

|                                                                                                                                 |    |   |     |               |                         |                |
|---------------------------------------------------------------------------------------------------------------------------------|----|---|-----|---------------|-------------------------|----------------|
| <b>Tab 1 SB 34 by Braynon; (Similar to CS/H 06525) Relief of C.M.H. by the Department of Children and Families</b>              |    |   |     |               |                         |                |
| 700252                                                                                                                          | A  | S | RCS | JU, Braynon   | Delete L.105:           | 03/15 03:16 PM |
| <b>Tab 2 SB 204 by Passidomo; (Similar to CS/H 00377) Actions Founded on Real Property Improvements</b>                         |    |   |     |               |                         |                |
| 606890                                                                                                                          | D  | S | RCS | JU, Passidomo | Delete everything after | 03/15 03:18 PM |
| <b>Tab 3 CS/SB 172 by CF, Passidomo (CO-INTRODUCERS) Mayfield, Powell; (Similar to CS/H 00399) Guardianship</b>                 |    |   |     |               |                         |                |
| 695286                                                                                                                          | A  | S | RCS | JU, Passidomo | Delete L.62 - 91:       | 03/15 03:18 PM |
| <b>Tab 4 CS/SB 398 by RI, Passidomo; (Similar to CS/H 00483) Estoppel Certificates</b>                                          |    |   |     |               |                         |                |
| 164802                                                                                                                          | A  | S | RS  | JU, Passidomo | Delete L.149 - 552:     | 03/15 03:18 PM |
| 147378                                                                                                                          | AA | S | RCS | JU, Passidomo | Delete L.205:           | 03/15 03:18 PM |
| <b>Tab 5 SB 724 by Passidomo; (Similar to CS/H 00267) Estates</b>                                                               |    |   |     |               |                         |                |
| 877786                                                                                                                          | A  | S | RCS | JU, Passidomo | Delete L.265 - 286.     | 03/15 03:18 PM |
| <b>Tab 6 CS/SB 312 by CJ, Baxley; (Identical to CS/H 00643) Eyewitness Identification</b>                                       |    |   |     |               |                         |                |
| <b>Tab 7 SB 436 by Baxley (CO-INTRODUCERS) Steube, Mayfield; (Compare to CS/H 00303) Religious Expression in Public Schools</b> |    |   |     |               |                         |                |
| <b>Tab 8 SR 574 by Rader; (Similar to H 00281) United Nations Security Council Resolution 2334</b>                              |    |   |     |               |                         |                |
| <b>Tab 9 SB 1052 by Simmons; (Identical to H 00677) Justifiable Use of Force</b>                                                |    |   |     |               |                         |                |
| 244652                                                                                                                          | A  | S |     | JU, Simmons   | Delete L.24 - 32:       | 03/14 08:31 AM |
| <b>Tab 10 SB 1270 by Young; (Similar to H 01067) Compensatory Damages for Injury or Death of a Pet</b>                          |    |   |     |               |                         |                |
| 388014                                                                                                                          | A  | S | RCS | JU, Young     | Delete L.15 - 16:       | 03/15 03:18 PM |
| <b>Tab 11 SB 1062 by Powell (CO-INTRODUCERS) Bracy; (Similar to CS/H 00239) Public Records/Protective Injunction Petitions</b>  |    |   |     |               |                         |                |
| <b>Tab 12 SB 262 by Steube; (Identical to H 00675) Health Insurance</b>                                                         |    |   |     |               |                         |                |
| <b>Tab 13 CS/SB 80 by CA, Steube (CO-INTRODUCERS) Garcia; (Compare to H 00163) Public Records</b>                               |    |   |     |               |                         |                |
| 304520                                                                                                                          | D  | S | RS  | JU, Steube    | Delete everything after | 03/15 03:18 PM |
| 304888                                                                                                                          | SD | S | RCS | JU, Steube    | Delete everything after | 03/15 03:18 PM |

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Steube, Chair**  
**Senator Benacquisto, Vice Chair**

**MEETING DATE:** Tuesday, March 14, 2017

**TIME:** 2:00—4:00 p.m.

**PLACE:** Toni Jennings Committee Room, 110 Senate Office Building

**MEMBERS:** Senator Steube, Chair; Senator Benacquisto, Vice Chair; Senators Bracy, Flores, Garcia, Gibson, Mayfield, Powell, and Thurston

| TAB | BILL NO. and INTRODUCER                                                                        | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | COMMITTEE ACTION        |
|-----|------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 1   | <b>SB 34</b><br>Braynon<br>(Similar CS/H 6525)                                                 | Relief of C.M.H. by the Department of Children and Families; Providing for the relief of C.M.H.; providing an appropriation to compensate C.M.H. for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; requiring certain funds to be placed into an irrevocable trust, etc.<br><br>SM<br>JU      03/14/2017 Fav/CS<br>AHS<br>AP                                                                                                                                                                                        | Fav/CS<br>Yeas 9 Nays 0 |
| 2   | <b>SB 204</b><br>Passidomo<br>(Similar CS/H 377)                                               | Actions Founded on Real Property Improvements; Specifying when a contract has been completed between a professional engineer, registered architect, or licensed contractor and his or her employer, etc.<br><br>JU      03/14/2017 Fav/CS<br>RI<br>RC                                                                                                                                                                                                                                                                                                                                                                                           | Fav/CS<br>Yeas 9 Nays 0 |
| 3   | <b>CS/SB 172</b><br>Children, Families, and Elder<br>Affairs / Passidomo<br>(Similar CS/H 399) | Guardianship; Requiring each examining committee member in a proceeding to determine incapacity to file his or her report with the clerk of the court within a specified timeframe after appointment; increasing the time that a guardian has to file a required annual guardianship plan with the court if the court does not require filing on a calendar year basis; eliminating the requirement that a court must first find that a ward's spouse has consented to dissolution of marriage before the court may authorize a guardian to exercise specified rights, etc.<br><br>CF      02/06/2017 Fav/CS<br>JU      03/14/2017 Fav/CS<br>RC | Fav/CS<br>Yeas 9 Nays 0 |

