual contact with the victim, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity.³⁴

Sexual Performance by a Child

Section 827.071, F.S., specifies the criminal offenses for the production of child pornography and the possession and promotion of child pornography. It is a second degree felony for a person:

- Knowing the character and content thereof, to employ, authorize, or induce a child to engage in a sexual performance.^{35, 36}
- Who is a parent, legal guardian or custodian to consent for a child to participate in a sexual performance.³⁷
- Knowing the character and content, to produce, direct, or promote³⁸ any performance which includes sexual conduct by a child.³⁹

III. Effect of Proposed Changes:

The bill amends s. 775.15, F.S., to provide that there is no time limitation for the prosecution of:

- Any offense in ch. 794, F.S., relating to sexual battery, except:
 - Section 794.024, F.S., relating to unlawful to disclose identifying information;
 - Section 794.027, F.S., relating to duty to report sexual battery; penalties;
 - Section 794.03, F.S., relating to unlawful to publish or broadcast information identifying sexual offense victim; and
 - Section 794.075, F.S., relating to sexual predators; erectile dysfunction drugs.
- Section 800.04(7)(a)3., F.S., relating to certain acts of lewd or lascivious exhibition; or
- Section 827.071(2) or (3), F.S., relating to use of a child in a sexual performance or promoting a sexual performance of a child.

The bill provides that the exceptions to time limitations apply to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

The bill is effective July 1, 2022.

³² Section 800.04(7)(a)1., F.S.

³³ Section 800.04(7)(a)2., F.S.

³⁴ Section 800.04(7)(a)3., F.S.

³⁵ Section 827.071(2), F.S.

³⁶ Section 827.071(1)(c), F.S., provides “performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

³⁷ Section 827.071(2), F.S.

³⁸ Section 827.071(1)(d), F.S., provides “promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer to agree to do the same.

³⁹ Section 827.071(3), F.S.

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

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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:

The Criminal Justice Impact Conference has not reviewed the bill at this time. However, the bill will likely have a positive indeterminate (unquantifiable positive prison bed) impact on the Department of Corrections due to removing the time limitation for prosecution of these offenses. There may be individuals in the future who are prosecuted, who would have otherwise been barred from prosecution without the changes made in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 775.15 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 Criminal Justice on February 1, 2022:

The committee substitute removes s. 794.026, F.S., from the list of exceptions provided in the bill. Additionally, the bill removes unnecessary language to clarify the applicability of the bill.

- B. **Amendments:**

None.

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

By the Committee on Criminal Justice; and Senator Gibson

591-02595-22

20221244c1

A bill to be entitled

An act relating to statutes of limitations for sexual offenses; amending s. 775.15, F.S.; eliminating statutes of limitations periods for prosecution of specified sexual offenses; providing applicability; providing an effective date.

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

Section 1. Subsection (21) is added to section 775.15, Florida Statutes, to read:

775.15 Time limitations; general time limitations; exceptions.—

(21) (a) The prosecution for a violation of any of the following may be commenced at any time:

1. Chapter 794, except for a violation of s. 794.024, s. 794.027, s. 794.03, or s. 794.075;

2. Section 800.04(7)(a)3.; or

3. Section 827.071(2) or (3).

(b) This subsection applies to any offense that is not otherwise barred from prosecution on or before July 1, 2022.

Section 2. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR AUDREY GIBSON

6th District

COMMITTEES:
Judiciary, *Vice Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on
Transportation, Tourism, and Economic
Development
Military and Veterans Affairs, Space,
and Domestic Security
Reapportionment
Rules

SELECT SUBCOMMITTEE:
Select Subcommittee on Legislative
Reapportionment

JOINT COMMITTEE:
Joint Legislative Budget Commission

February 8, 2022

Senator Kathleen Passidomo, Chair
Committee on Rules
402 Senate Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Passidomo,

I respectfully request that SB 1244, relating to Statutes of Limitations for Sexual Offenses, be placed on the next committee agenda.

SB 1244, eliminates statutes of limitations periods for prosecution of specified sexual offenses under chapter 794, Sexual Battery. This bill passed unanimously in the first and second committees.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Audrey Gibson".

Audrey Gibson

State Senator
District 6

101 East Union Street, Suite 104, Jacksonville, Florida 32202 (904) 359-2553
410 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

2/23

Meeting Date

Rules

Committee

1244

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ellyn Bogdanoff

Phone

954 364 6005

Address

1 E Broward Blvd

Email

ebogdanoff@gmail.com

Street

FL

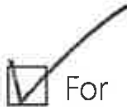
33301

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:

RAINN



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

2/23/2022

Meeting Date

1244

Bill Number or Topic

RULES

Committee

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

Amendment Barcode (if applicable)

Name

JEAN SIEBENALER

Phone

513-532-5408

Address

7502 OLD BAY POINTE RD

Email

j.siebenaler@gmail.com

Street

MILTON

FL

32583

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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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/SB 1304

INTRODUCER: Rules Committee; Judiciary Committee and Senator Gruters

SUBJECT: Public Records/Trust Proceedings

DATE: February 24, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Fav/CS
2. Ponder	McVaney	GO	Favorable
3. Bond	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 1304 creates a public records exemption for court records in a trust law case where a family trust company, licensed family trust company, or foreign licensed family trust company is a party. The court records of the case are not available for public inspection, but may be accessed by the settlor, a fiduciary or a beneficiary, and his or her attorney. The court may also allow access to a person who has a specific interest in the trust and who can show that there is a compelling need for access, subject to reasonable limitations on further distribution by the interested person.

This exemption is not subject to the Open Government Sunset Review Act because it applies solely to judicial branch records.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill takes effect July 1, 2022.

II. Present Situation:

A trust is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another

person. A trust arises as a result of a manifestation of an intention to create it.¹ Trusts are governed by statute.²

Trust companies are for-profit business organizations that are authorized to engage in trust business and to act as a fiduciary for the general public. A family may form and operate private or family trust companies that provide trust services similar to those that can be provided by an individual trustee or a financial institution. However, these family trust companies are owned exclusively by family members and may not provide fiduciary services to the public. These private, family trust companies are generally formed to manage the wealth of high net-worth families in lieu of traditional individual or institutional trustee arrangements for a variety of personal, investment, regulatory, and tax reasons. Family trust companies are uncommon.

In 2014, Florida statutes were amended to authorize the formation of family trust companies, licensed family trust companies, and foreign licensed family trust companies.³ The Florida Office of Financial Regulation may investigate applications for licensure or registration, require annual renewals and other regulatory filings from licensees and registrants, and conduct periodic examinations of family trust companies, licensed family trust companies, and foreign licensed family trust companies.

The books and records of a family trust company, licensed family trust company, or foreign licensed family trust company are confidential, with limited exceptions.⁴ Willful violation of the confidentiality is a third degree felony.⁵

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁶ 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.⁷

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 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.⁸ Chapter 119,

¹ 55A Fla. Jur 2d Trusts § 1.

² See *generally*, ch. 736, F.S.

³ Chapter 2014-97, L.O.F., creating chapter 662, F.S.

⁴ Section 662.146, F.S.

⁵ Section 662.146(2)(c), F.S.

⁶ FLA. CONST. art. I, s. 24(a).

⁷ *Id.*

⁸ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

F.S., known as the Public Records Act, provides requirements for public records held by executive agencies⁹. Chapter 119, F.S., does not apply to judicial branch records.¹⁰

Public Access to records of the judicial branch is governed by Florida Rule of Judicial Administration 2.420.¹¹

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹² (the Act), prescribe a legislative review process for newly created or substantially amended¹³ public records or open meetings exemptions, with specified exceptions. The Act does not apply to an exemption that applies solely to the State Court System.¹⁴

III. Effect of Proposed Changes:

CS/CS/SB 1304 creates a public records exemption for court records in a trust case under chapter 736 or chapter 738, F.S., in which a family trust company, licensed family trust company, or foreign licensed family trust company is a party. Chapter 736, F.S., is the general trust statute, and chapter 738, F.S., governs the allocation in trusts between principal and interest.

The clerk of court is not required to independently determine that this exemption applies; a party to the case must specifically notify the clerk that the exemption applies.

The clerk may not release any of the court file to the public, but must make the file available to the following individuals:

- The settlor;
- Any fiduciary for the trust, including a trustee or trust director;
- Any beneficiary of the trust;
- An attorney for the settlor, a fiduciary, or a beneficiary of the trust; and
- Any other person who can show the court a specific interest in the trust or a transaction relating to the trust or an asset held or previously held by the trust, and who can show a compelling need for access.

Where a court grants access to a person who has shown a specific interest, the court may limit the person's access to limited portions of the court file as necessary to protect the person's interest. The court may also limit the person from further distributing the information regarding the trust.

⁹ Section 119.011(2), F.S., defines "agency to mean 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.

¹⁰ *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

¹¹ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

¹² Section 119.15, F.S.

¹³ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁴ Section 119.15(2)(b), F.S.

The bill provides a public necessity statement as required by article I, section 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that the court records of proceedings under chapter 736, Florida Statutes, or chapter 738, Florida Statutes, involving family trust companies, licensed family trust companies, or foreign licensed family trust companies be made confidential and exempt from s. 119.07, Florida Statutes, and s. 24(a), Article I of the State Constitution under certain circumstances. Public disclosure of the court records of such proceedings, which include information relating to the clients, family members, members, or stockholders of a family trust company, licensed family trust company, or foreign licensed family trust company, would vitiate other protections granted by law to such companies and their constituents. In addition, proceedings under chapter 736, Florida Statutes, or chapter 738, Florida Statutes, often involve large sums of money or vulnerable people who could be targeted for exploitation or abuse. Public disclosure of sensitive family and financial information contained in the court records of such proceedings can result in specific harm to beneficiaries and other interested parties in these cases. Therefore, the Legislature finds that the need to protect the identities of beneficiaries of trusts for which a family trust company, licensed family trust company, or foreign licensed family trust company is a trustee, and the sensitive financial information contained in the court records of such proceedings, is sufficiently compelling to override the state's public policy of open government and that the protection of such information cannot be accomplished without this exemption.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 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 court records related to a family trust company, licensed family trust company, or foreign licensed family trust company, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 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.

Breadth of Exemption

Article I, section 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 bill is to protect information relating to the clients, family members, members, or stockholders of a family trust company, licensed family trust company, or foreign licensed family trust company; and sensitive family and financial information in trust proceedings related to a family trust company. The bill is limited to court records related to internal trust disputes in a small number of the trusts operated in the state and appears to allow access to information by all persons who may be directly affected by the dispute according to general principles of due process.

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:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 662.1465 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on February 23, 2022:

The committee substitute simplifies the bill by removing an unnecessary list of exempt documents as the bill exempts the entire court file, and limits application to only cases under chapter 736, F.S. (trusts) or chapter 738, F.S. (principal and interest).

CS by Judiciary on January 31, 2022:

The committee substitute substantially narrowed the exemption by clarifying that it only applies to the three forms of family trust companies, not to all trusts.

- B. **Amendments:**

None.



227864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
	.	
	.	
	.	

The Committee on Rules (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 662.1465, Florida Statutes, is created
to read:

662.1465 Family trust company proceedings; public records
exemption.—

(1) In proceedings under chapter 736 or chapter 738 in
which a family trust company, licensed family trust company, or
foreign licensed family trust company is a party, upon written



227864

notice from any party to the clerk that this section is applicable, the clerk shall keep all court records of that case separate from other records of the court and not open to inspection by the public. Upon receipt of such written notice, court records of that case are confidential and exempt from s. 119.07 and s. 24(a), Art. I of the State Constitution and must be protected. For the purposes of this section, the term "court records" means the docket and all filings and other records of a case.

(2) Notwithstanding subsection (1), court records may be inspected upon order of the court by persons deemed by the court to have a specific interest in the trust, a transaction relating to the trust, or an asset held or previously held by the trust and where the court determines there is a compelling need for releasing the information requested. In granting a right to any person to inspect court records, the court may limit access to such information as the court deems necessary and may place any reasonable restriction on further distribution of such information by such person.

(3) Notwithstanding subsection (1), the clerk shall make court records available to the following individuals:

(a) The settlor.

(b) Any fiduciary for the trust, including a trustee or trust director.

(c) Any beneficiary of the trust.

(d) An attorney for the settlor, a fiduciary, or a beneficiary of the trust.

Section 2. The Legislature finds that it is a public necessity that the court records of proceedings under chapter



227864

736, Florida Statutes, or chapter 738, Florida Statutes,
involving family trust companies, licensed family trust
companies, or foreign licensed family trust companies be made
confidential and exempt from s. 119.07, Florida Statutes, and s.
24(a), Article I of the State Constitution under certain
circumstances. Public disclosure of the court records of such
proceedings, which include information relating to the clients,
family members, members, or stockholders of a family trust
company, licensed family trust company, or foreign licensed
family trust company would vitiate other protections granted by
law to such companies and their constituents. In addition,
proceedings under chapter 736, Florida Statutes, or chapter 738,
Florida Statutes, often involve large sums of money or
vulnerable people who could be targeted for exploitation or
abuse. Public disclosure of sensitive family and financial
information contained in the court records of such proceedings
can result in specific harm to beneficiaries and other
interested parties in these cases. Therefore, the Legislature
finds that the need to protect the identities of beneficiaries
of trusts for which a family trust company, licensed family
trust company, or foreign licensed family trust company is a
trustee, and the sensitive financial information contained in
the court records of such proceedings, is sufficiently
compelling to override the state's public policy of open
government and that the protection of such information cannot be
accomplished without this exemption.

Section 3. This act shall take effect July 1, 2022.

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



227864

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; creating s.
662.1465, F.S.; requiring clerks to take certain
actions relating to court records for proceedings
under ch. 736, F.S., and ch. 738, F.S., in which a
family trust company, licensed family trust company,
or foreign licensed family trust company is a party
and upon written notice; creating an exemption from
public records requirements for such records; defining
the term "court records"; authorizing certain persons
to inspect such records if certain requirements are
met; authorizing clerks to make records available to
specified individuals under certain circumstances;
providing a statement of public necessity; providing
an effective date.

By the Committee on Judiciary; and Senator Gruters

590-02523-22

20221304c1

A bill to be entitled

An act relating to public records; creating s. 662.1465, F.S.; making the identities of beneficiaries and specified individuals and certain documents in trust proceedings when a family trust company, licensed family trust company, or foreign licensed family trust company is a party confidential and exempt from public records requirements; requiring the court to seal any documents filed with the court in such proceedings; prohibiting the court from releasing to the public any of the sealed documents or information contained therein; providing exceptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 662.1465, Florida Statutes, is created to read:

662.1465 Confidentiality of family trust company proceedings and other filings.—In trust proceedings in which a family trust company, licensed family trust company, or foreign licensed family trust company is a party, the identities of those who establish, administer, or benefit from a trust and any information relating to the trust are confidential and exempt from s. 24(a), Art. I of the State Constitution and must be protected in any court proceeding or filing related to the trust. The court shall seal any document filed with the court in a trust proceeding in which a family trust company, licensed

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

590-02523-22

20221304c1

family trust company, or foreign licensed family trust company is a party, including, but not limited to, the instrument on which the trust is based; any petitions, briefs, or inventories; any statement or report filed by a fiduciary; any court orders; and any other document in the court case file. The court may not release to the public any of the sealed documents or information contained therein, but shall make them available to the following individuals:

(1) The settlor.

(2) Any fiduciary for the trust.

(3) Any beneficiary of the trust.

(4) An attorney for the settlor, a fiduciary, or a beneficiary of the trust.

(5) Any other person if, upon a showing of a specific interest in the trust or a transaction relating to the trust or an asset held or previously held by the trust, the court determines there is a compelling need for releasing the information requested.

Section 2. The Legislature finds that it is a public necessity that trust proceedings involving family trust companies, licensed family trust companies, or foreign licensed family trust companies be made confidential and exempt from s. 24(a), Article I of the State Constitution. Public disclosure in such trust proceedings of information relating to the clients, family members, members, or stockholders of a family trust company, licensed family trust company, or foreign licensed family trust company would vitiate other protections granted by law to such companies and their constituents. In addition, such trust proceedings often involve large sums of money or

Page 2 of 3

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

590-02523-22

20221304c1

59 vulnerable people who could be targeted for exploitation or
60 abuse. Public disclosure of sensitive family and financial
61 information in trust proceedings can result in specific harm to
62 beneficiaries and other interested parties in these cases.
63 Therefore, the Legislature finds that the need to protect the
64 identities of beneficiaries of trusts for which a family trust
65 company, licensed family trust company, or foreign licensed
66 family trust company is a trustee and the sensitive financial
67 information contained in such proceedings is sufficiently
68 compelling to override the state's public policy of open
69 government and that the protection of such information cannot be
70 accomplished without this exemption.

71 Section 3. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 17, 2022

I respectfully request that **Senate Bill #1304**, relating to Public Records/Trust Proceedings, be placed on the:

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

Possible Changed:

Creates a public records exemption for certain trust proceedings and other filings held by a court.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

Cc: John B. Phelps, Staff Director
Tom Yeatman, Deputy Staff Director
Cynthia Futch, Committee Administrative Assistant

File signed original with committee office

S-020 (03/2004)

2-23-22

Meeting Date

The Florida Senate
APPEARANCE RECORD

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

1304

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Rey Contreras

Phone

352-665-7397

Address

4 Palm Ln

Email

Rey@MIANTrial.com

Street

Ponte Vedra FL 32082

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

2-23-22

Meeting Date



1304

Bill Number or Topic

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

Rules

Committee

Amendment Barcode (if applicable)

Name Virginia Hamrick

Phone 850-222-3518

Address 317 E Park Ave
Street

Email vhamrick@floridafaf.org

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:

Florida First Amendment
Foundation

☐ 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)

2/23/22

Meeting Date

The Florida Senate
APPEARANCE RECORD

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

SB 1304

Bill Number or Topic

Committee

Name

Saran Butters

Phone

425-5447

Amendment Barcode (if applicable)

Address

4049 Shadyview Ln

Email

sbutters@ausley.com

Street

TLH

FL

32311

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:

RFP TL Section Chair - elect

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/SB 1352

INTRODUCER: Rules Committee; Ethics and Elections Committee; and Senator Brodeur

SUBJECT: Limitations on Political Contributions

DATE: February 23, 2022

REVISED: 02/01/22

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rey	Roberts	EE	Fav/CS
2.	Rey	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1352 defines the term “foreign national” and prohibits a “foreign national” from making a contribution or expenditure, directly or indirectly, in connection with any election held in the state. The term “foreign national” does not include a person who is a dual citizen of the United States and a foreign country. A domestic subsidiary of a foreign corporation can disburse donations in connection to an election if it meets specified criteria.

The bill will take effect on July 1, 2022.

II. Present Situation:

Since *Buckley v. Valeo*,¹ the constitutionality of campaign-finance laws regarding the activities of American citizens relied on how well they serve the government’s interest in limiting “the actuality and appearance of corruption.”² Alternatively, restrictions on foreign-national involvement in American politics serve a different governmental interest: “preventing foreign influence over the U.S. political process.”³

The Federal Election Campaign Act of 1971 (“Act”)⁴ prohibits any “foreign national” from directly or indirectly making a contribution or donation of money or other thing of value, or an

¹ 424 U.S. 1 (1976).

² *Id.* at 26.

³ *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

⁴ FECA, Pub. L. 92-225, 86 Stat.

expenditure, or disbursement, in connection with a federal, state, or local election.⁵ Under the Act, a “foreign national” is defined as an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a “foreign principal” as defined at 22. U.S.C. § 611(b), which includes a “partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of a business in a foreign country.”⁶

The Act defines “election” to mean “a general, special, primary, or runoff election” as well as “a convention or caucus of a political party which has authority to nominate a candidate.”⁷ Florida has a broader definition of the term “election” in reference to campaign financing. Under Ch. 106, F.S., “election” is defined to mean “a primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, selecting a member of a political party executive committee, or submitting an issue to the electors for their approval or rejection.”⁸

III. Effect of Proposed Changes:

The bill incorporates into Florida Statutes the federal prohibition against a foreign national making or offering to make, directly or indirectly, a contribution or an expenditure in connection with any election held in the state.

The bill defines “foreign national” to mean:

- A foreign government;
- A foreign political party;
- A foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country;
- A person with foreign citizenship; or
- A person who is not a citizen or national of the United States and is not lawfully admitted to the United States for permanent residence.

The term “foreign national” does not include a person who is a dual citizen of the United States and a foreign country.

A domestic subsidiary of a foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of a foreign country will not be considered a “foreign national” under the bill if:

- The donations and disbursements used toward a contribution or expenditure are derived entirely from the subsidiary’s operations in the United States; and
- All decisions concerning disbursement of donations are made by individuals who are either citizens of the United States or a permanent resident of the United States.

⁵ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f).

⁶ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

⁷ 52 U.S.C. § 30101(1); the Federal Election Commission ruled that under the Act, the term “election” does not encompass state and local ballot issues, allowing political donations by foreign nationals to a domestic ballot initiative committee. MUR 7523 (Stop I-186 to Protect Mining and Jobs, *et al.*) (2021).

⁸ Section 106.011(7), F.S.

Overall budget for contributions or expenditures in connection with an election can be decided by the foreign parent of the domestic subsidiary.⁹

Under the bill, the term “foreign national” includes foreign governments and foreign political parties, which are not included in the federal definition of “foreign national”.¹⁰

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 U.S. Supreme Court has upheld statutes barring foreign nationals from activities “intimately related to the process of democratic self-government.”¹¹ Barring foreign nationals from participation in democratic political institution upholds a State’s obligation to “preserve the basic conception of a political community.”¹²

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

⁹ See Federal Election Commission Advisory Opinion 2006-15.

¹⁰ 52 U.S.C. § 30121(b).

¹¹ *Bernal v. Fainter*, 467 U.S. 216, 220 (1984).

¹² *Foley v. Connelie*, 435 U.S. 291 at 295 – 96 (1978).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 106.08.

IX. Additional Information:

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

CS/CS by Rules on February 23, 2022:

- Clarifies that domestic subsidiaries of foreign corporations or other combination of persons organized under foreign law will be allowed to make political contributions if the donations are derived entirely from the subsidiary's operations in the United States and all decisions on disbursement of donations are made by individuals who are either citizens of the United States or permanent residents of the United States. The foreign parent can still decide the overall budget for contribution or expenditures in connection to an election.

CS by Ethics and Elections on February 1, 2022:

- The CS clarifies that individuals who are dual citizens of the United States and a foreign country will not be considered foreign nationals for the purposes of campaign contributions.

- B. **Amendments:**

None.



335736

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
	.	
	.	
	.	

The Committee on Rules (Brodeur) recommended the following:

Senate Amendment

Delete lines 14 - 28
and insert:

(12) (a) 1. For purposes of this subsection, the term
"foreign national" means:
a. A foreign government;
b. A foreign political party;
c. A foreign corporation, partnership, association,
organization, or other combination of persons organized under
the laws of or having its principal place of business in a



335736

foreign country;

d. A person with foreign citizenship; or

e. A person who is not a citizen or national of the United States and is not lawfully admitted to the United States for permanent residence.

2. The term does not include:

a. A person who is a dual citizen or dual national of the United States and a foreign country.

b. A domestic subsidiary of a foreign corporation, partnership, association, organization, or other combination of persons organized under the laws or having its principal place of business in a foreign country if:

(I) The donations and disbursements used toward a contribution or an expenditure are derived entirely from funds generated by the subsidiary's operations in the United States; and

(II) All decisions concerning donations and disbursements used toward a contribution or an expenditure are made by individuals who either hold United States citizenship or are permanent residents of the United States. For purposes of this sub-sub-subparagraph, decisions concerning donations and disbursements do not include decisions regarding the subsidiary's overall budget for contributions or expenditures in connection with an election.

By the Committee on Ethics and Elections; and Senator Brodeur

582-02625-22

20221352c1

A bill to be entitled

An act relating to limitations on political contributions; amending s. 106.08, F.S.; defining the term "foreign national"; providing that a foreign national may not make or offer to make certain contributions or expenditures; providing an effective date.

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

Section 1. Subsection (12) is added to section 106.08, Florida Statutes, to read:

106.08 Contributions; limitations on.—

(12) (a) For purposes of this subsection, "foreign national" means:

1. A foreign government;

2. A foreign political party;

3. A foreign corporation, partnership, association, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country;

4. A person with foreign citizenship; or

5. A person who is not a citizen or national of the United States and is not lawfully admitted to the United States for permanent residence.

The term does not include a person who is a dual citizen or dual national of the United States and a foreign country.

(b) Consistent with the requirements of 52 U.S.C. s. 30121

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582-02625-22

20221352c1

and 11 C.F.R. s. 110.20, a foreign national may not make or offer to make, directly or indirectly, a contribution or an expenditure in connection with any election held in the state.

Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 4, 2022

I respectfully request that **Senate Bill 1352**, relating to **Limitations on Political Contributions**, be placed on the:

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

A handwritten signature in black ink that reads "Jason Brodeur". The signature is fluid and cursive.

Senator Jason Brodeur
Florida Senate, District 9

SB 1352 Explanation Statement

Senate Bill 1352 prohibits any foreign national from making, or offering to make, directly or indirectly, a contribution on an expenditure in connection with any election held in the state. The goal of this bill is to uphold the integrity of our elections and preserve the institution of democracy in Florida.

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/SB 1408

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Perry and others

SUBJECT: Grandparent Visitation Rights

DATE: February 24, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2. <u>Moody</u>	<u>Cox</u>	<u>CF</u>	Favorable
3. <u>Ravelo</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1408 amends Florida’s “Grandparental Visitation Rights” law to include an additional situation where a grandparent may petition for reasonable visitation with his or her grandchild.

Specifically, the bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where a court has found that one parent of a child criminally liable for the death of the other parent of the child or civilly liable for an intentional tort causing the death of the other parent of the child. This presumption would only apply to the grandparents who are the parents of the grandchild’s deceased parent. A court may decline to grant these visitation rights if visitation is not in the best interest of the child.

The bill takes effect July 1, 2022.

II. Present Situation:

Grandparent Visitation Rights

While parental rights have a well-founded history in U.S. legal system, grandparent’s rights are, in comparison, a more recent development. Under the common law, grandparents had no standard legal right to visit their grandchildren. Grandparent visitation rights began to gain

prominence in the 1960s, and today every state in the union has some form of grandparent visitation standard.¹

Colorado, for example, allows grandparents to request visitation rights in child custody cases or cases concerning the allocation of parental responsibilities, including those cases where a parent has become deceased.² Connecticut authorizes visitation if the grandparent can prove by clear and convincing evidence that a parent-like relationship exists between the grandparent and the minor and that denial of such visitation would cause real and significant harm.³ Georgia authorizes a court to award visitation rights in to any grandparent who is the parent of a deceased, incapacitated, or incarcerated⁴ parent and specifically provides that parental objection to such visitation is merely given deference and is not conclusive to the court's decision.⁵

Similar to the national trend with grandparent's visitation rights, Florida has had a long history with grandparent visitation legislation. In 1978, the Legislature adopted grandparent visitation legislation allowing courts to award grandparent visitation rights in dissolution of marriage proceedings under s. 61.1306(1), F.S (1977).⁶ This provision, under ch. 61, F.S., was eventually repealed after courts ruled that grandparents lacked standing to petition in such dissolution of marriage cases.⁷

In 1984, the Legislature enacted ch. 752, F.S., titled "Grandparents Visitation Rights," granting grandparents standing to petition the court for visitation in certain limited situations.⁸ In 1993, ch. 752, F.S., was further amended to grant grandparents standing to file an action for visitation

¹ Sarah Elizabeth Culley, *Troxel v. Granville and its Effect on the Future of Grandparent Visitation Statutes; Legislative Reform*, JOURNAL OF LEGISLATION, Vol. 27:1, at 238, available at <http://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1151&context=jleg> (last visited Feb. 3, 2022).

² Colo. Rev. Stat. Ann. s. 19-1-117. This sections specifically defines "case concerning the allocation of parental responsibilities with respect to a child" to include situations where: a parent has died, the marriage of the child's parents has been declared invalid or dissolved by a court, or legal custody or parental responsibility has been given or allocated to a party other than the child's parent.

³ Conn. Gen. Stat. Ann. s. 46b-59. The Supreme Court of Connecticut has held "When an otherwise fit parent denies his or her child access to an individual who has a parent-like relationship with the child and the parent's decision regarding visitation will cause the child to suffer real and substantial emotional harm, the State has a compelling interest in protecting the child's own complementary interest in preserving parent-like relationships that serve the child's welfare by avoiding the serious and immediate harm to the child that would result from the parent's decision to terminate or impair the child's relationship with the third party." *Boisvert v. Gavis*, 210 A.3d 1, 15 (Conn. 2019)(citing to that child *Roth v. Weston*, 789 A.2d 431, 445 (Conn. 2002)).

⁴ Ga. Code Ann. s. 19-7-3(d). The Supreme Court of Georgia has ruled, however, that this provision still requires proof by clear and convincing evidence of actual or threatened harm to the child in order to override an otherwise fit parents objection. *Patten v. Ardis*, 816 S.E.2d 633, 637 (Ga. 2018).

⁵ Ga. Code Ann. s. 19-7-3(c)(3) provides that "a parent's decision regarding family member visitation shall be given deference by the court, the parent's decision shall not be conclusive when failure to provide family member contact would result in emotional harm to the child. A court may presume that a child who is denied any contact with his or her family member or who is not provided some minimal opportunity for contact with his or her family member when there is a preexisting relationship between the child and such family member may suffer emotional injury that is harmful to such child's health. Such presumption shall be a rebuttable presumption."

⁶ Section 61.1306(1), F.S. (1977).

⁷ *Shuler v. Shuler*, 371 So. 2d 588, 590 (Fla. 1st DCA 1979).

⁸ Specifically, s. 752.01(1) (a)-(c), F.S. (1993) allowed visitation to be awarded if the court determined it to be in the best interests of the child and one of the following circumstances existed: (1) one or both of the child's parents were deceased, (2) the parents are divorced, (3) one parent had deserted the child, or (4) the child was born out of wedlock.

rights in situations where the family was still intact, but one or both of the parents “used their parental authority to prohibit a relationship between the minor child and the grandparents.”⁹ The constitutionality of this new subsection was specifically addressed in the 1996 case *Beagle v. Beagle*.¹⁰ In *Beagle*, the Florida Supreme Court ruled that this subsection was facially unconstitutional and did not satisfy *strict scrutiny*, holding that under Florida’s *privacy clause*¹¹ “the State may not intrude upon the parents’ fundamental right to raise their children except in cases where the child is threatened with harm.”¹²

In 2000, the Florida Supreme Court addressed the constitutionality of a 1997 amendment to ch. 61, F.S., which gave a grandparent the right to intervene in a custody dispute involving their grandchild if the grandparent could prove (1) that the grandchild was residing with them and (2) that the grandchild had a stable relationship with them. The court ruled that this amended section was unconstitutional because it allowed courts to make custody decisions based solely on the best interest of the child and placed the legal interests of the grandparent as equal to those of the parents.¹³ Finally, the court again addressed grandparent’s rights in 2004, invalidating another amendment to ch. 61, F.S., which authorized courts in dissolution of marriage proceedings to award a grandparent reasonable visitation with their grandchild if it was in the child’s best interest.¹⁴

Currently, statutes relating to grandparents rights to visitation and custody are contained in chs. 752 and 39, F.S. As previously discussed, ch. 61, F.S., has had various different grandparent rights provisions, but each has been repealed by the Legislature as a result of litigation. Chapter 752, F.S., titled “Grandparental Visitation Rights” allows for visitation to be awarded when a minor child’s parents are deceased, missing, or in a permanent vegetative state.¹⁵ If only one parent is deceased, missing or in a permanent vegetative state, the other parent must have been convicted of a felony or a violent offense in order for a grandparent to be able to petition for visitation. The court must also find the grandparent has made a *prima facie* showing of parental unfitness or danger of significant harm to the child, and if not, must dismiss the petition.

Dependency Proceedings

A dependent child is a child found by a court to have been abandoned, abused, or neglected by the child’s parents or other custodians.¹⁶ The Department of Children and Families (DCF) is responsible for providing care, safety and protection to the dependent children in its care. One of the most essential functions of the DCF is to achieve *permanency*, that is, to find a permanent

⁹ Section 752.01(1)(e), F.S. (1995).

¹⁰ 678 So. 2d 1271, 1276 (Fla. 1996).

¹¹ Specifically, Florida’s right to privacy provision states: “Every natural person has the right to be let alone and free from governmental intrusion into the persons private life except as otherwise provided herein.” FLA. CONST. art. I, s. 23.

¹² *Beagle*, 678 So. 2d at 1276.

¹³ *Richardson v. Richardson*, 766 So. 2d 1036, 1039 (Fla. 2000).

¹⁴ *Sullivan v. Sapp*, 866 So. 2d 28 (Fla. 2004). Specifically, s. 61.13(2)(b)2.c., F.S. (2001), provided: “The court may award the grandparents visitation rights with a minor child if it is in the child’s best interest. Grandparents have legal standing to seek judicial enforcement of such an award. This section does not require that grandparents be made parties or given notice of dissolution pleadings or proceedings, nor do grandparents have legal standing as contestants.”

¹⁵ Section 752.011, F.S.

¹⁶ Sections 39.01(14)(a)-(f) and 984.03(12)(a)-(f), F.S. Additionally, dependent children may be those who are surrendered, voluntarily placed with adoption agencies, have no legal guardian, or are at a substantial risk of imminent abuse or neglect by the parent or parents of the custodian.

stable environment in which to place the child. Florida courts have a large role in supervising a child's case through the dependency and, when appropriate, the adoption process. Section 39.812(3), F.S., provides [t]he court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted." Additionally, courts are required to enter any orders the court deems necessary and suitable to promote and protect the best interests of a child to be adopted.¹⁷

The Legislative Intent of Part IV of ch. 39, F.S., titled "Taking Children into Custody and Shelter Hearings" specifically provides that:

Every child in out-of-home care be afforded the advantages that can be gained from the use of family finding to establish caring and long-term or permanent connections and relationships for children and youth in out-of-home care, as well as to establish a long-term emotional support network with family members and other adults who may not be able to take the child into their home but who want to stay connected with the child.¹⁸

Consistent with the above legislative intent, grandparents often play an important role in the dependency system. Nationwide, 2.7 million grandparents are raising grandchildren and nearly half of all children living with their grandchildren are under the age of 6.¹⁹ When a child has been adjudicated dependent and is removed from the physical custody of his or her parents, the child's grandparents have the right to unsupervised, reasonable visitation, unless it is not in the best interest of the child or would interfere with the goals of the case plan.²⁰ These rights do not cease even if the court enters an order for termination of the child's parental rights. Before the court may terminate parental rights, notice must be provided to certain persons, including any grandparent entitled to priority for purposes of adoption.

III. Effect of Proposed Changes:

The bill amends ch. 752, F.S., titled "Grandparental Visitation Rights," to allow a grandparent to petition for reasonable visitation with his or her grandchild in a narrow set of circumstances.

The bill creates a presumption that a court may award a grandparent reasonable visitation with a grandchild in cases where a court has found one parent of a child criminally liable for the death of the other parent or civilly liable for an intentional tort causing the death of the other parent of the child. This presumption for visitation rights applies only to a grandparent who is a parent of the grandchild's deceased parent. This presumption may be overcome if the court finds that granting such visitation is not in the best interests of the child.

The bill applies to both biological grandparents, as well as step-grandparents.

The bill takes effect July 1, 2022.

¹⁷ Section 63.022(4)(k), F.S.

¹⁸ Section 39.04015(1)(e), F.S.

¹⁹ Children Now, *A Focus on Grandparents, The 2020 Census is Underway*, (Apr. 27, 2020) available at <https://www.childrennow.org/blog/2020-census/> (last visited Feb. 3, 2022).

²⁰ Section 39.509, F.S.

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 United States Supreme Court has recognized the fundamental liberty interests involved in the “care, custody and management” of their children.²¹ The Florida Supreme Court has likewise recognized that decisions related to parenting are fundamental rights within the Fourteenth Amendment of the United States Constitution and the liberty interests under the privacy clause of the State Constitution.²² Any statute that infringes on these rights is subject to the highest level of judicial scrutiny, and the government must prove that the statute in question serves a compelling government interest through the least intrusive means necessary.

As discussed in the Current Situation section, grandparent visitation legislation has frequently been litigated and invalidated in this state. Some legislative efforts have been scrutinized by the courts for interfering with the fundamental rights of parents or for forcing courts to replace parental decisions with their own judgement. As discussed in the Florida Supreme Court’s 1996 *Beagle* decision, the issue with much of the previous legislation concerned the fact that the legislation allowed for the courts to intervene even when there was no showing of harm to a child.

In comparison to some previous legislative efforts, however, the bill is much more narrowly tailored, and potentially distinguishable from the invalidated statutes.

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

None.

²¹ *Troxel*, 530 U.S. 57, 65 (2000).

²² See s. 61.1306(1), F.S. (1977) and *Shuler*, 371 So.2d at 591; and accompanying text.

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 752.011, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Rules on February 23, 2022:

The CS revises the applicability of the bill where a parent is found civilly liable for the death of the other parent. The underlying bill only requires a civil finding that a parent was liable for the death of the other parent, which would include civil judgements based on negligence. The CS, instead, is narrower and requires that the parent be found to have committed an intentional tort that caused the death of the other parent.

CS by Judiciary on January 24, 2022:

The CS revises the bill to be consistent with the House companion. The original Senate bill authorized additional grandparent rights in the context of a dependency proceeding. The CS authorizes a grandparent to be granted visitation with a grandchild in a narrow set of circumstances, but the grandchild need not be a subject of a dependency proceeding.

B. Amendments:

None.



142966

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment

Delete lines 26 - 27
and insert:
one parent of a child has been held criminally liable for the
death of the other parent of the child or civilly liable for an
intentional tort causing the death of the other parent of the
child, there is a

By the Committee on Judiciary; and Senators Perry and Rouson

590-02248-22

20221408c1

A bill to be entitled

An act relating to grandparent visitation rights; amending s. 752.011, F.S.; creating a presumption for maternal or paternal grandparent or stepgrandparent visitation of a child under certain circumstances; providing a burden for overcoming such presumption; providing an effective date.

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

Section 1. Present subsections (2) through (11) of section 752.011, Florida Statutes, are redesignated as subsections (3) through (12), respectively, a new subsection (2) is added to that section, and present subsections (4) and (5) of that section are amended, to read:

752.011 Petition for grandparent visitation with a minor child.—A grandparent of a minor child whose parents are deceased, missing, or in a persistent vegetative state, or whose one parent is deceased, missing, or in a persistent vegetative state and whose other parent has been convicted of a felony or an offense of violence evincing behavior that poses a substantial threat of harm to the minor child's health or welfare, may petition the court for court-ordered visitation with the grandchild under this section.

(2) Notwithstanding subsection (1), if the court finds that one parent of a child has been held criminally or civilly liable for the death of the other parent of the child, there is a presumption for granting reasonable visitation with the petitioning grandparent or stepgrandparent if he or she is the

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

590-02248-22

20221408c1

parent of the child's deceased parent. This presumption may be overcome only if the court finds that granting such visitation is not in the best interests of the child.

(5) (4) In assessing the best ~~interests~~ interest of the child under subsection (4) (3), the court shall consider the totality of the circumstances affecting the mental and emotional well-being of the minor child, including:

(a) The love, affection, and other emotional ties existing between the minor child and the grandparent, including those resulting from the relationship that had been previously allowed by the child's parent.

(b) The length and quality of the previous relationship between the minor child and the grandparent, including the extent to which the grandparent was involved in providing regular care and support for the child.

(c) Whether the grandparent established ongoing personal contact with the minor child before the death of the parent, before the onset of the parent's persistent vegetative state, or before the parent was missing.

(d) The reasons cited by the respondent parent in ending contact or visitation between the minor child and the grandparent.

(e) Whether there has been significant and demonstrable mental or emotional harm to the minor child as a result of the disruption in the family unit, whether the child derived support and stability from the grandparent, and whether the continuation of such support and stability is likely to prevent further harm.

(f) The existence or threat to the minor child of mental injury as defined in s. 39.01.

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

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(g) The present mental, physical, and emotional health of the minor child.

(h) The present mental, physical, and emotional health of the grandparent.

(i) The recommendations of the minor child's guardian ad litem, if one is appointed.

(j) The result of any psychological evaluation of the minor child.

(k) The preference of the minor child if the child is determined to be of sufficient maturity to express a preference.

(l) A written testamentary statement by the deceased parent regarding visitation with the grandparent. The absence of a testamentary statement is not deemed to provide evidence that the deceased or missing parent or parent in a persistent vegetative state would have objected to the requested visitation.

(m) Other factors that the court considers necessary to making its determination.

(6) ~~(5)~~ In assessing material harm to the parent-child relationship under subsection (4) ~~(3)~~, the court shall consider the totality of the circumstances affecting the parent-child relationship, including:

(a) Whether there have been previous disputes between the grandparent and the parent over childrearing or other matters related to the care and upbringing of the minor child.

(b) Whether visitation would materially interfere with or compromise parental authority.

(c) Whether visitation can be arranged in a manner that does not materially detract from the parent-child relationship,

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including the quantity of time available for enjoyment of the parent-child relationship and any other consideration related to disruption of the schedule and routine of the parent and the minor child.

(d) Whether visitation is being sought for the primary purpose of continuing or establishing a relationship with the minor child with the intent that the child benefit from the relationship.

(e) Whether the requested visitation would expose the minor child to conduct, moral standards, experiences, or other factors that are inconsistent with influences provided by the parent.

(f) The nature of the relationship between the child's parent and the grandparent.

(g) The reasons cited by the parent in ending contact or visitation between the minor child and the grandparent which was previously allowed by the parent.

(h) The psychological toll of visitation disputes on the minor child.

(i) Other factors that the court considers necessary in making its determination.

Section 2. This act shall take effect July 1, 2022.

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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2/23/22

Meeting Date

Rules

Committee

1408

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ron Watson

Phone

850 567-1202

Address

9114 Seafair Lane

Email

watson.strategy@gmail.com

Street

Tallahassee

State

FL

32317

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:

myself

☐

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)

Rules

The Florida Senate
APPEARANCE RECORD

1408

Meeting Date

2/23/22

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Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Karen Cyphert

Phone

850 528-3871

Address

4442 Maylor Rd

Email

Street

Tallahassee 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:

Justice for Dan

☐

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)

2/23/22

Meeting Date

Rules

Committee

The Florida Senate
APPEARANCE RECORD

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1408

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Jeremy Cohen

Phone

850 443-8711

Address

4442 Maylor Rd

Email

Street

Tallahassee

State

FL 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:

Markel Family



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/SB 1614

INTRODUCER: Governmental Oversight and Accountability Committee; Transportation Committee and Senator Harrell

SUBJECT: Public Records/Motor Vehicle Crashes/Traffic Citations

DATE: February 21, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Vickers	TR	Fav/CS
2.	Ponder	McVaney	GO	Fav/CS
3.	Proctor	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1614 amends s. 316.066, F.S., to (i) expand a current public records exemption related to personal information in a crash report; and (ii) make crash report data in a computerized database confidential and exempt from public inspection and copying requirements. The bill also amends s. 316.650, F.S., to make driver information contained in a uniform traffic citation (UTC) exempt from public record inspection and copying requirements.

The exemption for personal information in a crash report is expanded under the bill by enlarging the definition of agency.¹ The bill makes crash report data in a computerized database confidential and exempt from public inspection and copying requirements. The bill designates certain governmental and third-party entities to whom a crash report may be made immediately available. The bill permits a crash report to be immediately available to the media² provided that it does not contain any of the following information related to the parties involved in the crash:

- The home or employment street address;
- Driver license number or identification card number;

¹ The bill provides that agency has the same meaning as that term is defined in s. 119.011, F.S., rather than, as under current law, meaning only those agencies that “regularly receive[] or prepare[] information from or concerning the parties to motor vehicle crashes.” See s. 316.066(2)(a), F.S.

² Radio and television stations licensed by the Federal Communications Commissions and newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S.

- Date of birth; and
- Home and employment telephone numbers.

The bill permits a crash report to also be made available to any third party acting on behalf of a person or entity authorized under law to access the crash report, except that the third party may disclose the crash report only to the person or entity authorized to access the crash report on whose behalf the third party has sought the report.

The bill provides that crash reports may be made available 60 days after the report is filed to any person or entity eligible to access crash reports under the bill or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

The bill makes driver information in a UTC exempt from public records inspection and copying requirements. The bill defines the term “driver information” to mean a driver’s date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number. The bill excludes the driver’s name from the definition.

The bill specifically provides authority for an agency to release driver information in a UTC in accordance with the exemptions in the Driver’s Privacy Protection Act (DPPA) of 1994 and in the same manner that prescribed by s. 119.0712(2)(b), F.S., which governs the release of personal information in a motor vehicle record.

The bill provides additional penalties for a person who obtains a crash report or crash data and who knowingly discloses or knowingly uses personal information revealed in the report for a purpose not permitted under 18 U.S.C. s. 2721(b) is liable to the individual to whom the information pertains, who may bring a civil action in any court of competent jurisdiction. The court may award:

- Actual damages, but not less than liquidated damages in the amount of \$2,500;
- Punitive damages upon proof of willful or reckless disregard of the law;
- Reasonable attorney fees and other litigation costs reasonably incurred; or
- Such other preliminary and equitable relief as the court determines to be appropriate.

The bill is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement for each exemption as required by the State Constitution.

Because the bill expands a public records exemption and creates two new public records exemptions, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

The bill takes effect March 1, 2023.

II. Present Situation:

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.³ 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.⁴

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, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.⁵ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁶ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as 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.⁷

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁸ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁹

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

³ FLA. CONST. art. I, s. 24(a).

⁴ *Id.*

⁵ 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)

⁶ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁷ 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.”

⁸ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

⁹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.¹⁰ A violation of the Public Records Act may result in civil or criminal liability.¹¹

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.¹² 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.¹³

General exemptions from the public records requirements are contained in the Public Records Act.¹⁴ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁵

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁶ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁸ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁹ public records or open meetings exemptions, with specified exceptions.²⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²¹

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.²²

¹⁰ Section 119.07(1)(a), F.S.

¹¹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹² FLA. CONST. art. I, s. 24(c).

¹³ *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).

¹⁴ *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).

¹⁵ *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).

¹⁶ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁷ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁸ Section 119.15, F.S.

¹⁹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

²⁰ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²³
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁴ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁵

The Act also requires specified questions to be considered during the review process.²⁶ In examining an exemption, the Act directs the Legislature to carefully 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.²⁷ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁸

Driver Privacy Protection Act of 1994

To obtain a driver's license or register a vehicle, state departments of motor vehicles require an individual to disclose detailed personal information, including name, home address, telephone number, social security number and medical information. The Drivers Privacy Protection Act of 1994²⁹ (DPPA) was enacted to address two concerns (i) the growing threat from stalkers and criminals who could acquire personal information from state departments of motor vehicles; and (ii) to address the concern related to the common practice of some states of selling personal information to business engaged in direct marketing and solicitation. To address these concerns, the DPPA "establishes a regulatory scheme that restricts the States' ability to disclose a driver's

²³ Section 119.15(6)(b)1., F.S.

²⁴ Section 119.15(6)(b)2., F.S.

²⁵ Section 119.15(6)(b)3., F.S.

²⁶ 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?

²⁷ See generally s. 119.15, F.S.

²⁸ Section 119.15(7), F.S.

²⁹ 18 U.S.C. §§ 2721-2725.

personal information from motor vehicle records without the driver's consent.”³⁰ The DPPA defines “motor vehicle record” to mean “any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles.”³¹ “[P]ersonal information” is “information that identifies an individual, including [a] ... driver identification number, name, address ..., [or] telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations and driver's status.”³²

The DPPA's disclosure ban is subject to the following 14 exceptions for which personal information may be disclosed:

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only -
 - To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.
- For use in providing notice to the owners of towed or impounded vehicles;
- For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.
- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license.
- For use in connection with the operation of private toll transportation facilities.
- For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.

³⁰ See [Reno v. Condon, 528 U.S. 141, 144 \(2000\)](#).

³¹ 18 U.S.C. § 2725(1).

³² *Id.* § 2725(3).

- For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.
- For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

Information that is not covered by the DPPA is non-personal information contained in motor vehicle and driver license records, such as vehicular crash records, driving violations, and driver status information. This information is considered public.³³

The DPPA Protections Incorporated into Florida's Public Records Laws

Section 119.0712(2)(a) and (b), F.S., specifically incorporate the DPPA protections relating to personal information contained in a motor vehicle record held by the Department of Highway Safety and Motor Vehicles (DHSMV) into the state's public records law. Additionally, state law restrictions extend beyond the DPPA to restrict access to emergency contact information contained in a motor vehicle report and email addresses collected by the DHSMV.³⁴

Crash Reports

Florida law requires written reports of motor vehicle crashes, which must contain the following information:

- The date, time, and location of the crash.
- A description of the vehicles involved.
- The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.
- The names and addresses of witnesses.
- The name, badge number, and law enforcement agency of the officer investigating the crash.
- The names of the insurance companies for the respective parties involved in the crash.³⁵

Pursuant to s. 316.066(2)(a), F.S., crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash are confidential and exempt for a period of 60 days after the report is filed.³⁶ This exemptions applies to crash reports held by any agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes. During the 60 day period, crash reports may be released to those provided for in law, including but not limited to, the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, and law enforcement

³³ Florida Department of Highway Safety and Motor Vehicles, *Privacy Statement Driver Privacy Protection Act*, available at <https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/> (last visited on January 13, 2022).