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, March 14, 2017, 2:00—4:00 p.m.

| TAB | BILL NO. and INTRODUCER                                                    | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | COMMITTEE ACTION                   |
|-----|----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| 4   | <b>CS/SB 398</b><br>Regulated Industries / Passidomo<br>(Similar CS/H 483) | <p>Estoppel Certificates; Revising requirements relating to the issuance of an estoppel certificate to specified persons; requiring a condominium, cooperative, or homeowners' association to designate a street or e-mail address on its website for estoppel certificate requests; prohibiting an association from charging a preparation and delivery fee or making certain claims if it fails to deliver an estoppel certificate within certain timeframes, etc.</p> <p>RI 02/22/2017 Fav/CS<br/>JU 03/14/2017 Fav/CS<br/>RC</p>                                                                    | <p>Fav/CS<br/>Yeas 9 Nays 0</p>    |
| 5   | <b>SB 724</b><br>Passidomo<br>(Similar H 267)                              | <p>Estates; Revising the circumstances under which the decedent's property interest in the protected homestead is excluded from the elective estate; providing for the valuation of the decedent's protected homestead under certain circumstances; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share with respect to certain property, etc.</p> <p>JU 03/14/2017 Fav/CS<br/>BI<br/>RC</p>                                                                                                                                          | <p>Fav/CS<br/>Yeas 9 Nays 0</p>    |
| 6   | <b>CS/SB 312</b><br>Criminal Justice / Baxley<br>(Similar H 643)           | <p>Eyewitness Identification; Citing this act as the "Eyewitness Identification Reform Act"; requiring state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and provide training programs on how to conduct lineups, etc.</p> <p>CJ 02/21/2017 Fav/CS<br/>JU 03/14/2017 Favorable<br/>RC</p>                                                                                                                                               | <p>Favorable<br/>Yeas 9 Nays 0</p> |
| 7   | <b>SB 436</b><br>Baxley<br>(Identical H 303)                               | <p>Religious Expression in Public Schools; Citing this act as the "Florida Student and School Personnel Religious Liberties Act"; Prohibiting a school district from discriminating against students, parents, or school personnel on the basis of religious viewpoints or expression; prohibiting penalty or reward for a student's religious expression in coursework, artwork, or other specified assignments; requiring a school district to comply with the federal requirements in Title VII of the Civil Rights Act of 1964, etc.</p> <p>ED 03/06/2017 Favorable<br/>JU 03/14/2017 Favorable</p> | <p>Favorable<br/>Yeas 5 Nays 4</p> |

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, March 14, 2017, 2:00—4:00 p.m.

| TAB | BILL NO. and INTRODUCER                                              | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | COMMITTEE ACTION           |
|-----|----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 8   | <b>SR 574</b><br>Rader<br>(Similar HR 281)                           | United Nations Security Council Resolution 2334;<br>Opposing United Nations Security Council Resolution<br>2334 and requesting its repeal or fundamental<br>alteration, etc.<br><br>JU      03/14/2017 Favorable<br>RC                                                                                                                                                                                                                                                                                                                                     | Favorable<br>Yeas 6 Nays 2 |
| 9   | <b>SB 1052</b><br>Simmons<br>(Identical H 677)                       | Justifiable Use of Force; Specifying that a person who<br>is attacked or threatened with the use of force in a<br>dwelling, residence, or vehicle in which the person<br>has the right to be has no duty to retreat and has the<br>right to stand his or her ground by using or<br>threatening to use force upon a reasonable belief of<br>necessity to prevent imminent death, great bodily<br>harm, or a forcible felony, etc.<br><br>JU      03/14/2017 Temporarily Postponed<br>RC                                                                     | Temporarily Postponed      |
| 10  | <b>SB 1270</b><br>Young<br>(Similar H 1067, Compare H 497,<br>S 690) | Compensatory Damages for Injury or Death of a Pet;<br>Specifying liability for compensatory damages for the<br>injury or death of a pet, etc.<br><br>JU      03/14/2017 Fav/CS<br>AG<br>RC                                                                                                                                                                                                                                                                                                                                                                 | Fav/CS<br>Yeas 9 Nays 0    |
| 11  | <b>SB 1062</b><br>Powell<br>(Similar CS/H 239)                       | Public Records/Protective Injunction Petitions;<br>Providing an exemption from public records<br>requirements for petitions, and the contents thereof,<br>for certain protective injunctions that are dismissed in<br>certain circumstances; requiring the removal of<br>petitions dismissed before, on, or after a specified<br>date from publicly accessible records; providing for<br>future legislative review and repeal of the exemption;<br>providing a statement of public necessity, etc.<br><br>JU      03/14/2017 Favorable<br>GO<br>RC         | Favorable<br>Yeas 8 Nays 0 |
| 12  | <b>SB 262</b><br>Steube<br>(Identical H 675)                         | Health Insurance; Deleting a provision that provides<br>that health maintenance organizations are not<br>vicariously liable for certain medical negligence<br>except under certain circumstances; authorizing<br>specified persons to bring a civil action against a<br>health maintenance organization for certain violations;<br>specifying a health maintenance organization's<br>liability for such violations, etc.<br><br>BI      02/21/2017 Favorable<br>JU      03/07/2017 Temporarily Postponed<br>JU      03/14/2017 Temporarily Postponed<br>RC | Temporarily Postponed      |



**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Tuesday, March 14, 2017, 2:00—4:00 p.m.

| TAB | BILL NO. and INTRODUCER                                                 | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                 | COMMITTEE ACTION        |
|-----|-------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| 13  | <b>CS/SB 80</b><br>Community Affairs / Steube<br>(Compare H 163, S 246) | Public Records; Requiring a complainant to timely provide written notice of a public records request in order to be entitled to the reasonable costs of enforcement, including attorney fees, in certain civil actions for enforcement of ch. 119, F.S.; specifying factors for a court to consider in determining whether an agency unlawfully refused to permit a public record to be inspected or copied, etc.<br><br>GO 02/07/2017 Favorable<br>CA 03/06/2017 Fav/CS<br>JU 03/14/2017 Fav/CS | Fav/CS<br>Yeas 8 Nays 0 |

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Other Related Meeting Documents

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## THE FLORIDA SENATE

### SPECIAL MASTER ON CLAIM BILLS

**Location**

302 Senate Office Building

**Mailing Address**

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

| DATE    | COMM | ACTION        |
|---------|------|---------------|
| 1/31/17 | SM   | Favorable     |
| 3/15/17 | JU   | <b>Fav/CS</b> |
|         | AHS  |               |
|         | AP   |               |

January 31, 2017

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

Re: **CS/SB 34** – Judiciary Committee and Senator Oscar Braynon  
**HB 6525** – Representative J.W. Grant  
Relief of C.M.H.

### SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR \$5,000,000 PREDICATED ON THE ENTRY OF A JURY AWARD IN FAVOR OF CHRISTOPHER HANN AND THERESA HANN, INDIVIDUALLY, AND AS NAUTRAL GUARDIANS OF C.M.H., A MINOR CHILD, DUE TO THE NEGLIGENCE OF THE DEPARTMENT OF CHILDREN AND FAMILIES.

#### FINDINGS OF FACT:

The Department of Children and Families, placed J.W., a 10 year old foster child with a history of violence and sexual assaults against younger children, in the home of Christopher and Theresa Hann. The Hanns had young children of their own, and because the Hanns were not trained to handle a child with J.W.'s propensity for violence, the department should not have placed J.W. in the Hann's home. Making matters worse, the department concealed J.W.'s violent past from the Hanns when it had a duty to disclose it. Ultimately, the department's placement of J.W. in the Hann's home led to the emotional, physical, and sexual abuse of C.M.H., the Hann's 8 year old son, by J.W.

**The Department of Children and Families knew of J.W.'s propensity for violence toward other children.**

J.W. was born January 23, 1992, in Florida, to a teenage mother who had a history of mental illness and homelessness. She did not receive prenatal care and attempted suicide during the third month of her pregnancy by inhaling butane. J.W.'s mother was living in a shelter for homeless and runaway youth at his birth. J.W.'s biological father had a history of drug abuse and played no major role in his life.

J.W. lived with his mother until the age of 4. During this time, he was subjected to extreme neglect, cruelty, and physical and sexual abuse by his mother, her boyfriends, and her extended family members. J.W., at age 1, was subjected to sexual abuse for approximately 2-3 years by males visiting his mother. He was severely beaten at age 2 while in the care of his mother's boyfriend.

As a result of his repeated abuse and neglect, J.W. began to exhibit symptoms of post-traumatic stress disorder. Due to aggressive behaviors, he was dismissed from two daycare centers. At age 3, he attempted suicide. He was subsequently diagnosed as having attention deficit hyperactivity disorder with psychotic behavior and suicidal tendencies and treated with anti-psychotic medication.

J.W. was returned to his mother's care at age 5. He was severely psychotic and began setting fires. In June 1997, J.W. was admitted to the Columbia Hospital Inpatient Psychiatric Program for a week due to self-mutilation, violent behavior, homicidal ideation, auditory hallucinations, and multiple suicide attempts. J.W. would continue receiving intensive outpatient psychiatric treatment for 7 months following his initial hospitalization.

After receiving a report that J.W. was again sexually molested by another of his mother's male friends, the department placed J.W. back into foster care where he resided on and off for approximately 5 years. He was involuntarily hospitalized at least two more times by age 9. One hospitalization was due to aggressive behavior, an attempt to stab his uncle and his babysitter with a knife. Later he was hospitalized for planning to bring a gun and knife to school to kill a teacher and himself.