³⁴ Section 119.0712(2)(c) and (d), F.S.

³⁵ Section 316.066(a) and (b), F.S.

³⁶ Section 316.066, F.S.

agencies.³⁷ Additionally, any local, state, or federal agency authorized by law to have access to crash reports must be granted access in furtherance of its statutory duties.³⁸

After the 60 day period, all crash report data is released as public record, including all personal information. DHSMV routinely makes crash reports available to the public through the Florida Crash Portal.³⁹ The portal comprises crash reports transmitted by the Florida Highway Patrol (FHP), county sheriff's officers, local police departments, and other law enforcement agencies throughout the state.

In 2020, more than 595,000 crash reports were submitted to the DHSMV, which was a significant decrease from 2019, when more than 740,000 reports were submitted.⁴⁰

Uniform Traffic Citations

Under Florida law, DHSMV has the duty of prescribing and providing to every traffic enforcement agency in the state pre-numbered traffic citation books.⁴¹ In lieu of using printed citation books, traffic enforcement agencies may produce uniform traffic citations (UTCs) by electronic means.⁴² FHP is among the agencies who routinely prepare citations electronically.

UTCs contain various personal information about drivers who are issued citations, including their names, dates of birth, addresses, telephone numbers, and driver license numbers.⁴³

Traffic enforcement agencies, including FHP, submit traffic citations to the clerks of court. The clerks routinely provide searchable traffic court dockets on their internet websites. Electronic citation data is also transmitted to the clerks through the Comprehensive Case Information System maintained by the Florida Association of Court Clerks and Comptrollers, Inc.⁴⁴ The UTCs, arrest, disposition, and criminal financial obligation files are electronically transmitted by the clerks to DHSMV through the Traffic Citation Accounting and Transmission System.

Under current law, all traffic citations, including all personal identifying information on the citations, is a public record and can be freely distributed. In 2020, more than 2 million citations were issued by Florida law enforcement agencies.⁴⁵

³⁷ Section 316.066(2)(b), F.S. permits the immediate availability of crash reports to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations licensed by the Federal Communications Commission, and certain newspapers.

³⁸ Section 316.066(2)(c), F.S.

³⁹ FLHSMV, Florida Crash Portal, at <https://www.flhsmv.gov/traffic-crash-reports> (last visited Jan. 18, 2022)

⁴⁰ Email from Kevin Jacobs, Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, *FLHSMV Legislation* (October 8, 2021)(on file with the Senate Committee on Transportation).

⁴¹ Section 316.650(1)(a), F.S.

⁴² Section 316.650(1)(c), F.S.

⁴³ See FLHSMV, Uniform Traffic Citation Procedures Manual (Rev. Nov. 2019), available at <https://www.flhsmv.gov/pdf/courts/utc/UTCCCombinedManual.pdf>. (last visited Jan. 26, 2022)

⁴⁴ See s. 28.2405, F.S.

⁴⁵ See *supra* note 39.

III. Effect of Proposed Changes:

Section 1 amends s. 316.066, F.S., to provide that personal information held by an agency *as defined in s. 119.011*⁴⁶ are confidential and exempt.⁴⁷ (emphasis added). Current law makes this information confidential and exempt when held by an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes.

This section revises the listing in current law of those to whom a crash report may be made immediately available. This section provides that, in addition to the parties involved in their crash and their representatives,⁴⁸ that the crash report may be made immediately available to:

- Victim services programs; and
- Any federal, state, or local governmental agency or any private person or entity acting on behalf of a federal, state, or local governmental agency in carrying out its functions, but not for redistribution to any person or entity not provided in law.

This section makes a crash report immediately available to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031, F.S., provided that it does not contain any of the following information related to the parties involved in the crash:

- The home or employment street address;
- Driver license number or identification card number;
- Date of birth;
- Home and employment telephone numbers.

This section permits a crash report to also be made available to any third party acting on behalf of a person or entity authorized under this section to access the crash report, except that the third party may disclose the crash may disclose the crash report only to the person or entity authorized to access the crash report under this section on whose behalf the third party has sought the report.

This section provides that an agency is not prevented, pursuant to a memorandum of understanding, from providing data derived from crash reports to a third party solely for the purpose of identifying vehicles involved in crashes if such data does not reveal the identity, home or employment telephone number or home or employment address, or other personal information of the parties involved in the crash.

This section provides that crash reports may be made available 60 days after the report is filed to any person or entity eligible to access crash reports under the bill or in accordance with any of

⁴⁶Section 119.011(2), F.S., defines the term “agency” to mean 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.

⁴⁷ Current law makes the exemption applicable only to “an agency that regularly receives or prepares information from or concerning the parties to motor vehicle crashes.”

⁴⁸ Including their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information.

the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

This section makes crash report data entered in a computerized database held by an agency confidential and exempt from public records requirements. Specifically, the bill provides that if crash reports are created by or submitted to an agency electronically as data elements within a computerized database, or if personal information from a crash report is entered into a computerized database, such crash report data is confidential and exempt. Sixty days after the date the crash report is filed, an agency may provide crash data derived from the crash report which includes personal information to eligible entities under this section or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Such data must be provided pursuant to a memorandum of understanding.

This section provides for the repeal of the exemption pursuant to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

This section provides for additional penalties for a person who obtains a crash report or crash data and who knowingly discloses or knowingly uses personal information revealed in the report for a purpose not permitted under 18 U.S.C. s. 2721(b) is liable to the individual to whom the information pertains, who may bring a civil action in any court of competent jurisdiction. The court may award:

- Actual damages, but not less than liquidated damages in the amount of \$2,500;
- Punitive damages upon proof of willful or reckless disregard of the law;
- Reasonable attorney fees and other litigation costs reasonably incurred; or
- Such other preliminary and equitable relief as the court determines to be appropriate.

The section provides that the above penalty provisions do not apply to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031.

Section 2 amends s. 316.650, F.S., to make driver information contained in a uniform traffic citation (UTC) held by an agency exempt⁴⁹ from public records inspection and copying requirements. This applies to driver information held by an agency before, on, or after the effective date of the bill.

The section defines the term “driver information” to mean a driver’s date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number. The section excludes the driver’s name from the definition.

⁴⁹ When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record. Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

The section permits an agency to release driver information in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b), which are:

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers.
- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only -
 - To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
 - If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting.
- For use in providing notice to the owners of towed or impounded vehicles.
- For use by any licensed private investigative agency or licensed security service for any purpose permitted under this subsection.
- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under chapter 313 of title 49.
- For use in connection with the operation of private toll transportation facilities.
- For any other use in response to requests for individual motor vehicle records if the State has obtained the express consent of the person to whom such personal information pertains.
- For bulk distribution for surveys, marketing or solicitations if the State has obtained the express consent of the person to whom such personal information pertains.
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains.
- For any other use specifically authorized under the law of the State that holds the record, if such use is related to the operation of a motor vehicle or public safety.

Any such release of driver information must conform to that prescribed by s. 119.0712(2)(b), F.S., which governs the release of personal information in a motor vehicle record and be pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

The public records exemption for driver information is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3 contains a public necessity statement identifying a public purpose for each exemption.

The public necessity statement justifying the exemption for crash reports that reveal personal information provides that:

- Crash reports reveal significant personal information, not only about drivers involved in a crash but also about motor vehicle owners, motor vehicle passengers, and other witnesses and about owners of nonvehicle property damaged in a crash.
- Use of the Internet and related technologies allows those with malicious purposes to exploit the use of personal information, such as a motorist's date of birth, driver license number, and address, threatening motorist privacy and security.
- Increasing use of information technology for the preparation, submission, and management of crash reports has led agencies to hold vast repositories of computerized crash report data, which includes such personal information.
- Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information, however, have not applied to personal information contained in crash reports.
- When crash reports and computerized crash report data are made available to the public, because they comprise much of the same personal information contained in motor vehicle records, the protections afforded by the DPPA are undermined, eroding the privacy and safety of motorists.

The public necessity statement justifying the exemption for driver information states:

- UTCs reveal significant personal information about drivers issued a citation.
- Use of the Internet and related technologies allow those with malicious purpose to exploit the use of personal information, such as a motorist's date of birth, driver license number, and address, threatening motorists' privacy and security.
- Motorist personal information, when held by the DHSMV in motor vehicle records, is confidential pursuant to the DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information have not applied to driver information contained in UTCs.
- When driver information contained in UTCs is made available to the public, because it comprises much of the same personal information contained in motor vehicle records, the protections afforded by the DPPA are undermined, eroding the privacy and safety of motorists.

The bill takes effect March 1, 2023.

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

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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 expands a public records exemption related to personal information in a crash report and makes crash report data in a computerized database confidential and exempt. The bill also makes driver information contained in a uniform traffic citation exempt from public records requirements. Thus, the bill requires 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 3 of the bill contains a statement of public necessity for each exemption.

Breadth 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 personal information - the home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash - in a crash report and in computerized crash report data; and
- Protect driver information - the driver's date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number - contained in a uniform traffic citation.

The exemptions do 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:

The private sector entities which currently acquire and use personal information and driver information to generate revenue, may be negatively impacted by the provisions of the bill.

C. Government Sector Impact:

Government entities may incur costs related to the redaction of personal information in a crash report, computerized crash report data, and a uniform traffic citation in responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.066 and 316.650.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Governmental Oversight and Accountability on February 10, 2022:

The committee substitute:

- Maintains the 60 day time limitation in current law on the public record exemption related to personal information in a crash report.
 - Expands this exemption by enlarging the definition of the term “agency” to be that as provided in chapter 119.

- A crash report to be released to certain parties within the 60 day exemption period.
- A redacted crash report to be made available within the 60 day exemption period to certain parties.
- Authorizes the release of crash reports after the 60 day exemption period in accordance with the permissible uses provided under the Driver's Privacy Protection Act (DPPA) of 1994 and pursuant to DPPA's resale and redisclosure requirements.
- Creates a public records exemption for data in a computerized database confidential and exempt from public inspection and copying requirements.
- Provides additional penalties for a person who knowingly discloses or knowingly uses exempt personal information in a crash report. This penalty provision does not apply to the media.
- Makes driver information in a uniform traffic citation exempt from public record inspection and copying requirements.
- Authorizes the release of driver information in accordance with any of the permissible uses provided under the DPPA and pursuant to the DPPA's resale and redisclosure requirements.
- Delays the effective date of the bill until March 1, 2023.

CS by Transportation on January 18, 2022:

The committee substitute:

- Clarifies current practice with respect to third parties acting on behalf of entities exempt from the public record exemption. Third parties acting on behalf of persons or entities who are authorized access to crash reports under this legislation may continue to access the report. The third party may only redisclose the report to the entity they are acting on behalf of; and
- Removes conflicting language regarding disclosing crash reports to third parties, and clarifies that crash reports may not be redisclosed for solicitation.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Transportation; and Senator Harrell

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A bill to be entitled

An act relating to public records; amending s. 316.066, F.S.; revising agencies to which a public records exemption for certain motor vehicle crash reports applies; revising entities to whom crash reports may be made immediately available; revising the types of crash reports that may be made immediately available to certain radio and television stations and newspapers; providing that crash reports may be made available to certain third parties subject to a certain restriction; revising conditions for accessing crash reports; specifying the availability of crash reports after a certain period; deleting a restriction on certain crash report information by certain newspapers; providing a public records exemption for certain electronic crash data; providing for future legislative review and repeal of the exemptions; revising applicability of a criminal penalty; providing a private cause of action against a person who violates certain restrictions relating to personal information; specifying damages, attorney fees, costs, and other relief a court may award; providing construction; amending s. 316.650, F.S.; defining the term "driver information"; providing an exemption from public records requirements for driver information contained in a uniform traffic citation; providing retroactive applicability; authorizing the release of driver information under certain circumstances; providing for future legislative review

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and repeal of the exemption; providing statements of public necessity; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 316.066, Florida Statutes, are amended to read:

316.066 Written reports of crashes.—

(2)(a) Crash reports that reveal the identity, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an any agency, as defined in s. 119.011, ~~that regularly receives or prepares information from or concerning the parties to motor vehicle crashes~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

(b) Crash reports held by an agency under paragraph (a) may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, victim services programs, and any federal, state, or local governmental agency or any private person or entity acting on behalf of a federal, state, or local governmental agency in carrying out its functions, but not for redistribution to any person or entity not listed in this subsection. Crash reports held by an agency under paragraph (a) which do not contain the home or employment

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59 street addresses, driver license or identification card numbers,
 60 dates of birth, and home and employment telephone numbers of the
 61 parties involved in the crash shall be made immediately
 62 available to radio and television stations licensed by the
 63 Federal Communications Commission and newspapers qualified to
 64 publish legal notices under ss. 50.011 and 50.031. A crash
 65 report may also be made available to any third party acting on
 66 behalf of a person or entity authorized under this section to
 67 access the crash report, except that the third party may
 68 disclose the crash report only to the person or entity
 69 authorized to access the crash report under this section on
 70 whose behalf the third party has sought the report. This section
 71 shall not prevent an agency, pursuant to a memorandum of
 72 understanding, from providing data derived from crash reports to
 73 a third party solely for the purpose of identifying vehicles
 74 involved in crashes if such data does not reveal the identity,
 75 home or employment telephone number or home or employment
 76 address, or other personal information of the parties involved
 77 in the crash ~~prosecutorial authorities, law enforcement~~
 78 ~~agencies, the Department of Transportation, county traffic~~
 79 ~~operations, victim services programs, radio and television~~
 80 ~~stations licensed by the Federal Communications Commission,~~
 81 ~~newspapers qualified to publish legal notices under ss. 50.011~~
 82 ~~and 50.031, and, in accordance with paragraph (f), free~~
 83 ~~newspapers of general circulation, published once a week or more~~
 84 ~~often, of which at least 7,500 copies are distributed by mail or~~
 85 ~~by carrier as verified by a postal statement or by a notarized~~
 86 ~~printer's statement of press run, which are intended to be~~
 87 ~~generally distributed and circulated, and which contain news of~~

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88 ~~general interest with at least 10 pages per publication,~~
 89 ~~available and of interest to the public generally for the~~
 90 ~~dissemination of news. For the purposes of this section, the~~
 91 ~~following products or publications are not newspapers as~~
 92 ~~referred to in this section: those intended primarily for~~
 93 ~~members of a particular profession or occupational group; those~~
 94 ~~with the primary purpose of distributing advertising; and those~~
 95 ~~with the primary purpose of publishing names and other personal~~
 96 ~~identifying information concerning parties to motor vehicle~~
 97 ~~crashes.~~

98 (c) Any local, state, or federal agency that is authorized
 99 to have access to crash reports by any provision of law shall be
 100 granted such access in the furtherance of the agency's statutory
 101 duties.

102 (d) As a condition precedent to accessing a crash report
 103 ~~within 60 days after the date the report is filed,~~ a person must
 104 present a valid driver license or other photographic
 105 identification, proof of status, or identification that
 106 demonstrates his or her qualifications to access that
 107 information and file a written sworn statement with the state or
 108 local agency in possession of the information stating that
 109 information from a crash report made confidential and exempt by
 110 this section will not be used for any commercial solicitation of
 111 accident victims, or knowingly disclosed to any third party for
 112 the purpose of such solicitation, ~~during the period of time that~~
 113 ~~the information remains confidential and exempt.~~ Such written
 114 sworn statement must be completed and sworn to by the requesting
 115 party for each individual crash report that is being requested
 116 ~~within 60 days after the report is filed.~~ In lieu of requiring

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the written sworn statement, an agency may provide crash reports by electronic means pursuant to a memorandum of understanding to third-party vendors under contract with one or more insurers, but only when such contract states that information from a crash report made confidential and exempt by this section will not be used for any commercial solicitation of accident victims by the vendors, or knowingly disclosed by the vendors to any third party for the purpose of such solicitation, ~~during the period of time that the information remains confidential and exempt~~, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status.

(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.

(f) Crash reports held by an agency under paragraph (a) may be made available 60 days after the date the report is filed to any person or entity eligible to access crash reports under paragraph (b) or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

(g) If crash reports are created by or submitted to an agency electronically as data elements within a computerized database or if personal information from a crash report is entered into a computerized database, such crash data held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Sixty days after the date the crash report is filed, an agency may provide crash data derived from the crash report which includes personal

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information to entities eligible to access the crash report under paragraphs (b), or in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c). Such data shall be provided pursuant to a memorandum of understanding.

(h) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature ~~Free newspapers of general circulation published once a week or more often, of which at least 7,500 copies are distributed by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run, which are intended to be generally distributed and circulated, which contain news of general interest with at least 10 pages per publication, available and of interest to the public generally for the dissemination of news, and which request 10 or more crash reports within a 24 hour period before 60 days have elapsed after the report is filed may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(3) (a) Any driver failing to file the written report required under subsection (1) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in

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chapter 318.

(b) Any employee of a state or local agency in possession of information made confidential and exempt by this section who knowingly discloses such confidential and exempt information to a person not entitled to access such information under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Any person, knowing that he or she is not entitled to obtain information made confidential and exempt by this section, who obtains or attempts to obtain such information commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) Any person who knowingly uses confidential and exempt information in violation of a filed written sworn statement, memorandum of understanding, or contractual agreement required by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) In addition to penalties outlined in paragraphs (c) and (d), a person who obtains a crash report or crash data and who knowingly discloses or knowingly uses personal information revealed in the report for a purpose not permitted under 18 U.S.C. s. 2721(b) is liable to the individual to whom the information pertains, who may bring a civil action in any court of competent jurisdiction. The court may award:

1. Actual damages, but not less than liquidated damages in the amount of \$2,500.

2. Punitive damages upon proof of willful or reckless disregard of the law.

3. Reasonable attorney fees and other litigation costs

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reasonably incurred.

4. Such other preliminary and equitable relief as the court determines to be appropriate.

This paragraph does not apply to radio and television stations licensed by the Federal Communications Commission and newspapers qualified to publish legal notices under ss. 50.011 and 50.031.

Section 2. Subsection (11) of section 316.650, Florida Statutes, is amended to read:

316.650 Traffic citations.—

(11)(a) As used in this subsection, the term “driver information” means a driver’s date of birth, driver license or identification card number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver’s name.

(b)1. Driver information contained in a uniform traffic citation held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph applies to driver information held by an agency before, on, or after the effective date of the exemption.

2. An agency may release driver information in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b) and pursuant to the resale and redisclosure requirements in 18 U.S.C. s. 2721(c).

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal

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through reenactment by the Legislature.

(c) Driver information contained in a uniform traffic citation, including ~~which includes but is not limited to~~, the accused person's name and address, shall not be used for commercial solicitation purposes. However, the use of such driver information contained in a uniform traffic citation shall not be considered a commercial purpose when used for publication in a newspaper or other news periodical, when used for broadcast by radio or television, or when used to inform a person of the availability of driver safety training.

Section 3. (1) The Legislature finds that it is a public necessity that crash reports that reveal personal information concerning parties, passengers, and witnesses to a crash for a period of 60 days after the date the crash report is filed with an agency; such personal information revealed in crash reports held by an agency following the 60-day period; and computerized crash report data held by an agency be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Crash reports reveal significant personal information, not only about parties involved in a crash, but also about passengers and other witnesses to the crash. Pervasive use of the Internet and related technologies abet those with malicious purposes in exploiting the use of personal information revealed in crash reports, such as a party's, passenger's, or witness's date of birth, driver license number, and address, creating ever-expanding threats to privacy and security never envisioned in generations past. Moreover, ever-increasing use of information technology for the preparation, submission, and management of crash reports has led

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agencies to hold vast repositories of computerized crash report data, which includes such personal information. Personal information, when held by the Department of Highway Safety and Motor Vehicles in driver license and motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. These restrictions on disclosure of personal information, however, have not applied to personal information revealed in crash reports. When personal information revealed in crash reports or computerized crash report data is made available to the public, because it comprises much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of drivers. Therefore, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements crash reports that reveal personal information concerning parties, passengers, and witnesses to a crash for a period of 60 days after the date the crash report is filed with an agency; such personal information revealed in crash reports held by an agency following the 60-day period; and computerized crash report data held by an agency.

(2) The Legislature finds that it is a public necessity that driver information contained in a uniform traffic citation held by an agency be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Uniform traffic citations reveal significant personal information about drivers issued a citation. Pervasive use of the Internet and

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related technologies abet those with malicious purposes in exploiting the use of personal information contained in traffic citations, such as a driver's date of birth, driver license number, and address, creating ever-expanding threats to privacy and security never envisioned in generations past. Driver information, when held by the Department of Highway Safety and Motor Vehicles in driver license and motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. These restrictions on disclosure of personal information, however, have not applied to driver information contained in uniform traffic citations. When driver information contained in uniform traffic citations is made available to the public, because it comprises much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of drivers. Therefore, the Legislature finds that it is a public necessity to make exempt from public records requirements driver information contained in uniform traffic citations.

Section 4. This act shall take effect March 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

SENATOR GAYLE HARRELL

25th District

February 10, 2022

Senator Kathleen Passidomo
400 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Passidomo,

I respectfully request that **SB 1614 – Public Records Exemption** be placed on the next available agenda for the Rules Committee Meeting.

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 blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: John Phelps, Staff Director
Cynthia Futch, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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/SB 1664

INTRODUCER: Rules Committee; Judiciary Committee; and Senators Perry and Boyd

SUBJECT: Unlawful Assemblies

DATE: February 24, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2. <u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
3. <u>Ravelo</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1664 addresses unlawful assemblies that specifically target residences to harass or disturb people inside their homes.

Specifically, the bill makes it a criminal offense picket or protest before or about another person's home in order to harass or disturb the person in his or her home. A person who engages in the prohibited conduct commits a second degree misdemeanor.

The bill may have a jail bed impact but this impact is indeterminate. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2022.

II. Present Situation:

Frisby v. Shultz: The First Amendment and Restrictions on Targeted Residential Picketing or Protesting

The First Amendment of the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."¹ The rights guaranteed by

¹ Amend. I, U.S. Const.

the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.² “Despite the seemingly clear imperative of the text of the First Amendment, the Supreme Court has held that a content-neutral restriction of speech is constitutional if it ‘serves a significant government interest,’ ‘is narrowly tailored’ to achieving those ends, and leaves ample alternative avenues for speech.”³

The “principal inquiry in determining whether a restriction on speech is content-neutral is ‘whether the government has adopted a restriction on speech because of the message it conveys. The government’s purpose is the controlling consideration.’”⁴

“[T]he government may impose reasonable restrictions on the time, place and manner of protected speech[.]”⁵ “[T]he requirement of narrow tailoring is satisfied ‘so long as the ... regulation promotes a substantial governmental interest’”⁶ and “the means chosen are not substantially broader than necessary to achieve the government’s interest.”⁷

In *Frisby v. Schultz*,⁸ the U.S. Supreme Court upheld an ordinance enacted in Brookfield, Wisconsin. This ordinance banned targeted residential picketing. The precise language of the ordinance was described as follows: “It is unlawful for any person to engage in picketing before or about the residence or dwelling of any individual in the Town of Brookfield.”⁹ The Court stated that the appellees and others engaged in picketing “on a public street outside the Brookfield residence of a doctor who apparently performs abortions at two clinics in neighboring towns.”¹⁰ The Court described the picketing as:

generally orderly and peaceful; the town never had occasion to invoke any of its various ordinances prohibiting obstruction of the streets, loud and unnecessary noises, or disorderly conduct. Nonetheless, the picketing generated substantial controversy and numerous complaints.¹¹

In undertaking its analysis of the ordinance, the Court first identified the ordinance as impacting protected speech.¹² Next, the Court noted that in ascertaining “what limits, if any, may be placed on protected speech, we have often focused on the ‘place’ of that speech, considering the nature of the forum the speaker seeks to employ. Our cases have recognized that the standards by which limitations on speech must be evaluated ‘differ depending on the character of the property at

² Amend. XIV, U.S. Const. See also Art. I, Fla. Const.

³ *Bell v. Winter Park, Fla.*, 745 F.3d 1318, 1322 (11th Cir. 2014) (footnotes omitted), citing *Frisby v. Schultz*, 487 U.S. 474, 484-485 (1988). The Eleventh Circuit court noted that this is an intermediate scrutiny test rather than the strict scrutiny test applied to content-based restrictions on speech. *Id.* at 1322, n. 7, citing and quoting *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 180 (11th Cir. 2006).

⁴ *Id.* at 1333, n. 6, citing and quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (citation omitted).

⁵ *Ward*, *supra*, 491 U.S. at 791. “Even protected speech is not equally permissible in all places and at all times.” *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.* 473 U.S. 788, 799 (1985).

⁶ *Id.* at 799, citing and quoting *United State v. Albertini*, 472 U.S. 675, 689 (1985) (other citation omitted).

⁷ *Id.* at 800.

⁸ 487 U.S. 474 (1988).

⁹ *Id.* at 477 (citing appellate record).

¹⁰ *Id.* at 476.

¹¹ *Id.*

¹² *Id.* at 479.

issue.”¹³ The Court determined that public streets and sidewalks were impacted by the ordinance, and that they were public fora and “must be judged against the stringent standards we have established for restrictions on speech in traditional public fora[.]”¹⁴ Those “standards” are provided in the content-neutral analysis previously described.

The Court accepted the lower federal court’s conclusion that the ordinance was content-neutral.¹⁵ While the next step in the analysis is typically to determine whether the regulation is narrowly tailored to serve a governmental interest, the court elected to first address whether the ordinance left open ample alternative channels of communication because this question was “easily answered.”¹⁶ The Court determined that the ordinance was “readily subject to a narrowing construction that avoids constitutional difficulties.” The ordinance only prohibited “focused picketing taking place solely in front of a particular residence[.]”¹⁷ The ordinance did not bar protestors from residential neighborhoods, including marching through those neighborhoods or walking a route in front of houses in those neighborhoods.¹⁸

The Court then inquired whether the ordinance served a significant government interest. The court relied on its precedent to answer the question affirmatively. This precedent identified “[t]he state’s interest in protecting the well-being, tranquility, and privacy of the home” as being “certainly of the highest order in a free and civilized society.”¹⁹ The Court also noted:

One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear, ... the home is different. “That we are often ‘captives’ outside the sanctuary of the home and subject to objectionable speech ... does not mean we must be captives everywhere.” *Rowan v. Post Office Dept.*, [397 U.S. 728, 738 (1970)]. Instead, a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions. Thus, we have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom....²⁰

Finally, the Court inquired whether the ordinance was narrowly tailored to serve the identified government interest. The Court stated that “[a] statute is narrowly tailored if it targets and eliminates no more than the exact source of the ‘evil’ it seeks to remedy.”²¹ Further, a complete ban “can be narrowly tailored, but only if each activity within the proscription’s scope is an appropriately targeted evil.”²² The Court found that the “type of focused picketing prohibited” by the ordinance was “fundamentally different from more generally directed means of

¹³ *Id.*, citing and quoting *Perry Education Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 44 (1983).

¹⁴ *Id.* at 480-481.

¹⁵ *Id.* at 482.

¹⁶ *Id.*

¹⁷ *Id.* at 482-483 (relying on representations from counsel at oral argument).

¹⁸ *Id.* at 483 (relying on representations from counsel at oral argument).

¹⁹ *Id.* at 484, citing and quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980).

²⁰ *Id.* at 484-485 (other citations omitted).

²¹ *Id.* at 485 (citation omitted).

²² *Id.*

communication that may not be completely banned in residential areas,” citing its decisions regarding handbilling and solicitation.²³ The Court further found:

... the picketing is narrowly directed at the household, not the public. The type of picketers banned by the Brookfield ordinance generally do not seek to disseminate a message to the general public, but to intrude upon the targeted resident, and to do so in an especially offensive way. Moreover, even if some such picketers have a broader communicative purpose, their activity nonetheless inherently and offensively intrudes on residential privacy....²⁴

The Court opined that the “First Amendment permits the government to prohibit offensive speech as intrusive when the ‘captive’ audience cannot avoid the objectionable speech.”²⁵ The Court concluded that the ordinance was narrowly tailored to addresses targeted picketing of residents who were essentially “captives” to this picketing.

The target of the focused picketing banned by the Brookfield ordinance is just such a “captive.” The resident is figuratively, and perhaps literally, trapped within the home, and because of the unique and subtle impact of such picketing is left with no ready means of avoiding the unwanted speech.... Thus, the “evil” of targeted residential picketing, “the very presence of an unwelcome visitor at the home,” [*Carey v. Brown*, 447 U.S. 455, 478 (1980) (Rehnquist, J., dissenting)], is “created by the medium of expression itself.” [*City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 810 (1984)]. Accordingly, the Brookfield ordinance’s complete ban of that particular medium of expression is narrowly tailored.²⁶

Unlawful Assembly, Breach of Peace, and Disorderly Conduct

Although protests, at face value, are legal, certain offenses may occur at or near a protest that are not protected under the First Amendment. For example, s. 870.02(1), F.S., provides that it is a second degree misdemeanor²⁷ for three or more persons meeting together to commit *a breach of the peace*²⁸ or any other unlawful act.

The Florida Supreme Court has held that the “basic common law elements apply” to s. 870.02, F.S., and has construed this statute “to prohibit (1) an assembly of three or more persons who, (2) having a common unlawful purpose, (3) assemble in such a manner as to give rational, firm, and courageous persons in the neighborhood of the assembly a well-grounded fear of a breach of the peace.”²⁹ The Court has further held that this statute does not infringe on free speech or assembly if the term “unlawful assembly” used in s. 870.02, F.S., meets the Court’s previously-described

²³ *Id.* at 486 (citations omitted).

²⁴ *Id.*

²⁵ *Id.* at 487 (citations omitted).

²⁶ *Id.* at 487-488 (other citation omitted).

²⁷ A second degree misdemeanor is punishable by up to 60 days in jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

²⁸ Emphasis provided by staff.

²⁹ *State v. Simpson*, 347 So.2d 414, 415 (Fla. 1977) (footnote omitted).

definition, the elements are “established by the circumstances of the incident,” and the “charging document ... articulate[s] the facts which establish each of those elements.”³⁰

Section 877.03, F.S., provides that it is a second degree misdemeanor to commit such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engage in brawling or fighting, or *engage in such conduct as to constitute a breach of the peace or disorderly conduct*.³¹

The unlawful assembly statute differs from the breach of peace or disorderly conduct statute by requiring that a person arrested for unlawful assembly be held in custody until he or she is brought before the court for admittance to bail in accordance with ch. 903, F.S.³²

Section 870.04, F.S., requires the following officers to go among persons who “unlawfully, riotously, or tumultuously assemble in any county, city or municipality” (or as near to them as may be done safely) and in the name of the state command these persons “immediately and peaceably to disperse”:

- The sheriff or the sheriff’s deputies;
- The mayor;
- Any commissioner, council member, alderman, or police officer of the city or municipality;
- Any officer or member of the Florida Highway Patrol;
- Any officer or agent of the Fish and Wildlife Conservation Commission or the Department of Environmental Protection;
- Any beverage enforcement agent;
- Any personnel or representatives of the Department of Law Enforcement or its successor; or
- Any other peace officer.

This requirement applies regardless of the number of assembled persons or whether they are armed or not.

Section 870.04, F.S., also provides that if the assembled persons, after receiving the command to disperse, do not immediately and peaceably disperse, the officers must command the assistance of “all such persons in seizing, arresting, and securing such persons in custody.”

³⁰ *Id.* at 416.

³¹ Emphasis provided by staff. The Florida Supreme Court has narrowed the application of the statute to avoid possible infringement on constitutionally-protected speech, limiting its application so it only applies “to words which ‘by their very utterance . . . inflict injury or tend to incite an immediate breach of the peace,’ *White v. State*, [330 So.2d 3, 7 (Fla.1976)]; *See Chaplinsky v. New Hampshire*, [315 U.S. 568, 572 (1942)]; or to words, known to be false, reporting some physical hazard in circumstances where such a report creates a clear and present danger of bodily harm to others.” *State v. Saunders*, 339 So.2d 641, 644 (Fla. 1976). The Court in *Saunders* construed s. 877.03, F.S., “so that no words except ‘fighting words’ or words like shouts of ‘fire’ in a crowded theatre fall within its proscription, in order to avoid the constitutional problem of overbreadth, and ‘the danger that a citizen will be punished as a criminal for exercising his right of free speech.’” *Id.* at 644, quoting *Spears v. State*, 337 So.2d 977, 980 (Fla. 1976).

³² Section 870.02(2), F.S.

Finally, s. 870.04, F.S., deems the following persons present at a riot or unlawful assembly to be one of the rioters or persons unlawfully assembled who may be prosecuted and punished accordingly:

- A person who is commanded to aid and assist in seizing and securing a rioter or person unlawfully assembled, or assist in suppressing a riot or unlawful assembly, but refuses or neglects to obey this command; or
- A person who is required by an officer to depart from a riot or unlawful assembly but refuses and neglects to do so.³³

Recent Targeted Protests at Private Residences

Protests, especially for highly-publicized issues, have sometimes targeted specific individual's homes. Both Senators Marco Rubio and Rick Scott have had protests outside their private residences.³⁴ There were protests outside the home of a public school board member in Brevard County, Florida, over "LGBTQ-affirming" school district policies.³⁵ In Windermere, Florida, groups stood outside of a home owned by Derek Chauvin who, at the time of the protest, had been charged but not convicted for the murder of George Floyd.³⁶ Outside of Florida, the mayors of Chicago and Portland have drawn protests to their private residences.^{37, 38}

III. Effect of Proposed Changes:

The bill creates a new criminal offense to picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home. The bill provides a definition of "dwelling" to include "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." The bill expressly requires a law enforcement officer to command a person who is unlawfully picketing or protesting before or about a dwelling to disperse before the person may be arrested for unlawful residential picketing. A person who engages in unlawful residential picketing

³³ In a case involving an earlier version of the statute, the Florida Supreme Court held that "[u]nder this statute the offense can only be committed when the unlawful assembly has been ordered to disperse by those officers of the law named in the statute. *Lezama v. State*, 110 Fla. 304307, 148 So. 304 (Fla. 1933).

³⁴ Jacob Ogles, *Protesters to convene on Marco Rubio's, Rick Scott's homes to demand challenge to Joe Biden win*, Florida Politics, Jan. 1, 2021, available at <https://floridapolitics.com/archives/405357-protesters-to-convene-on-marco-rubios-rick-scotts-homes-to-demand-challenge-to-joe-biden-win/> (last visited on Feb. 2, 2022); and Lautaro Grinspan, *Trump supporters gather in front of Marco Rubio's West Miami home. 'You work for us.'*, The Spokesman Review, Jan. 3 2021 (originally published in The Miami Herald), available at <https://www.spokesman.com/stories/2021/jan/03/trump-supporters-gather-in-front-of-marco-rubios-w/> (last visited on Feb. 2, 2022).

³⁵ Bailey Gallion, *Protesters' anti-LGBTQ sentiments met by messages of love outside BPS board member's home*, Florida Today, Apr. 9, 2021, available at <https://www.floridatoday.com/story/news/education/2021/04/09/protest-outside-brevard-school-board-member-home-spurs-message-love/7157736002/> (last visited on Feb. 2, 2022).

³⁶ *Protesters remain at Orlando-area home owned by officer connected to George Floyd's death*, May 30, 2020, Fox 35 (Orlando), available at <https://www.fox35orlando.com/news/protesters-remain-at-orlando-area-home-owned-by-officer-connected-to-george-floyds-death> (last visited on Feb. 2, 2022). However, Chauvin was not in the home when the protest occurred. *Id.*

³⁷ Madeline Holcombe, *Chicago protesters rally at mayor's house a day after clashes with police*, CNN, July 19, 2020, available at <https://www.cnn.com/2020/07/19/us/chicago-protest-lori-lightfoot/index.html> (last visited on Feb. 2, 2022).

³⁸ The Portland mayor actually planned to move out of his apartment due to the targeted protests at his home. Andrew Hay, *Portland mayor to leave home targeted by protestors*, Reuters, Sept. 2, 2020, available at <https://www.reuters.com/article/us-global-race-usa-protests-portland/portland-mayor-to-leave-home-targeted-by-protesters-idUSKBN25T32R> (last visited on Feb. 2, 2022).

commits a second degree misdemeanor which may result in a sentence of to up to 60 days in county jail and the assessment of a \$500 fine.

The bill also specifically provides whereas clauses specifying that the purpose of the new offense is to “serve the state’s significant interest in protecting the well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing” as recognized in *Frisby v. Shultz*. As previously noted, the U.S. Supreme Court has identified “[t]he state’s interest in protecting the well-being, tranquility, and privacy of the home” as being “certainly of the highest order in a free and civilized society.”³⁹

The bill takes effect October 1, 2022.

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 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

First Amendment

It is important to note that *Frisby v. Shultz*⁴⁰ involved a First Amendment facial challenge to the Brookfield ordinance. The U.S. Supreme Court’s decision did not bar First Amendment challenges based on unconstitutional application of a law. For example, the Court speculated that the Brookfield ordinance may not apply if the resident used his or her home as a place of business or public meeting “since the ordinance’s goal is the protection of residential privacy.”⁴¹

Additionally, not every court has reached the same conclusion as the U.S. Supreme Court in *Frisby* regarding a targeted residential picketing ordinance. For example, post-*Frisby*,

³⁹ *Carey v. Brown*, 447 U.S. 455, 471 (1980).

⁴⁰ See footnote 8, *supra*.

⁴¹ *Id.* at 488.

the federal Sixth Circuit Court of Appeals (Sixth Circuit) found that a targeted residential picketing ordinance enacted in Upper Arlington, Ohio, was unconstitutionally overbroad.⁴² This ordinance was identical to the Brookfield ordinance reviewed in *Frisby*.⁴³ Regarding the Brookfield ordinance and the *Frisby* holding on that ordinance, the Sixth Circuit opined:

The ordinance construed by the Court in *Frisby* was unconstitutionally overbroad as written but was saved by the extraordinary measure of accepting counsel's representation at oral argument before the Supreme Court as to how the ordinance would be enforced. Although there is precedent for this approach, four Justices were highly critical of saving the ordinance by this device. In his dissent, Justice Stevens offered a simple and practical alternative: [I]t is a simple matter for the town to amend its ordinance and to limit the ban to conduct that unreasonably interferes with the privacy of the home and does not serve a reasonable communicative purpose. [*Frisby v. Shultz*, 487 U.S. 474, 499 (1988)] (Stevens, J., dissenting).⁴⁴

The Sixth Circuit stated that, “[n]otwithstanding the procedure adopted in *Frisby*, we know of nothing that requires us to accept representations from the City’s counsel” regarding enforcement of the ordinance.⁴⁵ The Sixth Circuit was unclear regarding those representations, and uncertain if counsel could bind either the legislative body of the City or its police department.⁴⁶ The Sixth Circuit also believed “the record demonstrate[d] that the City’s idea of what constitutes an enforcement procedure that does not offend the Constitution” was in conflict with the Supreme Court’s post-*Frisby* holding in *Madsen v. Women’s Health Center*,⁴⁷ which the Sixth Circuit claimed “makes it clear that any linear extension beyond the area ‘solely in front of a particular residence’ is at best suspect, if not prohibited outright.”⁴⁸

Both the Brookfield ordinance on targeted residential picketing that was reviewed by the U.S. Supreme Court in *Frisby v. Shultz*⁴⁹ and the offense created by the bill focus on targeted picketing; specifically, they focus on picketing before or about the residence of any person.⁵⁰

However, there are also some differences between the Brookfield ordinance and the offense created by the bill. The Brookfield ordinance mentions “picketing”; the offense created by the bill mentions “picket or protest.” The Brookfield ordinance imposes a complete ban on targeted picketing before or about a residence or dwelling; the offense

⁴² *Vittitow v. City of Upper Arlington*, 43 F.3d 1100 (6th Cir. 1995), cert. denied, 515 US 1121 (1995).

⁴³ *Id.* at 1106.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ 114 S.Ct. 2516 (1994).

⁴⁸ *Vittitow*, *supra*, 43 F.3d at 1105 (footnote omitted), quoting *Madsen*, *supra*, 114 S.Ct. at 2530.

⁴⁹ See footnote 8, *supra*.

⁵⁰ See text of the Brookfield ordinance in the “Present Situation” section of this analysis, *supra*.

created by the bill only punishes “a picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home.”⁵¹ Also, unlike the Brookfield ordinance, the offense created by the bill defines what a dwelling is.

Vagueness

Criminal laws may not include “such vague and broad language that a person of common intelligence must speculate about its meaning and be subjected to arrest and punishment if the guess is wrong.”⁵² A vague statute, “because of its imprecision, may also invite arbitrary and discriminatory enforcement.”⁵³

However, the fact that the Legislature may not have defined words or chosen the clearest or most precise language in a statute does not necessarily render a statute unconstitutionally vague.⁵⁴ “In the absence of a statutory definition, resort may be had to case law or related statutory provisions which define the term, and where a statute does not specifically define words of common usage, such words are construed in their plain and ordinary sense.”⁵⁵

The bill does not define “harass.” Some current offenses that use the term “harass” define it; others do not. For example, s. 784.048, F.S., which punishes stalking, defines “harass” as engaging in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.⁵⁶ In contrast, s. 365.16, F.S., which punishes harassing phone calls, does not define “harass.”

It does not appear that the term “disturb” is defined in Florida law. An example of its use (without definition) is s. 871.015, F.S., which punishes knowingly engaging in protest activities or knowingly causing protest activities to occur within 500 feet of the property line of a residence, cemetery, funeral home, house of worship, or other location during or within 1 hour before or 1 hour after the conducting of a funeral or burial at that place. “Protest activities” is defined in the statute as any action, including picketing, which is undertaken with the intent to interrupt or disturb a funeral or burial.⁵⁷

⁵¹ Neither “harass” nor “disturb” is defined. See “Other Constitutional Issues” section of this analysis, *infra*.

⁵² *State v. Wershow*, 343 So.2d 605, 608 (Fla.1977). If a law is “indefinite and susceptible of differing constructions, the rule of lenity applies; the statute must be construed in the manner most favorable to the accused.” *State v. Del Castillo*, 890 So.2d 376, 398 (Fla. 3d DCA 2004). See s. 775.021(1), F.S. (codifying the rule of lenity).

⁵³ *Southeastern Fisheries Ass’n, Inc. v. Department of Natural Resources*, 453 So.2d 1351, 1353 (Fla. 1984).

⁵⁴ *State v. Barnes*, 686 So.2d 633, 637 (Fla. 2d DCA 1996), review denied, 695 So.2d 698 (Fla.1997), cert. denied, 522 U.S. 903 (1997). “[A] defendant who establishes only that the statute is vague in the sense that it requires a person to conform his or her conduct to an imprecise but comprehensible standard cannot prevail on a vagueness challenge.” *Id*.

⁵⁵ *State v. Hagan*, 387 So.2d 943, 945 (Fla.1980) (citations omitted). In *Barnes*, *supra*, the court determined that the undefined terms “high speed vehicle pursuit” and “high speed,” which appeared in a statute punishing unlawful flight from a law enforcement officer, were not impermissibly vague in all of their applications. The meaning of the term “high” could be ascertained from a dictionary definition and the meaning of the term “high speed pursuit” could be ascertained from a plain reading.

⁵⁶ Section 784.048(1)(a), F.S.

⁵⁷ Section s. 871.015(1)(c), F.S. (emphasis provided by staff).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a jail bed impact but this impact is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 810.15 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on February 23, 2022:**

The CS creates a new statute for the substance of the bill. Additionally, the CS expressly requires a law enforcement officer to command a person who is unlawfully picketing or protesting before or about a dwelling to disperse before the person may be arrested for unlawful residential picketing.

CS by Judiciary on January 31, 2022:

The CS provides a definition for “dwelling” as used in the bill to include “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
	.	
	.	
	.	

The Committee on Rules (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 810.15, Florida Statutes, is created to
read:

810.15 Residential picketing.—

(1) As used in this section, the term "dwelling" means any
building, structure, or portion thereof which is occupied as, or
designed or intended for occupancy as, a residence by one or
more families.



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(2) It is unlawful for a person to picket or protest before or about the dwelling of a person with the intent to harass or disturb that person in his or her dwelling.

(3) A person who violates this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) Before a person may be arrested for a violation of this section, a law enforcement officer as defined in s. 943.10 or any local, state, federal, or military law enforcement agency must go as near to the person as may be done with safety and shall command any person picketing or protesting before or about the dwelling of a person to immediately and peaceably disperse. If any such person does not thereupon immediately and peaceably disperse, he or she may be arrested for a violation of this section.

Section 2. This act shall take effect October 1, 2022.

===== 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 residential picketing; creating s.
810.15, F.S.; defining the term "dwelling";
prohibiting a person from picketing or protesting
before or about the dwelling of a person with
specified intent; providing criminal penalties;
requiring a specified warning before arresting a
person for a certain violation; providing an effective



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41 date.

42
43 WHEREAS, the state has a significant interest in protecting
44 the tranquility and privacy of the home and protecting citizens
45 from the detrimental effect of targeted picketing, and

46 WHEREAS, the Supreme Court of the United States recognized
47 this interest in upholding a challenged ordinance restricting
48 residential picketing in *Frisby v. Schultz*, 487 U.S. 474 (1988),
49 NOW, THEREFORE,

By the Committee on Judiciary; and Senators Perry and Boyd

590-02522-22

20221664c1

A bill to be entitled

An act relating to unlawful assemblies; amending s. 870.02, F.S.; prohibiting a person or persons from picketing or protesting before or about the residence or dwelling of any person with specified intent; defining the term "dwelling"; providing criminal penalties; providing an effective date.

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

Section 1. Section 870.02, Florida Statutes, is amended to read:

870.02 Unlawful assemblies.—

(1) (a) If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) ~~(2)~~ A person arrested for a violation of paragraph (a) this section shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903.

(2) (a) In an effort to serve the state's significant interest in protecting the well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing, it is unlawful for a person or persons to picket or protest before or about the residence or dwelling of any person with the intent to harass or disturb that person in his or her home. As used in this paragraph, the term "dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a

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

590-02522-22

20221664c1

residence by one or more families.

(b) A person who violates paragraph (a) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect October 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 8, 2022

I respectfully request that **Senate Bill #1664**, relating to Unlawful Assemblies, be placed on the:

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

Statement of Intent:

Senate Bill 1664 aims to amend the Unlawful Assemblies statute, ss. 870.02, to prohibit picketing or protesting before or about a person's home for the specified intent of harassing or disturbing a targeted individual or group. This bill will further the states vested interest in protecting Floridian's well-being, tranquility, and privacy of the home and protecting residents from the detrimental effect of targeted picketing.

A handwritten signature in black ink that reads "W. Keith Perry". The signature is fluid and cursive.

Senator Keith Perry
Florida Senate, District 8

The Florida Senate
APPEARANCE RECORD

2/23

Meeting Date

Rules

Committee

SB 1664

Bill Number or Topic

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

Amendment Barcode (if applicable)

Name

Captain Antorrio Wright

Phone

407-254-7119

Address

2500 West Colonial Drive

Email

Antonio.Wright@ocfl.net

Street

Orlando FL 32804

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:

Orange County Sheriff



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: PCS/CS/SB 1702 (703878)

INTRODUCER: Rules Committee

SUBJECT: Mandatory Building Inspections

DATE: February 22, 2022

REVISED: 2/22/22

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hunter	Ryon	CA	Favorable
2. Oxamendi	Imhof	RI	Fav/CS
3. Oxamendi/Hunter	Phelps	RC	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 1702 (703878) by Rules establishes a mandatory milestone inspection requirement for multifamily residential buildings. A milestone inspection is defined by the bill as a structural inspection of a building by a Florida-licensed architect or engineer for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.

Under the bill, multifamily buildings that are three stories or more in height have a milestone inspection once the building reaches 30 years in age, and every 10 years thereafter. If the building is within three miles of coastline, the milestone inspection must be conducted when the building reaches 20 years of age, and every 7 years thereafter. Inspections must be done by a licensed architect or engineer. An initial milestone inspection must be performed before December 31, 2024 if the building's certificate of occupancy was issued on or before July 1, 1992.

The bill provides a two-phase milestone inspection process consisting of a phase one visual inspection and a phase two structural inspection, which may involve more intensive destructive and nondestructive testing, if the phase-one visual inspection identifies structural distress. Local governments may prescribe timelines and penalties with respect to compliance.

The milestone inspection requirement does not apply to a two-family or three-family dwelling with three or fewer habitable stories above ground.

Upon completion of the milestone inspections, the:

- Architect or engineer who conducts the inspection must submit a sealed copy of the inspection report to the local building official and the board of administration for the condominium and cooperative association; and
- Board must distribute a copy of the inspection report to each unit owner.

The bill directs the Florida Building Commission to establish “comprehensive structural and life safety standards for maintaining and inspecting all buildings and structures” in Florida that are three stories or more in height by December 31, 2022. These standards must be made available for local governments to adopt at their discretion.

The bill revises the maintenance obligations for condominium and cooperative associations, to provide that:

- The association shall provide for the maintenance, repair, and replacement of specified association property;
- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

Effective January 1, 2024, the bill requires condominium and cooperative associations with a residential building that is three stories or more in height to conduct a reserve study at least once every three years, and specifies the matters that must be considered in the reserve study. The reserve study must include a schedule for the full funding of reserves. Under the bill, a reserve account is fully funded when the actual or projected reserve balance in the reserve account is equal in direct proportion to the fraction of useful life for a given component or components. The board must annually review the results of the reserve study and make any necessary adjustments.