In 2002, J.W. was living with his mother who had married several years earlier and had given birth to a daughter with her new husband. The department and the family entered into a voluntary case plan to address continuing allegations of abuse, neglect, and domestic violence in the home. During this time, J.W. began to exhibit sexually aggressive behavior towards other children. Multiple reports indicated that J.W. performed anal penetration on a neighborhood girl. He also continued to display severe psychotic behavior. On one occasion he attempted to cut his stepfather's throat while he slept.

On June 14, 2002, DCF family services counselor, Suzy Parchment, referred J.W. to Camelot Community Care, a DCF provider of child welfare and behavioral health services, for intensive therapeutic in-home services. Realizing the severity of J.W.'s behavior, in a communication with Camelot on June 24, Ms. Parchment noted that J.W. needed to be in a residential treatment facility as soon as possible.

As an emergency, temporary solution and noting that J.W. was a danger in the home, Camelot accepted the referral to provide mental health services to J.W. in his natural home while the department sought residential placement. Camelot noted on its admission form that J.W. was a sexual predator and engaged in sexually inappropriate behavior. It was also noted that J.W. suffered from non-specified psychosis, major depression with psychotic features, adjustment disorder and attention deficit hyperactivity disorder. The in-home counselor assigned to J.W.'s case did not have experience with sexual trauma, and Camelot's initial treatment plan did not include any specific goals or specialized treatment for sexual abuse.

J.W.'s mother informed Camelot and the department that J.W. was giving his 3 year old sister hickies, bouncing her on his lap in a sexual manner, and having her fondle his genitals. Camelot performed a child safety determination and found that based on J.W.'s history, a sibling was likely to be in immediate danger of moderate to severe harm if J.W. was not supervised. Camelot recommended that J.W.'s parents separate him from his younger sister at night and closely watch him when he interacts with his sister.

On or about August 2002, the department removed J.W. and his younger sister from their mother's care after she

abandoned them at a friend's house. J.W. was sheltered in the home of a family friend, Luz Cruz, a non-relative placement while his younger half-sister was placed with family members.

J.W. underwent a Comprehensive Behavioral Health Assessment on August 30, 2002, at the request of DCF. The assessment concluded that J.W. "should not have unsupervised access to [his younger sister], or to any younger, or smaller children wherever he resides." The Assessment also states: ***"J.W.'s caregiver must be informed about these issues and must be able to demonstrate that they can provide adequate levels of supervision in order to prevent further victimization. These issues should be strongly considered in terms of making decisions about both temporary and long term care and supervision of J.W."***

Based upon the findings and recommendations in the Assessment, J.W. was referred to Father Flanagan's Boys' Home d/b/s Girls and Boys Town, a DCF service provider, for case management services.

**The Department of Children and Families knew that J.W., should not have been placed in a home with younger children.**

Ms. Parchment removed J.W. from the Cruz home on September 6, 2002, due to allegations of sexual abuse by a member of the Cruz family; however, she did not report the abuse allegation as required by Florida law. It was also on September 6, 2002, that J.W. was placed with the Hanns.

Mr. and Mrs. Hann were former neighbors of J.W. and his natural family. The Hanns lived with their two children, a daughter, age 16, and a son, C.M.H., age 8. They were not licensed or trained foster parents. In the past, J.W. had often sought shelter in the Hann home when left alone by his mother. Theresa Hann had offered to care for J.W. and his mother lobbied Camelot and the department to have J.W. placed with the Hann family instead of Luz Cruz.

Ms. Parchment recalled her first impressions of the Hann family were of nice people who maintained a very organized and clean home. She believed Theresa Hann's main purpose was to care for J.W. and that she had no ulterior motives.

However, despite the willingness of the Hanns to care for J.W., the removal of J.W. from the Cruz home and placement in the Hann home violated DCF rules.

Under the department's rules, it is required to obtain prior court approval for all non-relative placements. This requirement eliminates non-relative placements for use in lieu of emergency shelter care. Ms. Parchment did not obtain the required court approval prior to placing J.W. in the Hann home. She also failed to notify the department's legal team, who is responsible for court filings, of the allegation of sexual abuse of J.W. in the Cruz home or his subsequent placement in the Hann home for two months.

Additionally, the placement directly conflicted with previous recommendations by department providers regarding placement for J.W. due to his sexually aggressive behaviors. J.W. was placed in a home with an 8 year old child even though 2 months earlier Camelot had warned that a sibling would be in danger in a home with J.W. One week prior to the placement, St. Mary's Medical Center had recommended that J.W. not have unsupervised access to younger children. The Hanns were not provided any information about J.W.'s ongoing inappropriate behavior with younger children and the Hanns allowed J.W. to share a bedroom with their son, C.M.H. Department rules expressly prohibit placing a sexually aggressive child in a bedroom with another child. Ms. Parchment knew of the planned sleeping arrangements prior to placing J.W. in the Hann home but did not tell them that the arrangement was prohibited under the department's rules.

**The Department of Children and Families failed to inform the Hanns of J.W.'s background.**

Christopher Hann specifically requested information about J.W., but the department failed to provide any information regarding J.W.'s troubled history of child-on-child sexual abuse or on his background generally. Florida law requires DCF to share psychological, psychiatric and behavioral histories, comprehensive behavioral assessments and other social assessments found in the child's resource record with caregivers. The department acknowledged during litigation that no evidence of a child resource record for J.W. was found. Additionally, for the purpose of preventing the reoccurrence of child-on-child sexual abuse, the department must provide caregivers of sexual abuse victims and aggressors with

written, complete, and detailed information and strategies related to such children, including the date of the sexual abuse incident(s), type of abuse, type of treatment received, and outcome of the treatment in order to “provide a safe living environment for all the children living in the home.”