The bill revises the requirements for the funding of reserves, by:

- Permitting associations to satisfy their reserves funding obligations by using an alternative funding method; and
- Authorizing the board to adopt a special assessment or borrow money without unit owner voting or approval for the necessary maintenance, repair, or replacement of association property, notwithstanding any provision in the declaration requiring prohibiting or limiting such authority.

The bill maintains the current authority of members of condominium and cooperative associations to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose. However, the bill permits a developer to waive reserves only if:

- The association's reserve obligations are funded consistent with the reserve study currently in effect; or
- The association provides an alternative funding mechanism for the association's reserve obligations.

The bill expands unit owner access to records, and provides additional disclosures relating to the funding of reserves by:

- Adding reserve studies and inspection reports to the list of official records of the association to which unit owners have the right to inspect and copy;
- Requiring copies of a milestone inspection report to be maintained for 15 years instead of the seven years required under current law;
- Adding the reserve study and inspection reports to the list of documents a condominium association of 150 or more units must make available on a website or through a mobile device application;
- Providing specific disclosures to unit owners in the annual budget as to any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect;
- Requiring developer and nondeveloper unit owners to provide copies of the milestone inspection report, if inspection was required, and the reserve study to prospective buyers of the unit.
- Requiring developer and nondeveloper unit owners to give prospective buyers of a unit a copy of the most recent reserve study and milestone inspection report before the applicable voidability period; and
- Providing specific disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a condominium unit regarding any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect.

The bill provides for the mediation of disputes between unit owners and the association related to failure of a governing body to perform a structural or life safety inspection, including the milestone inspection, perform a reserve study, fund reserves, or make or provide necessary maintenance or repairs of association property.

The bill also revises the post-election certification requirements for condominium and cooperative association board members. Under the bill a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, and cooperative proprietary lease, as applicable, and must complete an education curriculum administered by an education provider approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) within one year before, or 90 days after, his or her election or appointment. Under current law, a board member must certify in writing, as opposed to "by affidavit" as required in the bill, that he or she has read the applicable documents of the association or completed the approved education curriculum.

The bill takes effect July 1, 2022.

II. Present Situation:

Building Safety

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.² The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code (Building Code).³

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁴

The Florida Building Commission (commission) was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.⁵ The commission reviews several International Codes published by the International Code Council,⁶ the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated, and adopts an updated Building Code every three years.⁷

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 26, 2021).

² *Id.*; see also DBPR, *Building Code Information System*, at: <https://floridabuilding.org/c/default.aspx#> (last visited Feb. 21, 2022).

³ *Id.*

⁴ Section 553.72(1), F.S.

⁵ Section 553.74, F.S.

⁶ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Feb. 21, 2022).

⁷ Sections 553.73(7), F.S.

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.⁸ Every local government must enforce the Building Code and issue building permits.⁹ 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 as 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.¹⁰

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.¹¹ Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.¹²

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. However, local governments are empowered to enact such requirements at their discretion to apply throughout a local jurisdiction. Some local jurisdictions in the state have used the following model standards to aid in their adoption of local requirements for the maintenance and inspections of existing buildings: the International Property Maintenance Code, the Standard Housing Code, and the Standard Unsafe Building Abatement Code, or some combination thereof.¹³

Mandatory inspections of existing condominium buildings were once required by Florida law, but the law was repealed shortly after enactment. In 2008, the Legislature mandated that every condominium greater than three stories in height be inspected for maintenance, useful life, and replacement costs of the common elements every five years by an engineer or architect licensed in the state.¹⁴ A condominium association could waive this requirement for five years by a majority vote of interests present at a properly called meeting of the association.¹⁵ This provision was repealed in 2010.¹⁶

⁸ Section 553.72, F.S.

⁹ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁰ Sections 125.56(4)(a) and 553.79(1), F.S.

¹¹ 2020 Florida Building Code (7th ed.), s. 110.

¹² Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, at: <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%9393%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Feb. 21, 2022).

¹³ See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 1702* at p. 2 (Jan. 7, 2022) (on file with the Senate Committee on Regulated Industries).

¹⁴ Ch. 2008-28, Laws of Fla.

¹⁵ *Id.*

¹⁶ Ch. 2010-176, s. 59, Laws of Fla.

Building Code Administrators and Inspectors and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (FBCAIB) within the DBPR. The FBCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.¹⁷

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.¹⁸

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories in which the inspector has been licensed. The inspector categories are:¹⁹

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories in which the plans examiner has been licensed. The plans examiner categories are:²⁰

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

Threshold Building Inspections

In 1981, a “five-story Harbour Cay Condominium building in Cocoa Beach, Florida, collapsed during the placement of concrete for the roof slab, killing 11 workers and injuring 23 more.”²¹ In response to this tragedy, the Legislature instituted threshold building inspections, requiring

¹⁷ Section 468.605, F.S.

¹⁸ Section 468.603(2), F.S.

¹⁹ Section 468.603(5), F.S.

²⁰ Section 468.603(8), F.S.

²¹ National Institute of Standards and Technology, Harbour Cay Condominium Collapse Florida 1981, available at <https://www.nist.gov/el/harbour-cay-condominium-collapse-florida-1981> (last visited Jan. 26, 2022).

licensed “special inspectors” to conduct inspections for all threshold buildings.²² A special inspector is a licensed architect or registered engineer who is certified under chs. 471 or 481, F.S., to conduct inspections of threshold buildings.²³

A threshold building is defined as any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification, as defined in the Building Code, which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.²⁴ An enforcing agency must require a special inspector to perform structural inspections on a threshold building during new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified.²⁵

For a building that qualifies as a threshold building, a structural inspection plan must be submitted by the special inspector and the design professional of record to the enforcing agency prior to the issuance of a building permit for the construction of or modification to the building.²⁶ However, a fee-simple owner may declare a building a threshold building even when it does not meet the definitions.²⁷

The inspection plan for a threshold building provides specific inspection instructions to provide for the adequate inspection of the construction. The owner must retain the services of a special inspector who must inspect the building according to the special inspection plan. In addition, the inspector must determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency.²⁸ Special inspectors report directly to local building administrators and officials. The role of threshold building inspectors is unique to Florida.²⁹

There were 8,515 active Building Code Administrators/Inspectors licensed in Florida in Fiscal Year 2020-2021.³⁰

Local Building Recertification Programs

Florida does not require recertification of buildings or regular inspections of existing buildings, which is consistent with state building codes across the country. Miami-Dade and Broward Counties have amended their local building codes requiring a recertification process and inspection of buildings 40 years and older. Miami-Dade’s program was established in the 1970s,

²² Florida Building Commission, Florida Building Construction Standards available at https://www.floridabuilding.org/fbc/commission/FBC_0413/Commission_Education_POC/173/173-1-MATERIAL%20.pdf (last visited Jan. 26, 2022).

²³ See s. 553.71, F.S.

²⁴ *Id.*

²⁵ Section 553.79(5)(a), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Florida Board of Professional Engineers, *What Are Threshold Building Inspectors?*, available at <https://fbpe.org/what-are-threshold-building-inspectors/> (last visited Jan. 26, 2022).

³⁰ Department of Business and Professional Regulation, *2020-2021 Annual Report, Division of Certified Public Accounting, Division of Professions, Division of Real Estate, Division of Regulation* at p. 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Jan. 27, 2022).

and Broward County's program was modeled after Miami-Dade's and has been in effect since January 2006.³¹

Miami Dade's recertification program states that:

All buildings, except single-family residences, duplexes and minor structures as defined below, shall be recertified in the manner described below where such buildings or structures have been in existence for forty (40) years or longer, as determined by the Building Official, who shall at such time issue a Notice of Required Inspection to the building owner. Subsequent recertification shall be required at ten (10) years interval. In the event a building is determined to be structurally and electrically safe under the conditions set forth herein, and such building or structure is less than forty (40) years of age, recertification shall not be required for a minimum of ten (10) years from that time, or age forty (40), whichever is the longer period of time.³²

Inspection procedures shall "conform, in general, to the minimum inspection procedural guidelines" issued by the county, and are for the purpose of determining the general structural condition of the building or structure to the extent reasonably possible which affects the safety of the building or structure.³³ Miami-Dade's recertification program exempts buildings under 2,000 square feet,³⁴ and Broward's program exempts buildings under 3,500 square feet.³⁵ The inspections must be carried out by a professional engineer or architect registered with the State of Florida.³⁶

Following the 2021 tragedy in Surfside, Florida, where a 12-story condominium building, known as Champlain Towers South, unexpectedly experienced structural failure and partially collapsed, resulting in the death of 98 people, the concept of recertification programs gained considerable attention. The City of Boca Raton recently instituted a building recertification program for buildings over 30 years of age that are greater than three stories or 50 feet in height, or greater than 5,000 square feet and have an occupancy greater than 500 people.³⁷

³¹Broward County, Building Safety Inspection Program, available at <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 26, 2022).

³² See Code of Miami-Dade, ch. 8 Building Code, s. 8-11(f)(ii), at https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH8BUCO_ARTIAD_S8-11EXBU (last visited Jan. 26, 2022).

³³ *Id.* at s. 8-11(f)(i).

³⁴ *Id.* at s. 8-11(f)(ii).

³⁵Broward County, Building Safety Inspection Program, available at: <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 19, 2022)

³⁶ *Id.* and See Code of Miami-Dade, ch. 8, Building Code, s. 8-11(iv).

³⁷ City of Boca Raton. Ordinance 5589, available at: <https://www.myboca.us/DocumentCenter/View/28152/Ordinance-No-5589?bidId=> (last visited Jan. 21, 2022)

Community Associations

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,³⁸ recordkeeping requirements, including which records are accessible to the members of the association,³⁹ and financial reporting.⁴⁰ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., for associations that are still under developer control.⁴¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁴² After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.⁴³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.⁴⁵

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.⁴⁶

³⁸ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

³⁹ See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

⁴⁰ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.

⁴¹ Sections 718.501(1) and 719.501(1), F.S.

⁴² *Id.*

⁴³ Section 718.501(1), F.S.

⁴⁴ Section 719.501(1), F.S.

⁴⁵ Sections 718.501(1) and 719.501(1), F.S.

⁴⁶ *Id.*

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.⁴⁷

Condominiums

A condominium is a "form of ownership of real property created under ch. 718, F.S.,"⁴⁸ the "Condominium Act." Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.⁴⁹ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁵⁰

A condominium association is administered by a board of directors referred to as a "board of administration."⁵¹ The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represents the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.⁵²

There are 1,529,764 condominium units in Florida operated by 27,588 associations.⁵³ Approximately 912,376 of these condominium units in Florida are at least 30 years in age.⁵⁴ Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.⁵⁵

It is estimated that there are over 2 million residents occupying condominiums 30 years or older in Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.⁵⁶

Cooperatives

Section 719.103(12), F.S., defines a "cooperative" to mean:

⁴⁷ See s. 720.306(9)(c), F.S.

⁴⁸ Section 718.103(11), F.S.

⁴⁹ See s. 718.103, F.S., for the terms used in the Condominium Act.

⁵⁰ *Id.*

⁵¹ Section 718.103(4), F.S.

⁵² Section 718.103(2), F.S.

⁵³ Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, available at: <https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf> (last visited Jan. 21, 2022).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.⁵⁷ The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁵⁸ There are 778 cooperative associations in Florida that are registered with the DBPR.⁵⁹

Official Records – Condominium and Cooperative Associations

Florida law specifies the official records that condominium and cooperative associations must maintain.⁶⁰ Generally, the official records must be maintained in Florida for at least seven years.⁶¹ Certain of these records must be accessible to the members of an association.⁶² Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.⁶³

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website or make such documents available through an application that can be downloaded on a mobile device.⁶⁴ Cooperative associations are not required to maintain such a website.

Budgets and Reserves - Condominium and Cooperative Associations

Condominium and cooperative associations must have a budget of estimated revenues and expenses.⁶⁵ The board must adopt the annual budget at least 14 days before the start of the association's fiscal year.⁶⁶

⁵⁷ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), review dismissed 2020 WL 3442763 (Fla. 2020).

⁵⁸ See ss. 719.106(1)(g) and 719.107, F.S.

⁵⁹ See Task Force Report, pp. 4-5.

⁶⁰ See ss. 718.111(12) and 719.104(2), F.S., relating to condominium and cooperative associations, respectively.

⁶¹ See ss. 718.111(12)(b) and 719.104(2)(b), F.S., relating to condominium and cooperative associations, respectively.

⁶² See ss. 718.111(12)(a) and 719.104(2)(a), F.S., relating to condominium and cooperative associations, respectively.

⁶³ See ss. 718.111(12)(c) and 719.104(2)(c), F.S., relating to condominium and cooperative associations, respectively.

⁶⁴ Section 718.111(12)(g), F.S.

⁶⁵ Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to the annual budget for condominium and cooperative associations, respectively.

⁶⁶ *Id.*

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.⁶⁷

Condominium and cooperative associations must maintain reserve funds and any interest accrued on the reserve funds in the reserve account or accounts. Reserve funds may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of unit owners at a duly called meeting of the association.⁶⁸

Condominium and cooperative associations, and their developers, may vote to not fund reserves, i.e., waive reserves, or to provide reserves less adequate than required.⁶⁹

Reserve Studies

A reserve study determines how much an association needs to collect in annual reserve contributions for the board to afford capital projects when they are needed. A reserve study includes a physical inspection of the association's property and a financial analysis of the association's current reserves, payments by unit or homeowners into the association's reserve account, and anticipated future expenditures, thus allowing the community to pay for capital projects as they become necessary.⁷⁰ Nine states require a reserve study or a reserve schedule for condominium associations.⁷¹

Current law does not require condominium and cooperative associations in Florida to conduct a reserve study.

Financial Reporting - Condominium and Cooperative Associations

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide comparable financial reporting requirements for condominium and cooperative associations, respectively.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to

⁶⁷ Sections 718.112(2)(f)2.a. and 719.106(1)(j)2., F.S., relating to condominium and cooperative associations, respectively.

⁶⁸ Sections 718.112(2)(f)3. and 719.106(1)(j)3., F.S., relating to condominium and cooperative associations, respectively.

⁶⁹ *Id.*

⁷⁰ See Community Association Institute, *Understanding and Utilizing Your Reserve Study to Ensure Long-Term Success*, at: <https://www.caicd.org/understanding-and-utilizing-your-reserve-study-to-ensure-long-term-success/> (last visited Jan. 29, 2022).

⁷¹ See Community Association Institute, *Reserve Requirements and Funding*, at: <https://www.caionline.org/Advocacy/Priorities/ReserveStudy/Pages/default.aspx> (last visited Jan. 29, 2020). The nine states are: California, Colorado, Delaware, Hawaii, Nevada, Oregon, Utah, Virginia, and Washington State.

complete, the financial report. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The division must adopt rules setting forth uniform accounting principles, standards, and reporting requirements for cooperative associations.⁷² For condominium associations, the division's rulemaking authority is broader; the division must adopt rules setting forth uniform accounting principles and standards to be used by all condominium associations and addressing the financial reporting requirements for multicondominium associations. For condominium associations, the division's rules must include, but not be limited to:

...standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association.

Developer Turnover Report - Condominium and Cooperative Associations

In a condominium or cooperative association, when the unit owners other than the developer are entitled to elect the majority of the board for the association, the developer must relinquish control of the association to the unit owners other than the developer. The developer of a condominium or cooperative is required to give certain items to the association when this change of control occurs.⁷³

In a condominium association, the developer must give the association a turnover inspection report which is included in the official records, under seal of an architect or engineer authorized to practice in Florida, that attests to required maintenance, useful life, and replacement costs of the following applicable common elements:⁷⁴

- Roof.
- Structure.
- Fireproofing and fire protection systems.
- Elevators.
- Heating and cooling systems.
- Plumbing.
- Electrical systems.
- Swimming pool or spa and equipment.
- Seawalls.
- Pavement and parking areas.

⁷² Section 719.104(4)(a), F.S.

⁷³ Sections 718.301 and 719.301, F.S., relating to the transfer of association control for condominium and cooperative associations, respectively.

⁷⁴ Section 718.301(4)(p), F.S.

- Drainage systems.
- Painting.
- Irrigation systems.

The developer of a cooperative is not required to provide a turnover inspection report.

Pre-sale Disclosures - Condominium and Cooperative Associations

Developers and nondeveloper owners of condominium or cooperative units must give certain documents to a prospective buyer or lessee before the execution of a contract for the sale of a residential unit.⁷⁵

The developer may not close for 15 days following the execution of a purchase contract, or execution of a lease of a residential unit for an unexpired term of more than five years, and the delivery of the required documents to the buyer, including the documents creating the association, the bylaws, and the estimated operating budget of the association. A prospective purchaser may void the contract within 15 days of his or her receipt of all the required documents.⁷⁶

A nondeveloper unit owner must provide the prospective buyer or lessee certain information, including the articles of incorporation, bylaws and rules, a copy of the most recent financial information, and a “Frequently Asked Questions and Answers” document.⁷⁷ These documents must be provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract, or the sales contract is voidable by the prospective purchaser. These disclosures do not apply to the leasing of a residential unit by a nondeveloper owner.⁷⁸

Each contract for sale of a residential unit must contain in conspicuous type a statement acknowledging that the purchaser has received the document and his or her right to void the contract if the required documents are not provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract.

Prospectus or Offering Circular - Condominium and Cooperative Associations

Every developer of a residential condominium or cooperative which contains more than 20 residential units, or which is part of a group of residential condominiums or cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, must prepare a prospectus or offering circular and file it with the division prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than five years. A copy of the prospectus or offering circular must be provided to each buyer.⁷⁹

⁷⁵ Sections 718.503 and 719.503, F.S.

⁷⁶ Sections 718.503(1) and 719.503(1), F.S., providing the developer disclosures before the sale or lease of a residential condominium or cooperative unit, respectively.

⁷⁷ See ss. 718.503(2) and 719.503(2), F.S., providing the nondeveloper disclosures before the sale of a residential condominium or cooperative unit, respectively.

⁷⁸ *Id.*

⁷⁹ Sections 718.504 and 719.504, F.S., requiring a prospectus or offering circular for a residential condominium or cooperative unit, respectively.

The prospectus or offering circular must contain certain information about the condominium or cooperative, including an estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses.⁸⁰

Alternative Dispute Resolution - Condominium and Cooperative Associations

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. Before the institution of court litigation, other than an election or recall dispute, a party to a dispute must either petition the division for nonbinding arbitration or initiate presuit mediation.

Disputes in cooperative associations, including recall election disputes, are subject to the same alternative dispute resolution requirements and procedures applicable to condominiums set forth in s. 718.1255, F.S.⁸¹

Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.⁸²

Alternative dispute resolution is required for any disagreements between two or more parties that involves:⁸³

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;⁸⁴
- The board of directors' failure:
 - To properly conduct elections;
 - Give adequate notice of meetings;
 - Properly conduct meetings;
 - Provide access to association books and records; and
- A plan of termination pursuant to s. 718.117, F.S.

The division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve:⁸⁵

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

⁸⁰ See ss. 718.504(21) and 719.504(20) and (21), F.S., requiring certain budget information for the condominium or cooperative be included in the prospectus or offering circular, respectively.

⁸¹ Sections 719.1255 and 719.106(1)(f), F.S.

⁸² Section 718.1255(3)(b), F.S., providing legislative findings regarding the advantages of pre-suit alternative dispute resolution.

⁸³ Section 718.1255(1)(a), F.S., defining the term "dispute."

⁸⁴ *Id.*

⁸⁵ *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.⁸⁶

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,⁸⁷ or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.⁸⁸

The filing fee for a petition to the division to initiate nonbinding arbitration or presuit mediation is \$50.⁸⁹

The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.⁹⁰

The mediation of disputes in condominium and cooperative association is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowner association disputes under ch. 720, F.S. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.⁹¹

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.⁹²

⁸⁶ Section 718.1255(5), F.S.

⁸⁷ Section 718.1255(4)(a), F.S.

⁸⁸ Section 718.1255(4)(k), F.S.

⁸⁹ Section 718.1255(4)(a), F.S.

⁹⁰ Section 718.1255(2), F.S.

⁹¹ *Id.*

⁹² Section 720.311(2)(b), F.S.

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.⁹³

Post-Election Certification by Board Members

Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, or homeowners' association must certify in writing to the secretary of the association that he or she:⁹⁴

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, cooperative proprietary lease,⁹⁵ homeowners' association's covenants, bylaws, and current written policies, as applicable;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.⁹⁶ The curriculum must be administered by a condominium education provider approved by the division.⁹⁷ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.⁹⁸ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.⁹⁹ The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.¹⁰⁰

⁹³ Section 718.112(2)(k) and 719.106(1)(l), F.S., relating to condominium and cooperative associations, respectively.

⁹⁴ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S., provide a post-election certification requirement for newly elected condominium, cooperative, and homeowners' association board members, respectively.

⁹⁵ A newly elected member of the board of a cooperative association must also certify that they have read the "proprietary lease," which is an instrument that gives a shareholder in a cooperative association the right to occupy a particular dwelling unit. See Bankrate, *What is a Proprietary Lease?*, available at: <https://www.bankrate.com/glossary/p/proprietary-lease/> (last visited Feb. 21, 2022).

⁹⁶ The division's Internet site provides a listing of approved educational providers for the certification of board members. See Department of Business and Professional Regulation, *Condominium & Cooperatives – Education*, at <http://www.myfloridalicense.com/dbpr/lsc/documents/ListofApprovedProviders.pdf> (last visited Feb. 21, 2022). This listing also includes training for Homeowners' Associations and some Mobile Home training.

⁹⁷ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Recommendations from Government and Private Sector Groups

In response to the tragic loss of 98 lives suffered in the collapse of Champlain Towers South, the following local governments and industry groups organized to review current law and to make recommendations to prevent another building collapse:

- Broward County Condominium Structural Issues Committee;¹⁰¹
- Miami-Dade County Commission;¹⁰²
- The Florida Building Commission's Hurricane Research Advisory Committee;¹⁰³
- The Florida Bar Real Property, Probate, and Trust Law Section's Condominium Law and Policy Life Safety Advisory Task Force;¹⁰⁴
- The Miami-Dade Grand Jury;¹⁰⁵ and
- The Community Associations Institute.¹⁰⁶

The findings and recommendations from these government and private sector groups are extensive, addressing a variety of issues. The recommendations from these diverse groups are too numerous to address in this analysis. However, these groups made recommendations that may differ in the specifics but are similar in certain respects, including making recommendations for a state-wide certification program for high-rise condominiums; limiting or prohibiting the waiving of reserves by condominium associations, and requiring condominium associations to conduct reserve studies.

III. Effect of Proposed Changes:

The bill amends provisions in chs. 718 and 719, F.S., to provide for the inspection and maintenance of condominium and cooperative buildings, the funding of necessary reserves for the maintenance and repair of such buildings, and other provisions to provide unit owners with better access to relevant information regarding building safety and their association's funding of reserves.

¹⁰¹ Broward County Commission, *Summary Report and Recommendations of the Broward County Condominium Structural Issues Committee*, on file with the Regulated Industries Committee.

¹⁰² See Miami-Dade County, *Miami-Dade County convenes a series of discussion meetings with elected leaders to pursue policy reforms in wake of Surfside tragedy*, Aug. 4, 2021, <https://www.miamidade.gov/releases/2021-08-04-mayor-surfside-meetings.asp> (last visited Jan. 30, 2022).

¹⁰³ Florida Building Commission, Hurricane Research Advisory Committee, August 27, 2001, Agenda, available at: https://www.floridabuilding.org/fbc/commission/FBC_1021/HRAC/HRAC_Agenda.htm (last visited Jan. 30, 2022).

¹⁰⁴ The Florida Bar, *Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force*, Oct. 12, 2021, available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj78tuW_dn1AhX5hHIEHTUFAxUQFnoECBMQAQ&url=https%3A%2F%2Fwww-media.floridabar.org%2Fuploads%2F2021%2F10%2FC Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf&usg=AOvVaw2YITYoD_3yZbtvU0eKfYm (last visited Jan. 30, 2022).

¹⁰⁵ Eleventh Judicial Circuit of Florida in and for the County of Miami-Dade, *Final Report of the Miami-Dade Grand Jury*, Dec. 15, 2021, available at: https://miamisao.com/wp-content/uploads/2021/12/GRAND-JURY_202112151434-1.pdf (last visited Jan. 30, 2022).

¹⁰⁶ Community Associations Institute, *Condominium Safety Public Policy Report*, Oct. 2021, available at: <https://www.caionline.org/HomeownerLeaders/DisasterResources/Documents/CAI Condo Safety Public Policy Report 10 21.pdf> (last visited Jan. 30, 2022).

Inspection and Maintenance of Condominium and Cooperative Property

Mandatory Milestone Inspections

The bill creates s. 553.899, F.S., to require all multifamily residential buildings, including condominium and cooperative buildings, that are three stories or more in height to have a “milestone inspection” conducted by a licensed Florida architect or engineer.

The bill defines the term “milestone inspection: to mean:

a structural inspection of a building, including an inspection of load-bearing walls and primary structural members and primary structural systems, as defined in s. 627.706, F.S.,¹⁰⁷ by a licensed architect or engineer authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.

Under the bill, the purpose of the milestone inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code (code) or the fire safety code.

The milestone inspection must to be conducted by December 31, 2024, if the building received a certificate of occupancy on or before July 1, 1992. Buildings that are subject to the inspection requirement must be inspected by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy was issued, and every 10 years thereafter.

However, if the building is located within 3 miles of a coastline, it must have a milestone inspection by December 31 of the year the building reaches 20 years of the age, based on the date the certificate of occupancy was issued, and every 7 years thereafter.

The owner of the building, or the condominium or cooperative association, as applicable, is responsible for all costs associated with the inspection.

The bill provides a two-phase milestone inspection process:

- A Phase One inspection is a visual inspection of the property. If no signs of structural distress are found by the visual inspection, the architect or engineer may issue an inspection report.
- A Phase Two inspection is required if the Phase One inspection identifies any structural distress. A Phase Two inspection may involve destructive and nondestructive testing at the description of the special inspector.

¹⁰⁷ Section 627.706, F.S., relating to sinkhole insurance, defines the term “primary structural member” to mean a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure,” and the term “primary structural system” to mean an assemblage of primary structural members.

The milestone inspection requirement does not apply to a two-family or three-family dwelling with three or fewer habitable stories above ground.

A milestone inspection must be conducted by a Florida-licensed architect or engineer who conducts the inspection to submit a sealed copy of the inspection report to the condominium's board of administration upon the completion of a phase one or phase two inspection. However, the inspector in charge of a phase two milestone inspection must be a licensed engineer or licensed architect with a minimum of five years' experience designing structural components and five years' experience inspecting existing buildings of similar size, scope, and type of construction.

The architect, engineer, or special inspector who performs the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the building owner, or if the building is a condominium or cooperative, to the condominium or cooperative association and to the building official of the local government that has jurisdiction.

The association must distribute a copy of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

The bill authorizes local governments to prescribe timelines and penalties with respect to compliance.

The bill directs the Florida Building Commission to establish "comprehensive structural and life safety standards for maintaining and inspecting all buildings and structures" in Florida that are three stories or more in height by December 31, 2022. These standards must be made available for local governments to adopt at their discretion.

The Developer Turnover Inspection Report

The bill amends s. 718.301(4)(p), F.S., which requires the developer to provide a turnover inspection report to the association when the nondeveloper unit owners are entitled to elect the majority of the board of administration,¹⁰⁸ to require that the turnover inspection report comply with the milestone inspection requirements in s. 553.899, F.S., notwithstanding the date of issuance of the certificate of occupancy or the height of the building.

The bill also amends s. 718.301(4)(p), F.S., which specifies the components of the common elements that must be included in the developer's turnover report, to:

- Include "waterproofing" among the building components that must be addressed in the turnover report; and
- Require the developer to attest to the condition of the listed components.

¹⁰⁸ See s. 718.301, F.S., specifying the events that entitle unit owners other than the developer to elect at least a majority of the members of the board of administration of an association.

For the condominium turnover report, the bill changes the term “common elements”¹⁰⁹ to the broader term “association property.”¹¹⁰

The bill creates s. 719.301(4)(p), F.S., to provide a developer turnover report requirement for the inspection of listed components that is identical to that required for condominiums under s. 718.301(4)(p), F.S., as amended by the bill.

Maintenance of Condominium Property

The bill amends s. 718.113, F.S., which provides that maintenance of the common elements is the responsibility of the condominium association and details the maintenance obligations for condominium boards, to provide that:

- The association shall provide for the maintenance, repair, and replacement of the applicable condominium property identified in s. 718.301(4)(p), F.S., except for any maintenance responsibility for limited common elements¹¹¹ assigned to the unit by the declaration;
- After turnover of control to the unit owners, the association must perform any required maintenance for which it bears responsibility identified by the developer in the turnover report until the association obtains new maintenance protocols from a licensed professional engineer or architect;
- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

The bill creates s. 719.105(5), F.S., to provide identical obligations for maintenance of the cooperative property by the cooperative association.

In addition, the bill provides that maintenance of cooperative property is the responsibility of the association, which is identical to the provision in current law in s. 718.113(1), F.S., for condominium associations.

Reserves

Reserve Studies

The bill amends the budget reserve provisions in ss. 718.112(2)(f) and 719.106(1)(j), F.S., to:

- Effective January 1, 2024, require condominium and cooperative associations with a residential building that is three stories or greater to conduct a reserve study at least once every three years;

¹⁰⁹ Section 718.103(8), F.S., defines the term “common elements” to mean “the portions of the condominium property not included in the units.”

¹¹⁰ Section 718.103(3), F.S., defines the term “association property” to mean “that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.”

¹¹¹ Section 718.103, F.S., defines “limited common elements” to mean those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

- Require associations to provide reserves for the building components listed in ss. 718.301(4)(q) and 719.301(4)(q), F.S., instead of reserves for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000;
- Provide for the content of the reserve study, including:
 - A summary of any inspection, including the milestone inspection under s. 553.899, F.S., and the findings and recommendations from such inspections;
 - Identification of the structural components of a building for which the reserves can be established and those for which reserves cannot be established because the useful life of the component cannot be determined;
 - An estimate of the useful life for those structural components for which a useful life may be estimated;
 - An estimate of applicable costs to maintain, repair, replace, or restore those common elements;
 - The total annual assessment that may be necessary to cover the cost to maintain, repair, replace, or restore those common elements; and
 - A schedule for the full funding of reserves.

Under the bill, a reserve account is fully funded when the actual or projected reserve balance in the reserve account is equal in direct proportion to the fraction of useful life for a given component or components multiplied by the current replacement costs for the component or components.

Under the bill, the board must annually review the results of the reserve study and to make any necessary adjustments.

The reserve study requirements in the bill do not apply to condominium and cooperative associations with a building under three stories.

The bill specifies budget requirements for associations, including a description of the funding plan and the procedures used for estimating reserves.

Funding Reserves

The bill creates a new ss. 718.103(1) and 719.103, F.S., applicable to condominium and cooperative associations, respectively, to define the term “alternative funding method” to mean:

... the funding of a reserve account by other than an assessment or special assessment which may reasonably be expected to fully satisfy the association’s reserve funding obligations, including, but not limited to, payments into the reserve account by a developer who is offering units, or any other method approved by the [Division of Florida Condominiums, Timeshares & Mobile Homes].

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for the funding of reserves by condominium and cooperative associations, respectively, by:

- Permitting developers to satisfy their reserves funding obligations by using an alternative funding method; and
- Incorporating the findings and recommendations of the reserve study into the association's annual budget.

The bill amends s. 718.115(1)(a) and 719.107(1)(f), F.S., relating to the common expenses for condominium and cooperative associations, respectively, to provide that, notwithstanding any provision in the declaration requiring prohibiting or limiting a board of administration's authority to adopt a special assessment or to borrow money on behalf of the association, including any provision in the governing documents requiring unit owner voting or approval, the board may adopt a special assessment or borrow money for the necessary maintenance, repair, or replacement of the condominium or cooperative property identified in ss. 718.301(4)(p) and 719.301(4)(p), F.S., respectively.

Waiving Reserves

The bill maintains the current authority of members of condominium and cooperative associations to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose. However, the use of reserves for a purpose other than authorized reserve expenditures is authorized without a vote of the membership in the exercise of the condominium and cooperative associations' emergency powers under ss. 718.1265 or 719.128, F.S., respectively.

The bill clarifies that the majority vote required to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose is a majority vote of all the voting interests.¹¹²

The bill also amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for waiving of reserves by a developer. Before turnover, the bill permits a developer to waive reserves if:

- The reserves are funded consistent with the reserve study currently in effect; or
- An alternative funding mechanism for the association's reserve obligations is used.

Transparency - Access to Records and Disclosures

Official Records

The bill amends ss. 718.111(12)(a) and 719.104(2)(a), F.S., to include reserve studies, the milestone inspection report, and any other inspection report relating to a structural or life safety inspection to the list of documents that condominium and cooperative associations, respectively, must make available for inspection or copying by members of the association. The bill requires copies of

¹¹² Section 718.103(30), F.S., defines the term "voting interests" to mean "the voting rights distributed to the association members pursuant to s. 718.104(4)(j), F.S. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium."

inspection reports to be maintained for 15 years. Under current law, official records must be maintained for seven years unless otherwise provided by general law.¹¹³

The bill also amends s. 718.111(12)(g), F.S., which requires an association of 150 or more units to make specified documents available on a website or through an application that can be downloaded on a mobile device, to include the inspection reports and reserve studies among the types of documents such association must maintain on the website or application.

The bill does not provide a comparable provision requiring cooperative associations to publish these records on the internet or through a mobile device. Under current law, ch. 719, F.S., does not require cooperative associations of any size to publish specified records on a website or through a mobile device.

Budget Disclosures

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to require that the budget for the condominium and cooperative associations, respectively, must include a disclosure statement in conspicuous type regarding the status of reserves.

If the association has voted to waive reserves or to use existing reserve funds for purposes other than purposes for which the reserves were intended, the budget of the association must include the statement to note that event and to provide notice that the waiving of reserves or the use of reserves may result in unit owner liability for payment of unanticipated special assessments.

On or after January 1, 2026, if the association is required to perform a reserve study and the budget of the association does not fund reserves consistent with the reserve study, the budget of the association must include a statement noting the date of the last reserve study and that the reserve amount is less than required by the reserve study schedule.

Developer Turnover

The bill amends ss. 718.301(4) and 719.301(4), F.S., to require developers of condominium or cooperatives to provide the association a copy of the following when the non-developer unit owners assume control of the association:

- A copy of the inspector-prepared summary of the milestone inspection; and
- A copy of the most recent reserve study, along with the budget statements regarding the status required under ss. 718.112(2)(f) and 719.106(1)(j), F.S., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

The bill also amends s. 719.301(4), F.S., to require developers of a cooperative to provide the association identical documents or statements regarding reserves studies and the status of reserves to those required for developers of condominiums at the turnover of control to the nondeveloper unit owners.

¹¹³ Sections 718.111(12)(b) and 719.104(2)(b), F.S.

Additional Pre-Sale Disclosures

The bill amends ss. 718.503 and 719.503, F.S., for condominium and cooperative associations, respectively, which requires certain documents to be provided to prospective buyers of a unit before closing, and ss. 718.504 and 719.504, F.S., which requires specified disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a condominium or cooperative unit, respectively, to require that the following documents or information be provided to prospective buyers of a unit with a copy of:

- A copy of the most recent reserve study along with the budget statements regarding the status required under ss. 718.112(2)(f) and 719.106(1)(j), F.S., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable; and
- The inspector-prepared summary of the milestone inspection report.

Homeowner Remedies:

The bill amends the definition for the term “dispute” in s. 718.1255(1), F.S., to include a disagreement between two or more parties that involves the failure of a governing body, when required by ch. 718, F.S., or an association document, to:

- Perform a structural or life safety inspection, including the milestone inspection.
- Perform a reserve study.
- Fund reserves.
- Make or provide necessary maintenance or repairs of association property.

Under the bill, such disputes must be mediated under s. 720.311, F.S., and are not subject to non-binding arbitration by the division.

The bill also republishes s. 719.1255, F.S., which applies the alternative dispute resolution provisions for condominium disputes to cooperative disputes to incorporate the amendment to s. 718.1255, F.S.

Post-Election Certification by Board Members

The bill amends ss. 718.112(2)(d)4.b. and 719.106(1)(d)b., to revise the post-election certification requirements for condominium and cooperative association board members. Under the bill, a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, and cooperative proprietary lease, as applicable, and complete a division-approved education curriculum within one year before, or 90 days after, his or her election or appointment.

Conforming Cross-references

The bill amends ss. 558.002, 718.116, 718.121, 718.706, and 720.3085, F.S., to conform cross-references.

Effective Date

The bill takes effect July 1, 2022.

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:

Under the bill, condominium and cooperative associations and unit owners in those communities may incur additional expenses related to the required conduct of a milestone inspection and reserve study. However, the associations and unit owners may benefit from the long-term financial planning benefits of a reserve study and from the maintenance or repair of association property.

According to the Florida Building Commission comments in the analysis for SB 1702, the recertification and building safety inspections currently being conducted in Miami-Dade and Broward counties can cost as much as \$20,000 to \$40,000 for the inspection of a 15 to 20 story condominium, and between \$2,000 and \$4,000 for the inspection of a small commercial building. Any remedial work to remedy issues identified during the inspection would be in addition to these costs.¹¹⁴

Providers of reserve studies and architects and engineers who offer milestone inspections may benefit from additional business due to the required milestone inspections and reserve studies.

¹¹⁴ See Department of Business and Professional Regulation, 2022 *Agency Legislative Bill Analysis for SB 1702* at p. 7 (Jan. 7, 2022) (on file with the Senate Regulated Industries Committee).

C. Government Sector Impact:

The DBPR has not provided a fiscal impact for PCS/CS/SB 1702 (703878). However, the department has provided fiscal impact analysis for SB 7042, which provides similar requirements for the inspection of condominium and cooperative building, the maintenance of building components, and the funding of reserves. For SB 7042, the DBPR estimates a negative fiscal impact of \$1,221,912 for Fiscal Year 2022-2023, \$1,164,771 for Fiscal Year 2023-2024 and Fiscal Year 2024-2025. The estimated fiscal impact is due to anticipated additional complaints related to the expansion of the types of building components for which reserves must be maintained.¹¹⁵ The bill requires associations to maintain reserves for the building components listed in ss. 718.301(4)(p) and 719.301(4)(p), F.S., instead of reserves for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.

The division's Long Range Financial Plan requires it to complete investigations within 90 days. Consequently, by requiring more building components to be funded, the division anticipates more extensive reviews will be required within the 90-day investigation period.

The division also anticipates the need to contract for services with outside professional to assist in determining requests to approve alternative funding methods, and to contract with engineers and architects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Fannie Mae¹¹⁶ and the Federal Housing Administration¹¹⁷ have altered their requirements for loans secured by condominium and cooperatives in response to the Champlain Towers collapse, including requiring:

- The association to have assessments sufficient to fund any repairs; and
- That at least 10 percent of the association's assessments are dedicated to budget reserves.

Fannie Mae also provides that condominium and cooperatives with significant deferred maintenance or that have received a directive from a regulatory authority or inspection agency to make repairs due to unsafe conditions are not eligible for purchase until the repairs are made.¹¹⁸

¹¹⁵ See Department of Business and Professional Regulation, *2022 Session Fiscal Impact Form*, Feb. 17, 2022. (on file with the Senate Committee on Rules).

¹¹⁶ Fannie Mae, Lender Letter (LL-20221-14), Oct. 12, 2021, available at: <https://singlefamily.fanniemae.com/media/29411/display> (last visited Jan. 30, 2022).

¹¹⁷ Freddie Mac, *Handbook 4000.1, FHA Single Family Housing Policy Handbook, Condominium Project Approval*, sec. II.C.2.vi., p. 530 available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsg-102021.pdf> (last visited Jan. 30, 2022).

¹¹⁸ *Supra* n. 116.

Although the underwriting standard was adopted before the Champlain Towers South collapse, Freddie Mac also requires that at least 10 percent of a condominium association's assessments are dedicated to budget reserves.¹¹⁹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 558.002, 718.121, 718.103, 718.111, 718.112, 718.113, 718.115, 718.1255, 718.301, 718.503, 718.504, 718.706, 719.103, 719.104, 719.106, 719.107, 719.108, 719.1255, 719.301, 719.503, 719.504, and 720.3085.

This bill creates section 553.899 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.)

PCS/CS/SB 1702 (703878) by Rules on February 23, 2022:

PCS/CS/SB 1702 (703878) changes to the title of the bill from an act relating to mandatory building inspections to an act relating to building safety. The PCS/CS/SB 1702 (703878) differs from CS/SB 1702 as follows.

Regarding the mandatory milestone inspection requirements in s. 553.899, F.S., PCS/CS/SB 1702 (703878):

- Changes the inspection requirement from building more than 3 stories in height to building three stories or more in height;
- Clarifies that a milestone inspection is not a firesafety inspection;
- Requires associations to deliver an inspector-prepared summary (instead of the full inspection report) to unit owners by mail or personal delivery, and requires posting the summary in a conspicuous place, and requires posting of the full report and summary on the association website, if required to maintain a website;
- Revises the inspection requirement to not require the inspection of all habitable and uninhabitable areas to instead require the inspection of habitable areas; and
- Requires the Florida Building Commission to develop comprehensive structural and life safety standards for maintaining and inspecting buildings and structures in this state that are three stories or more in height instead of requiring the development of standards for all building types and structures.

Regarding condominium and cooperative associations under chs. 718 and 719, F.S., respectively, The PCS/CS/SB 1702 (703878) also:

- Amends ss. 718.111(12) and 719.104(2), F.S., to require associations to maintain, as official records, copies of the milestone inspection report and other inspection reports

¹¹⁹ Freddie Mac, Established Condominium Projects, April 3, 2021, available at: <https://guide.freddiemac.com/app/guide/section/5701.5> (last visited Jan. 30, 2022).

- relating to a structural or life safety inspection for 15 years, and copies of reserve studies and reserve funding plans;
- Amends ss. 718.103 and 719.103, F.S., to define the term “alternative funding method;”
- Amends s. 719.104, F.S., to revise the maintenance obligations for cooperative associations;
- Amends ss. 718.112 and 719.106, F.S., to revise the requirements for association budgets, including requirements for reserve studies, the waiving of reserves, the funding of reserves, and budget notices;
- Amends ss. 718.112(2)(d)4.b. and 719.106(1)(d)b., F.S., to revise the post-election certification for condominium and cooperative association board members;
- Amends s. 718.113, F.S., to revise the maintenance obligations for condominium associations;
- Amends ss. 718.115 and 719.107, F.S., to authorize associations to adopt a special assessment or borrow money without owner approval for the necessary repair, maintenance, or replacement of condominium or cooperative property;
- Amends s. 718.1255, F.S., to include disputes related to reserve studies, reserves, and inspections in the presuit mediation requirements for condominium associations;
- Reenacts s. 719.1255, F.S., relating to alternative dispute resolution, to incorporate the amendment made to s. 718.1255, F.S.;
- Amends ss. 718.301 and 719.301, F.S., to revise the requirements for the records a developer must provide to the association at turnover of control to the nondeveloper unit owners;
- Amends ss. 718.503 and 719.503, F.S., to delete notices acknowledging receipt of the milestone inspection report in the bill, and to instead require the unit owner to deliver to a prospective buyer or lessee a statement regarding the status of reserve funding in the budget, a copy of the most recent reserve study, and the milestone inspection report summary, if applicable;
- Amends ss. 719.504 and 719.504, F.S., to revise the requirements for prospectuses and offering circulars; and
- Amends ss. 558.002, 718.116, 718.121, 718.706, and 720.3085, F.S., to conform cross-references.

CS by Regulated Industries on February 1, 2022:

The committee substitute requires that the inspector in charge of a phase two milestone inspection must be a licensed engineer or licensed architect with a minimum of five years’ experience designing structural components and five years’ experience inspecting existing buildings of similar size, scope, and type of construction.

B. Amendments:

None.



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Proposed Committee Substitute by the Committee on Rules

A bill to be entitled

An act relating to building safety; creating s. 553.899, F.S.; providing legislative findings; defining the term "milestone inspection"; specifying that the purpose of a milestone inspection is not to determine compliance with the Florida Building Code or the firesafety code; requiring owners of certain multifamily residential buildings to have milestone inspections performed at specified times; requiring condominium and cooperative associations to arrange for milestone inspections of condominium buildings and cooperative buildings, respectively; specifying that such associations are responsible for costs relating to milestone inspections; providing applicability; requiring that initial milestone inspections for certain buildings be performed before a specified date; specifying that milestone inspections consist of two phases; providing requirements for each phase of a milestone inspection; requiring architects and engineers performing a milestone inspection to submit a sealed copy of the inspection report and a summary that includes specified findings and recommendations to certain entities; requiring condominium associations and cooperative associations to distribute and post a copy of each inspection report and summary in a specified manner; authorizing local enforcement agencies to prescribe timelines and penalties relating to milestone inspections; requiring



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the Florida Building Commission to develop certain standards by a specified date and make such standards available to local governments for adoption; amending s. 718.103, F.S.; defining the term "alternative funding method"; amending s. 718.111, F.S.; revising the types of records that constitute the official records of a condominium association; requiring associations to maintain specified records for a certain timeframe; specifying that renters of a unit have the right to inspect and copy certain reports; requiring associations to post a copy of certain reports and reserve studies on the association's website; revising rulemaking requirements for the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation; amending s. 718.112, F.S.; revising certification and education requirements for directors of association boards; revising requirements for association budgets; revising applicability; requiring certain associations to periodically have a study conducted relating to required reserves after a specified date; requiring boards to annually review the results of such study to determine if reserves are sufficient; requiring the division to adopt rules; providing requirements for the reserve study; revising requirements for approval of using reserve funds for a purpose other than authorized reserve expenditures; requiring that budgets include specified disclosures relating to reserve funds under certain circumstances



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58 on or after a specified date; restating requirements
59 for associations relating to milestone inspections;
60 amending s. 718.113, F.S.; requiring associations to
61 provide for the maintenance, repair, and replacement
62 of condominium property; providing an exception;
63 requiring associations to perform specified required
64 maintenance under certain circumstances; specifying
65 that necessary maintenance, repair, or replacement of
66 condominium property does not require unit owner
67 approval; specifying that associations are not liable
68 for certain expenses if a unit is vacated or access to
69 a common element is denied for specified reasons;
70 amending s. 718.115, F.S.; authorizing boards to adopt
71 a special assessment or borrow money for certain
72 reasons without unit owner approval; conforming cross-
73 references; amending s. 718.1255, F.S.; revising the
74 definition of the term "dispute"; specifying that
75 certain disputes are not subject to certain nonbinding
76 arbitration and must be submitted to presuit
77 mediation; amending s. 718.301, F.S.; revising
78 reporting requirements relating to the transfer of
79 association control; amending s. 718.503, F.S.;
80 revising the documents that must be delivered to a
81 prospective buyer or lessee of a residential unit;
82 revising requirements for nondeveloper disclosures;
83 amending s. 718.504, F.S.; revising requirements for
84 prospectuses and offering circulars; amending s.
85 719.103, F.S.; defining the term "alternative funding
86 method"; amending s. 719.104, F.S.; revising the types



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87 of records that constitute the official records of a
88 cooperative association; requiring associations to
89 maintain specified records for a certain timeframe;
90 specifying that renters of a unit have the right to
91 inspect and copy certain reports; revising rulemaking
92 requirements for the division; specifying that
93 maintenance of the cooperative property and common
94 areas is the responsibility of associations; providing
95 an exception; requiring associations to perform
96 specified required maintenance under certain
97 circumstances; specifying that necessary maintenance,
98 repair, or replacement of cooperative property does
99 not require unit owner approval; specifying that
100 associations are not liable for certain expenses if
101 unit must be vacated or if access to a common area is
102 denied for specified reasons; amending s. 719.106,
103 F.S.; revising certification and education
104 requirements for directors of association boards;
105 revising requirements for association budgets;
106 revising applicability; revising requirements for the
107 use of reserve funds for a purpose other than
108 authorized reverse expenditures; requiring certain
109 associations to periodically have a study conducted
110 relating to required reserves after a specified date;
111 requiring boards to annually review the results of
112 such study to determine if reserves are sufficient;
113 requiring the division to adopt rules; providing
114 requirements for the reserve study; requiring that
115 budgets include specified disclosures relating to



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116 reserve funds under certain circumstances on or after
117 a specified date; restating requirements for
118 associations relating to milestone inspections;
119 amending s. 719.107, F.S.; authorizing boards to adopt
120 a special assessment or borrow money for certain
121 reasons without unit owner approval; amending s.
122 719.301, F.S.; requiring developers to deliver a
123 turnover inspection report relating to cooperative
124 property under certain circumstances; requiring
125 developers to deliver a copy of certain reserve
126 studies and statements when relinquishing control of
127 an association; amending s. 719.503, F.S.; revising
128 the documents that must be delivered to a prospective
129 buyer or lessee of a residential unit; revising
130 nondeveloper disclosure requirements; amending s.
131 719.504, F.S.; revising requirements for prospectuses
132 and offering circulars; amending ss. 558.002, 718.116,
133 718.121, 718.706, and 720.3085, F.S.; conforming
134 cross-references; reenacting s. 719.1255, F.S.,
135 relating to alternative resolution of disputes, to
136 incorporate the amendment made to s. 718.1255, F.S.,
137 in a reference thereto; providing an effective date.
138
139 Be It Enacted by the Legislature of the State of Florida:
140
141 Section 1. Section 553.899, Florida Statutes, is created to
142 read:
143 553.899 Mandatory structural inspections for multifamily
144 residential buildings.—



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145 (1) The Legislature finds that maintaining the structural
146 integrity of a building throughout its service life is of
147 paramount importance in order to ensure that buildings are
148 structurally sound so as to not pose a threat to the public
149 health, safety, or welfare. As such, the Legislature finds that
150 the imposition of a statewide structural inspection program for
151 aging multifamily residential buildings in this state is
152 necessary to ensure that such buildings are safe for continued
153 use.
154 (2) As used in this section, the term "milestone
155 inspection" means a structural inspection of a building,
156 including an inspection of load-bearing walls and the primary
157 structural members and primary structural systems as those terms
158 are defined in s. 627.706, by a licensed architect or engineer
159 authorized to practice in this state for the purposes of
160 attesting to the life safety and adequacy of the structural
161 components of the building and, to the extent reasonably
162 possible, determining the general structural condition of the
163 building as it affects the safety of such building, including a
164 determination of any necessary maintenance, repair, or
165 replacement of any structural component of the building. The
166 purpose of such inspection is not to determine if the condition
167 of an existing building is in compliance with the Florida
168 Building Code or the firesafety code.
169 (3) The owner of a multifamily residential building that is
170 three stories or more in height must have a milestone inspection
171 performed by December 31 of the year in which the building
172 reaches 30 years of age, based on the date the certificate of
173 occupancy for the building was issued, and every 10 years



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thereafter. The owner of a multifamily residential building that is three stories or more in height and is located within 3 miles of a coastline as defined in s. 376.031 must have a milestone inspection performed by December 31 of the year in which the building reaches 20 years of age, based on the date the certificate of occupancy for the building was issued, and every 7 years thereafter. If a condominium building or cooperative building is required to have a milestone inspection performed pursuant to this section, the condominium association or cooperative association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of this section. The building owner or condominium association or cooperative association is responsible for all costs associated with the inspection. This subsection does not apply to a two-family or three-family dwelling with three or fewer habitable stories above ground.