Not only did the department fail to comply with its own requirements, Ms. Parchment told Mr. Hann that she was not allowed to give him such information about J.W. because the placement was temporary. Nevertheless, J.W. remained in the Hann home for approximately 3 years during which his behavioral problems continued and quickly escalated.

**The Department of Children and Families knew it should have removed J.W. from the Hann home as his violent behaviors increased.**

Within a few weeks after J.W.’s placement in the Hann home, Mrs. Hann reported to Camelot that J.W. was playing with matches in the presence of C.M.H.; exhibited extreme anger and hostility towards C.M.H., including yelling, screaming “shut up” at the smallest aggravation or noise, and kicking C.M.H. Among J.W.’s behavioral problems, he stabbed himself with a straightened paper clip after being grounded for leaving the neighborhood without permission; threatened to jump out of a window after it was discovered he stole a roll of felt from school; and attacked Ms. Hann, biting and scratching her when she grounded him for cursing.

Camelot recommended to Ms. Parchment that the Hanns place a one way monitor in the bedroom shared by J.W. and C.M.H. While Ms. Parchment agreed to pass the recommendation on to the Hanns, there is no evidence that the information was shared or that the Hanns ever obtained the monitor.

J.W.’s behavior further deteriorated and on October 24, 2002, after a physical altercation with C.M.H., he pulled a knife on the younger child but was stopped from further assaulting him by Mr. Hann. Camelot was immediately informed of the incident by Mr. Hann, and J.W. was again involuntarily committed into Columbia Hospital for a mental health assessment. Camelot’s notes indicate Ms. Parchment was informed of J.W.’s escalating behavior in the Hann home. Ms. Parchment later acknowledged that at this point she should

have considered removing J.W. from the Hann home due to the danger he posed to himself, the Hanns and their son.

A week after the mental health assessment was performed, J.W. sexually assaulted a 4 year old girl who was visiting the Hann home. The children were watching a movie when J.W. exposed his genitals and began “humping” the young girl. Ms. Hann reported the incident to DCF. During the course of the investigation, the department learned the children were not under the direct supervision of any adult at the time of the incident – a failure that DCF providers warned would lead to harm of other children when left alone with J.W. Again, DCF was required to give immediate consideration to the safety of C.M.H. Despite, the inability of the Hanns, who both worked outside the home, to adequately supervise J.W. and his continuing access to young children, DCF did not remove J.W. from the Hann home.

Camelot began pressuring Ms. Parchment to schedule a psychosexual evaluation of J.W. which she was required to do months earlier pursuant to DCF’s operating procedures. The evaluation had in fact been requested by Camelot when J.W. was placed with the Hanns and again just 2 days before he sexually assaulted the 4 year old girl visiting the Hann home. Camelot’s notes indicate that it told Ms. Parchment that “[J.W.] needed specific sexual counseling by a specialist in this area.” Ms. Parchment took no action so Camelot advised Mr. Hann that a new safety plan would be implemented which prohibited J.W. and C.M.H. from sharing a bedroom and requiring J.W. to be under close adult supervision when other children were present. Such recommendations had already been a complete failure at preventing J.W. from perpetuating sexual abuse on other children. Further, still without knowledge of J.W.’s extensive history of sexual abuse as a victim and aggressor, Mr. Hann informed Camelot that the family disagreed with and would not follow the safety plan.

**The Department of Children and Families ignored repeated warnings from its service providers.**

Beginning in November 2002, Girls and Boys Town began providing services to J.W. in conjunction with Camelot. The assessment of J.W.’s case and his current behaviors, which was performed by Girls and Boys Town, found that despite his escalating violence and suicidal and sexually aggressive



actions, no additional interventions or therapies had been put in place.

Camelot again requested a psychosexual evaluation of J.W. on November 6, 2002.

Additionally, in November 2002, C.M.H. began to exhibit behavioral problems which Camelot directly attributed to J.W. being in the home. C.M.H.'s grade dropped. In one school year he went from being an "A", "B", or "C" student to failing grades and was ultimately retained in the fourth grade.

In December 2002, the Hanns, overwhelmed with the number of providers involved in J.W.'s care and the disruption to their family, canceled the services of Camelot. Camelot recommended in its discharge form, signed by Ms. Parchment, that J.W. be placed in a residential treatment facility; however, DCF did not initiate a change in placement.

In June 2003, J.W. began expressing sexually inappropriate behavior towards C.M.H., asking him if he wanted to "see what sperm looks like" before masturbating to completion in front of him and attempting to hand him the semen. Due to this new escalation of J.W.'s behavior now directed at C.M.H., the department finally secured the psychosexual evaluation of J.W. but still did not remove him from the Hann home.

The department received the results of the psychosexual evaluation of J.W. performed by The Chrysalis Center on September 18, 2003. The Center found that J.W. "fit the profile of a sexually aggressive child due to the fact that he continues to engage in extensive sexual behaviors with children younger than himself." Further, it was found that J.W. "[presented] a risk of potentially becoming increasingly more aggressive" and "continuing sexually inappropriate behaviors." The Center warned that J.W. "may seek out victims who are children and coerce them to engage in sexual activity." And again the Center recommended specific counseling for J.W. and appropriate training for his caregivers, the Hanns.

Finally, in October 2003, the Hanns requested J.W. be placed in a therapeutic treatment facility as they did not feel equipped to provide him with services and interventions he needed. Therapeutic placement was authorized for J.W. and he was referred to Alternate Family Care in Jupiter, Florida. The

Hanns were told that if J.W. was removed from their home they would not be permitted visitation privileges with him at the facility. The Hanns did not want to be the next in a series of parental figures that abandoned J.W. so they ultimately made the decision to maintain him in their home with a request for additional services to treat his ongoing issues. At this time the Hanns begin training to become therapeutic foster parents.

C.M.H.'s problems due to J.W.'s presence in the home continued at school. Beginning in late 2003 to early 2004, C.M.H. began to act out and have more conflicts in school. He received a student discipline referral for ongoing behavioral problems in the classroom. Additionally, in early 2004 he began gaining weight and would subsequently gain about 40 pounds over the next two years.

**The Department of Children and Families failed to remove a dangerous child it had placed in the Hann home when requested by the Hanns.**

Mrs. Hann was diagnosed with terminal cancer on March 3, 2004. As a result, Mr. Hann contacted DCF within 48 hours of the diagnosis and requested the process of having J.W.'s placement with them as "long-term non-relative care" be stopped and asked that J.W. be placed elsewhere. Ms. Parchment visited the Hann home within 24 hours after the request and advised the family that "we'll get on it."

Nothing was done and contrary to the express request and wishes of the Hanns and without their knowledge, DCF had the Hanns declared as "long term non-relative caregivers" of J.W. The department subsequently closed the dependency case, leaving J.W. him the care of the Hanns.

**The Department of Children and Family Services withdrew support for the Hann family when it was needed most.**

The Hanns were not part of the foster care system so when DCF closed its dependency case, the Hann family lost approximately 50 percent of their services and counseling. Father Flanagan's suspended services to J.W. and the Hann family in April 2004. The Hanns would later directly attribute the resurgence in J.W.'s inappropriate sexual behavior to the loss of counseling services.

With almost no support from DCF, the Hanns grew more desperate as they tried to deal with Mrs. Hann's illness and J.W.'s escalating behavior.

C.M.H.'s troubles also continued. An April 2005 treatment plan from St. Mary's Child Development Center's Children's Provider Network noted that he began to have nightmares and was easily frustrated. The report also noted that his mother's diagnosis of terminal cancer and intensive chemotherapy treatments were contributing to C.M.H.'s increasing separation anxiety and grief issues. He was diagnosed with post-traumatic stress disorder.

In April 2005, Mr. Hann wrote DCF and the juvenile judge requesting help in placing J.W. in a residential placement. There was no response to his request, and J.W. remained in the Hann home.

A report from Child & Family Connections, the lead agency for community-based care in Palm Beach County, dated June 16, 2005, provided a description of J.W.'s personality and behavior, the high risk of sexual behavior problems and increasing aggression, his excessive masturbation, seeking out younger children, lies, and refusal to take responsibility for his actions. The report stated that the Hanns "[had] been told that it is not a matter of will J.W. perpetrate on their son again, but a matter of when the perpetration would occur. [J.W. was] in need of a more restrictive setting with intensive services specializing in sexual specific treatment." The report also noted that J.W.'s previous therapist, current therapist, and a psychosexual evaluation all recommended a full-time group home facility specializing in sexual specific treatment. The report concluded that J.W.'s condition was "so severe and the situation so urgent that treatment [could not] be safely attempted in the community."

**Predictably, the numerous failures of the Department and its Family Services resulted in the sexual assault of another child.**

On June 29, 2005, after a physical altercation between J.W. and Mrs. Hann, C.M.H., then 10 years old, told his parents that 2 years prior, J.W. had forced him to engage in oral sex while the boys were at a sleepover at this cousin's house. Mr. Hann called Girls & Boys Town and demanded that J.W. be removed from the home immediately. Later that same day, the

department finally removed J.W. from the Hann home, and he was taken to an emergency shelter until a placement could be determined.

The court entered an order on August 11, 2005, authorizing the placement of J.W. into a residential treatment center. The court found that although a previous court order authorized placement in a specialized therapeutic group home, due to another incident that occurred while in emergency shelter, J.W. required a higher level of care.

Theresa Hann passed away the next year shortly after initiating litigation against DCF and its providers.

CLAIMANT'S POSITION:

The lawsuit was filed against the department, Camelot Community Care, Inc., Elaine Beckwith, Chrysalis Center, and Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida. The suit alleged the defendants were negligent and directly liable for the injuries suffered by C.M.H. as a result of the sexual abuse due to:

1. The initial placement of J.W. in the Hann home;
2. The failure of DCF to follow its own rules and operating procedures to provide the necessary treatment and services for J.W.;
3. The failure of DCF to provide the required information to the Hanns regarding J.W.'s history of sexual abuse and sexual aggressiveness, including the failure to formulate a safety plan for J.W. and all the children residing in the Hann home;
4. The failure of DCF to maintain the safety of J.W. and any children residing in the placement;
5. The failure of the DCF employee to report the allegations of sexual abuse of J.W. as mandated by s. 39.201, F.S.; and

DCF moving forward with having the court declare the Hanns "long-term non-relative caregivers," closing the case file, and leaving J.W. in the custody of the Hanns without notice to them and despite their request to stop the process.