(4) If a milestone inspection is required under this section and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024.

(5) A milestone inspection consists of two phases:

(a) For phase one of the milestone inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. Surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes are not considered signs of



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structural distress unless the architect or engineer performing the inspection determines that such surface imperfections are a sign of structural distress. If the architect or engineer finds no signs of structural distress to any building components under visual examination, phase two of the inspection, as provided in paragraph (b), is not required. An architect or engineer who completes a phase one milestone inspection shall prepare and submit an inspection report pursuant to subsection (6).

(b) A phase two of the milestone inspection must be performed if any structural distress is identified during phase one. The inspector in charge of a phase two inspection must be a licensed engineer or licensed architect who has a minimum of 5 years of experience designing the primary structural components of buildings and a minimum of 5 years of experience inspecting structural components of existing buildings of a similar size, scope, and type of construction. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report pursuant to subsection (6).

(6) Upon completion of a phase one or phase two milestone



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232 inspection, the architect or engineer who performed the
233 inspection must submit a sealed copy of the inspection report
234 with a separate summary of, at minimum, the material findings
235 and recommendations in the inspection report to the building
236 owner or, if the building is a condominium or cooperative, to
237 the condominium association or cooperative association, and to
238 the building official of the local government which has
239 jurisdiction. For a milestone inspection of a building that is a
240 condominium or cooperative, the association must distribute a
241 copy of the inspector-prepared summary of the inspection report
242 to each condominium unit owner or cooperative unit owner,
243 regardless of the findings or recommendations in the report, by
244 United States mail or personal delivery; must post a copy of the
245 inspector-prepared summary in a conspicuous place on the
246 condominium or cooperative property; and must publish the full
247 report and inspector-prepared summary on the association's
248 website, if the association is required to have a website.

249 (7) A local enforcement agency may prescribe timelines and
250 penalties with respect to compliance with this section.

251 (8) The commission shall develop comprehensive structural
252 and life safety standards for maintaining and inspecting
253 buildings and structures in this state that are three stories or
254 more in height by December 31, 2022. The standards are in
255 addition to those provided in this section and must be made
256 available for local governments to adopt at their discretion.

257 Section 2. Present subsections (1) through (30) of section
258 718.103, Florida Statutes, are redesignated as subsections (2)
259 through (31), respectively, and a new subsection (1) is added to
260 that section, to read:



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261 718.103 Definitions.—As used in this chapter, the term:
262 (1) "Alternative funding method" means a method for the
263 funding of a reserve account by other than an assessment or
264 special assessment which may reasonably be expected to fully
265 satisfy the association's reserve funding obligations,
266 including, but not limited to, payments into the reserve account
267 by a developer who is offering units or any other method
268 approved by the division.

269 Section 3. Paragraphs (a), (c), and (g) of subsection (12)
270 and subsection (13) of section 718.111, Florida Statutes, are
271 amended to read:

272 718.111 The association.—

273 (12) OFFICIAL RECORDS.—

274 (a) From the inception of the association, the association
275 shall maintain each of the following items, if applicable, which
276 constitutes the official records of the association:

277 1. A copy of the plans, permits, warranties, and other
278 items provided by the developer under s. 718.301(4).

279 2. A photocopy of the recorded declaration of condominium
280 of each condominium operated by the association and each
281 amendment to each declaration.

282 3. A photocopy of the recorded bylaws of the association
283 and each amendment to the bylaws.

284 4. A certified copy of the articles of incorporation of the
285 association, or other documents creating the association, and
286 each amendment thereto.

287 5. A copy of the current rules of the association.

288 6. A book or books that contain the minutes of all meetings
289 of the association, the board of administration, and the unit



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owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:



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a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, reserve studies and reserve funding plans, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection reports ~~report as~~ described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report ~~ss. 718.301(4)(p).~~

16. Bids for materials, equipment, or services.



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348 17. All affirmative acknowledgments made pursuant to s.
349 718.121(4)(c).

350 18. All other written records of the association not
351 specifically included in the foregoing which are related to the
352 operation of the association.

353 (c)1. The official records of the association are open to
354 inspection by any association member or the authorized
355 representative of such member at all reasonable times. The right
356 to inspect the records includes the right to make or obtain
357 copies, at the reasonable expense, if any, of the member or
358 authorized representative of such member. A renter of a unit has
359 a right to inspect and copy only the declaration of condominium,
360 ~~and~~ the association's bylaws and rules, and the inspection
361 reports described in ss. 553.899 and 718.301(4)(p). The
362 association may adopt reasonable rules regarding the frequency,
363 time, location, notice, and manner of record inspections and
364 copying but may not require a member to demonstrate any purpose
365 or state any reason for the inspection. The failure of an
366 association to provide the records within 10 working days after
367 receipt of a written request creates a rebuttable presumption
368 that the association willfully failed to comply with this
369 paragraph. A unit owner who is denied access to official records
370 is entitled to the actual damages or minimum damages for the
371 association's willful failure to comply. Minimum damages are \$50
372 per calendar day for up to 10 days, beginning on the 11th
373 working day after receipt of the written request. The failure to
374 permit inspection entitles any person prevailing in an
375 enforcement action to recover reasonable attorney fees from the
376 person in control of the records who, directly or indirectly,



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377 knowingly denied access to the records.

378 2. Any person who knowingly or intentionally defaces or
379 destroys accounting records that are required by this chapter to
380 be maintained during the period for which such records are
381 required to be maintained, or who knowingly or intentionally
382 fails to create or maintain accounting records that are required
383 to be created or maintained, with the intent of causing harm to
384 the association or one or more of its members, is personally
385 subject to a civil penalty pursuant to s. 718.501(1)(d).

386 3. The association shall maintain an adequate number of
387 copies of the declaration, articles of incorporation, bylaws,
388 and rules, and all amendments to each of the foregoing, as well
389 as the question and answer sheet as described in s. 718.504 and
390 year-end financial information required under this section, on
391 the condominium property to ensure their availability to unit
392 owners and prospective purchasers, and may charge its actual
393 costs for preparing and furnishing these documents to those
394 requesting the documents. An association shall allow a member or
395 his or her authorized representative to use a portable device,
396 including a smartphone, tablet, portable scanner, or any other
397 technology capable of scanning or taking photographs, to make an
398 electronic copy of the official records in lieu of the
399 association's providing the member or his or her authorized
400 representative with a copy of such records. The association may
401 not charge a member or his or her authorized representative for
402 the use of a portable device. Notwithstanding this paragraph,
403 the following records are not accessible to unit owners:

404 a. Any record protected by the lawyer-client privilege as
405 described in s. 90.502 and any record protected by the work-



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product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print



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and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a



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464 third-party provider with whom the association owns, leases,
465 rents, or otherwise obtains the right to operate a web page,
466 subpage, web portal, collection of subpages or web portals, or
467 an application which is dedicated to the association's
468 activities and on which required notices, records, and documents
469 may be posted or made available by the association.

470 b. The association's website or application must be
471 accessible through the Internet and must contain a subpage, web
472 portal, or other protected electronic location that is
473 inaccessible to the general public and accessible only to unit
474 owners and employees of the association.

475 c. Upon a unit owner's written request, the association
476 must provide the unit owner with a username and password and
477 access to the protected sections of the association's website or
478 application which contain any notices, records, or documents
479 that must be electronically provided.

480 2. A current copy of the following documents must be posted
481 in digital format on the association's website or application:

482 a. The recorded declaration of condominium of each
483 condominium operated by the association and each amendment to
484 each declaration.

485 b. The recorded bylaws of the association and each
486 amendment to the bylaws.

487 c. The articles of incorporation of the association, or
488 other documents creating the association, and each amendment to
489 the articles of incorporation or other documents. The copy
490 posted pursuant to this sub-subparagraph must be a copy of the
491 articles of incorporation filed with the Department of State.

492 d. The rules of the association.



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493 e. A list of all executory contracts or documents to which
494 the association is a party or under which the association or the
495 unit owners have an obligation or responsibility and, after
496 bidding for the related materials, equipment, or services has
497 closed, a list of bids received by the association within the
498 past year. Summaries of bids for materials, equipment, or
499 services which exceed \$500 must be maintained on the website or
500 application for 1 year. In lieu of summaries, complete copies of
501 the bids may be posted.

502 f. The annual budget required by s. 718.112(2)(f) and any
503 proposed budget to be considered at the annual meeting.

504 g. The financial report required by subsection (13) and any
505 monthly income or expense statement to be considered at a
506 meeting.

507 h. The certification of each director required by s.
508 718.112(2)(d)4.b.

509 i. All contracts or transactions between the association
510 and any director, officer, corporation, firm, or association
511 that is not an affiliated condominium association or any other
512 entity in which an association director is also a director or
513 officer and financially interested.

514 j. Any contract or document regarding a conflict of
515 interest or possible conflict of interest as provided in ss.
516 468.436(2)(b)6. and 718.3027(3).

517 k. The notice of any unit owner meeting and the agenda for
518 the meeting, as required by s. 718.112(2)(d)3., no later than 14
519 days before the meeting. The notice must be posted in plain view
520 on the front page of the website or application, or on a
521 separate subpage of the website or application labeled "Notices"



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which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The reserve study required under s. 718.112(2).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself



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sufficient to invalidate any action or decision of the association's board or its committees.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line ~~accounting~~ method or to fully fund reserves based on the pooling method. ~~This disclosure is not applicable to reserves funded via the pooling method.~~ In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports



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shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare a complete set of financial statements in accordance with generally accepted accounting principles. The financial statements must be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.

(b) 1. An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, deferred maintenance, and any other category for which the association maintains reserves.



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(c) An association may prepare, without a meeting of or approval by the unit owners:

1. Compiled, reviewed, or audited financial statements, if the association is required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is required to prepare compiled financial statements; or

3. Audited financial statements if the association is required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the



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date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall



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provide a copy of such report to an association member upon his or her request.

Section 4. Paragraphs (d) and (f) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (p) is added to that subsection, to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) *Unit owner meetings.*—

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

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members



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696 may stand for reelection unless prohibited by the bylaws. Board
697 members may serve terms longer than 1 year if permitted by the
698 bylaws or articles of incorporation. A board member may not
699 serve more than 8 consecutive years unless approved by an
700 affirmative vote of unit owners representing two-thirds of all
701 votes cast in the election or unless there are not enough
702 eligible candidates to fill the vacancies on the board at the
703 time of the vacancy. Only board service that occurs on or after
704 July 1, 2018, may be used when calculating a board member's term
705 limit. If the number of board members whose terms expire at the
706 annual meeting equals or exceeds the number of candidates, the
707 candidates become members of the board effective upon the
708 adjournment of the annual meeting. Unless the bylaws provide
709 otherwise, any remaining vacancies shall be filled by the
710 affirmative vote of the majority of the directors making up the
711 newly constituted board even if the directors constitute less
712 than a quorum or there is only one director. In a residential
713 condominium association of more than 10 units or in a
714 residential condominium association that does not include
715 timeshare units or timeshare interests, co-owners of a unit may
716 not serve as members of the board of directors at the same time
717 unless they own more than one unit or unless there are not
718 enough eligible candidates to fill the vacancies on the board at
719 the time of the vacancy. A unit owner in a residential
720 condominium desiring to be a candidate for board membership must
721 comply with sub-subparagraph 4.a. and must be eligible to be a
722 candidate to serve on the board of directors at the time of the
723 deadline for submitting a notice of intent to run in order to
724 have his or her name listed as a proper candidate on the ballot



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725 or to serve on the board. A person who has been suspended or
726 removed by the division under this chapter, or who is delinquent
727 in the payment of any assessment due to the association, is not
728 eligible to be a candidate for board membership and may not be
729 listed on the ballot. For purposes of this paragraph, a person
730 is delinquent if a payment is not made by the due date as
731 specifically identified in the declaration of condominium,
732 bylaws, or articles of incorporation. If a due date is not
733 specifically identified in the declaration of condominium,
734 bylaws, or articles of incorporation, the due date is the first
735 day of the assessment period. A person who has been convicted of
736 any felony in this state or in a United States District or
737 Territorial Court, or who has been convicted of any offense in
738 another jurisdiction which would be considered a felony if
739 committed in this state, is not eligible for board membership
740 unless such felon's civil rights have been restored for at least
741 5 years as of the date such person seeks election to the board.
742 The validity of an action by the board is not affected if it is
743 later determined that a board member is ineligible for board
744 membership due to having been convicted of a felony. This
745 subparagraph does not limit the term of a member of the board of
746 a nonresidential or timeshare condominium.

747 3. The bylaws must provide the method of calling meetings
748 of unit owners, including annual meetings. Written notice of an
749 annual meeting must include an agenda; be mailed, hand
750 delivered, or electronically transmitted to each unit owner at
751 least 14 days before the annual meeting; and be posted in a
752 conspicuous place on the condominium property or association
753 property at least 14 continuous days before the annual meeting.



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754 Written notice of a meeting other than an annual meeting must
755 include an agenda; be mailed, hand delivered, or electronically
756 transmitted to each unit owner; and be posted in a conspicuous
757 place on the condominium property or association property within
758 the timeframe specified in the bylaws. If the bylaws do not
759 specify a timeframe for written notice of a meeting other than
760 an annual meeting, notice must be provided at least 14
761 continuous days before the meeting. Upon notice to the unit
762 owners, the board shall, by duly adopted rule, designate a
763 specific location on the condominium property or association
764 property where all notices of unit owner meetings must be
765 posted. This requirement does not apply if there is no
766 condominium property for posting notices. In lieu of, or in
767 addition to, the physical posting of meeting notices, the
768 association may, by reasonable rule, adopt a procedure for
769 conspicuously posting and repeatedly broadcasting the notice and
770 the agenda on a closed-circuit cable television system serving
771 the condominium association. However, if broadcast notice is
772 used in lieu of a notice posted physically on the condominium
773 property, the notice and agenda must be broadcast at least four
774 times every broadcast hour of each day that a posted notice is
775 otherwise required under this section. If broadcast notice is
776 provided, the notice and agenda must be broadcast in a manner
777 and for a sufficient continuous length of time so as to allow an
778 average reader to observe the notice and read and comprehend the
779 entire content of the notice and the agenda. In addition to any
780 of the authorized means of providing notice of a meeting of the
781 board, the association may, by rule, adopt a procedure for
782 conspicuously posting the meeting notice and the agenda on a



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783 website serving the condominium association for at least the
784 minimum period of time for which a notice of a meeting is also
785 required to be physically posted on the condominium property.
786 Any rule adopted shall, in addition to other matters, include a
787 requirement that the association send an electronic notice in
788 the same manner as a notice for a meeting of the members, which
789 must include a hyperlink to the website where the notice is
790 posted, to unit owners whose e-mail addresses are included in
791 the association's official records. Unless a unit owner waives
792 in writing the right to receive notice of the annual meeting,
793 such notice must be hand delivered, mailed, or electronically
794 transmitted to each unit owner. Notice for meetings and notice
795 for all other purposes must be mailed to each unit owner at the
796 address last furnished to the association by the unit owner, or
797 hand delivered to each unit owner. However, if a unit is owned
798 by more than one person, the association must provide notice to
799 the address that the developer identifies for that purpose and
800 thereafter as one or more of the owners of the unit advise the
801 association in writing, or if no address is given or the owners
802 of the unit do not agree, to the address provided on the deed of
803 record. An officer of the association, or the manager or other
804 person providing notice of the association meeting, must provide
805 an affidavit or United States Postal Service certificate of
806 mailing, to be included in the official records of the
807 association affirming that the notice was mailed or hand
808 delivered in accordance with this provision.

809 4. The members of the board of a residential condominium
810 shall be elected by written ballot or voting machine. Proxies
811 may not be used in electing the board in general elections or



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elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this



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

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall do both of the following:

(I) Certify by affidavit in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. ~~In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may~~

(II) Submit a certificate of having satisfactorily



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870 completed the educational curriculum administered by a division-
871 approved condominium education provider within 1 year before or
872 90 days after the date of election or appointment. The affidavit
873 ~~and written certification or~~ educational certificate is valid
874 and does not have to be resubmitted as long as the director
875 serves on the board without interruption.

876

877 A director of an association of a residential condominium who
878 fails to timely file the affidavit and ~~written certification or~~
879 educational certificate is suspended from service on the board
880 until he or she complies with this sub-subparagraph. The board
881 may temporarily fill the vacancy during the period of
882 suspension. The secretary shall require ~~cause~~ the association to
883 retain a director's affidavit and ~~written certification or~~
884 educational certificate for inspection by the members for 5
885 years after a director's election or the duration of the
886 director's uninterrupted tenure, whichever is longer. Failure to
887 have such affidavit and ~~written certification or~~ educational
888 certificate on file does not affect the validity of any board
889 action.

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

892 5. Any approval by unit owners called for by this chapter
893 or the applicable declaration or bylaws, including, but not
894 limited to, the approval requirement in s. 718.111(8), must be
895 made at a duly noticed meeting of unit owners and is subject to
896 all requirements of this chapter or the applicable condominium
897 documents relating to unit owner decisionmaking, except that
898 unit owners may take action by written agreement, without



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899 meetings, on matters for which action by written agreement
900 without meetings is expressly allowed by the applicable bylaws
901 or declaration or any law that provides for such action.

902 6. Unit owners may waive notice of specific meetings if
903 allowed by the applicable bylaws or declaration or any law.
904 Notice of meetings of the board of administration, unit owner
905 meetings, except unit owner meetings called to recall board
906 members under paragraph (j), and committee meetings may be given
907 by electronic transmission to unit owners who consent to receive
908 notice by electronic transmission. A unit owner who consents to
909 receiving notices by electronic transmission is solely
910 responsible for removing or bypassing filters that block receipt
911 of mass e-mails sent to members on behalf of the association in
912 the course of giving electronic notices.

913 7. Unit owners have the right to participate in meetings of
914 unit owners with reference to all designated agenda items.
915 However, the association may adopt reasonable rules governing
916 the frequency, duration, and manner of unit owner participation.
917 8. A unit owner may tape record or videotape a meeting of
918 the unit owners subject to reasonable rules adopted by the
919 division.

920 9. Unless otherwise provided in the bylaws, any vacancy
921 occurring on the board before the expiration of a term may be
922 filled by the affirmative vote of the majority of the remaining
923 directors, even if the remaining directors constitute less than
924 a quorum, or by the sole remaining director. In the alternative,
925 a board may hold an election to fill the vacancy, in which case
926 the election procedures must conform to sub-subparagraph 4.a.
927 unless the association governs 10 units or fewer and has opted



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out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (j) and rules adopted by the division.

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

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

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it



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shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, the maintenance and replacement of the condominium property identified in s. 718.301(4)(p) ~~roof replacement, building painting, and pavement resurfacing,~~ regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the



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members of an association have determined, by a majority vote of all the voting interests, voting in person or by proxy at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4) (e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If an association is required to perform a reserve study under subparagraph 3., the developer may vote to waive reserve contributions or reduce reserve funding only if the association's reserve obligations are funded consistent with the reserve study currently in effect or if the association provides an alternative funding method for the association's reserve obligations. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.



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3. Effective January 1, 2024, unless the declaration of condominium, articles of incorporation, or bylaws provide for a more frequent reserve study, an association with a residential condominium building that is three stories or more in height and subject to the milestone inspection requirements in s. 553.899 must have a study conducted of the reserves required to maintain, repair, replace, and restore the condominium property identified in s. 718.301(4) (p) at least every 3 years. The board shall review the results of such study at least annually to determine if reserves are sufficient to meet the association's reserve obligations and to make any adjustments the board deems necessary to maintain reserves, as appropriate. The division shall adopt rules setting forth uniform financial standards and forms for reserve studies. The reserve study must include, without limitation:

a. A summary of any inspection of the major components of the condominium property identified in s. 718.301(4) (p) and any other portion of the condominium property that the association is obligated to maintain, repair, replace, or restore;

b. If applicable, a summary of the findings and recommendations of the milestone inspection report required under s. 553.899 and any other structural or life safety inspection of the condominium property considered in the reserve study;

c. An identification of the structural components of the building for which necessary reserves may be reasonably projected and an identification of the structural components of the building with an indefinite useful life for which a reasonable determination of necessary reserves may not be



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estimated;

d. An estimate of the useful life of the structural components of the building identified in s. 718.301(4)(p) for which an estimate of useful life may be determined as attested to by a licensed architect or engineer in the turnover inspection required under s. 718.301(4)(p), a milestone inspection, or any other structural or life safety inspection of the condominium property;

e. An estimate of the remaining useful life of any other portion of the condominium property that the association is obligated to maintain, repair, replace, or restore;

f. An estimate of the cost of maintenance, repair, replacement, or restoration of each major component of the condominium property identified in s. 718.301(4)(p) and any other portion of the condominium property identified pursuant to sub-subparagraph c.;

g. An estimate of the total annual assessment that may be necessary to cover the cost of maintaining, repairing, replacing, or restoring the major components of the condominium property identified in s. 718.301(4)(p) and any other portion of the condominium property identified pursuant to sub-subparagraph c., and an estimate of the funding plan, including any alternative funding method, which may be necessary to provide adequate funding for the required reserves; and

h. A schedule for the full funding of reserves. A reserve account is fully funded when the actual or projected reserve balance in the reserve account is equal in direct proportion to the fraction of useful life for a given component or components multiplied by the current replacement costs for the component or



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components.

4. The annual budget must, at minimum:

a. Identify all items for which reserves are or will be established;

b. Provide an estimate of the maintenance, repair, and replacement costs for the structural components for which an estimate of useful life may be determined;

c. Identify any structural component for which a reserve account is not established or reserves are not funded, because the useful life of the component cannot be determined;

d. As of the beginning of the fiscal year for which the budget is prepared, the current amount of accumulated funds for each reserve component or, if the pooling method is used, the amount of the accumulated pooled funds;

e. A description of the funding plan for the reserve funding obligations of the association, including the use of regular assessments, special assessments, and any other alternative funding method; and

f. A description of the procedures used for the estimation and accumulation of reserves pursuant to this paragraph, the identity of any independent third party who conducted the reserve study on behalf of the association, and the extent to which the association is funding its reserve obligations consistent with the reserve study currently in effect.

5.3- Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all voting interests, voting in person or by limited proxy at a duly called



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meeting of the association; provided that the use of reserve funds for a purpose other than authorized reserve expenditures is authorized in the exercise of the association's emergency powers under s. 718.1265. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

6.a.4- The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

b. If the association has voted to waive reserves or to use existing reserve funds for purposes other than purposes for which the reserves were intended, the budget must contain the following statement in conspicuous type: THE OWNERS HAVE ELECTED TO WAIVE RESERVES, IN WHOLE OR IN PART, OR ALLOWED ALTERNATIVE



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USES OF EXISTING RESERVES UNDER SECTION 718.112(2)(f), FLORIDA STATUTES. THE WAIVING OR ALTERNATIVE USE OF RESERVE FUNDS MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

c. On or after January 1, 2026, if the association is required to perform a reserve study under this paragraph and the budget of the association does not fund the association's reserve obligations consistent with the reserve study currently in effect, the budget must also contain the following statement in conspicuous type: THE ASSOCIATION'S LAST RESERVE STUDY IS DATED THE RESERVE AMOUNT BUDGETED AND/OR COLLECTED IS LESS THAN REQUIRED BY THE RESERVE STUDY SCHEDULE. FAILURE TO FUND RESERVES CONSISTENT WITH THE ASSOCIATION'S RESERVE STUDY MAY RESULT IN UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(p) Mandatory milestone inspections.-If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the inspection. Upon completion of a phase one or phase two milestone inspection and receipt of the inspector-prepared summary of the inspection report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery; must post a copy of the inspector-prepared summary in a conspicuous place on



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1160 the condominium property; and must publish the full report and
1161 inspector-prepared summary on the association's website, if the
1162 association is required to have a website.

1163 Section 5. Present subsections (4) through (9) of section
1164 718.113, Florida Statutes, are redesignated as subsections (5)
1165 through (10), respectively, a new subsection (4) is added to
1166 that section, and subsections (1) and (2) of that section are
1167 amended, to read:

1168 718.113 Maintenance; limitation upon improvement; display
1169 of flag; hurricane shutters and protection; display of religious
1170 decorations.—

1171 (1) Maintenance of the common elements is the
1172 responsibility of the association, except for any maintenance
1173 responsibility for limited common elements assigned to the unit
1174 owner by the declaration. The association shall provide for the
1175 maintenance, repair, and replacement of the condominium property
1176 for which it bears responsibility. After turnover of control of
1177 the association to the unit owners, the association must perform
1178 any required maintenance identified by the developer pursuant to
1179 s. 718.301(4)(p) until the association obtains new maintenance
1180 protocols from a licensed professional engineer or architect.

1181 The declaration may provide that certain limited common elements
1182 shall be maintained by those entitled to use the limited common
1183 elements or that the association shall provide the maintenance,
1184 either as a common expense or with the cost shared only by those
1185 entitled to use the limited common elements. If the maintenance
1186 is to be by the association at the expense of only those
1187 entitled to use the limited common elements, the declaration
1188 shall describe in detail the method of apportioning such costs



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1189 among those entitled to use the limited common elements, and the
1190 association may use the provisions of s. 718.116 to enforce
1191 payment of the shares of such costs by the unit owners entitled
1192 to use the limited common elements.

1193 (2) (a) Except as otherwise provided in this section, there
1194 shall be no material alteration or substantial additions to the
1195 common elements or to real property which is association
1196 property, except in a manner provided in the declaration as
1197 originally recorded or as amended under the procedures provided
1198 therein. If the declaration as originally recorded or as amended
1199 under the procedures provided therein does not specify the
1200 procedure for approval of material alterations or substantial
1201 additions, 75 percent of the total voting interests of the
1202 association must approve the alterations or additions before the
1203 material alterations or substantial additions are commenced.
1204 This paragraph is intended to clarify existing law and applies
1205 to associations existing on July 1, 2018.

1206 (b) There shall not be any material alteration of, or
1207 substantial addition to, the common elements of any condominium
1208 operated by a multicondominium association unless approved in
1209 the manner provided in the declaration of the affected
1210 condominium or condominiums as originally recorded or as amended
1211 under the procedures provided therein. If a declaration as
1212 originally recorded or as amended under the procedures provided
1213 therein does not specify a procedure for approving such an
1214 alteration or addition, the approval of 75 percent of the total
1215 voting interests of each affected condominium is required before
1216 the material alterations or substantial additions are commenced.
1217 This subsection does not prohibit a provision in any



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1218 declaration, articles of incorporation, or bylaws as originally
1219 recorded or as amended under the procedures provided therein
1220 requiring the approval of unit owners in any condominium
1221 operated by the same association or requiring board approval
1222 before a material alteration or substantial addition to the
1223 common elements is permitted. This paragraph is intended to
1224 clarify existing law and applies to associations existing on
1225 July 1, 2018.

1226 (c) There shall not be any material alteration or
1227 substantial addition made to association real property operated
1228 by a multicondominium association, except as provided in the
1229 declaration, articles of incorporation, or bylaws as originally
1230 recorded or as amended under the procedures provided therein. If
1231 the declaration, articles of incorporation, or bylaws as
1232 originally recorded or as amended under the procedures provided
1233 therein do not specify the procedure for approving an alteration
1234 or addition to association real property, the approval of 75
1235 percent of the total voting interests of the association is
1236 required before the material alterations or substantial
1237 additions are commenced. This paragraph is intended to clarify
1238 existing law and applies to associations existing on July 1,
1239 2018.

1240 (d) The necessary maintenance, repair, or replacement of
1241 condominium property is not a material alteration or substantial
1242 addition requiring unit owner approval.

1243 (4) The association is not liable for alternative housing
1244 costs, lost rent, or other expenses if a unit must be vacated in
1245 whole or in part or if access to a common element is denied for
1246 necessary maintenance, repair, or replacement of condominium



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1247 property.

1248 Section 6. Paragraphs (a) and (e) of subsection (1) of
1249 section 718.115, Florida Statutes, are amended to read:

1250 718.115 Common expenses and common surplus.—

1251 (1) (a) Common expenses include the expenses of the
1252 operation, maintenance, repair, replacement, or protection of
1253 the common elements and association property, costs of carrying
1254 out the powers and duties of the association, and any other
1255 expense, whether or not included in the foregoing, designated as
1256 common expense by this chapter, the declaration, the documents
1257 creating the association, or the bylaws. Common expenses also
1258 include reasonable transportation services, insurance for
1259 directors and officers, road maintenance and operation expenses,
1260 in-house communications, and security services, which are
1261 reasonably related to the general benefit of the unit owners
1262 even if such expenses do not attach to the common elements or
1263 property of the condominium. However, such common expenses must
1264 either have been services or items provided on or after the date
1265 control of the association is transferred from the developer to
1266 the unit owners or must be services or items provided for in the
1267 condominium documents or bylaws. Unless the manner of payment or
1268 allocation of expenses is otherwise addressed in the declaration
1269 of condominium, the expenses of any items or services required
1270 by any federal, state, or local governmental entity to be
1271 installed, maintained, or supplied to the condominium property
1272 by the association, including, but not limited to, firesafety
1273 equipment or water and sewer service where a master meter serves
1274 the condominium, shall be common expenses whether or not such
1275 items or services are specifically identified as common expenses



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in the declaration of condominium, articles of incorporation, or bylaws of the association. Notwithstanding any provision in a declaration, the articles of incorporation, or the bylaws requiring, prohibiting, or limiting a board of administration's authority to adopt a special assessment or to borrow money on behalf of the association, including any provision in a declaration, the articles of incorporation, or the bylaws requiring unit owner voting or approval, the board may adopt a special assessment or borrow money for the necessary maintenance, repair, or replacement of condominium property.

(e) The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(6) ~~s. 718.113(5)~~ constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However, if the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the cost of the installation of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection is not a common expense and shall be charged individually to the unit owners based on the cost of installation of the hurricane shutters, impact glass, code-



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compliant windows or doors, or other types of code-compliant hurricane protection appurtenant to the unit. Notwithstanding s. 718.116(9), and regardless of whether or not the declaration requires the association or unit owners to maintain, repair, or replace hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection, a unit owner who has previously installed hurricane shutters in accordance with s. 718.113(6) ~~s. 718.113(5)~~ that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant hurricane protection that comply with the current applicable building code shall receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit. However, such unit owner remains responsible for the pro rata share of expenses for hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(6) ~~s. 718.113(5)~~ and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.

Section 7. Subsections (1) and (5) of section 718.1255,



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Florida Statutes, are amended to read:

718.1255 Alternative dispute resolution; mediation;
nonbinding arbitration; applicability.—

(1) DEFINITIONS.—As used in this section, the term
“dispute” means any disagreement between two or more parties
that involves:

(a) The authority of the board of directors, under this
chapter or association document, to:

1. Require any owner to take any action, or not to take any
action, involving that owner’s unit or the appurtenances
thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this
chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

(d) The failure of a governing body, when required by this
chapter or an association document, to:

1. Perform a structural or life safety inspection,
including the milestone inspection required under s. 553.899.

2. Perform a reserve study as required by law or the
declaration, articles of incorporation, or bylaws.

3. Fund reserves as required by law or the declaration,
articles of incorporation, or bylaws.

4. Make or provide necessary maintenance or repairs of
condominium property.



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“Dispute” does not include any disagreement that primarily
involves: title to any unit or common element; the
interpretation or enforcement of any warranty; the levy of a fee
or assessment, or the collection of an assessment levied against
a party; the eviction or other removal of a tenant from a unit;
alleged breaches of fiduciary duty by one or more directors; or
claims for damages to a unit based upon the alleged failure of
the association to maintain the common elements or condominium
property.

(5) PRESUIT MEDIATION.—In lieu of the initiation of
nonbinding arbitration as provided in subsections (1)–(4), a
party may submit a dispute to presuit mediation in accordance
with s. 720.311; however, election and recall disputes are not
eligible for mediation and such disputes must be arbitrated by
the division or filed in a court of competent jurisdiction.
Disputes identified in paragraph (1)(d) are not subject to
nonbinding arbitration under subsections (1)–(4) and must be
submitted to presuit mediation in accordance with s. 720.311.

Section 8. Paragraph (p) of subsection (4) of section
718.301, Florida Statutes, is amended, and paragraph (r) is
added to that subsection, to read:

718.301 Transfer of association control; claims of defect
by association.—

(4) At the time that unit owners other than the developer
elect a majority of the members of the board of administration
of an association, the developer shall relinquish control of the
association, and the unit owners shall accept control.
Simultaneously, or for the purposes of paragraph (c) not more



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than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer authorized to practice in this state, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property common elements comprising a turnover inspection report:

1. Roof.
2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.



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14. Waterproofing.

(r) A copy of the most recent reserve study required under s. 718.112(2)(f)3., along with the statements indicating the status of the reserves required under s. 718.112(2)(f)6., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

Section 9. Present paragraphs (b) and (c) of subsection (2) of section 718.503, Florida Statutes, are redesignated as paragraphs (c) and (d), respectively, a new paragraph (b) is added to that subsection, and paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of that section are amended, to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days after following the execution of the agreement and delivery of the documents to the



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1450 buyer as evidenced by a signed receipt for documents unless the
1451 buyer is informed in the 15-day voidability period and agrees to
1452 close ~~before~~ prior to the expiration of the 15 days. The
1453 developer shall retain in his or her records a separate
1454 agreement signed by the buyer as proof of the buyer's agreement
1455 to close ~~before~~ prior to the expiration of ~~the said~~ voidability
1456 period. The developer must retain such said proof shall be
1457 ~~retained~~ for a period of 5 years after the date of the closing
1458 of the transaction. The documents to be delivered to the
1459 prospective buyer are the prospectus or disclosure statement
1460 with all exhibits, if the development is subject to ~~the~~
1461 ~~provisions of~~ s. 718.504, or, if not, then copies of the
1462 following which are applicable:

1463 1. The question and answer sheet described in s. 718.504,
1464 and declaration of condominium, or the proposed declaration if
1465 the declaration has not been recorded, which shall include the
1466 certificate of a surveyor approximately representing the
1467 locations required by s. 718.104.

1468 2. The documents creating the association.

1469 3. The bylaws.

1470 4. The ground lease or other underlying lease of the
1471 condominium.

1472 5. The management contract, maintenance contract, and other
1473 contracts for management of the association and operation of the
1474 condominium and facilities used by the unit owners having a
1475 service term in excess of 1 year, and any management contracts
1476 that are renewable.

1477 6. The estimated operating budget for the condominium and a
1478 schedule of expenses for each type of unit, including fees



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1479 assessed pursuant to s. 718.113(1) for the maintenance of
1480 limited common elements where such costs are shared only by
1481 those entitled to use the limited common elements.

1482 7. The lease of recreational and other facilities that will
1483 be used only by unit owners of the subject condominium.

1484 8. The lease of recreational and other common facilities
1485 that will be used by unit owners in common with unit owners of
1486 other condominiums.

1487 9. The form of unit lease if the offer is of a leasehold.

1488 10. Any declaration of servitude of properties serving the
1489 condominium but not owned by unit owners or leased to them or
1490 the association.

1491 11. If the development is to be built in phases or if the
1492 association is to manage more than one condominium, a
1493 description of the plan of phase development or the arrangements
1494 for the association to manage two or more condominiums.

1495 12. If the condominium is a conversion of existing
1496 improvements, the statements and disclosure required by s.
1497 718.616.

1498 13. The form of agreement for sale or lease of units.

1499 14. A copy of the floor plan of the unit and the plot plan
1500 showing the location of the residential buildings and the
1501 recreation and other common areas.

1502 15. A copy of all covenants and restrictions that ~~which~~
1503 will affect the use of the property and ~~which~~ are not contained
1504 in the foregoing.

1505 16. If the developer is required by state or local
1506 authorities to obtain acceptance or approval of any dock or
1507 marina facilities intended to serve the condominium, a copy of



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any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

18. A copy of the most recent reserve study required under s. 718.112(2)(f)3., along with the statements in the budget indicating the status of the reserves required under s. 718.112(2)(f)6., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

19. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p).

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter ~~must shall~~ comply with ~~the provisions of~~ this subsection ~~before prior to~~ the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.

2. Articles of incorporation of the association.

3. Bylaws and rules of the association.

4. Financial information required by s. 718.111.

5. A copy of the most recent reserve study required under s. 718.112(2)(f)3., along with the statements in the budget



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indicating the status of the reserves required under s. 718.112(2)(f)6., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

6. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p).

7. and The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(b) On and after January 1, 2009, The prospective purchaser ~~is shall~~ also be entitled to receive from the seller a copy of a governance form. Such form shall be provided by the division summarizing governance of condominium associations. In addition to such other information as the division considers helpful to a prospective purchaser in understanding association governance, the governance form shall address the following subjects:

1. The role of the board in conducting the day-to-day affairs of the association on behalf of, and in the best interests of, the owners.

2. The board's responsibility to provide advance notice of board and membership meetings.

3. The rights of owners to attend and speak at board and membership meetings.

4. The responsibility of the board and of owners with respect to maintenance of the condominium property.

5. The responsibility of the board and owners to abide by the condominium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.



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1566 6. Owners' rights to inspect and copy association records
1567 and the limitations on such rights.
1568 7. Remedies available to owners with respect to actions by
1569 the board which may be abusive or beyond the board's power and
1570 authority.
1571 8. The right of the board to hire a property management
1572 firm, subject to its own primary responsibility for such
1573 management.
1574 9. The responsibility of owners with regard to payment of
1575 regular or special assessments necessary for the operation of
1576 the property and the potential consequences of failure to pay
1577 such assessments.
1578 10. The voting rights of owners.
1579 11. Rights and obligations of the board in enforcement of
1580 rules in the condominium documents and rules adopted by the
1581 board.
1582
1583 The governance form shall also include the following statement
1584 in conspicuous type: "This publication is intended as an
1585 informal educational overview of condominium governance. In the
1586 event of a conflict, the provisions of chapter 718, Florida
1587 Statutes, rules adopted by the Division of Florida Condominiums,
1588 Timeshares, and Mobile Homes of the Department of Business and
1589 Professional Regulation, the provisions of the condominium
1590 documents, and reasonable rules adopted by the condominium
1591 association's board of administration prevail over the contents
1592 of this publication."
1593 Section 10. Paragraph (f) of subsection (24) of section
1594 718.504, Florida Statutes, is amended, and paragraph (q) is



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1595 added to that subsection, to read:
1596 718.504 Prospectus or offering circular.—Every developer of
1597 a residential condominium which contains more than 20
1598 residential units, or which is part of a group of residential
1599 condominiums which will be served by property to be used in
1600 common by unit owners of more than 20 residential units, shall
1601 prepare a prospectus or offering circular and file it with the
1602 Division of Florida Condominiums, Timeshares, and Mobile Homes
1603 prior to entering into an enforceable contract of purchase and
1604 sale of any unit or lease of a unit for more than 5 years and
1605 shall furnish a copy of the prospectus or offering circular to
1606 each buyer. In addition to the prospectus or offering circular,
1607 each buyer shall be furnished a separate page entitled
1608 "Frequently Asked Questions and Answers," which shall be in
1609 accordance with a format approved by the division and a copy of
1610 the financial information required by s. 718.111. This page
1611 shall, in readable language, inform prospective purchasers
1612 regarding their voting rights and unit use restrictions,
1613 including restrictions on the leasing of a unit; shall indicate
1614 whether and in what amount the unit owners or the association is
1615 obligated to pay rent or land use fees for recreational or other
1616 commonly used facilities; shall contain a statement identifying
1617 that amount of assessment which, pursuant to the budget, would
1618 be levied upon each unit type, exclusive of any special
1619 assessments, and which shall further identify the basis upon
1620 which assessments are levied, whether monthly, quarterly, or
1621 otherwise; shall state and identify any court cases in which the
1622 association is currently a party of record in which the
1623 association may face liability in excess of \$100,000; and which



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shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(24) Copies of the following, to the extent they are applicable, shall be included as exhibits:

(f) The estimated operating budget for the condominium and the required schedule of unit owners' expenses, and the most recent reserve study required under s. 718.112(2)(f)3., along with the statements in the budget indicating the status of the reserves required under s. 718.112(2)(f)6., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

(g) A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.301(4)(p).

Section 11. Present subsections (1) through (28) of section 719.103, Florida Statutes, are redesignated as subsections (2) through (29), respectively, and a new subsection (1) is added to that section, to read:

719.103 Definitions.—As used in this chapter:

(1) "Alternative funding method" means a method for the



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funding of a reserve account by other than an assessment or special assessment which may reasonably be expected to fully satisfy the association's reserve funding obligations, including, but not limited to, payments into the reserve account by a developer who is offering units, or any other method approved by the division.

Section 12. Present subsections (5) through (11) of section 719.104, Florida Statutes, are redesignated as subsections (6) through (12), respectively, a new subsection (5) is added to that section, and paragraphs (a) and (c) of subsection (2) and paragraph (a) of subsection (4) of that section are amended, to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain



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the e-mail addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, reserve studies and reserve funding plans, and financial reports of the association.



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d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. A copy of the inspection reports as described in ss. 553.899 and 719.301(4)(p) and any other inspection report relating to a structural or life safety inspection of the cooperative property. Such record must be maintained by the association for 15 years after receipt of the report.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. A renter of a unit has a right to inspect and copy only the association's bylaws and rules and the inspection reports described in ss. 553.899 and 719.301(4)(p). The association may



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1740 adopt reasonable rules regarding the frequency, time, location,
1741 notice, and manner of record inspections and copying, but may
1742 not require a member to demonstrate any purpose or state any
1743 reason for the inspection. The failure of an association to
1744 provide the records within 10 working days after receipt of a
1745 written request creates a rebuttable presumption that the
1746 association willfully failed to comply with this paragraph. A
1747 member who is denied access to official records is entitled to
1748 the actual damages or minimum damages for the association's
1749 willful failure to comply. The minimum damages are \$50 per
1750 calendar day for up to 10 days, beginning on the 11th working
1751 day after receipt of the written request. The failure to permit
1752 inspection entitles any person prevailing in an enforcement
1753 action to recover reasonable attorney fees from the person in
1754 control of the records who, directly or indirectly, knowingly
1755 denied access to the records. Any person who knowingly or
1756 intentionally defaces or destroys accounting records that are
1757 required by this chapter to be maintained during the period for
1758 which such records are required to be maintained, or who
1759 knowingly or intentionally fails to create or maintain
1760 accounting records that are required to be created or
1761 maintained, with the intent of causing harm to the association
1762 or one or more of its members, is personally subject to a civil
1763 penalty under s. 719.501(1)(d). The association shall maintain
1764 an adequate number of copies of the declaration, articles of
1765 incorporation, bylaws, and rules, and all amendments to each of
1766 the foregoing, as well as the question and answer sheet as
1767 described in s. 719.504 and year-end financial information
1768 required by the department, on the cooperative property to



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1769 ensure their availability to members and prospective purchasers,
1770 and may charge its actual costs for preparing and furnishing
1771 these documents to those requesting the same. An association
1772 shall allow a member or his or her authorized representative to
1773 use a portable device, including a smartphone, tablet, portable
1774 scanner, or any other technology capable of scanning or taking
1775 photographs, to make an electronic copy of the official records
1776 in lieu of the association providing the member or his or her
1777 authorized representative with a copy of such records. The
1778 association may not charge a member or his or her authorized
1779 representative for the use of a portable device. Notwithstanding
1780 this paragraph, the following records shall not be accessible to
1781 members:

1782 1. Any record protected by the lawyer-client privilege as
1783 described in s. 90.502 and any record protected by the work-
1784 product privilege, including any record prepared by an
1785 association attorney or prepared at the attorney's express
1786 direction which reflects a mental impression, conclusion,
1787 litigation strategy, or legal theory of the attorney or the
1788 association, and which was prepared exclusively for civil or
1789 criminal litigation or for adversarial administrative
1790 proceedings, or which was prepared in anticipation of such
1791 litigation or proceedings until the conclusion of the litigation
1792 or proceedings.

1793 2. Information obtained by an association in connection
1794 with the approval of the lease, sale, or other transfer of a
1795 unit.

1796 3. Personnel records of association or management company
1797 employees, including, but not limited to, disciplinary, payroll,



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health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the



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association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

(4) FINANCIAL REPORT.—

(a) Within 90 days following the end of the fiscal or calendar year or annually on such date as provided in the bylaws of the association, the board of administration shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The division shall adopt rules setting forth uniform accounting principles, standards, and reporting requirements. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line method or to fully fund reserves based on the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association.

(5) MAINTENANCE.—



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1856 (a) Maintenance of the common areas is the responsibility
1857 of the association, except for any maintenance responsibility
1858 for limited common areas assigned to the unit owner by the
1859 cooperative documents. The association shall provide for the
1860 maintenance, repair, and replacement of the cooperative property
1861 for which it bears responsibility. After turnover of control of
1862 the association to the unit owners, the association must perform
1863 any required maintenance identified by the developer pursuant to
1864 s. 719.301(4) (p) until the association obtains new maintenance
1865 protocols from a licensed professional engineer or architect.

1866 (b) The necessary maintenance, repair, or replacement of
1867 cooperative property is not a material alteration or substantial
1868 addition requiring unit owner approval.

1869 (c) The association is not liable for alternative housing
1870 costs, lost rent, or other expenses if a unit must be vacated in
1871 whole or in part or if access is denied to a common area for
1872 necessary maintenance, repair, or replacement of cooperative
1873 property.

1874 Section 13. Paragraphs (d) and (j) of subsection (1) of
1875 section 719.106, Florida Statutes, are amended, and paragraph
1876 (n) is added to that subsection, to read:

1877 719.106 Bylaws; cooperative ownership.—

1878 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
1879 documents shall provide for the following, and if they do not,
1880 they shall be deemed to include the following:

1881 (d) *Shareholder meetings.*—There shall be an annual meeting
1882 of the shareholders. All members of the board of administration
1883 shall be elected at the annual meeting unless the bylaws provide
1884 for staggered election terms or for their election at another



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1885 meeting. Any unit owner desiring to be a candidate for board
1886 membership must comply with subparagraph 1. The bylaws must
1887 provide the method for calling meetings, including annual
1888 meetings. Written notice, which must incorporate an
1889 identification of agenda items, shall be given to each unit
1890 owner at least 14 days before the annual meeting and posted in a
1891 conspicuous place on the cooperative property at least 14
1892 continuous days preceding the annual meeting. Upon notice to the
1893 unit owners, the board must by duly adopted rule designate a
1894 specific location on the cooperative property upon which all
1895 notice of unit owner meetings are posted. In lieu of or in
1896 addition to the physical posting of the meeting notice, the
1897 association may, by reasonable rule, adopt a procedure for
1898 conspicuously posting and repeatedly broadcasting the notice and
1899 the agenda on a closed-circuit cable television system serving
1900 the cooperative association. However, if broadcast notice is
1901 used in lieu of a posted notice, the notice and agenda must be
1902 broadcast at least four times every broadcast hour of each day
1903 that a posted notice is otherwise required under this section.
1904 If broadcast notice is provided, the notice and agenda must be
1905 broadcast in a manner and for a sufficient continuous length of
1906 time to allow an average reader to observe the notice and read
1907 and comprehend the entire content of the notice and the agenda.
1908 In addition to any of the authorized means of providing notice
1909 of a meeting of the shareholders, the association may, by rule,
1910 adopt a procedure for conspicuously posting the meeting notice
1911 and the agenda on a website serving the cooperative association
1912 for at least the minimum period of time for which a notice of a
1913 meeting is also required to be physically posted on the



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cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, the notice of the annual meeting must be sent by mail, hand delivered, or electronically transmitted to each unit owner. An officer of the association must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association, affirming that notices of the association meeting were mailed, hand delivered, or electronically transmitted, in accordance with this provision, to each unit owner at the address last furnished to the association.