RESPONDENT'S POSITION:

The Department of Children and Families defended the lawsuit. On November 18, 2013, after a 4-week jury trial, a judgment was entered in the amount of \$10,000,000. DCF was found to be 50 percent liable (\$5,000,000) and Mr. and Mrs. Hann were found to be 50 percent liable (\$5,000,000). The jury attributed no liability to the remaining defendants.

**CONCLUSIONS OF LAW:**

Every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. With respect to this claim bill, which is based on a negligence claim, the claimant proved that the state had a duty to the claimant, the state breached that duty, and that the breach caused the claimant's damages.

**Duty**

The Department of Children and Families had a duty pursuant to exercise reasonable care when placing a child involved in child-on-child sexual abuse or sexual assault in substitute care; to provide caregivers of children with sexual aggression and sexual abuse with written, detailed and complete information of the child's history; to establish appropriate safeguards and strategies to protect all children living in the foster or temporary care; to ensure the foster family is properly trained and equipped to meet the serious needs of the foster child; and to exercise reasonable care under the circumstances.

**Breach**

A preponderance of the evidence establishes that DCF breached its duties by failing to follow its governing statutes, rules, and internal operating procedures by:

- Placing J.W., a known sexually aggressive, severely emotionally disturbed, and dangerous child in the Hann home without legal authority and in direct conflict with recommendations of DCF service providers that J.W. not have access to young children;
- Failing to ensure that Mr. and Mrs. Hann were duly licensed and trained as required by department rule, making them capable of safely caring for a child with J.W.'s extensive needs;
- Failing to fully and completely inform the Hanns of J.W.'s history, and the risk and danger he posed to C.M.H. as required by department rule; and
- Failing to remove J.W. from the Hann home when it became clear that the placement was inappropriate and dangerous to the Hanns and C.M.H. particularly.

**Causation**

The sexual, physical and emotional abuse suffered by C.M.H. was the direct and proximate result of DCF's failure to fulfill its

duties regarding the foster placement of a known sexually aggressive child.

### **Damages**

At the conclusion of a 2-week trial, the jury found DCF and Mr. and Mrs. Hann each 50 percent responsible for the negligence that resulted in the injuries suffered by C.M.H. The jury awarded C.M.H. \$6 million for past pain and suffering, \$3.5 million for future pain and suffering, \$250,000.00 for future treatment and services and \$250,000.00 for future loss of earning capacity for a total award of \$10 million. The department and Mr. and Mrs. Hann were each responsible for \$5 million. The jury did not assess any liability for negligence against the remaining 6 defendants.

C.M.H. was initially diagnosed with post-traumatic stress disorder in 2005. Thomas N. Dikel, Ph.D., reaffirmed the diagnosis in 2010, finding that C.M.H.'s severe PTSD was caused by his "experiences of child-on-child sexual abuse, exacerbated and magnified by his mother's diagnosis of stage 4, metastatic colon cancer."

He was re-evaluated by Dr. Stephen Alexander in October 2014. Dr. Alexander found C.M.H. to continue to suffer from PTSD and major depression, but had become even more dysfunctional since his initial evaluation due to lack of services. Dr. Alexander attributed the majority of C.M.H.'s psychological trauma to this mother's illness and death; however, he did note that due to J.W.'s presence in the home during her illness, the two events have become inextricably intertwined in this psyche.

Comprehensive Rehabilitation Consultants, Inc., created a life plan for C.M.H. to determine the funds necessary to provide the support needed by C.M.H. as a direct consequence of the sexual abuse he experienced. It was determined the cost for medical, psycho-therapies, educational and support services as well as ancillary services of transportation, housing and personal items would be \$2.23 million over C.M.H.'s life.

As a result of the judgment entered by the court against DCF, the state paid \$100,000 (the maximum allowed under the state's sovereign immunity waiver) with the remaining \$4.9 million to be paid if this claim bill is passed by the Legislature and signed into law by the Governor.

COLLATERAL SOURCES OF RECOVERY:

Father Flanagan's Boys' Home d/b/a Girls and Boys Town of South Florida (Father Flanagan) was a named defendant in the lawsuit. Father Flanagan executed a settlement agreement with Claimants on July 30, 2013, in the amount of \$340,000. However, in October 2013, the jury found that Father Flanagan was not negligent for any loss, injury or damage to C.M.H.

ATTORNEYS FEES:

Claimant's attorneys have acknowledged in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees.

RECOMMENDATIONS:

The negligence of the department and the Hanns were the legal proximate cause of the damages suffered by C.M.H. However, The jury award of \$9.5 million for non-economic damages or pain and suffering is not supported by the weight of the evidence. According to Dr. Alexander's October 2014 report, C.M.H. continues to suffer from PTSD but attributes a majority of C.M.H.'s psychological trauma to the illness and death of his mother. The department should not be held financially liable for C.M.H.'s psychological trauma that occurred due to the illness and death of his mother.