1. The board of administration shall be elected by written ballot or voting machine. A proxy may not be used in electing the board of administration in general elections or elections to fill vacancies caused by recall, resignation, or otherwise unless otherwise provided in this chapter.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or transmit, whether by separate association mailing, delivery, or electronic transmission or included in another association mailing, delivery, or electronic transmission, including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board



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of administration must give written notice to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in this section, the association shall mail, deliver, or electronically transmit a second notice of election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, to be included with the mailing, delivery, or electronic transmission of the ballot, with the costs of mailing, delivery, or transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets provided by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There is no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any such ballots improperly cast are invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 719.303. The regular election must occur on the date of the annual meeting.



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1972 This subparagraph does not apply to timeshare cooperatives.
1973 Notwithstanding this subparagraph, an election and balloting are
1974 not required unless more candidates file a notice of intent to
1975 run or are nominated than vacancies exist on the board. Any
1976 challenge to the election process must be commenced within 60
1977 days after the election results are announced.

1978 b. Within 90 days after being elected or appointed to the
1979 board, each new director shall do both of the following:

1980 (I) Certify by affidavit ~~in writing~~ to the secretary of the
1981 association that he or she has read the association's bylaws,
1982 articles of incorporation, proprietary lease, and current
1983 written policies; that he or she will work to uphold such
1984 documents and policies to the best of his or her ability; and
1985 that he or she will faithfully discharge his or her fiduciary
1986 responsibility to the association's members. ~~Within 90 days~~
1987 ~~after being elected or appointed to the board, in lieu of this~~
1988 ~~written certification, the newly elected or appointed director~~
1989 ~~may~~

1990 (II) Submit a certificate of having satisfactorily
1991 completed the educational curriculum administered by an
1992 education provider as approved by the division pursuant to the
1993 requirements established in chapter 718 within 1 year before or
1994 90 days after the date of election or appointment. The
1995 educational certificate is valid and does not have to be
1996 resubmitted as long as the director serves on the board without
1997 interruption.

1998
1999 A director who fails to timely file the affidavit and written
2000 ~~certification or~~ educational certificate is suspended from



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2001 service on the board until he or she complies with this sub-
2002 subparagraph. The board may temporarily fill the vacancy during
2003 the period of suspension. The secretary of the association shall
2004 ~~require~~ ~~cause~~ the association to retain a director's affidavit
2005 ~~and written certification or~~ educational certificate for
2006 inspection by the members for 5 years after a director's
2007 election or the duration of the director's uninterrupted tenure,
2008 whichever is longer. Failure to have such affidavit and written
2009 ~~certification or~~ educational certificate on file does not affect
2010 the validity of any board action.

2011 2. Any approval by unit owners called for by this chapter,
2012 or the applicable cooperative documents, must be made at a duly
2013 noticed meeting of unit owners and is subject to this chapter or
2014 the applicable cooperative documents relating to unit owner
2015 decisionmaking, except that unit owners may take action by
2016 written agreement, without meetings, on matters for which action
2017 by written agreement without meetings is expressly allowed by
2018 the applicable cooperative documents or law which provides for
2019 the unit owner action.

2020 3. Unit owners may waive notice of specific meetings if
2021 allowed by the applicable cooperative documents or law. Notice
2022 of meetings of the board of administration, shareholder
2023 meetings, except shareholder meetings called to recall board
2024 members under paragraph (f), and committee meetings may be given
2025 by electronic transmission to unit owners who consent to receive
2026 notice by electronic transmission. A unit owner who consents to
2027 receiving notices by electronic transmission is solely
2028 responsible for removing or bypassing filters that may block
2029 receipt of mass emails sent to members on behalf of the



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association in the course of giving electronic notices.

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

5. Any unit owner may tape record or videotape meetings of the unit owners subject to reasonable rules adopted by the division.

6. Unless otherwise provided in the bylaws, a vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of subparagraph 1. unless the association has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (f) and rules adopted by the division.

Notwithstanding subparagraphs (b)2. and (d)1., an association may, by the affirmative vote of a majority of the total voting interests, provide for a different voting and election procedure in its bylaws, which vote may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for



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elections to be conducted by limited or general proxy.

(j) *Annual budget.*—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days prior to the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it shall be deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but not be limited to, the maintenance and replacement of the cooperative property identified in s. 719.301(4)(p) ~~roof replacement, building painting, and pavement resurfacing~~, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This paragraph shall not apply to any budget in which the members of an association have, at a duly called



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meeting of the association and by a majority vote of all the voting interests, voting in person or by proxy, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection.

~~3. However,~~ Prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 719.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 years of the operation of the association after which time reserves may only be waived or reduced upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect. For an association that is required to perform a reserve study under this paragraph, the developer may only vote to waive reserve contributions or reduce reserve funding if the association's reserve obligations are funded consistent with the reserve study currently in effect or if the association provides an alternative funding method for the association's reserve obligations.

~~4.3-~~ Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of all the voting interests, voting in person or by limited proxy at a duly called meeting of the association; provided that



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the use of reserve funds for a purpose other than authorized reserve expenditures is authorized in the exercise of the association's emergency powers under s. 719.128. Prior to turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

5. Effective January 1, 2024, unless the cooperative documents provide for a more frequent reserve study, an association with a residential cooperative building that is three stories or more in height and subject to the milestone inspection requirements in s. 553.899 must have a study conducted of the reserves required to repair, replace, and restore the cooperative property identified in s. 719.301(4)(p) at least every 3 years. The board shall review the results of such study at least annually to determine if reserves are sufficient to meet the association's reserve obligations and to make any adjustments the board deems necessary to maintain reserves, as appropriate. The division shall adopt rules setting forth uniform financial standards and forms for reserve studies. The reserve study must include, without limitation:

a. A summary of any inspection of the major components of the cooperative property identified in s. 719.301(4)(p) and any other portion of the cooperative property that the association is obligated to maintain, repair, replace, or restore;

b. If applicable, a summary of the findings and recommendations of the milestone inspection report required



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2146 under s. 553.899 and any other structural or life safety
2147 inspection of the cooperative property considered in the reserve
2148 study;

2149 c. An identification of the structural components of the
2150 building for which necessary reserves may be reasonably
2151 projected and an identification of the structural components of
2152 the building with an indefinite useful life for which a
2153 reasonable determination of necessary reserves may not be
2154 estimated;

2155 d. An estimate of the useful life of the structural
2156 components of the building identified in s. 719.301(4)(p) for
2157 which an estimate of useful life may be determined as attested
2158 to by a licensed architect or engineer in the turnover
2159 inspection required under s. 719.301(4)(p), a milestone
2160 inspection, or any other structural or life safety inspection of
2161 the cooperative property;

2162 e. An estimate of the remaining useful life of any other
2163 portion of the cooperative property that the association is
2164 obligated to maintain, repair, replace, or restore;

2165 f. An estimate of the cost of maintenance, repair,
2166 replacement, or restoration of each major component of the
2167 cooperative property identified in s. 719.301(4)(p) and any
2168 other portion of the cooperative property identified pursuant to
2169 sub-subparagraph c.;

2170 g. An estimate of the total annual assessment that may be
2171 necessary to cover the cost of maintaining, repairing,
2172 replacing, or restoring the major components of the cooperative
2173 property identified in s. 719.301(4)(p) and any other portion of
2174 the cooperative property identified pursuant to sub-subparagraph



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2175 c., and an estimate of the funding plan, including any
2176 alternative funding method, which may be necessary to provide
2177 adequate funding for the required reserves; and

2178 h. A schedule for the full funding of reserves. A reserve
2179 account is fully funded when the actual or projected reserve
2180 balance in the reserve account is equal in direct proportion to
2181 the fraction of useful life for a given component or components
2182 multiplied by the current replacement costs for the component or
2183 components.

2184 6. The annual budget must, at minimum:

2185 a. Identify all items for which reserves are or will be
2186 established;

2187 b. Provide an estimate of the maintenance, repair, and
2188 replacement costs for the structural components for which an
2189 estimate of useful life may be determined;

2190 c. Identify any structural component for which a reserve
2191 account is not established or reserves are not funded, because
2192 the useful life of the component cannot be determined;

2193 d. As of the beginning of the fiscal year for which the
2194 budget is prepared, the current amount of accumulated funds for
2195 each reserve component or, if the pooling method is used, the
2196 amount of the accumulated pooled funds;

2197 e. A description of the funding plan for the reserve
2198 funding obligations of the association, including the use of
2199 regular assessments, special assessments, and any other
2200 alternative funding method; and

2201 f. A description of the procedures used for the estimation
2202 and accumulation of reserves pursuant to this paragraph, the
2203 identity of any independent third party who conducted the



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2204 reserve study on behalf of the association, and the extent to
2205 which the association is funding its reserve obligations
2206 consistent with the reserve study currently in effect.

2207 7. If the association has voted to waive reserves or to use
2208 existing reserve funds for purposes other than purposes for
2209 which the reserves were intended, the budget must contain the
2210 following statement in conspicuous type: THE OWNERS HAVE ELECTED
2211 TO WAIVE RESERVES, IN WHOLE OR IN PART, OR ALLOWED ALTERNATIVE
2212 USES OF EXISTING RESERVES UNDER SECTION 719.106(1)(j), FLORIDA
2213 STATUTES. THE WAIVING OR ALTERNATIVE USE OF RESERVE FUNDS MAY
2214 RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED
2215 SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

2216 8. On or after January 1, 2026, if the association is
2217 required to perform a reserve study under this paragraph and the
2218 budget of the association does not fund the association's
2219 reserve obligations consistent with the reserve study currently
2220 in effect, the budget must also contain the following statement
2221 in conspicuous type: THE ASSOCIATION'S LAST RESERVE STUDY IS
2222 DATED THE RESERVE AMOUNT BUDGETED AND/OR COLLECTED IS LESS
2223 THAN REQUIRED BY THE RESERVE STUDY SCHEDULE. THE BUDGET OF THE
2224 ASSOCIATION DOES NOT PROVIDE FOR FULLY FUNDED RESERVE ACCOUNTS
2225 FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE CONSISTENT
2226 WITH THE ASSOCIATION'S RESERVE STUDY. FAILURE TO FUND RESERVES
2227 CONSISTENT WITH THE ASSOCIATION'S RESERVE STUDY MAY RESULT IN
2228 UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

2229 (n) Mandatory milestone inspections.-If an association is
2230 required to have a milestone inspection performed pursuant to s.
2231 553.899, the association must arrange for the milestone
2232 inspection to be performed and is responsible for ensuring



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2233 compliance with the requirements of s. 553.899. The association
2234 is responsible for all costs associated with the inspection.
2235 Upon completion of a phase one or phase two milestone inspection
2236 and receipt of the inspector-prepared summary of the inspection
2237 report from the architect or engineer who performed the
2238 inspection, the association must distribute a copy of the
2239 inspector-prepared summary of the inspection report to each unit
2240 owner, regardless of the findings or recommendations in the
2241 report, by United States mail or personal delivery; must post a
2242 copy of the inspector-prepared summary in a conspicuous place on
2243 the cooperative property; and must publish the full report and
2244 inspector-prepared summary on the association's website, if the
2245 association is required to have a website.

2246 Section 14. Paragraph (f) is added to subsection (1) of
2247 section 719.107, Florida Statutes, to read:

2248 719.107 Common expenses; assessment.-

2249 (1)

2250 (f) Notwithstanding any provision in the cooperative
2251 documents requiring, prohibiting, or limiting a board of
2252 administration's authority to adopt a special assessment or to
2253 borrow money on behalf of the association, including any
2254 provision in the cooperative documents requiring unit owner
2255 voting or approval, the board may adopt a special assessment or
2256 borrow money for the necessary maintenance, repair, or
2257 replacement of the cooperative property.

2258 Section 15. Paragraphs (p) and (q) are added to subsection
2259 (4) of section 719.301, Florida Statutes, to read:

2260 719.301 Transfer of association control.-

2261 (4) When unit owners other than the developer elect a



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majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property comprising a turnover inspection report:

1. Roof.
2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms defined in s. 627.706.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.



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10. Pavement and parking areas.
 11. Drainage systems.
 12. Painting.
 13. Irrigation systems.
 14. Waterproofing.
- (q) A copy of the most recent reserve study required under s. 719.106(1)(j), along with the statements indicating the status of the reserves required under s. 719.106(1)(j)7. and 8., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

Section 16. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 719.503, Florida Statutes, are amended to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(b) Copies of documents to be furnished to prospective buyer or lessee.—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may ~~shall~~ not close for 15 days ~~after following~~ the execution of the agreement and delivery of the documents to the buyer as



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2320 evidenced by a receipt for documents signed by the buyer unless
2321 the buyer is informed in the 15-day voidability period and
2322 agrees to close before ~~prior to~~ the expiration of the 15 days.
2323 The developer shall retain in his or her records a separate
2324 signed agreement as proof of the buyer's agreement to close
2325 before ~~prior to~~ the expiration of the said voidability period.
2326 The developer must retain such said proof ~~shall be retained~~ for
2327 a period of 5 years after the date of the closing transaction.
2328 The documents to be delivered to the prospective buyer are the
2329 prospectus or disclosure statement with all exhibits, if the
2330 development is subject to ~~the provisions of~~ s. 719.504, or, if
2331 not, then copies of the following which are applicable:
2332 1. The question and answer sheet described in s. 719.504,
2333 and cooperative documents, or the proposed cooperative documents
2334 if the documents have not been recorded, which shall include the
2335 certificate of a surveyor approximately representing the
2336 locations required by s. 719.104.
2337 2. The documents creating the association.
2338 3. The bylaws.
2339 4. The ground lease or other underlying lease of the
2340 cooperative.
2341 5. The management contract, maintenance contract, and other
2342 contracts for management of the association and operation of the
2343 cooperative and facilities used by the unit owners having a
2344 service term in excess of 1 year, and any management contracts
2345 that are renewable.
2346 6. The estimated operating budget for the cooperative and a
2347 schedule of expenses for each type of unit, including fees
2348 assessed to a shareholder who has exclusive use of limited



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2349 common areas, where such costs are shared only by those entitled
2350 to use such limited common areas.
2351 7. The lease of recreational and other facilities that will
2352 be used only by unit owners of the subject cooperative.
2353 8. The lease of recreational and other common areas that
2354 will be used by unit owners in common with unit owners of other
2355 cooperatives.
2356 9. The form of unit lease if the offer is of a leasehold.
2357 10. Any declaration of servitude of properties serving the
2358 cooperative but not owned by unit owners or leased to them or
2359 the association.
2360 11. If the development is to be built in phases or if the
2361 association is to manage more than one cooperative, a
2362 description of the plan of phase development or the arrangements
2363 for the association to manage two or more cooperatives.
2364 12. If the cooperative is a conversion of existing
2365 improvements, the statements and disclosure required by s.
2366 719.616.
2367 13. The form of agreement for sale or lease of units.
2368 14. A copy of the floor plan of the unit and the plot plan
2369 showing the location of the residential buildings and the
2370 recreation and other common areas.
2371 15. A copy of all covenants and restrictions that ~~which~~
2372 will affect the use of the property and ~~which~~ are not contained
2373 in the foregoing.
2374 16. If the developer is required by state or local
2375 authorities to obtain acceptance or approval of any dock or
2376 marina facilities intended to serve the cooperative, a copy of
2377 any such acceptance or approval acquired by the time of filing



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with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

18. A copy of the most recent reserve study required under s. 719.106(1)(j), along with the statements indicating the status of the reserves required under s. 719.106(1)(j)7. and 8., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

19. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.301(4)(p).

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with ~~the provisions of~~ this subsection ~~before prior to~~ the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of all of the following:

1. The articles of incorporation of the association.

2. The bylaws, and rules of the association.

3. ~~as well as~~ A copy of the question and answer sheet as provided in s. 719.504.

4. A copy of the most recent reserve study required under s. 719.106(1)(j), along with the statements in the budget



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indicating the status of the reserves required under s. 719.106 (1)(j)7. and 8., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

5. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.301(4)(p).

Section 17. Paragraph (f) of subsection (23) of section 719.504, Florida Statutes, is amended, and paragraph (q) is added to that subsection, to read:

719.504 Prospectus or offering circular.—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is



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2436 obligated to pay rent or land use fees for recreational or other
2437 commonly used facilities; contain a statement identifying that
2438 amount of assessment which, pursuant to the budget, would be
2439 levied upon each unit type, exclusive of any special
2440 assessments, and which identifies the basis upon which
2441 assessments are levied, whether monthly, quarterly, or
2442 otherwise; state and identify any court cases in which the
2443 association is currently a party of record in which the
2444 association may face liability in excess of \$100,000; and state
2445 whether membership in a recreational facilities association is
2446 mandatory and, if so, identify the fees currently charged per
2447 unit type. The division shall by rule require such other
2448 disclosure as in its judgment will assist prospective
2449 purchasers. The prospectus or offering circular may include more
2450 than one cooperative, although not all such units are being
2451 offered for sale as of the date of the prospectus or offering
2452 circular. The prospectus or offering circular must contain the
2453 following information:

2454 (23) Copies of the following, to the extent they are
2455 applicable, shall be included as exhibits:

2456 (f) The estimated operating budget for the cooperative and
2457 the required schedule of unit owners' expenses, and the most
2458 recent reserve study required under s. 719.106(1)(j), along with
2459 the statements in the budget indicating the status of the
2460 reserves required under s. 719.106(1)(j)7. and 8., if
2461 applicable, or a statement in conspicuous type indicating that
2462 the association has not completed the required reserve study or
2463 that the association is not required to perform a reserve study,
2464 as applicable.



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2465 (q) A copy of the inspector-prepared summary of the
2466 milestone inspection report as described in ss. 553.899 and
2467 719.301(4)(p).

2468 Section 18. Subsection (2) of section 558.002, Florida
2469 Statutes, is amended to read:

2470 558.002 Definitions.—As used in this chapter, the term:

2471 (2) "Association" has the same meaning as in s. 718.103(3)
2472 ~~s. 718.103(2)~~, s. 719.103(3) ~~s. 719.103(2)~~, s. 720.301(9), or s.
2473 723.075.

2474 Section 19. Paragraph (b) of subsection (1) of section
2475 718.116, Florida Statutes, is amended to read:

2476 718.116 Assessments; liability; lien and priority;
2477 interest; collection.—

2478 (1)

2479 (b)1. The liability of a first mortgagee or its successor
2480 or assignees who acquire title to a unit by foreclosure or by
2481 deed in lieu of foreclosure for the unpaid assessments that
2482 became due before the mortgagee's acquisition of title is
2483 limited to the lesser of:

2484 a. The unit's unpaid common expenses and regular periodic
2485 assessments which accrued or came due during the 12 months
2486 immediately preceding the acquisition of title and for which
2487 payment in full has not been received by the association; or

2488 b. One percent of the original mortgage debt. The
2489 provisions of this paragraph apply only if the first mortgagee
2490 joined the association as a defendant in the foreclosure action.
2491 Joinder of the association is not required if, on the date the
2492 complaint is filed, the association was dissolved or did not
2493 maintain an office or agent for service of process at a location



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which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(3) ~~s. 718.103(2)~~ or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

Section 20. Subsection (2) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(2) Labor performed on or materials furnished to a unit may not be the basis for the filing of a lien under part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of a natural gas fuel station or an electric vehicle charging station under s. 718.113(9) ~~s. 718.113(8)~~ may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may be filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.



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Section 21. Subsection (3) of section 718.706, Florida Statutes, is amended to read:

718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.—

(3) A bulk assignee, while in control of the board of administration of the association, may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves pursuant to s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer; or

(b) The use of reserve expenditures for other purposes pursuant to s. 718.112(2)(f)5. ~~s. 718.112(2)(f)3.~~, unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer.

Section 22. Paragraph (d) of subsection (2) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(2)

(d) An association, or its successor or assignee, that acquires title to a parcel through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(3) ~~s. 718.103(2)~~ or s. 720.301(9), which holds a superior lien interest on the parcel. This paragraph is intended to clarify existing law.

Section 23. For the purpose of incorporating the amendment



703878

595-03089B-22

2552 made by this act to section 718.1255, Florida Statutes, in a
2553 reference thereto, section 719.1255, Florida Statutes, is
2554 reenacted to read:

2555 719.1255 Alternative resolution of disputes.—The Division
2556 of Florida Condominiums, Timeshares, and Mobile Homes of the
2557 Department of Business and Professional Regulation shall provide
2558 for alternative dispute resolution in accordance with s.
2559 718.1255.

2560 Section 24. This act shall take effect July 1, 2022.

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/SB 1702

INTRODUCER: Rules Committee; Regulated Industries Committee and Senator Bradley

SUBJECT: Building Safety

DATE: February 23, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hunter	Ryon	CA	Favorable
2. Oxamendi	Imhof	RI	Fav/CS
3. Oxamendi/Hunter	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1702 establishes a mandatory milestone inspection requirement for multifamily residential buildings. A milestone inspection is defined by the bill as a structural inspection of a building by a Florida-licensed architect or engineer for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.

Under the bill, multifamily buildings that are three stories or more in height have a milestone inspection once the building reaches 30 years in age, and every 10 years thereafter. If the building is within three miles of coastline, the milestone inspection must be conducted when the building reaches 20 years of age, and every 7 years thereafter. Inspections must be done by a licensed architect or engineer. An initial milestone inspection must be performed before December 31, 2024, if the building's certificate of occupancy was issued on or before July 1, 1992.

The bill provides a two-phase milestone inspection process consisting of a phase one visual inspection and a phase two structural inspection, which may involve more intensive destructive and nondestructive testing, if the phase one visual inspection identifies structural distress. Local governments may prescribe timelines and penalties with respect to compliance.

The milestone inspection requirement does not apply to a two-family or three-family dwelling with three or fewer habitable stories above ground.

Upon completion of the milestone inspections, the:

- Architect or engineer who conducts the inspection must submit a sealed copy of the inspection report to the local building official and the board of administration for the condominium and cooperative association; and
- Board must distribute a copy of the inspection report to each unit owner.

The bill directs the Florida Building Commission to establish “comprehensive structural and life safety standards for maintaining and inspecting all buildings and structures” in Florida that are three stories or more in height by December 31, 2022. These standards must be made available for local governments to adopt at their discretion.

The bill revises the maintenance obligations for condominium and cooperative associations, to provide that:

- The association shall provide for the maintenance, repair, and replacement of specified association property;
- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

Effective January 1, 2024, the bill requires condominium and cooperative associations with a residential building that is three stories or more in height to conduct a reserve study at least once every three years, and specifies the matters that must be considered in the reserve study. The reserve study must include a schedule for the full funding of reserves. Under the bill, a reserve account is fully funded when the actual or projected reserve balance in the reserve account is equal in direct proportion to the fraction of useful life for a given component or components. The board must annually review the results of the reserve study and make any necessary adjustments.

The bill revises the requirements for the funding of reserves, by:

- Permitting associations to satisfy their reserves funding obligations by using an alternative funding method; and
- Authorizing the board to adopt a special assessment or borrow money without unit owner voting or approval for the necessary maintenance, repair, or replacement of association property, notwithstanding any provision in the declaration requiring prohibiting or limiting such authority.

The bill maintains the current authority of members of condominium and cooperative associations to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose. The bill requires a majority vote of all the voting interests to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose. However, the bill permits a developer to waive reserves only if:

- The association's reserve obligations are funded consistent with the reserve study currently in effect; or
- The association provides an alternative funding mechanism for the association's reserve obligations.

The bill expands unit owner access to records, and provides additional disclosures relating to the funding of reserves by:

- Adding reserve studies and inspection reports to the list of official records of the association to which unit owners have the right to inspect and copy;
- Requiring copies of a milestone inspection report to be maintained for 15 years instead of the seven years required under current law;
- Adding the reserve study and inspection reports to the list of documents a condominium association of 150 or more units must make available on a website or through a mobile device application;
- Providing specific disclosures to unit owners in the annual budget as to any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect;
- Requiring developer and nondeveloper unit owners to provide copies of the milestone inspection report, if inspection was required, and the reserve study to the prospective buyer of a unit;
- Requiring developer and nondeveloper unit owners to give prospective buyers of a unit a copy of the most recent reserve study and milestone inspection report before the applicable voidability period; and
- Providing specific disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a condominium unit regarding any waiver or reduction of required reserve funding or failure to fund reserves consistent with the reserve study currently in effect.

The bill provides for the mediation of disputes between unit owners and the association related to failure of a governing body to perform a structural or life safety inspection, including the milestone inspection, perform a reserve study, fund reserves, or make or provide necessary maintenance or repairs of association property.

The bill also revises the post-election certification requirements for condominium and cooperative association board members. Under the bill a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, and cooperative proprietary lease, as applicable, and must complete an education curriculum administered by an education provider approved by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) within one year before, or 90 days after, his or her election or appointment. Under current law, a board member must certify in writing, as opposed to "by affidavit" as required in the bill, that he or she has read the applicable documents of the association or completed the approved education curriculum.

The bill takes effect July 1, 2022.

II. Present Situation:

Building Safety

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.² The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code (Building Code).³

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (act). The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁴

The Florida Building Commission (commission) was statutorily created to implement the Building Code. The commission, which is housed within the Department of Business and Professional Regulation (DBPR), is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Building Code.⁵ The commission reviews several International Codes published by the International Code Council,⁶ the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated, and adopts an updated Building Code every three years.⁷

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited Jan. 26, 2021).

² *Id.*; see also DBPR, *Building Code Information System*, at: <https://floridabuilding.org/c/default.aspx#> (last visited Feb. 21, 2022).

³ *Id.*

⁴ Section 553.72(1), F.S.

⁵ Section 553.74, F.S.

⁶ The International Code Council (ICC) is an association that develops model codes and standards used in the design, building, and compliance process to "construct safe, sustainable, affordable and resilient structures." International Code Council, *About the ICC*, available at <https://www.iccsafe.org/about/who-we-are/> (last visited Feb. 21, 2022).

⁷ Section 553.73(7), F.S.

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.⁸ Every local government must enforce the Building Code and issue building permits.⁹ 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 as 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.¹⁰

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.¹¹ Construction work may not be done beyond a certain point until it passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.¹²

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. However, local governments are empowered to enact such requirements at their discretion to apply throughout a local jurisdiction. Some local jurisdictions in the state have used the following model standards to aid in their adoption of local requirements for the maintenance and inspections of existing buildings: the International Property Maintenance Code, the Standard Housing Code, and the Standard Unsafe Building Abatement Code, or some combination thereof.¹³

Mandatory inspections of existing condominium buildings were once required by Florida law, but the law was repealed shortly after enactment. In 2008, the Legislature mandated that every condominium greater than three stories in height be inspected for maintenance, useful life, and replacement costs of the common elements every five years by an engineer or architect licensed in the state.¹⁴ A condominium association could waive this requirement for five years by a majority vote of interests present at a properly called meeting of the association.¹⁵ This provision was repealed in 2010.¹⁶

⁸ Section 553.72, F.S.

⁹ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

¹⁰ Sections 125.56(4)(a) and 553.79(1), F.S.

¹¹ 2020 Florida Building Code (7th ed.), s. 110.

¹² Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, at: <http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%9393%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf> (last visited Feb. 21, 2022).

¹³ See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for SB 1702* at p. 2 (Jan. 7, 2022) (on file with the Senate Committee on Regulated Industries).

¹⁴ Ch. 2008-28, Laws of Fla.

¹⁵ *Id.*

¹⁶ Ch. 2010-176, s. 59, Laws of Fla.

Building Code Administrators and Inspectors and Plans Examiners

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board (FBCAIB) within the DBPR. The FBCAIB consists of nine members appointed by the Governor and subjected to confirmation by the Senate.¹⁷

A building code administrator, otherwise known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.¹⁸

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories in which the inspector has been licensed. The inspector categories are:¹⁹

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

A plans examiner reviews plans submitted for building permits to determine design compliance with construction codes. The term includes a residential plans examiner who is qualified to determine that plans submitted for building permits comply with the applicable residential building, plumbing, mechanical, electrical, gas, energy, accessibility, and other applicable construction codes. A plans examiner's ability to practice is limited to the category or categories in which the plans examiner has been licensed. The plans examiner categories are:²⁰

- Building plans examiner;
- Plumbing plans examiner;
- Mechanical plans examiner; and
- Electrical plans examiner.

Threshold Building Inspections

In 1981, a “five-story Harbour Cay Condominium building in Cocoa Beach, Florida, collapsed during the placement of concrete for the roof slab, killing 11 workers and injuring 23 more.”²¹ In response to this tragedy, the Legislature instituted threshold building inspections, requiring

¹⁷ Section 468.605, F.S.

¹⁸ Section 468.603(2), F.S.

¹⁹ Section 468.603(5), F.S.

²⁰ Section 468.603(8), F.S.

²¹ National Institute of Standards and Technology, Harbour Cay Condominium Collapse Florida 1981, available at <https://www.nist.gov/el/harbour-cay-condominium-collapse-florida-1981> (last visited Jan. 26, 2022).

licensed “special inspectors” to conduct inspections for all threshold buildings.²² A special inspector is a licensed architect or registered engineer who is certified under chs. 471 or 481, F.S., to conduct inspections of threshold buildings.²³

A threshold building is defined as any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification, as defined in the Building Code, which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.²⁴ An enforcing agency must require a special inspector to perform structural inspections on a threshold building during new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified.²⁵

For a building that qualifies as a threshold building, a structural inspection plan must be submitted by the special inspector and the design professional of record to the enforcing agency prior to the issuance of a building permit for the construction of or modification to the building.²⁶ However, a fee-simple owner may declare a building a threshold building even when it does not meet the definitions.²⁷

The inspection plan for a threshold building provides specific inspection instructions to provide for the adequate inspection of the construction. The owner must retain the services of a special inspector who must inspect the building according to the special inspection plan. In addition, the inspector must determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency.²⁸ Special inspectors report directly to local building administrators and officials. The role of threshold building inspectors is unique to Florida.²⁹

There were 8,515 active Building Code Administrators/Inspectors licensed in Florida in Fiscal Year 2020-2021.³⁰

Local Building Recertification Programs

Florida does not require recertification of buildings or regular inspections of existing buildings, which is consistent with state building codes across the country. Miami-Dade and Broward Counties have amended their local building codes requiring a recertification process and inspection of buildings 40 years and older. Miami-Dade’s program was established in the 1970s,

²² Florida Building Commission, Florida Building Construction Standards available at https://www.floridabuilding.org/fbc/commission/FBC_0413/Commission_Education_POC/173/173-1-MATERIAL%20.pdf (last visited Jan. 26, 2022).

²³ See s. 553.71, F.S.

²⁴ *Id.*

²⁵ Section 553.79(5)(a), F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Florida Board of Professional Engineers, *What Are Threshold Building Inspectors?*, available at <https://fbpe.org/what-are-threshold-building-inspectors/> (last visited Jan. 26, 2022).

³⁰ Department of Business and Professional Regulation, *2020-2021 Annual Report, Division of Certified Public Accounting, Division of Professions, Division of Real Estate, Division of Regulation* at p. 20, at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY2021.pdf (last visited Jan. 27, 2022).

and Broward County's program was modeled after Miami-Dade's and has been in effect since January 2006.³¹

Miami Dade's recertification program states that:

All buildings, except single-family residences, duplexes and minor structures as defined below, shall be recertified in the manner described below where such buildings or structures have been in existence for forty (40) years or longer, as determined by the Building Official, who shall at such time issue a Notice of Required Inspection to the building owner. Subsequent recertification shall be required at ten (10) years interval. In the event a building is determined to be structurally and electrically safe under the conditions set forth herein, and such building or structure is less than forty (40) years of age, recertification shall not be required for a minimum of ten (10) years from that time, or age forty (40), whichever is the longer period of time.³²

Inspection procedures shall "conform, in general, to the minimum inspection procedural guidelines" issued by the county, and are for the purpose of determining the general structural condition of the building or structure to the extent reasonably possible which affects the safety of the building or structure.³³ Miami-Dade's recertification program exempts buildings under 2,000 square feet,³⁴ and Broward's program exempts buildings under 3,500 square feet.³⁵ The inspections must be carried out by a professional engineer or architect registered with the State of Florida.³⁶

Following the 2021 tragedy in Surfside, Florida, where a 12-story condominium building, known as Champlain Towers South, unexpectedly experienced structural failure and partially collapsed, resulting in the death of 98 people, the concept of recertification programs gained considerable attention. The City of Boca Raton recently instituted a building recertification program for buildings over 30 years of age that are greater than three stories or 50 feet in height, or greater than 5,000 square feet and have an occupancy greater than 500 people.³⁷

³¹Broward County, Building Safety Inspection Program, available at <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 26, 2022).

³² See Code of Miami-Dade, ch. 8 Building Code, s. 8-11(f)(ii), at https://library.municode.com/fl/miami-dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH8BUCO_ARTIAD_S8-11EXBU (last visited Jan. 26, 2022).

³³ *Id.* at s. 8-11(f)(i).

³⁴ *Id.* at s. 8-11(f)(ii).

³⁵Broward County, Building Safety Inspection Program, available at: <https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf> (last visited Jan. 19, 2022)

³⁶ *Id.* and See Code of Miami-Dade, ch. 8, Building Code, s. 8-11(iv).

³⁷ City of Boca Raton. Ordinance 5589, available at: <https://www.myboca.us/DocumentCenter/View/28152/Ordinance-No-5589?bidId=> (last visited Jan. 21, 2022)

Community Associations

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. The chapters delineate requirements for notices of meetings,³⁸ recordkeeping requirements, including which records are accessible to the members of the association,³⁹ and financial reporting.⁴⁰ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the DBPR administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., for associations that are still under developer control.⁴¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁴² After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.⁴³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers, associations, and association board members.⁴⁵

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.⁴⁶

³⁸ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners' associations, respectively.

³⁹ See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners' associations, respectively.

⁴⁰ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners' associations, respectively.

⁴¹ Sections 718.501(1) and 719.501(1), F.S.

⁴² *Id.*

⁴³ Section 718.501(1), F.S.

⁴⁴ Section 719.501(1), F.S.

⁴⁵ Sections 718.501(1) and 719.501(1), F.S.

⁴⁶ *Id.*

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.⁴⁷

Condominiums

A condominium is a “form of ownership of real property created under ch. 718, F.S.”⁴⁸ the “Condominium Act.” Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.⁴⁹ For unit owners, membership in the association is an unalienable right and required condition of unit ownership.⁵⁰

A condominium association is administered by a board of directors referred to as a “board of administration.”⁵¹ The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represents the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.⁵²

There are 1,529,764 condominium units in Florida operated by 27,588 associations.⁵³ Approximately 912,376 of these condominium units in Florida are at least 30 years in age.⁵⁴ Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.⁵⁵

It is estimated that there are over 2 million residents occupying condominiums 30 years or older in Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.⁵⁶

Cooperatives

Section 719.103(12), F.S., defines a “cooperative” to mean:

⁴⁷ See s. 720.306(9)(c), F.S.

⁴⁸ Section 718.103(11), F.S.

⁴⁹ See s. 718.103, F.S., for the terms used in the Condominium Act.

⁵⁰ *Id.*

⁵¹ Section 718.103(4), F.S.

⁵² Section 718.103(2), F.S.

⁵³ Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, available at: <https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf> (last visited Jan. 21, 2022).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.⁵⁷ The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.⁵⁸ There are 778 cooperative associations in Florida that are registered with the DBPR.⁵⁹

Official Records – Condominium and Cooperative Associations

Florida law specifies the official records that condominium and cooperative associations must maintain.⁶⁰ Generally, the official records must be maintained in Florida for at least seven years.⁶¹ Certain of these records must be accessible to the members of an association.⁶² Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.⁶³

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website or make such documents available through an application that can be downloaded on a mobile device.⁶⁴ Cooperative associations are not required to maintain such a website.

Budgets and Reserves - Condominium and Cooperative Associations

Condominium and cooperative associations must have a budget of estimated revenues and expenses.⁶⁵ The board must adopt the annual budget at least 14 days before the start of the association's fiscal year.⁶⁶

⁵⁷ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), review dismissed 2020 WL 3442763 (Fla. 2020).

⁵⁸ See ss. 719.106(1)(g) and 719.107, F.S.

⁵⁹ See Task Force Report, pp. 4-5.

⁶⁰ See ss. 718.111(12) and 719.104(2), F.S., relating to condominium and cooperative associations, respectively.

⁶¹ See ss. 718.111(12)(b) and 719.104(2)(b), F.S., relating to condominium and cooperative associations, respectively.

⁶² See ss. 718.111(12)(a) and 719.104(2)(a), F.S., relating to condominium and cooperative associations, respectively.

⁶³ See ss. 718.111(12)(c) and 719.104(2)(c), F.S., relating to condominium and cooperative associations, respectively.

⁶⁴ Section 718.111(12)(g), F.S.

⁶⁵ Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to the annual budget for condominium and cooperative associations, respectively.

⁶⁶ *Id.*

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.⁶⁷

Condominium and cooperative associations must maintain reserve funds and any interest accrued on the reserve funds in the reserve account or accounts. Reserve funds may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of unit owners at a duly called meeting of the association.⁶⁸

Condominium and cooperative associations, and their developers, may vote to not fund reserves, i.e., waive reserves, or to provide reserves less adequate than required.⁶⁹

Reserve Studies

A reserve study determines how much an association needs to collect in annual reserve contributions for the board to afford capital projects when they are needed. A reserve study includes a physical inspection of the association's property and a financial analysis of the association's current reserves, payments by unit or homeowners into the association's reserve account, and anticipated future expenditures, thus allowing the community to pay for capital projects as they become necessary.⁷⁰ Nine states require a reserve study or a reserve schedule for condominium associations.⁷¹

Current law does not require condominium and cooperative associations in Florida to conduct a reserve study.

Financial Reporting - Condominium and Cooperative Associations

Sections 718.11(13), 719.104(4), and 720.303(7), F.S., provide comparable financial reporting requirements for condominium and cooperative associations, respectively.

Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the board must complete, or contract with a third party to

⁶⁷ Sections 718.112(2)(f)2.a. and 719.106(1)(j)2., F.S., relating to condominium and cooperative associations, respectively.

⁶⁸ Sections 718.112(2)(f)3. and 719.106(1)(j)3., F.S., relating to condominium and cooperative associations, respectively.

⁶⁹ *Id.*

⁷⁰ See Community Association Institute, *Understanding and Utilizing Your Reserve Study to Ensure Long-Term Success*, at: <https://www.caic.org/understanding-and-utilizing-your-reserve-study-to-ensure-long-term-success/> (last visited Jan. 29, 2022).

⁷¹ See Community Association Institute, *Reserve Requirements and Funding*, at: <https://www.caionline.org/Advocacy/Priorities/ReserveStudy/Pages/default.aspx> (last visited Jan. 29, 2020). The nine states are: California, Colorado, Delaware, Hawaii, Nevada, Oregon, Utah, Virginia, and Washington State.

complete, the financial report. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The division must adopt rules setting forth uniform accounting principles, standards, and reporting requirements for cooperative associations.⁷² For condominium associations, the division's rulemaking authority is broader; the division must adopt rules setting forth uniform accounting principles and standards to be used by all condominium associations and addressing the financial reporting requirements for multicondominium associations. For condominium associations, the division's rules must include, but not be limited to:

...standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association.

Developer Turnover Report - Condominium and Cooperative Associations

In a condominium or cooperative association, when the unit owners other than the developer are entitled to elect the majority of the board for the association, the developer must relinquish control of the association to the unit owners other than the developer. The developer of a condominium or cooperative is required to give certain items to the association when this change of control occurs.⁷³

In a condominium association, the developer must give the association a turnover inspection report which is included in the official records, under seal of an architect or engineer authorized to practice in Florida, that attests to required maintenance, useful life, and replacement costs of the following applicable common elements:⁷⁴

- Roof.
- Structure.
- Fireproofing and fire protection systems.
- Elevators.
- Heating and cooling systems.
- Plumbing.
- Electrical systems.
- Swimming pool or spa and equipment.
- Seawalls.
- Pavement and parking areas.

⁷² Section 719.104(4)(a), F.S.

⁷³ Sections 718.301 and 719.301, F.S., relating to the transfer of association control for condominium and cooperative associations, respectively.

⁷⁴ Section 718.301(4)(p), F.S.

- Drainage systems.
- Painting.
- Irrigation systems.

The developer of a cooperative is not required to provide a turnover inspection report.

Pre-sale Disclosures - Condominium and Cooperative Associations

Developers and nondeveloper owners of condominium or cooperative units must give certain documents to a prospective buyer or lessee before the execution of a contract for the sale of a residential unit.⁷⁵

The developer may not close for 15 days following the execution of a purchase contract, or execution of a lease of a residential unit for an unexpired term of more than five years, and the delivery of the required documents to the buyer, including the documents creating the association, the bylaws, and the estimated operating budget of the association. A prospective purchaser may void the contract within 15 days of his or her receipt of all the required documents.⁷⁶

A nondeveloper unit owner must provide the prospective buyer or lessee certain information, including the articles of incorporation, bylaws and rules, a copy of the most recent financial information, and a “Frequently Asked Questions and Answers” document.⁷⁷ These documents must be provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract, or the sales contract is voidable by the prospective purchaser. These disclosures do not apply to the leasing of a residential unit by a nondeveloper owner.⁷⁸

Each contract for sale of a residential unit must contain in conspicuous type a statement acknowledging that the purchaser has received the document and his or her right to void the contract if the required documents are not provided more than three days, excluding Saturdays, Sundays, and legal holidays, before the execution of the contract.

Prospectus or Offering Circular - Condominium and Cooperative Associations

Every developer of a residential condominium or cooperative which contains more than 20 residential units, or which is part of a group of residential condominiums or cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, must prepare a prospectus or offering circular and file it with the division prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than five years. A copy of the prospectus or offering circular must be provided to each buyer.⁷⁹

⁷⁵ Sections 718.503 and 719.503, F.S.

⁷⁶ Sections 718.503(1) and 719.503(1), F.S., providing the developer disclosures before the sale or lease of a residential condominium or cooperative unit, respectively.

⁷⁷ See ss. 718.503(2) and 719.503(2), F.S., providing the nondeveloper disclosures before the sale of a residential condominium or cooperative unit, respectively.

⁷⁸ *Id.*

⁷⁹ Sections 718.504 and 719.504, F.S., requiring a prospectus or offering circular for a residential condominium or cooperative unit, respectively.

The prospectus or offering circular must contain certain information about the condominium or cooperative, including an estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses.⁸⁰

Alternative Dispute Resolution - Condominium and Cooperative Associations

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. Before the institution of court litigation, other than an election or recall dispute, a party to a dispute must either petition the division for nonbinding arbitration or initiate presuit mediation.

Disputes in cooperative associations, including recall election disputes, are subject to the same alternative dispute resolution requirements and procedures applicable to condominiums set forth in s. 718.1255, F.S.⁸¹

Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.⁸²

Alternative dispute resolution is required for any disagreements between two or more parties that involves:⁸³

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;⁸⁴
- The board of directors' failure to:
 - Properly conduct elections;
 - Give adequate notice of meetings;
 - Properly conduct meetings;
 - Provide access to association books and records; and
- A plan of termination pursuant to s. 718.117, F.S.

The division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve:⁸⁵

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

⁸⁰ See ss. 718.504(21) and 719.504(20) and (21), F.S., requiring certain budget information for the condominium or cooperative be included in the prospectus or offering circular, respectively.

⁸¹ Sections 719.1255 and 719.106(1)(f), F.S.

⁸² Section 718.1255(3)(b), F.S., providing legislative findings regarding the advantages of pre-suit alternative dispute resolution.

⁸³ Section 718.1255(1)(a), F.S., defining the term “dispute.”

⁸⁴ *Id.*

⁸⁵ *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.⁸⁶

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,⁸⁷ or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.⁸⁸

The filing fee for a petition to the division to initiate nonbinding arbitration or presuit mediation is \$50.⁸⁹

The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.⁹⁰

The mediation of disputes in condominium and cooperative associations is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowner association disputes under ch. 720, F.S. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.⁹¹

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.⁹²

⁸⁶ Section 718.1255(5), F.S.

⁸⁷ Section 718.1255(4)(a), F.S.

⁸⁸ Section 718.1255(4)(k), F.S.

⁸⁹ Section 718.1255(4)(a), F.S.

⁹⁰ Section 718.1255(2), F.S.

⁹¹ *Id.*

⁹² Section 720.311(2)(b), F.S.

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.⁹³

Post-Election Certification by Board Members

Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, or homeowners' association must certify in writing to the secretary of the association that he or she:⁹⁴

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, cooperative proprietary lease,⁹⁵ homeowners' association's covenants, bylaws, and current written policies, as applicable;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.⁹⁶ The curriculum must be administered by a condominium education provider approved by the division.⁹⁷ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.⁹⁸ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.⁹⁹ The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.¹⁰⁰

⁹³ Sections 718.112(2)(k) and 719.106(1)(l), F.S., relating to condominium and cooperative associations, respectively.

⁹⁴ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S., provide a post-election certification requirement for newly elected condominium, cooperative, and homeowners' association board members, respectively.

⁹⁵ A newly elected member of the board of a cooperative association must also certify that he or she has read the "proprietary lease," which is an instrument that gives a shareholder in a cooperative association the right to occupy a particular dwelling unit. See Bankrate, *What is a Proprietary Lease?*, available at: <https://www.bankrate.com/glossary/p/proprietary-lease/> (last visited Feb. 21, 2022).

⁹⁶ The division's Internet site provides a listing of approved educational providers for the certification of board members. See Department of Business and Professional Regulation, *Condominium & Cooperatives – Education*, at <http://www.myfloridalicense.com/dbpr/lsc/documents/ListofApprovedProviders.pdf> (last visited Feb. 21, 2022). This listing also includes training for Homeowners' Associations and some Mobile Home training.

⁹⁷ Sections 718.112(2)(d)4.b., 719.106(1)(d)b., and 720.3033(1)(a), F.S.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

Recommendations from Government and Private Sector Groups

In response to the tragic loss of 98 lives suffered in the collapse of Champlain Towers South, the following local governments and industry groups organized to review current law and to make recommendations to prevent another building collapse:

- Broward County Condominium Structural Issues Committee;¹⁰¹
- Miami-Dade County Commission;¹⁰²
- The Florida Building Commission's Hurricane Research Advisory Committee;¹⁰³
- The Florida Bar Real Property, Probate, and Trust Law Section's Condominium Law and Policy Life Safety Advisory Task Force;¹⁰⁴
- The Miami-Dade Grand Jury;¹⁰⁵ and
- The Community Associations Institute.¹⁰⁶

The findings and recommendations from these government and private sector groups are extensive, addressing a variety of issues. The recommendations from these diverse groups are too numerous to address in this analysis. However, these groups made recommendations that may differ in the specifics but are similar in certain respects, including making recommendations for a state-wide certification program for high-rise condominiums; limiting or prohibiting the waiving of reserves by condominium associations, and requiring condominium associations to conduct reserve studies.

III. Effect of Proposed Changes:

The bill provides for the inspection of multifamily buildings, including condominium and cooperative association buildings, and provides for the maintenance of condominium and cooperative buildings, the funding of necessary reserves for the maintenance and repair of such buildings, and other provisions to provide unit owners with better access to relevant information regarding building safety and their association's funding of reserves.

¹⁰¹ Broward County Commission, *Summary Report and Recommendations of the Broward County Condominium Structural Issues Committee*, on file with the Regulated Industries Committee.

¹⁰² See Miami-Dade County, *Miami-Dade County convenes a series of discussion meetings with elected leaders to pursue policy reforms in wake of Surfside tragedy*, Aug. 4, 2021, <https://www.miamidade.gov/releases/2021-08-04-mayor-surfside-meetings.asp> (last visited Jan. 30, 2022).

¹⁰³ Florida Building Commission, Hurricane Research Advisory Committee, August 27, 2001, Agenda, available at: https://www.floridabuilding.org/fbc/commission/FBC_1021/HRAC/HRAC_Agenda.htm (last visited Jan. 30, 2022).

¹⁰⁴ The Florida Bar, *Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force*, Oct. 12, 2021, available at:

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwj78tuW_dn1AhX5hHIEHTUFAxUQFnoECBMQAQ&url=https%3A%2F%2Fwww-media.floridabar.org%2Fuploads%2F2021%2F10%2FCondominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf&usg=AOvVaw2YITYoD_3yZbtvU0eKfYm (last visited Jan. 30, 2022).

¹⁰⁵ Eleventh Judicial Circuit of Florida in and for the County of Miami-Dade, *Final Report of the Miami-Dade Grand Jury*, Dec. 15, 2021, available at: https://miamisao.com/wp-content/uploads/2021/12/GRAND-JURY_202112151434-1.pdf (last visited Jan. 30, 2022).

¹⁰⁶ Community Associations Institute, *Condominium Safety Public Policy Report*, Oct. 2021, available at: <https://www.caionline.org/HomeownerLeaders/DisasterResources/Documents/CAI-Condo-Safety-Public-Policy-Report-10-21.pdf> (last visited Jan. 30, 2022).

Inspection and Maintenance of Condominium and Cooperative Property

Mandatory Milestone Inspections

The bill creates s. 553.899, F.S., to require all multifamily residential buildings, including condominium and cooperative buildings, that are three stories or more in height to have a “milestone inspection” conducted by a licensed Florida architect or engineer.

The bill defines the term “milestone inspection: to mean:

a structural inspection of a building, including an inspection of load-bearing walls and primary structural members and primary structural systems, as defined in s. 627.706, F.S.,¹⁰⁷ by a licensed architect or engineer authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.

Under the bill, the purpose of the milestone inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code (code) or the fire safety code.

The milestone inspection must be conducted by December 31, 2024, if the building received a certificate of occupancy on or before July 1, 1992. Buildings that are subject to the inspection requirement must be inspected by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy was issued, and every 10 years thereafter.

However, if the building is located within 3 miles of a coastline, it must have a milestone inspection by December 31 of the year the building reaches 20 years of the age, based on the date the certificate of occupancy was issued, and every 7 years thereafter.

The owner of the building, or the condominium or cooperative association, as applicable, is responsible for all costs associated with the inspection.

The bill provides a two-phase milestone inspection process:

- A Phase One inspection is a visual inspection of the property. If no signs of structural distress are found by the visual inspection, the architect or engineer may issue an inspection report.
- A Phase Two inspection is required if the Phase One inspection identifies any structural distress. A Phase Two inspection may involve destructive and nondestructive testing at the description of the special inspector.

¹⁰⁷ Section 627.706, F.S., relating to sinkhole insurance, defines the term “primary structural member” to mean a structural element designed to provide support and stability for the vertical or lateral loads of the overall structure,” and the term “primary structural system” to mean an assemblage of primary structural members.

The milestone inspection requirement does not apply to a two-family or three-family dwelling with three or fewer habitable stories above ground.

A milestone inspection must be conducted by a Florida-licensed architect or engineer who conducts the inspection to submit a sealed copy of the inspection report to the condominium's board of administration upon the completion of a phase one or phase two inspection. However, the inspector in charge of a phase two milestone inspection must be a licensed engineer or licensed architect with a minimum of five years' experience designing structural components and five years' experience inspecting existing buildings of similar size, scope, and type of construction.

The architect, engineer, or special inspector who performs the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the building owner, or if the building is a condominium or cooperative, to the condominium or cooperative association and to the building official of the local government that has jurisdiction.

The association must distribute a copy of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

The bill authorizes local governments to prescribe timelines and penalties with respect to compliance.

The bill directs the Florida Building Commission to establish "comprehensive structural and life safety standards for maintaining and inspecting all buildings and structures" in Florida that are three stories or more in height by December 31, 2022. These standards must be made available for local governments to adopt at their discretion.

The Developer Turnover Inspection Report

The bill amends s. 718.301(4)(p), F.S., which requires the developer to provide a turnover inspection report to the association when the nondeveloper unit owners are entitled to elect the majority of the board of administration,¹⁰⁸ and to require that the turnover inspection report comply with the milestone inspection requirements in s. 553.899, F.S., notwithstanding the date of issuance of the certificate of occupancy or the height of the building.

The bill also amends s. 718.301(4)(p), F.S., which specifies the components of the common elements that must be included in the developer's turnover report, to:

- Include "waterproofing" among the building components that must be addressed in the turnover report; and
- Require the developer to attest to the condition of the listed components.

¹⁰⁸ See s. 718.301, F.S., specifying the events that entitle unit owners other than the developer to elect at least a majority of the members of the board of administration of an association.

For the condominium turnover report, the bill changes the term “common elements”¹⁰⁹ to the broader term “association property.”¹¹⁰

The bill creates s. 719.301(4)(p), F.S., to provide a developer turnover report requirement for the inspection of listed building components in cooperatives that is identical to that required for condominiums under s. 718.301(4)(p), F.S., as amended by the bill.

Maintenance of Condominium Property

The bill amends s. 718.113, F.S., which provides that maintenance of the common elements is the responsibility of the condominium association and details the maintenance obligations for condominium boards, to provide that:

- The association shall provide for the maintenance, repair, and replacement of the applicable condominium property identified in s. 718.301(4)(p), F.S., except for any maintenance responsibility for limited common elements¹¹¹ assigned to the unit by the declaration;
- After turnover of control to the unit owners, the association must perform any required maintenance for which it bears responsibility identified by the developer in the turnover report until the association obtains new maintenance protocols from a licensed professional engineer or architect;
- Necessary maintenance, repair, or replacement of condominium property is not a material alteration or substantial addition to the common elements or to real property requiring unit owner approval; and
- The association is not liable for alternative housing costs, lost rent, or other expenses if a resident must vacate a unit or is denied access to a common element for necessary maintenance, repair, or replacement of condominium property.

The bill creates s. 719.105(5), F.S., to provide identical obligations for maintenance of the cooperative property by the cooperative association.

In addition, the bill provides that maintenance of cooperative property is the responsibility of the association, which is identical to the provision in current law in s. 718.113(1), F.S., for condominium associations.

Reserves

Reserve Studies

The bill amends the budget reserve provisions in ss. 718.112(2)(f) and 719.106(1)(j), F.S., to:

- Effective January 1, 2024, require condominium and cooperative associations with a residential building that is three stories or greater to conduct a reserve study at least once every three years;

¹⁰⁹ Section 718.103(8), F.S., defines the term “common elements” to mean “the portions of the condominium property not included in the units.”

¹¹⁰ Section 718.103(3), F.S., defines the term “association property” to mean “that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.”

¹¹¹ Section 718.103, F.S., defines “limited common elements” to mean those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

- Require associations to provide reserves for the building components listed in ss. 718.301(4)(q) and 719.301(4)(q), F.S., instead of reserves for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000;
- Provide for the content of the reserve study, including:
 - A summary of any inspection, including the milestone inspection under s. 553.899, F.S., and the findings and recommendations from such inspections;
 - Identification of the structural components of a building for which the reserves can be established and those for which reserves cannot be established because the useful life of the component cannot be determined;
 - An estimate of the useful life for those structural components for which a useful life may be estimated;
 - An estimate of applicable costs to maintain, repair, replace, or restore those common elements;
 - The total annual assessment that may be necessary to cover the cost to maintain, repair, replace, or restore those common elements; and
 - A schedule for the full funding of reserves.

Under the bill, a reserve account is fully funded when the actual or projected reserve balance in the reserve account is equal in direct proportion to the fraction of useful life for a given component or components multiplied by the current replacement costs for the component or components.

Under the bill, the board must annually review the results of the reserve study and make any necessary adjustments.

The reserve study requirements in the bill do not apply to condominium and cooperative associations with a building under three stories.

The bill specifies budget requirements for all condominium and cooperative associations, including a description of the funding plan and the procedures used for estimating reserves.

Funding Reserves

The bill creates a new ss. 718.103(1) and 719.103, F.S., applicable to condominium and cooperative associations, respectively, to define the term “alternative funding method” to mean:

... the funding of a reserve account by other than an assessment or special assessment which may reasonably be expected to fully satisfy the association’s reserve funding obligations, including, but not limited to, payments into the reserve account by a developer who is offering units, or any other method approved by the [Division of Florida Condominiums, Timeshares & Mobile Homes].

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for the funding of reserves by condominium and cooperative associations, respectively, by:

- Permitting developers to satisfy their reserves funding obligations by using an alternative funding method; and
- Incorporating the findings and recommendations of the reserve study into the association's annual budget.

The bill amends s. 718.115(1)(a) and 719.107(1)(f), F.S., relating to the common expenses for condominium and cooperative associations, respectively, to provide that, notwithstanding any provision in the declaration requiring prohibiting or limiting a board of administration's authority to adopt a special assessment or to borrow money on behalf of the association, including any provision in the governing documents requiring unit owner voting or approval, the board may adopt a special assessment or borrow money for the necessary maintenance, repair, or replacement of the condominium or cooperative property identified in ss. 718.301(4)(p) and 719.301(4)(p), F.S., respectively.

Waiving Reserves

The bill maintains the current authority of members of condominium and cooperative associations to vote to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose. However, the use of reserves for a purpose other than authorized reserve expenditures is authorized without a vote of the membership in the exercise of the condominium and cooperative associations' emergency powers under ss. 718.1265 or 719.128, F.S., respectively.

The bill requires a majority vote of all the voting interests to not provide reserves, reduce the funding of reserves, or to use reserves for other than their intended purpose.¹¹²

The bill also amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to revise the requirements for waiving of reserves by a developer. Before turnover, the bill permits a developer to waive reserves if:

- The reserves are funded consistent with the reserve study currently in effect; or
- An alternative funding mechanism for the association's reserve obligations is used.

Transparency - Access to Records and Disclosures

Official Records

The bill amends ss. 718.111(12)(a) and 719.104(2)(a), F.S., to include reserve studies, the milestone inspection report, and any other inspection report relating to a structural or life safety inspection to the list of documents that condominium and cooperative associations, respectively, must make available for inspection or copying by members of the association. The bill requires copies of inspection reports to be maintained for 15 years. Under current law, official records must be maintained for seven years unless otherwise provided by general law.¹¹³

¹¹² Section 718.103(30), F.S., defines the term "voting interests" to mean "the voting rights distributed to the association members pursuant to s. 718.104(4)(j), F.S. In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium."

¹¹³ Sections 718.111(12)(b) and 719.104(2)(b), F.S.

The bill also amends s. 718.111(12)(g), F.S., which requires an association of 150 or more units to make specified documents available on a website or through an application that can be downloaded on a mobile device, to include the inspection reports and reserve studies among the types of documents such association must maintain on the website or application.

The bill does not provide a comparable provision requiring cooperative associations to publish these records on the Internet or through a mobile device. Under current law, ch. 719, F.S., does not require cooperative associations of any size to publish specified records on a website or through a mobile device.

Budget Disclosures

The bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., to require that the budget for the condominium and cooperative associations, respectively, must include a disclosure statement in conspicuous type regarding the status of reserves.

If the association has voted to waive reserves or to use existing reserve funds for purposes other than which the reserves were intended, the budget of the association must include the statement to note that event and to provide notice that the waiving of reserves or the use of reserves may result in unit owner liability for payment of unanticipated special assessments.

On or after January 1, 2026, if the association is required to perform a reserve study and the budget of the association does not fund reserves consistent with the reserve study, the budget of the association must include a statement noting the date of the last reserve study and that the reserve amount is less than required by the reserve study schedule.

Developer Turnover

The bill amends ss. 718.301(4) and 719.301(4), F.S., to require developers of condominiums or cooperatives to provide the association a copy of the following when the non-developer unit owners assume control of the association:

- A copy of the inspector-prepared summary of the milestone inspection; and
- A copy of the most recent reserve study, along with the budget statements regarding the status required under ss. 718.112(2)(f) and 719.106(1)(j), F.S., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable.

The bill also amends s. 719.301(4), F.S., to require developers of a cooperative to provide the association identical documents or statements regarding reserves studies and the status of reserves to those required for developers of condominiums at the turnover of control to the nondeveloper unit owners.

Additional Pre-Sale Disclosures

The bill amends ss. 718.503 and 719.503, F.S., for condominium and cooperative associations, respectively, which require certain documents to be provided to prospective buyers of a unit before closing, and ss. 718.504 and 719.504, F.S., which require specified disclosures in the prospectus or offering circular that must be provided to prospective purchasers of a

condominium or cooperative unit, respectively, to require that the following documents or information be provided to prospective buyers of a unit with a copy of:

- A copy of the most recent reserve study along with the budget statements regarding the status required under ss. 718.112(2)(f) and 719.106(1)(j), F.S., if applicable, or a statement in conspicuous type indicating that the association has not completed the required reserve study or that the association is not required to perform a reserve study, as applicable; and
- The inspector-prepared summary of the milestone inspection report.

Homeowner Remedies:

The bill amends the definition for the term “dispute” in s. 718.1255(1), F.S., to include a disagreement between two or more parties that involves the failure of a governing body, when required by ch. 718, F.S., or an association document, to:

- Perform a structural or life safety inspection, including the milestone inspection.
- Perform a reserve study.
- Fund reserves.
- Make or provide necessary maintenance or repairs of association property.

Under the bill, such disputes must be mediated under s. 720.311, F.S., and are not subject to non-binding arbitration by the division.

The bill also republishes s. 719.1255, F.S., which applies the alternative dispute resolution provisions for condominium disputes to cooperative disputes to incorporate the amendment to s. 718.1255, F.S.

Post-Election Certification by Board Members

The bill amends ss. 718.112(2)(d)4.b. and 719.106(1)(d)b., F.S., to revise the post-election certification requirements for condominium and cooperative association board members. Under the bill, a board member for these associations must certify by affidavit that he or she has read the declaration of condominium, articles of incorporation, and cooperative proprietary lease, as applicable, and complete a division-approved education curriculum within one year before, or 90 days after, his or her election or appointment.

Conforming Cross-references

The bill amends ss. 558.002, 718.116, 718.121, 718.706, and 720.3085, F.S., to conform cross-references.

Effective Date

The bill takes effect July 1, 2022.

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:

Under the bill, condominium and cooperative associations and unit owners in those communities may incur additional expenses related to the required conduct of a milestone inspection and reserve study. However, the associations and unit owners may benefit from the long-term financial planning benefits of a reserve study and from the maintenance or repair of association property.

According to the Florida Building Commission comments in the analysis for SB 1702, the recertification and building safety inspections currently being conducted in Miami-Dade and Broward counties can cost as much as \$20,000 to \$40,000 for the inspection of a 15 to 20 story condominium, and between \$2,000 and \$4,000 for the inspection of a small commercial building. Any remedial work to remedy issues identified during the inspection would be in addition to these costs.¹¹⁴

Providers of reserve studies and architects and engineers who offer milestone inspections may benefit from additional business due to the required milestone inspections and reserve studies.

¹¹⁴ See Department of Business and Professional Regulation, 2022 *Agency Legislative Bill Analysis for SB 1702* at p. 7 (Jan. 7, 2022) (on file with the Senate Regulated Industries Committee).

C. Government Sector Impact:

The Department of Business and Professional Regulation (DBPR) has not provided a fiscal impact for CS/CS/SB 1702. However, the department has provided fiscal impact analysis for SB 7042, which provides similar requirements for the inspection of condominium and cooperative building, the maintenance of building components, and the funding of reserves. For SB 1702, the DBPR estimates a negative fiscal impact of \$914,572 for Fiscal Year 2022-2023, \$882,827 for Fiscal Year 2023-2024 and Fiscal Year 2024-2025. The estimated fiscal impact is due to anticipated additional complaints related to the expansion of the types of building components for which reserves must be maintained.¹¹⁵ The bill requires associations to maintain reserves for the building components listed in ss. 718.301(4)(p) and 719.301(4)(p), F.S., instead of reserves for roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds \$10,000.

The Long Range Financial Plan of the Division of Florida, Condominium, Timeshares, and Mobile Homes requires it to complete investigations within 90 days. Consequently, by requiring more building components to be funded, the division anticipates more extensive reviews will be required within the 90-day investigation period.

The division also anticipates the need to contract for services with outside professional to assist in determining requests to approve alternative funding methods, and to contract with engineers and architects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Fannie Mae¹¹⁶ and the Federal Housing Administration¹¹⁷ have altered their requirements for loans secured by condominiums and cooperatives in response to the Champlain Towers collapse, including requiring:

- The association to have assessments sufficient to fund any repairs; and
- That at least 10 percent of the association's assessments are dedicated to budget reserves.

Fannie Mae also provides that condominiums and cooperatives with significant deferred maintenance or that have received a directive from a regulatory authority or inspection agency to make repairs due to unsafe conditions are not eligible for purchase until the repairs are made.¹¹⁸

¹¹⁵ See Department of Business and Professional Regulation, *2022 Session Fiscal Impact Form*, Feb. 23, 2022. (on file with the Senate Committee on Regulated Industries).

¹¹⁶ Fannie Mae, Lender Letter (LL-20221-14), Oct. 12, 2021, available at: <https://singlefamily.fanniemae.com/media/29411/display> (last visited Jan. 30, 2022).

¹¹⁷ Freddie Mac, *Handbook 4000.1, FHA Single Family Housing Policy Handbook, Condominium Project Approval*, sec. II.C.2.vi., p. 530 available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsg-102021.pdf> (last visited Jan. 30, 2022).

¹¹⁸ *Supra* n. 116.

Although the underwriting standard was adopted before the Champlain Towers South collapse, Freddie Mac also requires that at least 10 percent of a condominium association's assessments are dedicated to budget reserves.¹¹⁹

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 558.002, 718.121, 718.103, 718.111, 718.112, 718.113, 718.115, 718.1255, 718.301, 718.503, 718.504, 718.706, 719.103, 719.104, 719.106, 719.107, 719.108, 719.1255, 719.301, 719.503, 719.504, and 720.3085.

This bill creates section 553.899 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Rules on February 23, 2022:

The committee substitute (CS) changes to the title of the bill from an act relating to mandatory building inspections to an act relating to building safety. The CS differs from CS/SB 1702 as follows.

Regarding the mandatory milestone inspection requirements in s. 553.899, F.S., CS/CS/SB 1702:

- Changes the application of the inspection requirement from buildings more than 3 stories in height to buildings 3 stories or more in height;
- Clarifies that a milestone inspection is not a firesafety inspection;
- Requires associations to deliver an inspector-prepared summary (instead of the full inspection report) to unit owners by mail or personal delivery, and requires posting the summary in a conspicuous place, and requires posting of the full report and summary on the association website, if the association is required to maintain a website;
- Revises the inspection requirement to not require the inspection of all habitable and uninhabitable areas to instead require the inspection of only habitable areas; and
- Requires the Florida Building Commission to develop comprehensive structural and life safety standards for maintaining and inspecting buildings and structures in this state that are 3 stories or more in height instead of requiring the development of standards for all building types and structures.

Regarding condominium and cooperative associations under chs. 718 and 719, F.S., respectively, CS/CS/SB 1702 also:

- Amends ss. 718.111(12) and 719.104(2), F.S., to require associations to maintain, as official records, copies of the milestone inspection report and other inspection reports

¹¹⁹ Freddie Mac, Established Condominium Projects, April 3, 2021, available at: <https://guide.freddiemac.com/app/guide/section/5701.5> (last visited Jan. 30, 2022).

- relating to a structural or life safety inspection for 15 years, and copies of reserve studies and reserve funding plans;
- Amends ss. 718.103 and 719.103, F.S., to define the term “alternative funding method;”
- Amends s. 719.104, F.S., to revise the maintenance obligations for cooperative associations;
- Amends ss. 718.112 and 719.106, F.S., to revise the requirements for association budgets, including requirements for reserve studies, the waiving of reserves, the funding of reserves, and budget notices;
- Amends ss. 718.112(2)(d)4.b. and 719.106(1)(d)b., F.S., to revise the post-election certification for condominium and cooperative association board members;
- Amends s. 718.113, F.S., to revise the maintenance obligations for condominium associations;
- Amends ss. 718.115 and 719.107, F.S., to authorize associations to adopt a special assessment or borrow money without owner approval for the necessary repair, maintenance, or replacement of condominium or cooperative property;
- Amends s. 718.1255, F.S., to include disputes related to reserve studies, reserves, and inspections in the presuit mediation requirements for condominium associations;
- Reenacts s. 719.1255, F.S., relating to alternative dispute resolution, to incorporate the amendment made to s. 718.1255, F.S.;
- Amends ss. 718.301 and 719.301, F.S., to revise the requirements for the records a developer must provide to the association at turnover of control to the nondeveloper unit owners;
- Amends ss. 718.503 and 719.503, F.S., to delete notices acknowledging receipt of the milestone inspection report in the bill, and to instead require the unit owner to deliver to a prospective buyer or lessee a statement regarding the status of reserve funding in the budget, a copy of the most recent reserve study, and the milestone inspection report summary, if applicable;
- Amends ss. 719.504 and 719.504, F.S., to revise the requirements for prospectuses and offering circulars; and
- Amends ss. 558.002, 718.116, 718.121, 718.706, and 720.3085, F.S., to conform cross-references.

CS by Regulated Industries on February 1, 2022:

The committee substitute requires that the inspector in charge of a phase two milestone inspection must be a licensed engineer or licensed architect with a minimum of five years’ experience designing structural components and five years’ experience inspecting existing buildings of similar size, scope, and type of construction.

B. Amendments:

None.

By the Committee on Regulated Industries; and Senator Bradley

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1 A bill to be entitled
 2 An act relating to mandatory building inspections;
 3 creating s. 553.899, F.S.; providing legislative
 4 findings; defining the term "milestone inspection";
 5 specifying that the purpose of a milestone inspection
 6 is not to determine compliance with the Florida
 7 Building Code; requiring owners of certain multifamily
 8 residential buildings to have milestone inspections
 9 performed at specified times; requiring the boards of
 10 administration for condominium and cooperative
 11 associations to arrange for milestone inspections of
 12 condominium buildings and cooperative buildings,
 13 respectively; specifying that such associations are
 14 responsible for costs relating to milestone
 15 inspections; providing applicability; requiring that
 16 initial milestone inspections for certain buildings be
 17 performed before a specified date; specifying that
 18 milestone inspections consist of two phases; providing
 19 requirements for each phase of a milestone inspection;
 20 requiring architects and engineers performing a
 21 milestone inspection to submit a sealed copy of the
 22 inspection report to certain entities; requiring
 23 boards of administrations of condominium associations
 24 and cooperative associations to distribute a copy of
 25 each inspection report for a condominium building or
 26 cooperative building to unit owners and publish the
 27 report on the association's website under certain
 28 circumstances; authorizing local enforcement agencies
 29 to prescribe timelines and penalties relating to

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

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30 milestone inspections; requiring the Florida Building
 31 Commission to develop certain standards by a specified
 32 date and make such standards available to local
 33 governments for adoption; amending s. 718.111, F.S.;
 34 revising the types of records that constitute the
 35 official records of a condominium association;
 36 amending s. 718.503, F.S.; revising nondeveloper
 37 disclosure requirements relating to resales of
 38 residential condominium units; amending s. 719.104,
 39 F.S.; revising the types of records that constitute
 40 the official records of a cooperative association;
 41 amending s. 719.503, F.S.; entitling prospective
 42 purchasers of an interest in a cooperative to a copy
 43 of milestone inspection reports; providing an
 44 effective date.
 45
 46 Be It Enacted by the Legislature of the State of Florida:
 47
 48 Section 1. Section 553.899, Florida Statutes, is created to
 49 read:
 50 553.899 Mandatory structural inspections for multifamily
 51 residential buildings.—
 52 (1) The Legislature finds that maintaining the structural
 53 integrity of a building throughout its service life is of
 54 paramount importance in order to ensure that buildings are
 55 structurally sound so as to not pose a threat to the public
 56 health, safety, or welfare. As such, the Legislature finds that
 57 the imposition of a statewide structural inspection program for
 58 aging multifamily residential buildings in this state is

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necessary to ensure that such buildings are safe for continued use.

(2) As used in this section, the term "milestone inspection" means a structural inspection of a building by a licensed architect or engineer authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code.

(3) The owner of a multifamily residential building that is greater than three stories in height must have a milestone inspection performed by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy was issued, and every 10 years thereafter. The owner of a multifamily residential building that is greater than three stories in height and is located within 3 miles of a coastline as defined in s. 376.031 must have a milestone inspection performed by December 31 of the year in which the building reaches 20 years of age, based on the date the certificate of occupancy was issued, and every 7 years thereafter. If a condominium building or cooperative building is required to have a milestone inspection performed pursuant to this section, the board of administration of the condominium association or cooperative association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of this section. The

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building owner or board of administration of a condominium association or cooperative association responsible for the milestone inspection is responsible for all costs associated with the inspection. This subsection does not apply to two-family dwellings or to buildings less than 3,500 square feet.

(4) If a milestone inspection is required under this section and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024.

(5) A milestone inspection consists of two phases:

(a) For phase one of the milestone inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of all habitable and nonhabitable areas of a building and provide a qualitative assessment of the structural conditions of the building. Surface imperfections such as cracks, distortion, sagging, excessive deflections, significant misalignment, signs of leakage, or peeling of finishes constitute signs of structural distress. If the architect or engineer finds no signs of structural distress to any building components under visual examination, phase two of the inspection, as provided in paragraph (b), is not required. An architect or engineer who completes the first phase of a milestone inspection shall prepare and submit an inspection report pursuant to subsection (6).

(b) Phase two of the milestone inspection must be performed if any structural distress is identified during phase one. The inspector in charge of a phase two inspection must be a licensed engineer or licensed architect who has a minimum of 5 years of experience designing the primary structural components of

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buildings and a minimum of 5 years of experience inspecting structural components of existing buildings of a similar size, scope, and type of construction. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess damaged areas of the building in order to confirm that the building is safe for its intended use or to recommend a program for fully assessing and repairing damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes the second phase of a milestone inspection shall prepare and submit an inspection report pursuant to subsection (6).

(6) Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report to the building owner or, if the building is a condominium or cooperative, to the board of administration of the condominium or cooperative, and to the building official of the local government which has jurisdiction. For a milestone inspection of a condominium or cooperative, the board of administration must distribute a copy of each inspection report to each condominium unit owner or cooperative unit owner, regardless of whether there are deficiencies reported, and, if the association is required by law to have a website, must publish the report on the association's website.

(7) A local enforcement agency may prescribe timelines and penalties with respect to compliance with this section.

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(8) The commission shall develop comprehensive structural and life safety standards for maintaining and inspecting all building types and structures in this state by December 31, 2022. The standards are in addition to those provided in this section and must be made available for local governments to adopt at their discretion.

Section 2. Paragraph (a) of subsection (12) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

1. A copy of the plans, permits, warranties, and other items provided by the developer under s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

3. A photocopy of the recorded bylaws of the association and each amendment to the bylaws.

4. A certified copy of the articles of incorporation of the association, or other documents creating the association, and each amendment thereto.

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if

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known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly

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statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

15. A copy of the inspection report as described in s. 718.301(4)(p).

16. A copy of all milestone inspection reports required by s. 553.899.

17. Bids for materials, equipment, or services.

18.17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

19.18. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

Section 3. Paragraph (c) of subsection (2) of section

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718.503, Florida Statutes, is amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(2) NONDEVELOPER DISCLOSURE.—

(c) Each contract entered into after July 1, 1992, for the resale of a residential unit shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM; ~~THE~~ ARTICLES OF INCORPORATION OF THE ASSOCIATION; ~~THE~~ BYLAWS AND RULES OF THE ASSOCIATION; ALL MILESTONE INSPECTION REPORTS REQUIRED BY SECTION 553.899, FLORIDA STATUTES; AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM; ~~THE~~ ARTICLES OF INCORPORATION; ~~THE~~ BYLAWS AND RULES OF THE ASSOCIATION; ALL MILESTONE INSPECTION REPORTS REQUIRED BY SECTION 553.899, FLORIDA STATUTES; AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL

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HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

Section 4. Paragraph (a) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and the numbers designated by unit owners

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for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid upon the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall

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be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

14. All milestone inspection reports required by s. 553.899.

15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

Section 5. Paragraph (a) of subsection (2) of section 719.503, Florida Statutes, is amended to read:

719.503 Disclosure prior to sale.—

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with the provisions of this subsection prior to the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of the articles of incorporation of the association, the bylaws, and rules of the association, as well as a copy of the question and answer sheet as provided in s. 719.504 and all milestone inspection reports

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349 required by s. 553.899.

350 Section 6. This act shall take effect July 1, 2022.

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
Division/Office: FL Condominiums, Timeshares and Mobile Homes
Budget Entity:
Fund: FL Condominiums, Timeshares and Mobile Homes Trust Fund

2022 SESSION FISCAL IMPACT FORM
Contact Info: Julie Scarbrough, Ext. 11471
Budget Entity Code:
Fund Code:
Bill No: SB 7042
2.17.2022

DRAFT

Issue Title: Condominium and Cooperative Associations

				FY 2022-23			FY 2023-2024	FY 2024-2025		
Appropriation Category		No.	Rate	Benefits	Recurring	NR	Total	Recurring	Recurring	Comments
Salaries and Benefits										
	Financial Examiner Analyst II (1564/01/023) - 3 Doral/2 FTL with CAD	5	42,024	22,292	321,580	0	321,580	321,580	321,580	
	Financial Examiner Analyst II (1564/01/023) - Tallahassee No CAD	3	40,750	22,056	188,418	0	188,418	188,418	188,418	
	Government Analyst II (2225/01/026)	1	48,888	23,560	72,448	0	72,448	72,448	72,448	
	Total no. of positions	9								
	Subtotal				582,446	0	582,446	582,446	582,446	
Expenses										
	Professional - Standard (Recurring)	9	6,365		57,285	0	57,285	57,285	57,285	
	Professional - Standard (Non-recurring)	9	4,747		0	42,723	42,723	0	0	
	Support - Standard (Recurring)		5,328		0	0	0	0	0	
	Support - Standard (Non-recurring)		4,398		0	0	0	0	0	
	Network Drops	9	150		0	1,350	1,350	0	0	
	Software Licenses	9	1,452		0	13,068	13,068	0	0	
	Software License Maintenance	9	255		2,295	0	2,295	2,295	2,295	
	Subtotal				59,580	57,141	116,721	59,580	59,580	
Operating Capital Outlay										
	Subtotal				0	0	0	0	0	
Special Categories										
					0	0	0	0	0	
					0	0	0	0	0	
					0	0	0	0	0	
	Transfer to DMS - HR Services	9	305		2,745	0	2,745	2,745	2,745	FTE = \$305.05, OPS = \$95.69
	Transfer to DMS - HR Services OPS	0	96			0				
	Subtotal				2,745	0	2,745	2,745	2,745	
Other Categories										
	Contracted Services - Alternative Funding Mechanism	1040	300		312,000	0	312,000	312,000	312,000	
	Contracted Services - Engineers and Architects	1040	200		208,000	0	208,000	208,000	208,000	
	Subtotal				520,000	0	520,000	520,000	520,000	
	GRAND TOTAL				1,164,771	57,141	1,221,912	1,164,771	1,164,771	



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:

Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:

Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

February 3, 2022

Senator Kathleen Passidomo, Chair
Senate Committee on Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Passidomo:

I respectfully request that CS/SB 1702 be placed on the Rules Committee agenda at your earliest convenience. In response to the collapse of Champlain Towers in Surfside, this bill establishes a statewide milestone inspection program.

Thank you for your consideration of this request.

Sincerely,

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

Jennifer Bradley

cc: Mr. John Phelps, Staff Director
Ms. Cynthia Futch, Administrative Assistant

REPLY TO:

- ☐ 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

2/23/2022

Meeting Date

Rules

Committee

Name

Allen Douglas

Phone

850-224-7121

Address

125 South Gadsden Street

Email

allen@fleng.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:

☐

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

1702 - Mandatory Building Inspections

Bill Number or Topic

Amendment Barcode (if applicable)

Deliver both copies of this form to
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The Florida Senate

APPEARANCE RECORD

2-23-22

Meeting Date

1702

Bill Number or Topic

Rules

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

Travis Moore

Phone

727.421.6902

Address

P.O. Box 2020

Email

travis@moore-relations.com

Street

St. Petersburg, 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:

community Associations Institute



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

2/23/22

Meeting Date

Rules

Committee

1702

Bill Number or Topic

Amendment Barcode (if applicable)

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

Name

Mark Anderson

Phone

613 -205 - 0658

Address

110 S. Monroe St

Email

mark@consultanderson.com

Street

Tallahassee

City

FL

State

32303

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:

Association Reserves

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

2/23/22

Meeting Date

Rules

Committee

1702

Bill Number or Topic

Amendment Barcode (if applicable)

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

Name Mark Anderson

Phone 613-205-0658

Address 110 S Monroe St

Email mark@consultanderson.com

Street

Tallahassee

City

FL

State

32303

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:

Chief Executive Officers of Management Companies (CEOMC)

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/SB 1736

INTRODUCER: Criminal Justice Committee and Senator Hooper

SUBJECT: Records of Physical Examinations

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	Fav/CS
2. Limones-Borja	McVane	GO	Favorable
3. Erickson	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1736 amends s. 943.13(6), F.S., to require the employing agency of a law enforcement officer, correctional officer, or correctional probation officer to maintain records of the officer's pre-employment physical examination for at least 5 years after the officer's separation from that agency. If an employing agency fails to maintain the records of the physical examination for the 5-year period after the officer's separation, it is presumed that the officer has met the requirement of successfully passing a pre-employment physical examination that failed to reveal any evidence of tuberculosis, heart disease, or hypertension. The absence of any finding of such disease in the pre-employment examination is a crucial prerequisite to the workers' compensation presumption that an officer with such disease acquired it accidentally and in the line of duty. *Therefore, retention of the physical examination record is essential evidence to establish a compensable occupational disease.*

The previously-described presumption of compensability also applies to firefighters. The bill amends s. 112.18, F.S., to specify that the medical examination required for firefighter certification pursuant to s. 633.412(5), F.S., may serve as a physical examination upon entering service for a firefighter if the employer did not retain or conduct a physical examination upon entering service.

The bill corrects omissions in ss. 112.18 and 943.13(6), F.S., to reference "correctional officers and correctional probation officers" regarding the presumption of compensability.

The retention of these records should not have any fiscal impact on state and local government. The impact of the change on workers' compensation claims is indeterminate. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

Physical Examination Requirement for Employment or Appointment as a Law Enforcement, Correctional, or Probation Officer

Section 943.13, F.S., provides minimum qualifications for employment or appointment as a fulltime, part-time, or auxiliary law enforcement, correctional officer, or correctional probation officer. Among the qualifications is a requirement to pass a physical examination.¹

Physical Examination Requirement for Certification as a Firefighter

Section 633.412, F.S., provides qualifications for certification as a firefighter. Among the qualifications is a requirement to be in good physical condition as determined by a medical examination.² The medical professional must certify that the applicant is medically fit to engage in firefighting training and does not have any pre-existing or current condition, illness, injury, or deficiency.³ There does not appear to be a provision for firefighters comparable to s. 943.13(6), F.S., which requires a pre-employment physical examination.

Workers' Compensation – Presumption of Compensability

In regards to a workers' compensation claim relating to an occupational disease, the term "occupational disease" means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment, and to exclude all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public. It is also a disease for which there are epidemiological studies showing that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.⁴

Section 112.18(1)(a), F.S., provides that any condition or impairment of health of any firefighter, law enforcement officer, correctional officer, or correctional probation officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death is presumed to have been accidental and suffered in the line of duty unless the contrary be shown by competent evidence.

¹ Section 943.13(6), F.S.

² Section 633.412(5), F.S.

³ Rule 69A-37.037 ("Firefighter Training Course Medical Examination"), F.A.C., available at https://www.flrules.org/gateway/notice_Files.asp?ID=21630435 (last visited on Feb. 4, 2022) and Form DFS-K3-1022 ("Medical Examination to Determine Fitness for Firefighter Training, Bureau of Fire Standards and Training"), Division of State Fire Marshal, Department of Financial Services, available at https://www.myfloridacfo.com/division/sfm/bfst/DFS-K4-1022_Medical_Jan2018.pdf (last visited on Feb. 4, 2022).

⁴ Section 440.151(2), F.S.

However, a crucial prerequisite to this statutory presumption is that the firefighter or officer successfully passed a physical examination prior to entering into any such service that failed to reveal any evidence of tuberculosis, heart disease, or hypertension. This prerequisite is provided in s. 112.18(1)(a), F.S., and is relevant to any firefighter, law enforcement officer, correctional officer, or correctional probation officer. A similar provision relevant only to law enforcement officers, correctional officers, and correctional probation officers is found in s. 943.13(6), F.S.

If the examination fails to reveal evidence of such disease, the firefighter or officer must present evidence of suffering from such disease but doesn't have to present evidence of causation that is typically required to demonstrate that an occupational disease is compensable.⁵ The evidentiary burden then shifts to the employer to show by clear and convincing evidence that the disease was caused by a non-work-related event or exposure.⁶

The Pre-Employment Physical is Crucial Evidence for the Compensability Presumption

As provided in s. 112.18(1)(a), F.S., to be eligible to use the presumption of compensability, a firefighter or officer must have successfully passed a physical examination upon entering into service, which examination failed to reveal any evidence of any tuberculosis, heart disease, or hypertension. This physical examination is crucial evidence in a dispute over workers' compensation benefits.

When the parties cannot produce a record of a pre-employment physical, the firefighter or officer cannot use the presumption to establish a compensable occupational disease. For example, in testimony before the House Banking and Insurance Committee, staff of the Florida State Fraternal Order of Police noted they had a workers compensation issue because an agency hired a third party vendor to handle medical records and that vendor purged the records system for anyone who was hired prior to 1998. One officer impacted by this purge suffered from posttraumatic stress disorder due to a violent public incident.⁷

Eligibility for the Workers' Compensation Presumption

In a disputed workers' compensation determination, the legal presumption does not apply if a law enforcement, correctional, or correctional probation officer:

- Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; or
- Was previously compensated pursuant to s. 112.18, F.S., and ch. 440, F.S. (workers' compensation) for tuberculosis, heart disease, or hypertension and thereafter sustains and

⁵ *McDonald v. City of Jacksonville*, 286 So.3d 792, 795 (Fla. 1st DCA 2019), relying primarily on *Walters v. State, DOC, Div. of Risk Management*, 100 So.3d 1173 (Fla. 1st DCA 2012) (rehearing denied), review denied by *Florida Dept. of Corrections v. Walters*, 108 So. 3d 654 (Fla. 2013).

⁶ *Butler v. City of Jacksonville*, 980 So.2d 1250, 1251-1252 (Fla. 1st DCA 2008).

⁷ Public testimony of Lisa Henning, representing the Florida State Fraternal Order of Police, before the House Insurance & Banking Subcommittee hearing on HB 453 (2022), Jan. 19, 2022. This testimony is available at <https://thefloridachannel.org/videos/1-19-22-house-insurance-banking-subcommittee/> (last visited on Feb. 4, 2022).

reports a new compensable workers' compensation claim under s. 112.18, F.S., and ch. 440, F.S., and the officer has departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment.⁸

To be eligible for workers' compensation benefits, a law enforcement officer, correctional officer, or correctional probation officer must make a claim for benefits prior to or within 180 days of leaving the employment of the employing agency.⁹

Firefighters are not subject to the exclusion for prior treatment or compensation and are not covered by the claim-filing deadline that allows a law enforcement officer, correctional officer, or correctional probation officer file a claim up to 180 days after leaving employment. A firefighter suffering from tuberculosis, heart disease, or hypertension must advise his or her employer of the injury within 90 days of the initial manifestation of the disease or 90 days after the firefighter obtains a medical opinion that the injury (occupational disease) is due to the nature of the firefighter's employment.¹⁰

Records Retention

According to the records retention schedule for state and local government agencies published by the Florida Department of State, reports of job-related medical examinations must be retained by the Florida Retirement System (FRS) for 25 years after a participating employee separates from government employment.¹¹

Local governments that do not participate in the FRS must maintain reports of job-related medical examinations for 50 years after a participating employee separates from government employment.¹²

State agencies that employ people through the Other Personnel Services system, as interns, or on a voluntary basis must maintain reports of job-related medical examinations for three years after the employee separates from government employment.¹³

III. Effect of Proposed Changes:

The bill amends s. 943.13(6), F.S., to require the employing agency of a law enforcement officer, correctional officer, or correctional probation officer to maintain records of the officer's pre-employment physical examination for at least five years after the officer's separation from that agency. If an employing agency fails to maintain the records of the physical examination for the

⁸ Section 112.18(1)(b)(1), F.S.

⁹ Section 112.18(1)(b)(4), F.S.

¹⁰ Sections 440.151(6) and 440.185(1), F.S.

¹¹ Florida Department of State, Division of Library and Information Services, *General Records Schedule GS1-SL for State and Local Government Agencies*, p. 31, available at <https://dos.myflorida.com/media/703328/gs1-sl-2020.pdf> (last visited on Feb. 4, 2022).

¹² *Id.* at 32.

¹³ *Id.*

5-year period after the officer's separation, it is presumed that the officer has met the requirement of that subsection that the officer successfully passed a pre-employment physical examination that failed to reveal any evidence of tuberculosis, heart disease, or hypertension. The absence of any finding of such disease in the pre-employment examination is a crucial prerequisite to the workers' compensation presumption that an officer with such disease acquired it accidentally and in the line of duty. *Therefore, retention of the physical examination record is essential evidence to establish a compensable occupational disease.*¹⁴

The previously-described presumption of compensability also applies to firefighters. The bill amends s. 112.18, F.S., to specify that the medical examination required for firefighter certification pursuant to s. 633.412(5), F.S., may serve as a physical examination upon entering service for a firefighter if the employer did not retain or conduct a physical examination upon entering service.

Finally, s. 112.18, F.S., mistakenly omits in two places in the statute, reference to correctional officers and correctional probation officers in regard to the presumption of compensability, even though the statute and s. 943.13(6), F.S., specifically provide that the presumption of compensability applies to these officers. The bill corrects these reference omissions.

The bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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.

¹⁴ This record retention provision does not apply to firefighters. Medical examination records required for firefighter certification are retained by the Department of Financial Services.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The record retention requirement of the bill does not impose additional duties on government employers, because state and local government agencies are already subject to record retention requirements that exceed the five-year benchmark established in this bill. (See discussion of records retention schedule, *supra*.)

The impact of the change on workers' compensation claims is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 943.13 and 112.18 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 Criminal Justice on January 25, 2022:

The committee substitute:

- Provides that a medical examination required for firefighter certification pursuant to s. 633.412(5), F.S., may serve as a physical examination upon entering service for a firefighter if the employer did not retain or conduct a physical examination upon entering service; and
- Corrects the omission of references to correctional officers and correctional probation officers in regard to a presumption of compensability (in workers' compensation law) that applies to these officers.

B. Amendments:

None.

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

By the Committee on Criminal Justice; and Senator Hooper

591-02278-22

20221736c1

A bill to be entitled

An act relating to records of physical examinations; amending s. 112.18, F.S.; authorizing a specified medical examination to serve as a certain required physical examination for firefighters; making technical changes; amending s. 943.13, F.S.; requiring an employing agency to maintain records of employee physical examinations for a specified period of time after employee separation from the agency; creating a presumption that applies to employees whose records are not maintained for that period of time; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 112.18, Florida Statutes, is amended to read:

112.18 Firefighters and law enforcement or correctional officers; special provisions relative to disability.—

(1) (a) Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter, ~~or~~ law enforcement officer, correctional officer,

Page 1 of 3

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

591-02278-22

20221736c1

or correctional probation officer must have successfully passed a physical examination upon entering into any such service as a firefighter, ~~or~~ law enforcement officer, correctional officer, or correctional probation officer, which examination failed to reveal any evidence of any such condition. The medical examination required by s. 633.412(5) may serve as a physical examination upon entering service for a firefighter if the employer did not retain or conduct a physical examination upon entering service. Such presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

Section 2. Subsection (6) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.—On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(6) Have passed a physical examination by a licensed physician, physician assistant, or licensed advanced practice registered nurse, based on specifications established by the commission. In order to be eligible for the presumption set

Page 2 of 3

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

591-02278-22

20221736c1

59 forth in s. 112.18 while employed with an employing agency, a
60 law enforcement officer, correctional officer, or correctional
61 probation officer must have successfully passed the physical
62 examination required by this subsection upon entering into
63 service as a law enforcement officer, correctional officer, or
64 correctional probation officer with the employing agency, which
65 examination must have failed to reveal any evidence of
66 tuberculosis, heart disease, or hypertension. A law enforcement
67 officer, correctional officer, or correctional probation officer
68 may not use a physical examination from a former employing
69 agency for purposes of claiming the presumption set forth in s.
70 112.18 against the current employing agency. An employing agency
71 shall maintain records of the physical examination required
72 under this subsection for at least 5 years after the employee's
73 separation from that agency. If an employing agency fails to
74 maintain such records for the required period of time, it is
75 presumed that the law enforcement officer, correctional officer,
76 or correctional probation officer satisfied the requirement of
77 this subsection of having passed a physical examination.

78 Section 3. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Kathleen Passidomo, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: February 10, 2022

I respectfully request that **Senate Bill # 1736**, relating to Records of Physical Examinations, be placed on the:

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

The bill amends s. 943.13(6), F.S., to require the employing agency of a law enforcement officer, correctional officer, or correctional probation officer to maintain records of the officer's pre-employment physical examination for at least five years after the officer's separation from that agency. If an employing agency fails to maintain the records of the physical examination for the 5-year period after the officer's separation, it is presumed that the officer has met the requirement of successfully passing a pre-employment physical examination that failed to reveal any evidence of tuberculosis, heart disease, or hypertension.

A handwritten signature in black ink, appearing to read "Ed Hooper", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 16

The Florida Senate

APPEARANCE RECORD

2-23-22

Meeting Date

1736

Bill Number or Topic

RULES

Committee

Deliver both copies of this form to
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Amendment Barcode (if applicable)

Name

Wayne "BERNIE" BERNOSKA

Phone

321-231-9116

Address

343 W. MADISON St.

Email

BERNIE@FPFP.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:

FLORIDA PROFESSIONAL FIREFIGHTERS

☐

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

Meeting Date

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1736
Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Lisa Hanning

Phone

850-766-8808

Address

242 Office Plaza Dr

Email

lphlegislative@aol.com

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:

Fraternal Order of Police

☐

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/SB 7040

INTRODUCER: Rules Committee and Appropriations Committee

SUBJECT: Time Limitations for Preadjudicatory Juvenile Detention Care

DATE: February 24, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Stokes	Harkness		ACJ Discussed
Atchley	Sadberry		AP Submitted as Comm. Bill/Fav
1. Stokes	Phelps	RC	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7040 amends s. 985.24, F.S., providing that a child who is placed on supervised release detention care must comply with any available condition established by the Department of Juvenile Justice (DJJ) or ordered by the court, including electronic monitoring, if the court finds such condition necessary to preserve public safety or to ensure the child's safety or appearance in court.

The bill clarifies that a child who is alleged to be dependent under ch. 39, F.S., *but who is not alleged to have committed a delinquent act or violation of law*, may not be placed into secure detention.

The bill authorizes a court to order a child be placed on *supervised release detention* care for any time period until an adjudicatory hearing for the case has been completed. If a child has served 60 days on supervised release detention care, the court must conduct a hearing within 15 days after the 60th day, to determine if continued supervised release detention care is warranted.

The bill specifies that, except in specified circumstances, a child may not be held in *secure detention* for longer than 21 days unless an adjudicatory hearing has been completed. Under current law, a child generally may not be held in *secure* or *supervised release detention* care for longer than 21 days, except in specified circumstances.

Additionally, the bill provides that the court may transition a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds such placement is necessary. Each period of secure detention care or supervised release detention care counts toward the time limitations, whether served consecutively or nonconsecutively.

Currently, upon a showing of good cause that additional time for the prosecution or defense is needed, the court may extend the length of detention for an additional 9 days, for specified offenses. The bill authorizes a court to also extend the length of detention based upon the totality of the circumstances, including the preservation of public safety, warranting an extension. Additionally, the bill increases the length of such extension from 9 days to up to 21 days. The bill expands the list of specified offenses to include:

- Any second degree felony; and
- A third degree felony involving violence against any individual.

The court may continue to extend the period of secure detention in increments of up to 21 days by conducting a hearing before the expiration of the current period. At such hearing the court must make required written findings. If the court extends the time period of secure detention care, it must ensure that an adjudicatory hearing for the case commences as soon as is reasonably possible and prioritize the efficient disposition of those cases in which the child has served 60 or more days in secure detention care.

The bill removes language contained in s. 985.26(4), F.S., relating to time limitations of preadjudicatory detention care because this language conflicts with new provisions relating to time limitations in the bill.

Any electronic monitoring ordered by a court as a condition of supervised release detention care may be supervised by the DJJ, a law enforcement agency, or the department and a law enforcement agency working in partnership. However, the bill specifies that it does not require a law enforcement agency to supervise a child placed on electronic monitoring.

This bill may have an indeterminate bed impact on the DJJ. See section V. Fiscal Impact Statement.

This bill is effective July 1, 2022.

II. Present Situation:

Detention of Children in Florida

Intake and Assessment

Every child under the age of 18 charged with a crime in Florida is referred to the DJJ.¹ Intake and screening services for a child referred to the DJJ are performed at a Juvenile Assessment Center.² The purpose of the intake process is to assess the child's needs and risks and to

¹ A referral is similar to an arrest in the adult criminal justice system. See the DJJ, *Probation and Community Intervention, Overview*, available at <http://www.djj.state.fl.us/services/probation> (last visited February 24, 2022).

² Section 985.135(4), F.S.

determine the most appropriate treatment plan and setting for the child.³ Once a child is in the custody of the DJJ, the DJJ determines whether detention care is appropriate.⁴ The DJJ makes an initial decision regarding detention care placement using the “Detention Risk Assessment Instrument.”⁵ The DJJ serves as the primary case manager responsible for managing, coordinating, and monitoring services provided to the child.⁶

A child is entitled to a detention hearing within 24 hours of being taken into custody or placed in detention care. At the hearing, the court may order continued detention care under certain circumstances.⁷ “Detention care” means “the temporary care of a child in secure, or supervised release detention, pending a court adjudication or disposition or execution of a court order.”⁸ There are two types of detention care, including:

- “Secure detention” which is the temporary custody of a child while he or she is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.
- “Supervised release detention” which is the temporary, no secure custody of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of department staff pending adjudication or disposition, through programs that include, but are not limited to, electronic monitoring, day reporting centers, and nonsecure shelters, in addition to other court-imposed requirements.⁹

The use of detention care must be based primarily on findings that the child:

- Presents a substantial risk of not appearing at a subsequent hearing;
- Presents a substantial risk of inflicting bodily harm on others as evidenced by recent behavior, including the illegal possession of a firearm;
- Presents a history of committing a property offense prior to adjudication, disposition, or placement;
- Has committed contempt of court by: intentionally disrupting the administration of the court; intentionally disobeying a court order; or engaging in a punishable act or speech in the court’s presence which shows disrespect for the authority and dignity of the court; or
- Requests protection from imminent bodily harm.¹⁰

Additionally, the use of detention care may not be used for the following reasons:

- To allow a parent to avoid his or her legal responsibility;
- To permit more convenient administrative access to the child;
- To facilitate further interrogation or investigation; or

³ Section 985.14(2), F.S. The intake process consists of a preliminary screening and may be followed by a comprehensive assessment, consisting of a full mental health, cognitive impairment, substance abuse, or psychosexual evaluation.

⁴ Section 985.25(1), F.S.

⁵ Sections 985.25(1) and 985.245, F.S. Section 985.245, F.S., outlines with whom the Detention Risk Assessment Instrument must be developed, when and how it must be updated, and what factors the assessment instrument should identify when evaluating a child to determine whether detention placement is appropriate.

⁶ Section 985.145(1), F.S.

⁷ Section 985.255(1), F.S.

⁸ Section 985.03(18), F.S.

⁹ *Id.*

¹⁰ Section 985.24(1), F.S.

- Due to a lack of more appropriate facilities.¹¹

Further, a child who is alleged to be dependent under ch. 39, F.S., may not, under any circumstances, be placed into secure detention care.¹²

Generally, a child may not be held in detention care for more than 21 days, unless an adjudicatory hearing for the case has been commenced in good faith by the court. The court may extend the length of detention for an additional 9 days if there is good cause shown that the nature of the charge requires additional time for the prosecution or defense of the case and the child is charged with one of the following offenses:

- Capital felony;
- Life felony;
- First degree felony; or
- Second degree felony involving violence against any individual.¹³

A prolific juvenile offender¹⁴ must be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order.¹⁵ If secure detention care is ordered by the court for a prolific juvenile offender, such secure detention care must not exceed 21 days unless an adjudicatory hearing for the case has been commenced in good faith, or secure detention care is extended for 9 days as described above.¹⁶

The time limitations on detention care do not include periods of delay resulting from a continuance granted by the court. Upon an order granting a continuance, the court must conduct a hearing at the end of each 72- hour period to determine the need for continued detention.¹⁷

The period of supervised release detention care is tolled upon the allegation that a child has violated his or her supervised release detention. This period remains tolled until the court makes a ruling on the alleged violation. If the court finds the child in violation, the number of day the child has served on any type of detention before the violation is excluded from the time limitations described above.¹⁸

¹¹ Section 985.24(2), F.S.

¹² Section 985.24(3), F.S.

¹³ Section 985.26, F.S.

¹⁴ Section 985.255, F.S., provides that a “prolific juvenile offender” means a child that is charged with a delinquent act that would be a felony if committed by an adult, has a prior adjudication or adjudication withheld for a delinquent act that would be a felony if committed by an adult, and has 5 or more arrests, adjudications, or adjudications withheld, 3 of which must have been felony offenses.

¹⁵ Section 985.26, F.S.

¹⁶ Section 985.26(2)(c), F.S.

¹⁷ Section 985.26(4)(a), F.S.

¹⁸ Section 985.26(4)(b), F.S.

Cost Sharing of Detention Care

Cost sharing is governed by s. 985.6865, F.S., which provides that each fiscal year, the DJJ must calculate and provide to every county that is not fiscally constrained¹⁹ and that does not provide its own detention care, its annual percentage share.²⁰

The DJJ calculates a county's annual percentage share by dividing the total number of detention days for children residing in the non-fiscally constrained county for the most recently completed 12-month period by the total number of detention days for children in all non-fiscally constrained counties. The county must pay 50 percent of the annual percentage share in 12 equal payments, due on the first day of each month.²¹

Counties that are required to pay their share of detention costs must incorporate sufficient funds to pay its share of detention costs into its annual budget.²² Funds paid by the counties to the DJJ under this section must be deposited into the Shared County/State Juvenile Detention Trust Fund.²³ The DJJ will determine quarterly whether counties are complying with this section.²⁴

The State must pay all costs of detention care for children:

- Residing in a fiscally constrained county.
- Residing out of State.
- Housed in state detention centers from counties that provide their own detention care for children.²⁵

III. Effect of Proposed Changes:

The bill amends s. 985.24, F.S., providing that a child who is placed on supervised release detention care must comply with any available condition established by the DJJ or ordered by the court, including electronic monitoring, if the court finds such condition necessary to preserve public safety or to ensure the child's safety or appearance in court.

The bill clarifies that a child who is alleged to be dependent under ch. 39, F.S., *but who is not alleged to have committed a delinquent act or violation of law*, may not be placed into secure detention.

The bill amends s. 985.26, F.S., providing that the court may order a child be placed on *supervised release detention* care for any time period until an adjudicatory hearing for the case has been completed. If a child has served 60 days on supervised release detention care, the court must conduct a hearing within 15 days after the 60th day, to determine if continued supervised

¹⁹ Section 985.6865(1)(b), F.S., defines "fiscally constrained county" as a county within a rural area of opportunity as designated by the Governor pursuant to s. 288.0656, F.S., or each county for which the value of a mill will raise no more than \$5 million in revenue, based on the certified school taxable value certified pursuant to s. 1011.62(4)(a)1.a., F.S., from the previous July 1.

²⁰ Section 985.6865(2), F.S.

²¹ *Id.*

²² Section 985.6865(4), F.S.

²³ Section 985.6865(5), F.S.

²⁴ Section 985.6865(6), F.S.

²⁵ Section 985.6865(3), F.S.

release detention care is warranted. At such hearing, the court may order the child to remain on supervised release detention care until an adjudicatory hearing has been completed, upon:

- Good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case; or
- Consideration of the totality of the circumstances, including the preservation of public safety.

The bill specifies that, except in specified circumstances, a child may not be held in *secure detention* for longer than 21 days unless an adjudicatory hearing has been commenced. Under current law, a child generally may not be held in *secure* or *supervised release detention care* for longer than 21 days, except in specified circumstances.

Additionally, the bill provides that the court may transition a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds such placement is necessary to:

- Preserve public safety;
- Ensure the child's safety;
- Ensure appearance in court; or
- Ensure compliance with any condition of supervised release detention care.

Each period of secure detention care or supervised release detention care counts toward the time limitations, whether served consecutively or nonconsecutively.

Currently, upon a showing of good cause that additional time for the prosecution or defense is needed, the court may extend the length of detention for an additional 9 days, for specified offenses. The bill authorizes a court to also extend the length of detention based upon the totality of the circumstances, including the preservation of public safety, warranting an extension. Additionally, the bill increases the length of such extension from 9 days to up to 21 days. The bill expands the list of specified offenses to include:

- Any second degree felony; and
- A third degree felony involving violence against any individual.

The court may continue to extend the period of secure detention in increments of up to 21 days by conducting a hearing before the expiration of the current period. At such hearing the court must make required written findings. If the court extends the time period of secure detention care, it must ensure that an adjudicatory hearing for the case commences as soon as is reasonably possible considering the totality of the circumstances. The court must prioritize the efficient disposition of those cases in which the child has served 60 or more days in secure detention care.

The bill removes language contained in s. 985.26(4), F.S., relating to time limitations of preadjudicatory detention care because this language conflicts with new provisions relating to time limitations in the bill.

Any electronic monitoring ordered by a court as a condition of supervised release detention care may be supervised by the DJJ, a law enforcement agency, or the department and a law enforcement agency working in partnership. However, the bill specifies that it does not require a law enforcement agency to supervise a child placed on electronic monitoring.

This bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

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:

The overall impact of the bill on the DJJ is indeterminate. There may be a positive indeterminate bed impact (unquantifiable increase in the need for secure detention beds) on the DJJ due to the increase in the number of children who may be held in secure detention for longer periods of time. This bed impact may be partially offset by the reduction in detention bed needs due to the use of supervised release detention. There may also be a positive workload impact on the DJJ due to the extended period of supervision under supervised release detention. It is unclear whether the fiscal impact due to the longer permissible period of secure detention will be offset by the court's ability to transfer a child from secure to supervised release detention. The bill may also increase the demand for electronic monitoring.

Additionally, all non-fiscally constrained counties pay for half of their prior year actual detention casts. More children detained in detention care would mean higher cost to the counties to pay for their detention care.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.24 and 985.26.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Rules on February 23, 2022:

The committee substitute:

- Decreases the number of days that a child must serve on supervised release detention before the court must set a hearing, from 75 days to 60 days, and removes the language excluding Saturday, Sunday, and legal holidays from the time frames in which the court must conduct a hearing for continued detention. Removal of this language complies with the Rule 8.180 of Juvenile Procedure and Rule 2.514 of Practice and Litigation Procedures.
- Specifies that each period of secure detention and supervised release detention count toward the time limitations provided in the bill.
- Clarifies that a child who is dependent under ch. 39, F.S., and who is not alleged to have committed a crime, may not be placed in secure detention.
- Revises and removes conflicting language relating to time limitations for detention.

B. Amendments:

None.



793404

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/23/2022	.	
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The Committee on Rules (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 37 - 96

and insert:

that section, and present subsection (3) is amended to
read:

985.24 Use of detention; prohibitions.—

(2) A child who is placed on supervised release detention
care must comply with any available condition established by the
department or ordered by the court, including electronic
monitoring, if the court finds such a condition is necessary to



793404

preserve public safety or to ensure the child's safety or
appearance in court.

(4)~~(3)~~ A child who is alleged to be dependent under chapter
39, but who is not alleged to have committed a delinquent act or
violation of law, may not, under any circumstances, be placed
into secure detention care.

Section 2. Section 985.26, Florida Statutes, is amended to
read:

985.26 Length of detention.—

(1) A child may not be placed into or held in detention
care for longer than 24 hours unless the court orders such
detention care, and the order includes specific instructions
that direct the release of the child from such detention care,
in accordance with s. 985.255. The order shall be a final order,
reviewable by appeal under s. 985.534 and the Florida Rules of
Appellate Procedure. Appeals of such orders shall take
precedence over other appeals and other pending matters.

(2)(a)1. A court may order that a child be placed on
supervised release detention care for any time period until the
adjudicatory hearing is completed. However, if a child has
served 60 days on supervised release detention care, the court
must conduct a hearing within 15 days after the 60th day, to
determine the need for continued supervised release detention
care. At the hearing, upon good cause being shown that the
nature of the charge requires additional time for the
prosecution or defense of the case or upon consideration of the
totality of the circumstances, including the preservation of
public safety, warranting an extension, the court may order the
child to remain on supervised release detention care until the



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adjudicatory hearing is completed.

2. Except as provided in paragraph (b) or paragraph (c), a child may not be held in secure detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.

3. This section does not prohibit a court from transitioning a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds that such placement is necessary to preserve public safety or to ensure the child's safety, appearance in court, or compliance with any condition of supervised release detention care. Each period of secure detention care or supervised release detention care counts toward the time limitations in this paragraph, whether served consecutively or nonconsecutively.

(b) Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case or upon the totality of the circumstances, including the preservation of public safety, warranting an extension, the court may extend the length of secure detention care for up to 21 ~~an additional 9~~ days if the child is charged with an offense that ~~would be~~, if committed by an adult, would be a capital felony, a life felony, a felony of the first or second degree, or a felony of the third ~~second~~ degree involving violence against any individual. The court may continue to extend the period of secure detention care in increments of up to 21 days by conducting a hearing before the expiration of the current period to



793404

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

71 And the title is amended as follows:

72 Between lines 6 and 7

73 insert:

74 authorizing a dependent child with a delinquency

75 charge to be placed in secure detention care;



464134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2022	.	
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The Committee on Rules (Stargel) recommended the following:

Senate Substitute for Amendment (793404) (with title amendment)

Delete lines 37 - 152

and insert:

that section, and present subsection (3) is amended to read:

985.24 Use of detention; prohibitions.—

(2) A child who is placed on supervised release detention care must comply with any available condition established by the department or ordered by the court, including electronic



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12 monitoring, if the court finds such a condition is necessary to
13 preserve public safety or to ensure the child's safety or
14 appearance in court.

15 (4)~~(3)~~ A child who is alleged to be dependent under chapter
16 39, but who is not alleged to have committed a delinquent act or
17 violation of law, may not, under any circumstances, be placed
18 into secure detention care.

19 Section 2. Section 985.26, Florida Statutes, is amended to
20 read:

21 985.26 Length of detention.—

22 (1) A child may not be placed into or held in detention
23 care for longer than 24 hours unless the court orders such
24 detention care, and the order includes specific instructions
25 that direct the release of the child from such detention care,
26 in accordance with s. 985.255. The order shall be a final order,
27 reviewable by appeal under s. 985.534 and the Florida Rules of
28 Appellate Procedure. Appeals of such orders shall take
29 precedence over other appeals and other pending matters.

30 (2) (a) 1. A court may order that a child be placed on
31 supervised release detention care for any time period until the
32 adjudicatory hearing is completed. However, if a child has
33 served 60 days on supervised release detention care, the court
34 must conduct a hearing within 15 days after the 60th day, to
35 determine the need for continued supervised release detention
36 care. At the hearing, upon good cause being shown that the
37 nature of the charge requires additional time for the
38 prosecution or defense of the case or upon consideration of the
39 totality of the circumstances, including the preservation of
40 public safety, warranting an extension, the court may order the



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child to remain on supervised release detention care until the adjudicatory hearing is completed.

2. Except as provided in paragraph (b) or paragraph (c), a child may not be held in secure detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.

3. This section does not prohibit a court from transitioning a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds that such placement is necessary to preserve public safety or to ensure the child's safety, appearance in court, or compliance with any condition of supervised release detention care. Each period of secure detention care or supervised release detention care counts toward the time limitations in this subsection, whether served consecutively or nonconsecutively.

(b) Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case or upon the totality of the circumstances, including the preservation of public safety, warranting an extension, the court may extend the length of secure detention care for up to 21 ~~an additional 9~~ days if the child is charged with an offense that ~~would be~~, if committed by an adult, would be a capital felony, a life felony, a felony of the first or second degree, or a felony of the third ~~second~~ degree involving violence against any individual. The court may continue to extend the period of secure detention care in increments of up to 21 days by conducting a hearing before the expiration of the current



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period to determine the need for continuing the secure detention care of the child. At the hearing, the court must make the required findings in writing to extend the period of secure detention care. If the court extends the time period for secure detention care, it must ensure that an adjudicatory hearing for the case commences as soon as reasonably possible considering the totality of the circumstances, and it must prioritize the efficient disposition of those cases in which the child has served 60 or more days in secure detention care.

(c) A prolific juvenile offender under s. 985.255(1)(f) shall be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

2. Fifteen days after the entry of an order of adjudication.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

(d) A prolific juvenile offender under s. 985.255(1)(f) who is taken into custody for a violation of the conditions of his or her supervised release detention must be held in secure



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detention until a detention hearing is held.

(3) Except as provided in subsection (2), a child may not be held in detention care for more than 15 days following the entry of an order of adjudication.

(4) ~~(a)~~ The time limitation ~~limits~~ in subsection ~~subsections~~ ~~(2) and (3)~~ does ~~do~~ not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of proceedings for the child or the state.

~~(b) The period for supervised release detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child's supervised release detention care until the court enters a ruling on the violation. Notwithstanding the tolling of supervised release detention care, the court retains jurisdiction over the child for a violation of a condition of supervised release detention care during the tolling period. If the court finds that a child has violated his or her supervised release detention care, the number of days that the child served in any type of detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).~~

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

And the title is amended as follows:



464134

128 Delete lines 7 - 26
129 and insert:
130 authorizing a dependent child with a delinquency
131 charge to be placed in secure detention care; amending
132 s. 985.26, F.S.; authorizing a court to order that a
133 child be placed on supervised release detention care
134 for any time period until the adjudicatory hearing is
135 completed; requiring a court to conduct a hearing
136 within a specified timeframe if a child has served
137 longer than a specified number of days on supervised
138 release detention care; prohibiting a child from being
139 held in secure detention care for longer than a
140 certain time period under certain circumstances;
141 authorizing a court to extend the length of secure
142 detention care for an increased amount of days under
143 specified circumstances; authorizing a court to
144 continue to extend the time period for secure
145 detention care under specified circumstances;
146 requiring a court to make specified findings;
147 requiring a court to conduct a hearing to determine
148 the continued need for secure detention care under
149 specified circumstances; revising time limitations
150 resulting from a continuance; deleting provisions
151 relating to supervised release detention care and its
152 exclusion from specified time limitations; authorizing



467696

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/23/2022	.	
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The Committee on Rules (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 58 - 177
and insert:
adjudicatory hearing is completed, in accordance with s.
985.255. However, if a child has served 60 days on supervised
release detention care, the court must conduct a hearing within
15 days, excluding Saturdays, Sundays, and legal holidays, to
determine the need for continued supervised release detention
care. At the hearing, upon good cause being shown that the
nature of the charge requires additional time for the



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prosecution or defense of the case or upon consideration of the totality of the circumstances, including the preservation of public safety, which may warrant an extension, the court may order the child to remain on supervised release detention care until the adjudicatory hearing is completed.

2. Except as provided in paragraph (b) or paragraph (d)
~~(e)~~, a child may not be held in secure detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.

3. This section does not prohibit a court from transitioning a child who is a prolific juvenile offender between secure detention care and supervised release detention care, including electronic monitoring, if the court finds that such placement is necessary to preserve public safety or to ensure the child's safety, appearance in court, or compliance with any condition of supervised release detention care. Each period of secure detention care counts toward the time limitation in this paragraph, whether served consecutively or nonconsecutively.

(b) Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case or upon the totality of the circumstances, including the preservation of public safety, warranting an extension, the court may extend the length of secure detention care for an additional 9 days if the child is charged with an offense that ~~would be~~, if committed by an adult, would be a capital felony, a life felony, a felony of the first degree, or a felony of the second degree involving violence against any individual. If the



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41 adjudicatory hearing has not commenced while the child has been
42 in secure detention care, the court may order the child to be
43 transitioned to supervised release detention care for up to 60
44 days. There is a rebuttable presumption that the child should be
45 released from all forms of supervision after 60 days of any form
46 of detention care.

47 (c) If the court has granted a 9-day extension under
48 paragraph (b) and upon good cause being shown that the nature of
49 the charge requires additional time for the prosecution or
50 defense of the case or upon the totality of the circumstances,
51 including the preservation of public safety, warranting an
52 extension, the court may extend the length of secure detention
53 care for another 30 days if the child is a prolific juvenile
54 offender. To extend the length of secure detention care, the
55 court must conduct a hearing before the expiration of the
56 current period, excluding Saturdays, Sundays, and legal
57 holidays, to determine the need for continuing the secure
58 detention care of the child. At the hearing, the court must make
59 the required findings on the record to extend the period of
60 secure detention care. If the court extends the time period for
61 secure detention care, it must ensure that an adjudicatory
62 hearing for the case commences as soon as reasonably possible,
63 considering the totality of the circumstances, and it must
64 prioritize the efficient disposition of those cases in which the
65 child has served 60 or more days in any form of detention.

66 (d) ~~(e)~~ A prolific juvenile offender under s. 985.255(1) (f)
67 shall be placed on supervised release detention care with
68 electronic monitoring or in secure detention care under a
69 special detention order until disposition. If secure detention



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care is ordered by the court, it must be authorized under this part and may not exceed:

1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (c) ~~(b)~~; or

2. Fifteen days after the entry of an order of adjudication.

As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

(e) ~~(d)~~ A prolific juvenile offender under s. 985.255(1)(f) who is taken into custody for a violation of the conditions of his or her supervised release detention must be held in secure detention until a detention hearing is held.

(3) Except as provided in subsection (2), a child may not be held in detention care for more than 15 days following the entry of an order of adjudication.

(4)(a) The time limits in subsections (2) and (3) do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued detention of the child and the need for further continuance of



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proceedings for the child or the state.

(b) ~~Any~~ The period of ~~for~~ supervised release detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child's supervised release detention care until the court enters a ruling on the violation. Notwithstanding the tolling of supervised release detention care, the court retains jurisdiction over the child for a violation of a condition of supervised release detention care during the tolling period. If the court finds that a child has violated his or her supervised release detention care, the number of days that the child served in any type of detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).

(5) A child who was not in secure detention at the time of the adjudicatory hearing, but for whom residential commitment is anticipated or recommended, may be placed under a special detention order for a period not to exceed 72 hours, excluding weekends and legal holidays, for the purpose of conducting a comprehensive evaluation as provided in s. 985.185. Motions for the issuance of such special detention order may be made subsequent to a finding of delinquency. Upon said motion, the court shall conduct a hearing to determine the appropriateness of such special detention order and shall order the least restrictive level of detention necessary to complete the comprehensive evaluation process that is consistent with public safety. Such special detention order may be extended for an additional 72 hours upon further order of the court.

(6) If a child is detained and a petition for delinquency



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is filed, the child must ~~shall~~ be arraigned in accordance with the Florida Rules of Juvenile Procedure within 48 hours after the filing of the petition for delinquency.

(7) Any electronic monitoring ordered by a court as a condition of supervised release detention care pursuant to this section may be supervised by the department, a law enforcement agency, or the department and a law enforcement agency working in partnership. However, this subsection does not require a law enforcement agency to supervise a child placed on electronic monitoring, and it does not authorize a law enforcement agency to charge a child, or a child's parent or guardian, for electronic monitoring.

Section 3. Paragraph (a) of subsection (3) of section 985.255, Florida Statutes, is amended to read

985.255 Detention criteria; detention hearing.—

(3) (a) The purpose of the detention hearing required under subsection (1) is to determine the existence of probable cause that the child has committed the delinquent act or violation of law that he or she is charged with and the need for continued detention. The court shall use the results of the risk assessment performed by the department and, based on the criteria in subsection (1), shall determine the need for continued detention. If the child is a prolific juvenile offender who is detained under s. 985.26(2)(d) ~~s. 985.26(2)(c)~~, the court shall use the results of the risk assessment performed by the department and the criteria in subsection (1) or subsection (2) only to determine whether the prolific juvenile offender should be held in secure detention.



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

And the title is amended as follows:

Delete lines 21 - 30

and insert:

circumstances; authorizing a court to order a child to
be transitioned to supervised release detention care
under certain circumstances; providing a rebuttable
presumption; authorizing a court to extend the length
of secure detention care under specified
circumstances; requiring a court to make specified
findings on the record; requiring a court to conduct a
hearing to extend the length of secure detention care;
revising provisions relating to supervised release
detention care and its exclusion from specified time
limitations; authorizing certain electronic monitoring
ordered by a court to be supervised by the Department
of Juvenile Justice or a law enforcement agency, or
both; providing construction; amending s. 985.255,
F.S.; conforming a cross-reference; providing an
effective date.

By the Committee on Appropriations

576-02924-22

20227040__

1 A bill to be entitled
 2 An act relating to time limitations for
 3 preadjudicatory juvenile detention care; amending s.
 4 985.24, F.S.; authorizing a court to order a child
 5 placed on supervised release detention care to comply
 6 with specified conditions under certain circumstances;
 7 amending s. 985.26, F.S.; authorizing a court to order
 8 that a child be placed on supervised release detention
 9 care for any time period until the adjudicatory
 10 hearing is completed; requiring a court to conduct a
 11 hearing within a specified timeframe if a child has
 12 served longer than a specified number of days on
 13 supervised release detention care; prohibiting a child
 14 from being held in secure detention care for longer
 15 than a certain time period under certain
 16 circumstances; authorizing a court to extend the
 17 length of secure detention care for an increased
 18 amount of days under specified circumstances;
 19 authorizing a court to continue to extend the time
 20 period for secure detention care under specified
 21 circumstances; requiring a court to make specified
 22 findings; requiring a court to conduct a hearing to
 23 determine the continued need for secure detention care
 24 under specified circumstances; revising provisions
 25 relating to supervised release detention care and its
 26 exclusion from specified time limitations; authorizing
 27 certain electronic monitoring ordered by a court to be
 28 supervised by the Department of Juvenile Justice or a
 29 law enforcement agency, or both; providing

Page 1 of 7

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20227040__

30 construction; providing an effective date.
 31
 32 Be It Enacted by the Legislature of the State of Florida:
 33
 34 Section 1. Present subsections (2), (3), and (4) of section
 35 985.24, Florida Statutes, are redesignated as subsections (3),
 36 (4), and (5), respectively, and a new subsection (2) is added to
 37 that section, to read:
 38 985.24 Use of detention; prohibitions.—
 39 (2) The court may order a child placed on supervised
 40 release detention care to comply with any condition established
 41 by the department or ordered by the court, including electronic
 42 monitoring, when the court finds such condition necessary to
 43 preserve public safety or to ensure the child's safety or
 44 appearance in court.
 45 Section 2. Section 985.26, Florida Statutes, is amended to
 46 read:
 47 985.26 Length of detention.—
 48 (1) A child may not be placed into or held in detention
 49 care for longer than 24 hours unless the court orders such
 50 detention care, and the order includes specific instructions
 51 that direct the release of the child from such detention care,
 52 in accordance with s. 985.255. The order shall be a final order,
 53 reviewable by appeal under s. 985.534 and the Florida Rules of
 54 Appellate Procedure. Appeals of such orders shall take
 55 precedence over other appeals and other pending matters.
 56 (2) (a) 1. A court may order that a child be placed on
 57 supervised release detention care for any time period until the
 58 adjudicatory hearing is completed. However, if a child has

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served 75 days on supervised release detention care, the court must conduct a hearing within 15 days, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued supervised release detention care. At the hearing, upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case or upon consideration of the totality of the circumstances, including the preservation of public safety, which may warrant an extension, the court may order the child to remain on supervised release detention care until the adjudicatory hearing is completed.

2. Except as provided in paragraph (b) or paragraph (c), a child may not be held in secure detention care under a special detention order for more than 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court.

3. This section does not prohibit a court from transitioning a child between secure detention care and supervised release detention care, including electronic monitoring, if the court finds that such placement is necessary to preserve public safety or to ensure the child's safety, appearance in court, or compliance with any condition of supervised release detention care. Each period of secure detention care counts toward the time limitation in this paragraph, whether served consecutively or nonconsecutively.

(b) Upon good cause being shown that the nature of the charge requires additional time for the prosecution or defense of the case or upon the totality of the circumstances, including the preservation of public safety, warranting an extension, the

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court may extend the length of secure detention care for up to 21 ~~an additional 9~~ days if the child is charged with an offense that ~~would be~~, if committed by an adult, would be a capital felony, a life felony, a felony of the first or second degree, or a felony of the ~~third~~ second degree involving violence against any individual. The court may continue to extend the period of secure detention care in increments of up to 21 days by conducting a hearing before the expiration of the current period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continuing the secure detention care of the child. At the hearing, the court must make the required findings in writing to extend the period of secure detention care. If the court extends the time period for secure detention care, it must ensure that an adjudicatory hearing for the case commences as soon as reasonably possible considering the totality of the circumstances, and it must prioritize the efficient disposition of those cases in which the child has served 60 or more days in secure detention care.

(c) A prolific juvenile offender under s. 985.255(1)(f) shall be placed on supervised release detention care with electronic monitoring or in secure detention care under a special detention order until disposition. If secure detention care is ordered by the court, it must be authorized under this part and may not exceed:

1. Twenty-one days unless an adjudicatory hearing for the case has been commenced in good faith by the court or the period is extended by the court pursuant to paragraph (b); or

2. Fifteen days after the entry of an order of adjudication.

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As used in this paragraph, the term "disposition" means a declination to file under s. 985.15(1)(h), the entry of nolle prosequi for the charges, the filing of an indictment under s. 985.56 or an information under s. 985.557, a dismissal of the case, or an order of final disposition by the court.

(d) A prolific juvenile offender under s. 985.255(1)(f) who is taken into custody for a violation of the conditions of his or her supervised release detention must be held in secure detention until a detention hearing is held.

(3) Except as provided in subsection (2), a child may not be held in detention care for more than 15 days following the entry of an order of adjudication.

(4)(a) The time limits in subsections (2) and (3) do not include periods of delay resulting from a continuance granted by the court for cause on motion of the child or his or her counsel or of the state. Upon the issuance of an order granting a continuance for cause on a motion by either the child, the child's counsel, or the state, the court shall conduct a hearing at the end of each 72-hour period, excluding Saturdays, Sundays, and legal holidays, to determine the need for continued secure detention of the child and the need for further continuance of proceedings for the child or the state.

(b) ~~Any~~ The period of for supervised release detention care under this section is tolled on the date that the department or a law enforcement officer alleges that the child has violated a condition of the child's supervised release detention care until the court enters a ruling on the violation. Notwithstanding the tolling of supervised release detention care, the court retains

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~~jurisdiction over the child for a violation of a condition of supervised release detention care during the tolling period. If the court finds that a child has violated his or her supervised release detention care, the number of days that the child served in any type of detention care before commission of the violation shall be excluded from the time limits under subsections (2) and (3).~~

(5) A child who was not in secure detention at the time of the adjudicatory hearing, but for whom residential commitment is anticipated or recommended, may be placed under a special detention order for a period not to exceed 72 hours, excluding weekends and legal holidays, for the purpose of conducting a comprehensive evaluation as provided in s. 985.185. Motions for the issuance of such special detention order may be made subsequent to a finding of delinquency. Upon said motion, the court shall conduct a hearing to determine the appropriateness of such special detention order and shall order the least restrictive level of detention necessary to complete the comprehensive evaluation process that is consistent with public safety. Such special detention order may be extended for an additional 72 hours upon further order of the court.

(6) If a child is detained and a petition for delinquency is filed, the child ~~must~~ shall be arraigned in accordance with the Florida Rules of Juvenile Procedure within 48 hours after the filing of the petition for delinquency.

(7) Any electronic monitoring ordered by a court as a condition of supervised release detention care pursuant to this section may be supervised by the department, a law enforcement agency, or the department and a law enforcement agency working

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175 in partnership. However, this subsection does not require a law
176 enforcement agency to supervise a child placed on electronic
177 monitoring.

178 Section 3. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

2/23/2022

7040

Meeting Date

Bill Number or Topic

Rules

Deliver both copies of this form to
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Committee

Amendment Barcode (if applicable)

Name **Sheriff Bob Gualtieri**

Phone **727-582-6200**

Address **10750 Ulmerton Road**

Email **rgualtieri@pcsonet.com**

Street

Largo

FL

33779

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 Sheriffs 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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

2/23/22

Meeting Date

RMES

Committee

The Florida Senate
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Bill Number or Topic

Amendment Barcode (if applicable)

Name

CARLOS J. MARTINEZ FOR FLA. PUBLIC DEFENDER ASSOCIATION

Phone

305-545-1900

Address

1320 NW 14 ST

Street

Email

cmartinez@pdmiami.com

MIAMI

City

FL

State

33125

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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Meeting Date

Rules

Committee

7040

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Adam Potts

Phone

850-591-5921

Address

113 E. College Ave.

Email

adam@libertypartnersfl.com

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:

Lutheran Services
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)

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Bill Number or Topic

Amendment Barcode (if applicable)

Meeting Date

Committee

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:

Florida Rising



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

SB 7040

2/23

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Committee

rules

Amendment Barcode (if applicable)

Name

Neisha-Rose Hines

Phone

786 368 1104

Address

4343 W Flagler

Email

Street

Miami 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:

HCLL FL

☐

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
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: HB 539

INTRODUCER: Representative Trumbull

SUBJECT: Nursing Home Financial Reporting

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Looke	Phelps	RC	Favorable

I. Summary:

HB 539 amends s. 408.061, F.S., to specify that when a nursing home or the home office of a nursing home reports its actual financial experience for the fiscal year to the Agency for Health Care Administration (AHCA), as required in current law, the actual financial experience must be its audited actual experience.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Currently, nursing homes are required to submit financial data to the AHCA pursuant to s. 408.061(5)-(6), F.S. These provisions were added in 2021 by SB 2518 (ch. 2021-41, L.O.F.) and mirror provisions in current law that require other health care facilities to submit such data.¹ Prior to July 1, 2021, nursing homes were exempt from this reporting requirement.

Currently a nursing home must report, within 120 days after the end of its fiscal year, its actual financial experience for that fiscal year, including expenditures, revenues, and statistical measures. Such data may be based on internal financial reports that are certified to be complete and accurate by the chief financial officer of the nursing home. This actual experience must include the fiscal year-end balance sheet, income statement, statement of cash flow, and statement of retained earnings and must be submitted to the AHCA in addition to the information filed in the uniform system of financial reporting. However, unlike other health care facilities, data submitted by nursing homes is not required to be audited.

Florida Hospital Uniform Reporting System (FHURS)

The FHURS is the AHCA's reporting system used by hospitals to file financial data. Hospitals are required to file their Prior Year Actual Report (FHURS report) within 120 days after the close of their fiscal year end. In addition to the FHURS report, a copy of the signed audited

¹ See s. 408.061(4), F.S.

financial statements is required. The auditor's report must contain an opinion. An audit report containing a disclaimer of opinion is not considered acceptable. Any differences between the FHURS report and the audited financial statements must be reconciled and/or explained.²

In addition to requiring nursing homes to report financial data, s. 408.061(5)-(6), F.S., requires the AHCA to establish a Florida Nursing Home Uniform Reporting System, or FNHURS.

III. Effect of Proposed Changes:

HB 539 amends s. 408.061, F.S., to specify that when a nursing home or the home office of a nursing home reports its actual financial experience for the fiscal year to the AHCA, as required in current law, the actual financial experience must be its audited actual experience.

The bill provides an effective date of July 1, 2022.

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:

None.

² Hospital Financial Data, Agency for Health Care Administration, available at https://ahca.myflorida.com/MCHQ/Central_Services/Financial_Ana_Unit/fa_data/index.shtml (last visited Jan. 27, 2022).

C. Government Sector Impact:

There may be an indeterminate impact on Medicaid nursing home expenditures. Nursing home costs associated with providing the audited data are considered allowable Medicaid costs.³ This will enable nursing homes to include the costs associated with providing the audited data in cost reports used to calculate Medicaid nursing home prospective rates incorporated into the General Appropriations Act. This may affect the amount the Legislature appropriates for statewide Medicaid costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 408.061.

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

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

None.

B. Amendments:

None.

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

³ See Centers for Medicare & Medicaid Services Provider Reimbursement Manual 15-1, at 2102.2, and Florida Medicaid Cost Report: Nursing Home Chart of Accounts and Description: at entry 730560. Both on file with Senate Health Policy Committee staff.

HB 539

2022

1 A bill to be entitled
 2 An act relating to nursing home financial reporting;
 3 amending s. 408.061, F.S.; requiring nursing homes and
 4 their home offices to annually file with the Agency
 5 for Health Care Administration their audited actual
 6 experience for purposes of financial reporting;
 7 providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Subsections (5) and (6) of section 408.061,
 12 Florida Statutes, are amended to read:

13 408.061 Data collection; uniform systems of financial
 14 reporting; information relating to physician charges;
 15 confidential information; immunity.—

16 (5) Within 120 days after the end of its fiscal year, each
 17 nursing home as defined in s. 408.07 shall file with the agency,
 18 on forms adopted by the agency and based on the uniform system
 19 of financial reporting, its actual financial experience for that
 20 fiscal year, including expenditures, revenues, and statistical
 21 measures. Such data may be based on internal financial reports
 22 that are certified to be complete and accurate by the chief
 23 financial officer of the nursing home. However, a nursing home's
 24 actual financial experience shall be its audited actual
 25 experience. This audited actual experience must include the

Page 1 of 3

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hb0539-00

HB 539

2022

26 fiscal year-end balance sheet, income statement, statement of
 27 cash flow, and statement of retained earnings and must be
 28 submitted to the agency in addition to the information filed in
 29 the uniform system of financial reporting. The financial
 30 statements must tie to the information submitted in the uniform
 31 system of financial reporting, and a crosswalk must be submitted
 32 along with the financial statements.

33 (6) Within 120 days after the end of its fiscal year, the
 34 home office of each nursing home as defined in s. 408.07 shall
 35 file with the agency, on forms adopted by the agency and based
 36 on the uniform system of financial reporting, its actual
 37 financial experience for that fiscal year, including
 38 expenditures, revenues, and statistical measures. Such data may
 39 be based on internal financial reports that are certified to be
 40 complete and accurate by the chief financial officer of the
 41 nursing home. However, the home office's actual financial
 42 experience shall be its audited actual experience. This audited
 43 actual experience must include the fiscal year-end balance
 44 sheet, income statement, statement of cash flow, and statement
 45 of retained earnings and must be submitted to the agency in
 46 addition to the information filed in the uniform system of
 47 financial reporting. The financial statements must tie to the
 48 information submitted in the uniform system of financial
 49 reporting, and a crosswalk must be submitted along with the
 50 audited financial statements.

Page 2 of 3

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hb0539-00

HB 539

2022

51

Section 2. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

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2/23/2022
Meeting Date

Rules
Committee

SB 539
Bill Number or Topic

Amendment Barcode (if applicable)

Name Tanya C. Jackson

Phone 850-445-0107

Address 110 E. College Ave
Street

Email Tanya@AnPointResults.com

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:

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

SEIU/199 Healthcare Workers

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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2/23/2022

Meeting Date

HB 539

Bill Number or Topic

RULES

Committee

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Amendment Barcode (if applicable)

Name

MICHAEL PHILLIPS

Phone

850-375-9513

Address

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Against

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Information

OR

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In Support

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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: CS/HB 1467, 1st Eng.

INTRODUCER: Appropriations Committee and Representative Garrison and others

SUBJECT: K-12 Education

DATE: February 21, 2022

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Palazes	Phelps	RC	Pre-meeting

I. Summary:

CS/HB 1467 establishes eight year term limits for district school board members. The bill also provides specific requirements for school districts in selecting instructional materials and materials used in school libraries and media centers. Specifically, the bill requires:

- Certain school district instructional material review committee meetings be noticed and open to the public.
- School district personnel who are involved in reviewing and selecting certain instructional materials and library materials to complete training developed by the Department of Education (DOE) on selecting quality, age-appropriate books, prior to making selections.
- School districts to adopt and post procedures for developing library media center collections.
- Each elementary school to post on its website a list of all materials maintained in the school library or required in a classroom booklist.
- Material in a school library or classroom booklist to be selected by a certified educational media specialist.
- School districts to provide access to all materials for public inspection and to publish in a searchable format a list of all materials available to students on the school website.
- School districts to provide a public review process for the adoption of all materials and to select, approve, adopt, or purchase materials as a separate line item on a board meeting agenda and provide reasonable opportunity for public comment.
- School districts to annually submit to the Commissioner of Education a report identifying materials for which the school district received an objection, and the DOE to publish a list of removed or discontinued materials as a result of an objection.
- School principals to oversee compliance with school library media center materials selection procedures.

The bill is effective July 1, 2022.

II. Present Situation:

District School Board Member Term Limits

The Florida Constitution provides that “[i]n each school district there shall be a school board composed of five or more members chosen by vote of the electors in a nonpartisan election for appropriately staggered terms of four years, as provided by law.”¹ This provision has been interpreted to allow qualifications to be established by statute.² Each district school board must operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.³ There is currently no limit on the number of terms a school board member may serve.⁴

Florida’s Constitution establishes term limits for the following elected officials:⁵

- Florida Governor;
- Florida representatives;
- Florida senators;
- Florida Lieutenant Governor;
- Florida Cabinet members;
- U.S. representatives from Florida; and
- U.S. senators from Florida.

The Florida Constitution states that none of these officials, except for the office of Governor which is governed by a slightly different provision, may appear on a ballot for reelection if, by the end of the current term of office, the person will have served or, but for resignation, would have served in that office for eight consecutive years.⁶ These term limits became effective in 1992 and were prospective, so that officials reelected to a consecutive term in 1992 could serve another consecutive eight years before reaching the term limit.⁷

Instructional Materials and Library Materials in Florida Public Schools

Instructional Materials Adoption

Each district school board has the constitutional duty and responsibility to select and provide adequate instructional materials to each student for core courses in mathematics, language arts,

¹ Art. IX, s. 4(a), Fla. Const.

² *Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974) upholding residency requirements for district school board members and holding that section 4(a) of article IX “does NOT address itself to Qualifications of the school district members” and, therefore, statutes imposing qualifications “remain intact and viable, unaffected by this new constitutional provision.” See also *Telli v. Broward County*, 94 So. 3d 504 (Fla. 2012) receding from prior opinions which held that article VI, section 4(b), Florida Constitution, listing the state elected offices with mandatory term limits, prohibited the imposition of term limits on other officials. The court held that “[i]nterpreting Florida’s Constitution to find implied restrictions on powers otherwise authorized is unsound in principle” and that “express restrictions must be found not implied.” *Id.* at 513.

³ Art. IX, s. 4(b), Fla. Const.

⁴ Art. IX, s. 4(a), Fla. Const.

⁵ Art. VI, s. 4(c), Fla. Const.

⁶ Art. VI, s. 4(c), Fla. Const.

⁷ See Art. VI, s. 4, Fla. Const. (1992); Billy Buzzett and Steven J. Uhlfelder, *Constitution Revision Commission: A Retrospective and Prospective Sketch*, The Florida Bar Journal (April 1997), <https://www.floridabar.org/the-florida-bar-journal/constitution-revision-commission-a-retrospective-and-prospective-sketch> (last visited April 12, 2021).

science, social studies, reading, and literature for kindergarten through grade 12.⁸ “Adequate instructional materials” are defined by law as a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for students.⁹

State Instructional Materials Adoption

The Florida Department of Education (DOE) facilitates the statewide instructional materials adoption process through evaluation of materials submitted by publishers and manufacturers.¹⁰ Expert reviewers chosen by the DOE must objectively evaluate materials based on alignment to Florida’s state-adopted standards, accuracy, and appropriateness for age and grade level.¹¹ Based on reviewer recommendations of materials that are “suitable, usable, and desirable,” the Commissioner of Education (commissioner) then selects and adopts instructional materials for each grade and subject under consideration.¹² The DOE must provide training to instructional materials reviewers on competencies for making valid, culturally sensitive, and objective recommendations regarding the content and rigor of instructional materials prior to the beginning of the review and selection process.¹³

After adoption, the DOE must make the final report of instructional materials available at all times for public inspection. The DOE Office of Instructional Materials announces the adoption by publicly posting the list on its website, as well as emailing district instructional materials contacts with the newly approved materials.¹⁴

School District Instructional Materials Adoption

A district school board or consortium of school districts may implement an instructional materials program that includes the review, recommendation, adoption, and purchase of instructional materials. The district school superintendent must certify to the DOE by March 31 of each year that all instructional materials for core courses used by the district are aligned with applicable state standards.¹⁵ School districts receive an allocation of state funds each year for instructional materials, library books, and reference books.¹⁶ Unless a school district has implemented its own instructional materials review process,¹⁷ at least 50 percent of the allocation

⁸ Section 1006.40(2), F.S.

⁹ Section 1006.28(1), F.S. Digital and instructional materials, including software applications, must be provided by each school board, in consultation with the district school superintendent, to students with disabilities in prekindergarten through grade 12. Section 1003.4203(2), F.S.

¹⁰ Section 1006.34(1), F.S.

¹¹ Section 1006.31, F.S.

¹² Section 1006.34(2)(a), F.S. Generally, the commissioner adopts instructional materials according to a 5-year rotating schedule. The commissioner may approve a shorter schedule if the content area requires more frequent revision. Section 1006.36(1), F.S.

¹³ Section 1006.29(5), F.S.

¹⁴ Florida Department of Education, Instructional Materials, *Archive*, <https://www.fldoe.org/academics/standards/instructional-materials/archive/> (last visited Jan. 18, 2022). The DOE website has all adopted instructional materials lists from 2005 to present.

¹⁵ Section 1006.283(1), F.S.

¹⁶ Specific Appropriation 7 and 90, section 2, ch. 2021-36, L.O.F.

¹⁷ Section s. 1006.283, F.S.

of funds must be used to purchase instructional materials on the state-adopted list.¹⁸ The remaining 50 percent of the annual allocation may be used for the purchase of library and reference books, nonprint materials, and the repair and renovation of materials; however, such materials are not subject to the same school-district adoption procedures as instructional materials.¹⁹ Each district school board is required to maintain a list of all purchased instructional materials, by grade level, on its website.²⁰

District school boards or a consortium of school districts who choose to implement an instructional materials program must adopt rules for the instructional materials program. The school district instructional materials review program must include processes criteria, and requirements for the following:²¹

- Selection of reviewers, one or more of whom must be parents with children in public schools;
- Review of instructional materials;
- Selection of instructional materials, including a thorough review of curriculum content;
- Reviewer recommendations;
- District school board adoption; and
- Purchase of instructional materials.

The process by which instructional materials are adopted by the district school board must include:²²

- A process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the school board hearing and public meeting as specified in this subparagraph. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption;
- An open, noticed school board hearing to receive public comment on the recommended instructional materials;
- An open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased through the district school board instructional materials review process pursuant to this section. This public meeting must be held on a different date than the school board hearing; and
- Notice requirements for the school board hearing and the public meeting that must specifically state which instructional materials are being reviewed and the manner in which the instructional materials can be accessed for public review. The hearing must allow the parent of a public school student or a resident of the county to proffer evidence that a recommended instructional material.

School districts are also required to establish the processes by which the district school board must receive public comment on the recommended instructional materials and how parents can

¹⁸ Section 1006.34, F.S. All adopted materials are posted on the DOE Instructional Materials webpage. Florida Department of Education, *Instructional Materials*, <https://www.fldoe.org/academics/standards/instructional-materials/> (last visited January 20, 2022).

¹⁹ Section 1006.40(3)(b), F.S.

²⁰ Section 1006.28(2)(a)(1), F.S.

²¹ Section 1006.283(2)(a)1.-6., F.S.

²² Section 1006.283(2)(b)8. a-d., F.S.

access their children's instructional materials through the district's local instructional improvement system.²³

In September 2021, the Second District Court of Appeal held that when a district school board delegates decision-making authority to an instructional materials review committee, any meeting in which the committee exercises the authority to rank, eliminate, and select materials for final approval by the school board must be noticed and open in accordance with the Sunshine Law.²⁴

Selection Processes of Library Media Materials

In addition to instructional materials, each district school board is responsible for the content of any other materials used in the classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program, or otherwise purchased or made available.²⁵ The selection of instructional materials, library media, and other reading materials used in the public-school system must include consideration of the age of the students who normally could be expected to have access to the material, the educational purpose to be served by the material, the degree to which the material would be supplemented and explained by classroom programs, and the consideration of the diversity of the students in Florida.²⁶

Best practices for developing a school library collection include research on potential books and basing selections on the goals and objectives of the school and the students' personal interests and learning. Materials should be appropriate for the subject area and age, emotional development, ability level, learning styles, and development of the students for whom the materials are selected.²⁷ Resources such as Association for Library Service to Children, Booklist, School Library Journal, Kirkus, and Young Adult Library Services Association are commonly recommended review sources for school librarians.²⁸

For the 2021-2022 fiscal year, the legislature allocated \$12,733,273 to school districts for the purchase of library media materials.²⁹ The library media categorical funds are intended for a specific purpose – the purchase of library media resources to be checked out by students and teachers through the school library. Specifically, library media materials include those items normally purchased under Instructional Media Resources.³⁰

Librarians/Media Specialists

Librarians/media specialists are defined as staff members responsible for evaluating, selecting, organizing, and managing media and technology resources, equipment, and related systems.

²³ Section 1006.283(2)(b) 9., 11., F.S.

²⁴ *Florida Citizens Alliance, Inc. v. School Bd. of Collier Cnty.*, 328 So.3d 22 (Fla. 2d DCA 2021). Florida's Sunshine Law is established in s. 286.011, F.S.

²⁵ Section 1006.28(2)(a)1., F.S.

²⁶ Section 1006.34(2)(b), F.S.

²⁷ American Library Association, Selection Criteria, *School Library Selection Criteria*, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/criteria> (last visited Jan. 17, 2022).

²⁸ *Id.*

²⁹ Specific Appropriation 7 and 90, section 2, ch. 2021-36, L.O.F.

³⁰ Florida Department of Education, Memo to School District Superintendents, *Specific Appropriations 7 and 90 – Library Media Allocation, 2021*, available at <https://info.fldoe.org/docushare/dsweb/Get/Document-9189/dps-2021-92.pdf>.

They are also responsible for working with teachers and students to make resources available in instructional programs, media productions, and location and use of information resources.³¹ Educators in Florida may become certified educational media specialists through the DOE certification process, but Florida schools are not required to employ a certified educational media specialist. In the 2021-22 school year, there were 3,682 certified media specialists working in Florida's school districts with every school district employing at least one certified media specialist.³² Of the 3,682 certified media specialists, 1,779 were employed as a media specialist and 1,903 were employed in another position within the district.³³

To become a certified educational media specialist in grades prekindergarten through 12, an individual must complete one of the following pathways:³⁴

- A bachelor's degree or higher with an undergraduate or graduate major in educational media or library science; or
- A bachelor's degree or higher with thirty semester hours in educational media or library science to include credit in management of library media programs, collection development, library media resources, reference sources and services, organization of collections, and design and production of educational media.

Each school district must provide training to school librarians and media specialists regarding the prohibition against distributing harmful materials to minors, and best practices for providing students access to age-appropriate materials and library resources.³⁵

Objection to Materials

Each district school board is required to establish a process by which a parent or resident of the county may contest the district school board's adoption of a specific material.³⁶ Parents must file a petition, on a form provided by the district school board, within 30 calendar days after the adoption of the material. The school board is required to conduct at least one open public hearing before an unbiased and qualified hearing officer that is not an employee or agent of the school district. Following the hearing, the school board's decision is final and not subject to further petition or review.³⁷

Required Instruction

Florida law requires certain topics to be taught in kindergarten through grade 12 public schools annually to ensure coverage of all State Board of Education adopted standards in reading and language arts, mathematics, science, social studies, foreign languages, health and physical education, and the arts.³⁸ Instructional personnel must teach these topics efficiently and

³¹ Section 1012.01(2)(c), F.S.

³² Email, Florida Department of Education, Jessica Fowler, Deputy Director of Governmental Relations (Jan. 24, 2022).

³³ *Id.*

³⁴ Rule 6A-4.0251, F.A.C.

³⁵ Section 1006.28(2)(d), F.S.

³⁶ Section 1006.28(2)(a)3., F.S.

³⁷ *Id.*

³⁸ Section 1003.42(1), F.S.

faithfully, utilizing materials that meet the highest standards for professionalism and historical accuracy.³⁹

School districts must submit a report to the commissioner annually describing how instruction was provided during the previous school year, including specific courses in which instruction was delivered, a description of materials and resources utilized to deliver instruction, and the professional qualifications of the person delivering instruction for specified topics.⁴⁰

Required instruction topics are not correlated with the instructional materials adoption process at the DOE; therefore, instructional materials that are purchased by a school district to teach these topics may not go through a public adoption process as with instructional materials for core courses.⁴¹ For example, the most recent state instructional materials adoption that included a call for health and physical education materials was in the 2015-2016 adoption; however, no materials were adopted for health and physical education for kindergarten through grade 8.⁴² The previous year's adoption, in 2014-2015, adopted three instructional materials for health and physical education courses in high school grade levels.⁴³

III. Effect of Proposed Changes:

CS/HB 1467 provides eight year terms limits for school board members, and modifies school district requirements for instructional materials, including instructional materials in school libraries and media centers to provide increased oversight over and public access to all materials used in instruction.

School Board Member Term Limits

The bill establishes term limits of eight years for school board members. The bill provides that a person may not appear on the ballot for reelection to the office of school board member if, by the end of his or her current term of office, the person will have served, or but for resignation would have served, in that office for eight consecutive years. The term limits would begin on or after

³⁹ Section 1003.42(2), F.S. Required instruction includes, for example, the history and content of the Declaration of Independence, the arguments in support of adopting our republican form of government, flag education, the history of the Holocaust, the history of African Americans, and kindness to animals.

⁴⁰ Rule 6A-1.094124, F.A.C. The DOE provides the Required Instruction Portal website for districts to annually submit information on required topics. Florida Department of Education, *Florida Required Instruction Portal*, <https://www.flrequiredinstruction.org/> (last visited Jan. 18, 2022).

⁴¹ Instructional materials adoption at the state level focuses on one or more related subject areas per year, on 5-year rotating basis. Florida Department of Education, Instructional Materials, *FLORIDA INSTRUCTIONAL MATERIALS ADOPTION SCHEDULE FOR ADOPTION YEARS 2020-2021 THROUGH 2023-2024* (2020), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/AdoptionCycle.pdf>. The DOE posts the instructional materials adoption cycle for 5 years. K-12 Mathematics is the subject area in the 2021-2022 year.

⁴² Florida Department of Education, Instructional Materials, *2015-2016 Florida Department of Education 6-12 Career and Technical Education, K-8 Physical and Health Education, K-12 Visual and Performing Arts, and K-12 World Languages: Chinese, German, Italian and Latin Adopted Instructional Materials* (July 12, 2016), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/2015-2016AdoptedIMUpdate.pdf>.

⁴³ Florida Department of Education, Instructional Materials, *2014-2015 Florida Department of Education Adopted Instructional Materials* (Jan. 28, 2016), available at <https://www.fldoe.org/core/fileparse.php/5574/urlt/1415AIMDec2015.pdf>. Instructional materials used to teach reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment, must be annually approved by a district school board in an open, noticed public meeting. Section 1003.42(1)(b), F.S.

the November 8, 2022, election, allowing current school board members to serve at least an additional eight years.

Public Participation in the Instructional Materials Review Process

The bill requires that district school boards that hold meetings of committees convened for the purpose of ranking, eliminating, or selecting instructional materials for recommendation to the district school board must be noticed and open to the public, and must include parents of district students. Additionally, the bill requires school districts to publish on their website, in a searchable format prescribed by the Department of Education (DOE), a list of all instructional materials, include those used for specified required instruction.

District school boards must also:

- Provide access to all materials, excluding teacher editions, 20 calendar days before the district school board⁴⁴ takes any official action on such materials. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption;
- Select, approve, adopt or purchase materials as a separate line item on the agenda and must provide a reasonable opportunity for public comment. The materials may not be selected, approved, or adopted as part of a consent agenda; and
- Submit to the Commissioner of Education, beginning June 30, 2023, an annual report that identifies:
 - Each material, not purchased from the state-adopted list, which the school district received an objection for the school year and the specific objections;
 - Each material that was removed or discontinued as a result of an objection; and
 - The grade level and course for which a removed or discontinued material was used, as applicable.

The bill requires the DOE to publish and update a list of materials that were removed or discontinued by district school boards as a result of an objection and disseminate the list to school districts for consideration in their instructional materials selection.

Materials in School District Libraries and Media Centers

The bill requires school librarians, media specialists, and other personnel involved in the selection of school district library materials to complete the training program developed by the DOE, which must also include training on materials for required instruction and materials in school library media centers and reading lists.

The bill also requires that each book made available to students through a school district library media center or included in a recommended or assigned school or grade-level reading list must be selected by a school district employee who holds a valid educational media specialist certificate. All public elementary schools will be required to publish on its website a list of all materials maintained in the school library or required as part of a booklist used in a classroom.

⁴⁴ The process by which instructional materials are adopted by a district school board is established in s. 1006.283(2)(b)8., F.S.

District school boards are required in the bill to adopt and post on the website procedures for developing library media center collections. At a minimum, the procedures must:

- Require book selections to selections be free of pornography and prohibited materials harmful to minors, suited to student needs, and appropriate for the grade level and age group;
- Require consultation of reputable, professionally recognized sources and school community stakeholders for each selection;
- Provide for library media center collections based on reader interest, support of state academic standards and aligned curriculum, and the academic needs of students and faculty; and
- Provide for the regular removal or discontinuance of books based on, at a minimum, physical condition, rate of recent circulation, alignment to state academic standards and relevancy to curriculum, out-of-date content, and materials that were removed because of an objection by a parent or resident of the county.

The bill provides that school principals are responsible for overseeing compliance with school library media center materials selection procedures.

The bill is effective July 1, 2022.

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:

None.

C. Government Sector Impact:

The fiscal impact to the state is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1001.35, 1006.28, 1006.29, 1006.40.

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

The Committee on Rules (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 290
and insert:
for 12 consecutive years. Service of a term of office which
commenced before November 8, 2022, will not be counted toward
the limitation imposed by this section.

Section 2. Paragraphs (a) and (d) of subsection (2) and
subsection (4) of section 1006.28, Florida Statutes, are
amended, and paragraph (e) is added to subsection (2) of that
section, to read:



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1006.28 Duties of district school board, district school superintendent; and school principal regarding K-12 instructional materials.—

(2) DISTRICT SCHOOL BOARD.—The district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students in accordance with the requirements of this part. The district school board also has the following specific duties and responsibilities:

(a) *Courses of study; adoption.*—Adopt courses of study, including instructional materials, for use in the schools of the district.

1. Each district school board is responsible for the content of all instructional materials and any other materials used in a classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program under s. 1006.283, or otherwise purchased or made available.

~~Each district school board shall maintain on its website a current list of instructional materials, by grade level, purchased by the district.~~

2. Each district school board must adopt a policy regarding an objection by a parent or a resident of the county to the use of a specific ~~instructional~~ material, which clearly describes a process to handle all objections and provides for resolution. The process must provide the parent or resident the opportunity to proffer evidence to the district school board that:

a. An instructional material does not meet the criteria of s. 1006.31(2) or s. 1006.40(3)(d) if it was selected for use in



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a course or otherwise made available to students in the school district but was not subject to the public notice, review, comment, and hearing procedures under s. 1006.283(2)(b)8., 9., and 11.

b. Any material used in a classroom, made available in a school library, or included on a reading list contains content that is pornographic or prohibited under s. 847.012, is not suited to student needs and their ability to comprehend the material presented, or is inappropriate for the grade level and age group for which the material is used.

If the district school board finds that an instructional material does not meet the criteria under sub-subparagraph a. or that any other material contains prohibited content under sub-subparagraph b., the school district shall discontinue use of the material for any grade level or age group for which such use is inappropriate or unsuitable.

3. Each district school board must establish a process by which the parent of a public school student or a resident of the county may contest the district school board's adoption of a specific instructional material. The parent or resident must file a petition, on a form provided by the school board, within 30 calendar days after the adoption of the instructional material by the school board. The school board must make the form available to the public and publish the form on the school district's website. The form must be signed by the parent or resident, include the required contact information, and state the objection to the instructional material based on the criteria of s. 1006.31(2) or s. 1006.40(3)(d). Within 30 days



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after the 30-day period has expired, the school board must, for all petitions timely received, conduct at least one open public hearing before an unbiased and qualified hearing officer. The hearing officer may not be an employee or agent of the school district. The hearing is not subject to the provisions of chapter 120; however, the hearing must provide sufficient procedural protections to allow each petitioner an adequate and fair opportunity to be heard and present evidence to the hearing officer. The school board's decision after convening a hearing is final and not subject to further petition or review.

4. Meetings of committees convened for the purpose of ranking, eliminating, or selecting instructional materials for recommendation to the district school board must be noticed and open to the public in accordance with s. 286.011. Any committees convened for such purposes must include parents of district students.

(d) *School library media services; establishment and maintenance.*—Establish and maintain a program of school library media services for all public schools in the district, including school library media centers, or school library media centers open to the public, and, in addition such traveling or circulating libraries as may be needed for the proper operation of the district school system. Beginning January 1, 2023, Each school district shall provide training to school librarians, and media specialists, and other personnel involved in the selection of school district library materials must complete the training program developed pursuant to s. 1006.29(6) before reviewing and selecting regarding the prohibition against distributing harmful materials to minors under s. 847.012 and applicable case law,



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~~and best practices for providing students access to age-~~
appropriate materials and library resources. Upon written
request, a school district shall provide access to any material
or book specified in the request that is maintained in a
district school system library and is available for review.

1. Each book made available to students through a school
district library media center or included in a recommended or
assigned school or grade-level reading list must be selected by
a school district employee who holds a valid educational media
specialist certificate, regardless of whether the book is
purchased, donated, or otherwise made available to students.

2. Each district school board shall adopt procedures for
developing library media center collections and post the
procedures on the website for each school within the district.
The procedures must:

a. Require that book selections meet the criteria in s.
1006.40(3)(d).

b. Require consultation of reputable, professionally
recognized reviewing periodicals and school community
stakeholders.

c. Provide for library media center collections based on
reader interest, support of state academic standards and aligned
curriculum, and the academic needs of students and faculty.

d. Provide for the regular removal or discontinuance of
books based on, at a minimum, physical condition, rate of recent
circulation, alignment to state academic standards and relevancy
to curriculum, out-of-date content, and required removal
pursuant to subparagraph (a)2.

3. Each elementary school must publish on its website, in a



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searchable format prescribed by the department, a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.

(e) *Public participation.*—Publish on its website, in a searchable format prescribed by the department, a list of all instructional materials, including those used to provide instruction required by s. 1003.42. Each district school board must:

1. Provide access to all materials, excluding teacher editions, in accordance with s. 1006.283(2)(b)8.a. before the district school board takes any official action on such materials. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption.

2. Select, approve, adopt, or purchase all materials as a separate line item on the agenda and must provide a reasonable opportunity for public comment. The use of materials described in this paragraph may not be selected, approved, or adopted as part of a consent agenda.

3. Annually, beginning June 30, 2023, submit to the Commissioner of Education a report that identifies:

a. Each material for which the school district received an objection pursuant to subparagraph (a)2. for the school year and the specific objections thereto.

b. Each material that was removed or discontinued as a result of an objection.

c. The grade level and course for which a removed or discontinued material was used, as applicable.



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The department shall publish and regularly update a list of materials that were removed or discontinued as a result of an objection and disseminate the list to school districts for consideration in their selection procedures.

(4) SCHOOL PRINCIPAL.—The school principal has the following duties for the management and care of ~~instructional~~ materials at the school:

(a) *Proper use of instructional materials.*—The principal shall assure that instructional materials are used to provide instruction to students enrolled at the grade level or levels for which the materials are designed, pursuant to adopted district school board rule. The school principal shall communicate to parents the manner in which instructional materials are used to implement the curricular objectives of the school.

(b) *Money collected for lost or damaged instructional materials; enforcement.*—The school principal shall collect from each student or the student's parent the purchase price of any instructional material the student has lost, destroyed, or unnecessarily damaged and to report and transmit the money collected to the district school superintendent. The failure to collect such sum upon reasonable effort by the school principal may result in the suspension of the student from participation in extracurricular activities or satisfaction of the debt by the student through community service activities at the school site as determined by the school principal, pursuant to policies adopted by district school board rule.

(c) *Sale of instructional materials.*—The school principal, upon request of the parent of a student in the school, shall



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sell to the parent any instructional materials used in the school. All such sales shall be made pursuant to rule adopted by the district school board, and the principal shall annually provide information to parents that they may purchase instructional materials and how to purchase the materials.

(d) *Disposition of funds.*—All money collected from the sale, exchange, loss, or damage of instructional materials shall be transmitted to the district school superintendent to be deposited in the district school board fund and added to the district appropriation for instructional materials.

(e) *Accounting for instructional materials.*—Principals shall see that all instructional materials are fully and properly accounted for as prescribed by adopted rules of the district school board.

(f) Selection of library media center materials.—School principals are responsible for overseeing compliance with school district procedures for selecting school library media center materials at the school to which they are assigned.

Section 3. Subsection (2) of section 1006.29, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

1006.29 State instructional materials reviewers.—

(2) For purposes of this part ~~state adoption~~, the term “instructional materials” means items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives,



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electronic media, and computer courseware or software. A publisher or manufacturer providing instructional materials as a single bundle shall also make the instructional materials available as separate and unbundled items, each priced individually. A publisher may also offer sections of state-adopted instructional materials in digital or electronic versions at reduced rates to districts, schools, and teachers.

(6) The department shall develop an online training program for school librarians, media specialists, and other personnel involved in the selection and maintenance of library media and collections or materials maintained on a reading list. This training must assist reviewers in complying with the requirements of s. 1006.31(2). The department shall make this training available no later than January 1, 2023. No later than July 1, 2023, and annually thereafter, each superintendent must certify to the department that all school librarians and media specialists employed by the district have completed the online training program.

Section 4. Paragraph (b) of subsection (4) of section 1006.40, Florida Statutes, is amended to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(4) Each district school board is responsible for the content of all materials used in a classroom or otherwise made available to students. Each district school board shall adopt rules, and each district school superintendent shall implement procedures, that:

(b) Provide a process for public review of, public comment



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on, and the adoption of ~~instructional~~ materials, including those
~~instructional materials~~ used to provide instruction required by
s. 1003.42 ~~teach reproductive health or any disease, including~~
~~HIV/AIDS, under ss. 1003.42(3) and 1003.46,~~ which satisfies the
requirements of s. 1006.283(2)(b)8., 9., and 11.

Section 5. Subsection (2) of section 1011.67, Florida
Statutes, is amended to read:

1011.67 Funds for instructional materials.—

(2) Annually by July 1 and before the release of
instructional materials funds, each district school
superintendent shall certify to the Commissioner of Education
that the district school board has approved a comprehensive
staff development plan that supports fidelity of implementation
of instructional materials programs, including verification that
training was provided; that the materials are being implemented
as designed; and, beginning July 1, 2021, for core reading
materials and reading intervention materials used in
kindergarten through grade 5, that the materials meet the
requirements of s. 1001.215(8). Such instructional materials, as
evaluated and identified pursuant to s. 1001.215(4), may be
purchased by the school district with funds under this section
without undergoing the adoption procedures under s.

1006.40(4)(b). The certification must identify any material that
received an objection pursuant to s. 1006.28 for the school year
and the specific objections thereto, each material that was
removed or discontinued as a result of an objection, and the
grade level and course for which a removed or discontinued
material was used, as applicable. This subsection does not
preclude school districts from purchasing or using other



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materials to supplement reading instruction and provide additional skills practice.

Section 6. This act shall take effect July 1, 2022.

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

And the title is amended as follows:

Delete lines 12 - 31

and insert:

specified training by a certain date; requiring certain materials to be selected by employees who meet specified criteria; requiring district school boards to adopt procedures for developing library media center collections; providing requirements for such procedures; requiring elementary schools, district school boards, and the Department of Education to post on their websites specified information relating to instructional materials and other materials in certain formats; providing district school board requirements; providing that school principals are responsible for overseeing compliance with specified procedures relating to library media center materials; amending s. 1006.29, F.S.; requiring the department to develop a training program for the selection of materials used in schools and library media centers by a certain date; amending s. 1006.40, F.S.; revising district school board requirements for the selection and adoption of certain materials; amending s. 1011.67, F.S.; requiring that the certification by district school superintendents to the Commissioner of



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302 Education identifies instructional materials that are
303 the subject of an objection and provides specified
304 information related to the objection; providing an
305 effective date.



801336

LEGISLATIVE ACTION

Senate

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House

The Committee on Rules (Farmer) recommended the following:

Senate Amendment (with title amendment)

Delete line 96

and insert:

is inappropriate or unsuitable. School districts may not destroy any material discontinued pursuant to this paragraph and shall make a good faith effort to either return the material to the entity that provided the material or, if unable to return the material, inform local libraries and nonprofit book depositories of the material's availability and transfer the material upon a local library or nonprofit book depository's request.



801336

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

And the title is amended as follows:

Delete line 6

and insert:

specified list on their websites; prohibiting school
districts from destroying certain discontinued
materials; specifying how school districts must return
or transfer such materials; requiring certain

CS/HB 1467, Engrossed 1

2022

1 A bill to be entitled
2 An act relating to K-12 education; amending s.
3 1001.35, F.S.; establishing term limits for school
4 board members; amending s. 1006.28, F.S.; deleting a
5 requirement that district school boards maintain a
6 specified list on their websites; requiring certain
7 meetings relating to instructional materials to be
8 noticed and open to the public; providing requirements
9 for the membership of committees related to
10 instructional materials; requiring certain individuals
11 involved in selecting library materials to complete a
12 specified training; requiring certain materials to be
13 selected by employees who meet specified criteria;
14 requiring district school boards to adopt procedures
15 for developing library media center collections;
16 providing requirements for such procedures; requiring
17 elementary schools, district school boards, and the
18 Department of Education to post on their websites
19 specified information relating to instructional
20 materials and other materials in certain formats;
21 providing district school board requirements;
22 providing school principals are responsible for
23 overseeing compliance with specified procedures
24 relating to library media center materials; amending
25 s. 1006.29, F.S.; revising requirements for the

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26 department relating to the development of training
27 programs for the selection of materials used in
28 schools and library media centers; amending s.
29 1006.40, F.S.; revising district school board
30 requirements for the selection and adoption of certain
31 materials; providing an effective date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Section 1001.35, Florida Statutes, is amended
36 to read:
37 1001.35 Term of office.—District school board members
38 shall be elected at the general election in November for terms
39 of 4 years except that a person may not appear on the ballot for
40 reelection to the office of school board member if, by the end
41 of his or her current term of office, the person will have
42 served, or but for resignation would have served, in that office
43 for 8 consecutive years. Service of a term of office which
44 commenced before November 8, 2022, will not be counted toward
45 the limitation imposed by this section.
46 Section 2. Paragraphs (a) and (d) of subsection (2) and
47 subsection (4) of section 1006.28, Florida Statutes, are
48 amended, and paragraph (e) is added to subsection (2) of that
49 section, to read:
50 1006.28 Duties of district school board, district school

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superintendent; and school principal regarding K-12 instructional materials.—

(2) DISTRICT SCHOOL BOARD.—The district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students in accordance with the requirements of this part. The district school board also has the following specific duties and responsibilities:

(a) Courses of study; adoption.—Adopt courses of study, including instructional materials, for use in the schools of the district.

1. Each district school board is responsible for the content of all instructional materials and any other materials used in a classroom, made available in a school library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program under s. 1006.283, or otherwise purchased or made available. ~~Each district school board shall maintain on its website a current list of instructional materials, by grade level, purchased by the district.~~

2. Each district school board must adopt a policy regarding an objection by a parent or a resident of the county to the use of a specific ~~instructional~~ material, which clearly describes a process to handle all objections and provides for resolution. The process must provide the parent or resident the

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opportunity to proffer evidence to the district school board that:

a. An instructional material does not meet the criteria of s. 1006.31(2) or s. 1006.40(3)(d) if it was selected for use in a course or otherwise made available to students in the school district but was not subject to the public notice, review, comment, and hearing procedures under s. 1006.283(2)(b) 8., 9., and 11.

b. Any material used in a classroom, made available in a school library, or included on a reading list contains content that is pornographic or prohibited under s. 847.012, is not suited to student needs and their ability to comprehend the material presented, or is inappropriate for the grade level and age group for which the material is used.

If the district school board finds that an instructional material does not meet the criteria under sub-subparagraph a. or that any other material contains prohibited content under sub-subparagraph b., the school district shall discontinue use of the material for any grade level or age group for which such use is inappropriate or unsuitable.

3. Each district school board must establish a process by which the parent of a public school student or a resident of the county may contest the district school board's adoption of a specific instructional material. The parent or resident must

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101 file a petition, on a form provided by the school board, within
 102 30 calendar days after the adoption of the instructional
 103 material by the school board. The school board must make the
 104 form available to the public and publish the form on the school
 105 district's website. The form must be signed by the parent or
 106 resident, include the required contact information, and state
 107 the objection to the instructional material based on the
 108 criteria of s. 1006.31(2) or s. 1006.40(3)(d). Within 30 days
 109 after the 30-day period has expired, the school board must, for
 110 all petitions timely received, conduct at least one open public
 111 hearing before an unbiased and qualified hearing officer. The
 112 hearing officer may not be an employee or agent of the school
 113 district. The hearing is not subject to the provisions of
 114 chapter 120; however, the hearing must provide sufficient
 115 procedural protections to allow each petitioner an adequate and
 116 fair opportunity to be heard and present evidence to the hearing
 117 officer. The school board's decision after convening a hearing
 118 is final and not subject to further petition or review.

119 4. Meetings of committees convened for the purpose of
 120 ranking, eliminating, or selecting instructional materials for
 121 recommendation to the district school board must be noticed and
 122 open to the public in accordance with s. 286.011. Any committees
 123 convened for such purposes must include parents of district
 124 students.

125 (d) School library media services; establishment and

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126 maintenance.—Establish and maintain a program of school library
 127 media services for all public schools in the district, including
 128 school library media centers, or school library media centers
 129 open to the public, and, in addition such traveling or
 130 circulating libraries as may be needed for the proper operation
 131 of the district school system. ~~Each school district shall~~
 132 ~~provide training to~~ School librarians, and media specialists,
 133 and other personnel involved in the selection of school district
 134 library materials must complete the training program developed
 135 pursuant to s. 1006.29(5) before reviewing and selecting
 136 ~~regarding the prohibition against distributing harmful materials~~
 137 ~~to minors under s. 847.012 and applicable case law, and best~~
 138 ~~practices for providing students access to~~ age-appropriate
 139 materials and library resources. Upon written request, a school
 140 district shall provide access to any material or book specified
 141 in the request that is maintained in a district school system
 142 library and is available for review.

143 1. Each book made available to students through a school
 144 district library media center or included in a recommended or
 145 assigned school or grade-level reading list must be selected by
 146 a school district employee who holds a valid educational media
 147 specialist certificate, regardless of whether the book is
 148 purchased, donated, or otherwise made available to students.

149 2. Each district school board shall adopt procedures for
 150 developing library media center collections and post the

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151 procedures on the website for each school within the district.
 152 The procedures must:
 153 a. Require that book selections meet the criteria in s.
 154 1006.40(3)(d).
 155 b. Require consultation of reputable, professionally
 156 recognized reviewing periodicals and school community
 157 stakeholders.
 158 c. Provide for library media center collections based on
 159 reader interest, support of state academic standards and aligned
 160 curriculum, and the academic needs of students and faculty.
 161 d. Provide for the regular removal or discontinuance of
 162 books based on, at a minimum, physical condition, rate of recent
 163 circulation, alignment to state academic standards and relevancy
 164 to curriculum, out-of-date content, and required removal
 165 pursuant to subparagraph (a)2.
 166 3. Each elementary school must publish on its website, in
 167 a searchable format prescribed by the department, a list of all
 168 materials maintained in the school library media center or
 169 required as part of a school or grade-level reading list.
 170 (e) Public participation.—Publish on its website, in a
 171 searchable format prescribed by the department, a list of all
 172 instructional materials, including those used to provide
 173 instruction required by s. 1003.42. Each district school board
 174 must:
 175 1. Provide access to all materials, excluding teacher

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176 editions, in accordance with s. 1006.283(2)(b)8.a. before the
 177 district school board takes any official action on such
 178 materials. This process must include reasonable safeguards
 179 against the unauthorized use, reproduction, and distribution of
 180 instructional materials considered for adoption.
 181 2. Select, approve, adopt, or purchase all materials as a
 182 separate line item on the agenda and must provide a reasonable
 183 opportunity for public comment. The use of materials described
 184 in this paragraph may not be selected, approved, or adopted as
 185 part of a consent agenda.
 186 3. Annually, beginning June 30, 2023, submit to the
 187 Commissioner of Education a report that identifies:
 188 a. Each material not purchased from the state-adopted list
 189 for which the school district received an objection pursuant to
 190 subparagraph (a)2. for the school year and the specific
 191 objections thereto.
 192 b. Each material that was removed or discontinued as a
 193 result of an objection.
 194 c. The grade level and course for which a removed or
 195 discontinued material was used, as applicable.
 196 The department shall publish and regularly update a list of
 197 materials that were removed or discontinued as a result of an
 198 objection and disseminate the list to school districts for
 199 consideration in their selection procedures.
 200

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201 (4) SCHOOL PRINCIPAL.—The school principal has the
 202 following duties for the management and care of ~~instructional~~
 203 materials at the school:

204 (a) Proper use of instructional materials.—The principal
 205 shall assure that instructional materials are used to provide
 206 instruction to students enrolled at the grade level or levels
 207 for which the materials are designed, pursuant to adopted
 208 district school board rule. The school principal shall
 209 communicate to parents the manner in which instructional
 210 materials are used to implement the curricular objectives of the
 211 school.

212 (b) Money collected for lost or damaged instructional
 213 materials; enforcement.—The school principal shall collect from
 214 each student or the student's parent the purchase price of any
 215 instructional material the student has lost, destroyed, or
 216 unnecessarily damaged and to report and transmit the money
 217 collected to the district school superintendent. The failure to
 218 collect such sum upon reasonable effort by the school principal
 219 may result in the suspension of the student from participation
 220 in extracurricular activities or satisfaction of the debt by the
 221 student through community service activities at the school site
 222 as determined by the school principal, pursuant to policies
 223 adopted by district school board rule.

224 (c) Sale of instructional materials.—The school principal,
 225 upon request of the parent of a student in the school, shall

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226 sell to the parent any instructional materials used in the
 227 school. All such sales shall be made pursuant to rule adopted by
 228 the district school board, and the principal shall annually
 229 provide information to parents that they may purchase
 230 instructional materials and how to purchase the materials.

231 (d) Disposition of funds.—All money collected from the
 232 sale, exchange, loss, or damage of instructional materials shall
 233 be transmitted to the district school superintendent to be
 234 deposited in the district school board fund and added to the
 235 district appropriation for instructional materials.

236 (e) Accounting for instructional materials.—Principals
 237 shall see that all instructional materials are fully and
 238 properly accounted for as prescribed by adopted rules of the
 239 district school board.

240 (f) Selection of library media center materials.—School
 241 principals are responsible for overseeing compliance with school
 242 district procedures for selecting school library media center
 243 materials.

244 Section 3. Subsections (2) and (5) of section 1006.29,
 245 Florida Statutes, are amended to read:

246 1006.29 State instructional materials reviewers.—

247 (2) For purposes of ~~this part state adoption~~, the term
 248 "instructional materials" means items having intellectual
 249 content that by design serve as a major tool for assisting in
 250 the instruction of a subject or course. These items may be

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251 available in bound, unbound, kit, or package form and may
 252 consist of hardbacked or softbacked textbooks, electronic
 253 content, consumables, learning laboratories, manipulatives,
 254 electronic media, and computer courseware or software. A
 255 publisher or manufacturer providing instructional materials as a
 256 single bundle shall also make the instructional materials
 257 available as separate and unbundled items, each priced
 258 individually. A publisher may also offer sections of state-
 259 adopted instructional materials in digital or electronic
 260 versions at reduced rates to districts, schools, and teachers.

261 (5) The department shall develop ~~a~~ training programs
 262 ~~program~~ for persons selected as state instructional materials
 263 reviewers and school district reviewers of instructional
 264 materials, including those used to provide instruction required
 265 by s. 1003.42, and any materials maintained in the district
 266 school library media centers or included on a reading list. The
 267 programs ~~program~~ shall be structured to assist reviewers in
 268 complying with the requirements of s. 1006.31(2) developing the
 269 skills necessary to make valid, culturally sensitive, and
 270 objective decisions regarding the content and rigor of
 271 instructional materials. All persons serving as ~~instructional~~
 272 ~~materials~~ reviewers must complete a ~~the~~ training program before
 273 ~~prior to~~ beginning the review and selection process.

274 Section 4. Paragraph (b) of subsection (4) of section
 275 1006.40, Florida Statutes, is amended to read:

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276 1006.40 Use of instructional materials allocation;
 277 instructional materials, library books, and reference books;
 278 repair of books.—

279 (4) Each district school board is responsible for the
 280 content of all materials used in a classroom or otherwise made
 281 available to students. Each district school board shall adopt
 282 rules, and each district school superintendent shall implement
 283 procedures, that:

284 (b) Provide a process for public review of, public comment
 285 on, and the adoption of ~~instructional~~ materials, including those
 286 ~~instructional materials~~ used to provide instruction required by
 287 s. 1003.42 teach reproductive health or any disease, including
 288 HIV/AIDS, under ss. 1003.42(3) and 1003.46, which satisfies the
 289 requirements of s. 1006.283(2)(b) 8., 9., and 11.

290 Section 5. This act shall take effect July 1, 2022.

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hb 1467-02-e1

CourtSmart Tag Report

Room: KB 412

Case No.: -

Type:

Caption: Senate Rules Committee

Judge:

Started: 2/23/2022 9:05:02 AM

Ends: 2/23/2022 11:10:00 AM

Length: 02:04:59

9:05:00 AM Meeting called to order by Chair Passidomo
9:05:07 AM Roll call by CAA
9:05:12 AM Quorum announced
9:05:42 AM Chair with opening comments
9:06:09 AM Tab 7 (CS/SB 804) is TP'd
9:06:26 AM Tab 16 CS/SB 1408
9:06:40 AM Senator Perry explains the bill
9:07:08 AM Amendment Barcode 142966
9:07:17 AM Senator Perry explains the amendment
9:07:46 AM Senator Perry waives close
9:07:55 AM Amendment is adopted
9:08:02 AM Appearance Forms
9:08:08 AM Ron Watson waives in support
9:08:12 AM Karen Cyphers, Justice for Dan, waives in support
9:08:19 AM Jeremy Cohen, Markel Family waives in support
9:08:30 AM Senator Book in debate
9:08:49 AM Senator Perry waives close
9:08:52 AM Roll call on CS/CS/SB 1408
9:08:57 AM CS/CS/SB 1408 is reported favorably
9:09:23 AM Tab 18 CS/SB 1664
9:09:29 AM Senator Perry explains the bill
9:10:09 AM Amendment Barcode 633174
9:10:15 AM Senator Perry explains the amendment
9:10:36 AM Senator Brandes with question
9:10:51 AM Senator Perry responds
9:10:58 AM Senator Gibson with question
9:11:04 AM Senator Perry responds
9:11:26 AM Amendment is adopted
9:11:40 AM Appearance Form
9:11:48 AM Captain Antorrio Wright, Orange County Sheriff speaks for the bill
9:12:45 AM Senator Brandes with question
9:12:49 AM Captain Wright responds
9:13:43 AM Senator Perry closes on bill
9:13:53 AM Roll call on CS/CS/SB 1664
9:14:10 AM CS/CS/SB 1664 is reported favorably
9:14:42 AM Tab 21 SB 7040
9:14:55 AM Senator Perry explains the bill
9:15:27 AM Amendment Barcode
9:15:35 AM SA 464134
9:15:43 AM Senator Stargel with explanation
9:16:01 AM Senator Perry explains the amendment
9:16:33 AM Senator Perry waives close
9:16:41 AM Amendment is adopted
9:16:50 AM Amendment Barcode 467696
9:17:00 AM Senator Brandes explains the amendment
9:18:35 AM Amendment is withdrawn, back on the bill as amended
9:18:46 AM Appearance Forms
9:18:58 AM Sheriff Bob Gualtieri, Florida Sheriffs Association, speaks in support of the bill
9:20:58 AM Carlos Martinez, FL Public Defender Association, speaks against
9:25:09 AM Senator Book with question
9:25:16 AM Mr. Martinez responds
9:25:49 AM Adam Potts, Lutheran Services Florida, waives in support

9:25:57 AM Ida Eskamani, Florida Rising, waives against
 9:26:01 AM Nesha-Rose Hines, ACLU FL, waives against
 9:26:26 AM Senator Gibson in debate
 9:27:28 AM Senator Brandes in debate
 9:30:55 AM Senator Farmer in debate
 9:32:30 AM Senator Perry closes on bill
 9:32:58 AM Roll call on CS/SB 7040
 9:33:58 AM CS/SB 7040 is reported favorably
 9:34:35 AM Tab 12 SB 1114
 9:34:54 AM Senator Bradley explains the bill
 9:36:15 AM Appearance Forms
 9:36:20 AM Cora Merritt, Nemours Children Health, waives in support
 9:36:24 AM Chris Nuland, Florida Chapter-American College of Physicians, waives in support
 9:36:30 AM Jarrod Fowler, Florida Medical Association, waives in support
 9:36:36 AM Chris Lyon, Florida Osteopathic Medical Association, waives in support
 9:36:45 AM Senator Bradley waives close
 9:36:51 AM Roll call on SB 1114
 9:36:59 AM SB 1114 is reported favorably
 9:37:25 AM Tab 19 CS/SB 1702
 9:37:33 AM Senator Bradley explains the bill
 9:37:46 AM Chair with comments
 9:37:54 AM Senator Garcia with motion
 9:38:02 AM PCS 703878
 9:38:10 AM Senator Bradley explains the PCS
 9:41:44 AM Appearance Forms
 9:41:48 AM Allen Douglas speaks for the bill
 9:43:22 AM Travis Moore, Community Associations Institute, waives in support
 9:43:30 AM Mark Anderson, Chief Executive Officers of Management Companies, and Association Reserves, waives in support
 9:43:54 AM Senator Hutson with comments/debate
 9:44:36 AM Senator Book in debate
 9:45:03 AM Senator Brandes in debate
 9:45:56 AM Senator Garcia in debate
 9:46:41 AM Senator Farmer in debate
 9:47:11 AM Chair in debate
 9:48:09 AM Senator Bradley closes
 9:48:15 AM Roll call on CS/CS/SB 1702
 9:49:17 AM CS/CS/SB 1702 is reported favorably
 9:49:54 AM Senator Bracy with vote change motion
 9:50:08 AM Tab 3 CS/SB 518
 9:50:28 AM Senator Brodeur explains the bill
 9:50:59 AM Senator Powell with question
 9:51:07 AM Senator Brodeur responds
 9:52:04 AM Senator Powell with follow-up
 9:52:10 AM Senator Brodeur responds
 9:52:25 AM Senator Powell with follow-up
 9:52:30 AM Senator Brodeur responds
 9:53:05 AM Appearance Forms
 9:53:07 AM Diana Ferguson, American Society of Landscape Architects Florida Chapter, waives in support
 9:53:15 AM Travis Moore, Community Associations Institute, speaks on the bill
 9:54:35 AM Rebecca O'Hara, Florida League of Cities, waives in support
 9:54:38 AM Edward G Labrador, FL Association of Counties, waives in support
 9:54:44 AM Jim Spratt, Florida Chapter-International Society of Arboriculture, waives in support
 9:55:01 AM Senator Farmer in debate
 9:55:39 AM Senator Powell in debate
 9:56:47 AM Senator Brodeur waives close
 9:56:52 AM Roll call on CS/SB 518
 9:57:01 AM CS/SB 518 is reported favorably
 9:57:23 AM Tab 15 CS/SB 1352
 9:57:36 AM Senator Brodeur explains the bill
 9:58:09 AM Amendment Barcode 335736
 9:58:12 AM Senator Brodeur explains the amendment

9:58:56 AM Senator Brodeur waives close
9:59:03 AM Amendment is adopted
9:59:09 AM Senator Brodeur waives close
9:59:15 AM Roll call on CS/CS/SB 1352
9:59:24 AM CS/CS/SB 1352 is reported favorably
9:59:54 AM Tab 10 CS/SB 1026
10:00:13 AM Senator Cruz explains the bill
10:01:36 AM Senator Powell with question
10:01:46 AM Senator Cruz responds
10:02:32 AM Appearance Forms
10:02:35 AM Bob Reynolds, Fresenius Medical Care, waives in support
10:02:39 AM Louis Betz, More Transplants More Life, Inc., waives in support
10:02:46 AM Tasha Carter, Office of the Insurance Consumer Advocate, waives in support
10:02:52 AM Toni Large, Florida Society of Nephrology, waives in support
10:02:57 AM Ron Watson, Florida Renal Association, waives in support
10:03:05 AM Senator Cruz waives close
10:03:11 AM Roll call on CS/SB 1026
10:03:14 AM CS/SB 1026 is reported favorably
10:03:44 AM Tab 6 SB 730
10:03:56 AM Senator Harrell explains the bill
10:05:25 AM Appearance Forms
10:05:30 AM Chris Nuland, Florida Chapter, American College of Physicians, waives in support
10:05:35 AM Jarrod Fowler, Florida Medical Association, waives in support
10:05:37 AM Chris Lyon, Florida Osteopathic Medical Association, waives in support
10:05:43 AM Amanda Frazier, American Diabetes Association, waives in support
10:05:50 AM Senator Farmer in debate
10:06:10 AM Senator Harrell waives close
10:06:16 AM Roll call on SB 730
10:06:20 AM SB 730 is reported favorably
10:06:52 AM Tab 17 CS/CS/SB 1614
10:06:57 AM Senator Harrell explains the bill
10:07:45 AM Senator Harrell waives close
10:07:54 AM Roll call on CS/CS/SB 1614
10:08:03 AM CS/CS/SB 1614 is reported favorably
10:08:29 AM Tab 9 CS/SB 1016
10:08:39 AM Senator Burgess explains the bill
10:09:44 AM Senator Gibson with question
10:09:52 AM Senator Burgess responds
10:10:14 AM Appearance Forms
10:10:18 AM Warren Husband, Attorneys' Title Fund Services, LLC., waives in support
10:10:24 AM David Daniel, Agents Section, Florida Landtitle Association, waives in support
10:10:30 AM Ashley Kalileh, Old Republic Title, waives in support
10:10:40 AM Roll call on CS/SB 1016
10:10:53 AM CS/SB 1016 is reported favorably
10:11:16 AM Tab 22 HB 539
10:11:27 AM Senator Burgess explains the bill
10:11:46 AM Appearance Forms
10:11:50 AM Tanya Jackson, SEIU 199 Healthcare Workers, waives in support
10:12:09 AM Michael Phillips, FL Long-Term Care Ombudsman, waives in support
10:12:21 AM Senator Burgess waives close
10:12:27 AM Roll call on HB 539
10:12:37 AM HB 539 is reported favorably
10:12:55 AM Tab 20 CS/SB 1736
10:13:05 AM Senator Hooper explains the bill
10:13:43 AM Appearance Forms
10:13:50 AM Wayne "Bernie" Bernoska, Florida Professional Firefighters, waives in support
10:13:53 AM Lisa Henning, Fraternal Order of Police, waives in support
10:14:02 AM Senator Hooper waives close
10:14:06 AM Roll call on CS/SB 1736
10:14:19 AM CS/SB 1736 is reported favorably
10:14:40 AM Tab 5 CS/SB 528
10:14:50 AM Senator Polsky explains the bill

10:15:32 AM Senator Brandes with question
10:15:37 AM Senator Polsky responds
10:15:50 AM Senator Polsky waives close
10:15:57 AM Roll call on CS/SB 528
10:16:02 AM CS/SB 528 is reported favorably
10:16:30 AM Tab 1 CS/SB 58
10:16:43 AM Senator Rodriguez explains the bill
10:17:11 AM Senator Rodriguez waives close
10:17:19 AM Roll call on CS/SB 58
10:17:25 AM CS/SB 58 is reported favorably
10:17:49 AM Tab 2 CS/SB 74
10:17:59 AM Senator Rodriguez explains the bill
10:18:27 AM Senator Rodriguez waives close
10:18:36 AM Roll call on CS/SB 74
10:18:45 AM CS/SB 74 is reported favorably
10:19:11 AM Tab 11 SM 1108
10:19:24 AM Senator Baxley explains the bill
10:20:16 AM Senator Baxley waives close
10:20:20 AM Roll call on SM 1108
10:20:27 AM SM 1108 is reported favorably
10:20:55 AM Tab 5 SB 614
10:21:03 AM Senator Garcia explains the bill
10:21:16 AM Appearance Forms
10:21:45 AM Kate Macfall, Humane Society of the United States, waives in support
10:21:52 AM Kelsey Gilmore-Futeral, Best Friends Animal Society, waives in support
10:22:08 AM Senator Garcia waives close
10:22:14 AM Roll call on SB 614
10:22:18 AM SB 614 is reported favorably
10:22:45 AM Tab 13 CS/SB 1244
10:23:00 AM Senator Gibson explains the bill
10:23:56 AM Appearance Form
10:24:00 AM Ellyn Bogdanoff, RAINN, waives in support
10:24:06 AM Jean Siebenaler waives in support
10:24:20 AM Senator Gibson waives close
10:24:25 AM Roll call on CS/SB 1244
10:24:29 AM CS/SB 1244 is reported favorably
10:24:54 AM Tab 8 CS/CS/SB 974
10:25:13 AM Senator Gruters explains the bill
10:25:27 AM Amendment Barcode 801476
10:25:44 AM Senator Hutson explains the amendment
10:26:26 AM AA 366398
10:26:54 AM Senator Hutson explains the amendment to the amendment
10:27:04 AM Chair with comments
10:27:40 AM Appearance Form
10:28:06 AM William Cotterall, Florida Justice Association waives in support
10:28:13 AM AA is adopted
10:28:28 AM AA 845510
10:28:35 AM Senator Hutson explains the amendment to the amendment
10:29:11 AM Senator Boyd with question
10:29:22 AM Senator Hutson responds
10:29:50 AM Senator Baxley with question
10:29:57 AM Senator Hutson responds
10:31:00 AM Senator Baxley with question
10:31:06 AM Senator Hutson responds
10:31:22 AM Senator Farmer with question
10:31:31 AM Senator Hutson responds
10:32:31 AM Senator Brandes with question
10:32:37 AM Senator Hutson responds
10:33:10 AM Appearance Form
10:33:14 AM William Cotterall waives in support
10:33:19 AM Senator Brandes in debate
10:34:10 AM Senator Gruters in debate

10:35:27 AM Senator Hutson closes on AA
10:35:37 AM AA in adopted
10:35:42 AM Amendment Barcode 801476
10:35:52 AM Appearance Forms
10:35:56 AM Chris Doolin, Small Counties & Small School Districts, speaks for
10:38:06 AM Senator Hutson with question
10:38:14 AM Mr. Doolin responds
10:38:18 AM Senator Hutson with comments
10:38:33 AM Darrell Taylor waives in support
10:38:37 AM Cameron Carstus waives in support
10:38:42 AM Kyle Peddie Superintendent-Liberty County, waives in support
10:38:48 AM Brian Morgan waives in support
10:38:52 AM Hunter Nolan waives in support
10:38:53 AM Mickey Hudson waives in support
10:38:57 AM Kyle Newson waives in support
10:39:01 AM Bob Harris, Panhandle Area Educational Consortium, speaks
10:39:25 AM Shannon Venable waives in support
10:39:29 AM Eydie Triquet waives in support
10:39:33 AM Brian Moore, FL Association of District School Superintendents, speaks
10:41:04 AM David Cruz, FL League of Cities, waives in support
10:41:08 AM Michael Beedie waives in support
10:41:14 AM Edward Labrador, FL Association of Counties, speaks for
10:43:31 AM Senator Hutson with question
10:43:40 AM Mr. Labrador responds
10:44:29 AM Senator Hutson with question
10:44:33 AM Mr. Labrador responds
10:44:52 AM Jessica Janasiewicz, Heartland Education Consortium, waives in support
10:44:59 AM William Large, Florida Justice Reform Institute, speaks against
10:46:20 AM Senator Brandes with question
10:46:27 AM Mr. Large responds
10:47:10 AM Senator Brandes with question
10:47:15 AM Mr. Large responds
10:47:44 AM Senator Baxley in debate
10:48:34 AM Senator Gruters in debate
10:48:59 AM Senator Hutson waives close
10:49:05 AM Amendment is adopted
10:49:19 AM Senator Brandes with question
10:49:28 AM Chair responds
10:49:37 AM Senator Gruters with comments
10:50:03 AM Senator Brandes with comments
10:50:07 AM Senator Hutson responds
10:50:25 AM Appearance Forms
10:50:28 AM Chris Doolin waives in support
10:50:48 AM Shannon Venable waives against
10:50:59 AM Kyle Newsom waives against
10:51:02 AM Bob Harris waives in support
10:51:22 AM Kyle Peddie waives in support
10:51:31 AM Cameron Carstus waives in support
10:51:39 AM Darrell Taylor waives in support
10:51:45 AM Brian Morgan waives in support
10:51:48 AM Hunter Nolan waives in support
10:51:55 AM Mickey Hudson waives in support
10:51:57 AM Eydie Tricquet waives in support
10:52:03 AM Devon West, Broward County waives against
10:52:10 AM William Large, Florida Justice Reform Institute, waives against
10:52:22 AM Senator Boyd in debate
10:53:43 AM Senator Farmer in debate
10:55:46 AM Senator Albritton in debate
10:57:57 AM Senator Hutson in debate
10:59:00 AM Senator Brandes in debate
11:00:53 AM Senator Gruters closes on the bill
11:01:27 AM Roll call on CS/CS/CS/SB 974

11:01:49 AM CS/CS/CS/SB 974 is reported favorably
11:02:20 AM Tab 14 CS/SB 1304
11:02:31 AM Senator Gruters explains the bill
11:02:38 AM Amendment Barcode 227864
11:02:49 AM Senator Gruters explains the amendment
11:03:20 AM Senator Gruters waives close
11:03:30 AM Amendment is adopted
11:03:35 AM Appearance Forms
11:03:43 AM Rey Contreras speaks against
11:05:41 AM Virginia Hamrick, Florida First Amendment Foundation, speaks against
11:06:25 AM Sarah Butters, RPPTL Section Chair Elect, waives in opposition
11:06:40 AM Senator Gruters closes on bill
11:07:14 AM Roll call on CS/CS/SB 1304
11:07:21 AM CS/CS/SB 1304 is reported favorably
11:07:54 AM Tab 23 HB 1467 is TP'd
11:08:19 AM Senator Stargel with vote motions on Tabs, 1,2,3,4,5,6,9,10,11,12,13,15,17,19,20,22
11:08:41 AM Senator Powell with vote motions on Tabs 16,6,17,9,22,20,2,13,8
11:09:05 AM Senator Garcia with vote motions on Tabs 3,5,18
11:09:15 AM Senator Farmer with vote motions on Tab 16
11:09:24 AM Senator Albritton with vote motion on Tab 12
11:09:36 AM Motions adopted
11:09:48 AM Senator Garcia moves to adjourn
11:09:49 AM Meeting adjourned