Damages awarded by the jury in the amount of \$500,000 for future treatment and services and lost wages due to the sexual abuse are reasonable under the circumstances and are fully supported by the weight of the evidence. C.M.H. requires intensive and long-term psychotherapy, psychiatric evaluation and treatment and possible psychotropic mediations to assist him in dealing with his PTSD.

It should be noted that since receiving the settlement from Father Flanagan's in 2013, C.M.H. has only sought psychiatric treatment one time.

Accordingly, I recommend that SB 58 be reported FAVORABLY, with the amount to be paid amended to \$2.5 million. The jury awarded \$9.5 million (\$4.75 million assessed to DCF) for past and future pain and suffering. Based on a lack of objective evidence in the record, a 50 percent reduction of DCF's obligation or \$2.375 million may be a more appropriate amount to be paid for the non-economic damages. A corresponding reduction of 50 percent of DCF's

share of the economic damages (\$125,000) would be appropriate.

I further recommend that the funds be paid into a trust established for C.M.H. in equal installments over 10 years to pay for expenses related to education, psycho-therapies and living expenses. Any funds remaining in the trust after 10 years should be distributed in full to C.M.H.

Respectfully submitted,

Barbara M. Crosier  
Senate Special Master

cc: Secretary of the Senate

**CS by Judiciary:**

The committee substitute, in conformity with a recent opinion of the Florida Supreme Court, does not include limits on the amount of lobbying fees that may be paid from the proceeds of the bill.





700252

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/15/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Judiciary (Braynon) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 105  
and insert:  
The total amount of attorney fees relating to

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

And the title is amended as follows:

Delete line 9  
and insert:  
fees; providing an effective date.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations  
Appropriations Subcommittee on the Environment  
and Natural Resources  
Banking and Insurance  
Ethics and Elections  
Regulated Industries  
Rules

### JOINT COMMITTEE:

Joint Legislative Budget Commission

### SENATOR OSCAR BRAYNON II

*Democratic Leader*  
35th District

February 9, 2017

Senator Greg Steube, Chair  
Judiciary Committee,  
326 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Steube:

This letter is to request that **Senate Bill SB 34**, relating to *Relief of C.M.H. by the Department of Children and Families* be placed on the agenda of the next scheduled meeting of the committee.

*SB 34 refers to, Relief of C.M.H. by the Department of Children and Families; Providing for the relief of C.M.H.; providing an appropriation to compensate C.M.H. for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; requiring certain funds to be placed into an irrevocable trust, etc. CLAIM WITH APPROPRIATION: \$5,076,543.00*

Thank you for consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Braynon  
District 35

CC: Tom Cibula, Staff Director

Joyce Butler, Committee Administrative Assistant- **Room 515K**

### REPLY TO:

- ☐ 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- ☐ 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

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

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 34  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 204

INTRODUCER: Judiciary Committee and Senator Passidomo

SUBJECT: Actions Founded on Real Property Improvements

DATE: March 15, 2017

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Cibula  | Cibula         | JU        | <b>Fav/CS</b> |
| 2. |         |                | RI        |               |
| 3. |         |                | RC        |               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 204 clarifies when the completion of a construction contract occurs. This date, in some cases, determines when the 4-or 10-year limitations periods begin for bringing a lawsuit for a construction defect or latent construction defect.

Under existing law, the start date of the limitations periods begin when both parties to a construction contract complete their obligations. Under the bill, the limitations periods begin at the later of the date of final performance of all the contracted services or the date that final payment for those services is due.

**II. Present Situation:**

The Florida Statutes establish a number of different time periods in which a person must file a lawsuit or is precluded from doing so. Some of these time periods are governed by a statute of limitations, which precludes a person from filing a lawsuit after a specified time period after the cause of action otherwise accrues.<sup>1</sup> A cause of action typically accrues when a person sustains an injury or incurs damages.

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<sup>1</sup> See *Kush v. Lloyd*, 616 So. 2d 415, 17-19 (Fla. 1992) (“A statute of limitation runs from the date the cause of action arises; that is, the date on which the final element (ordinarily, damages, but it may also be knowledge or notice) essential to the existence of a cause of action occurs.” (citing *Carr v. Broward County*, 505 So. 2d 568, 70 (Fla. 4th DCA 1987))).

Other time periods for filing a lawsuit are governed by a statute of repose, which precludes the filing of a lawsuit after a specified time after the occurrence of an event.<sup>2</sup> The purpose for statutes of repose is to prevent a person from being subject to liability in perpetuity in a manner that is supportive of another public policy choice.<sup>3</sup>

Many of the statutes of repose, including a statute of repose for actions alleging a construction defect or latent construction defect, are set forth in s. 95.11, F.S. The statute provides a 4 year statute of repose for actions alleging a construction defect. A 10 year statute of repose is provided for actions alleging a latent construction defect. A latent defect is generally considered to be a hidden or concealed defect that is not discoverable by a reasonable and customary inspection, and of which the owner has no knowledge.<sup>4</sup>

In a 2015 opinion of the Fifth District Court of Appeal in *Cypress Fairway Condominium Association v. Bergeron Construction Company*, the court determined when the 10-year limitations period, or statute of repose, for a lawsuit alleging a latent construction defect begins.<sup>5</sup> The statute construed by the court, s. 95.11(3)(c), F.S., provides that the statute of repose for an action alleging a construction defect begins to run on the later of several events including the “date of completion . . . of the contract.”

The construction company argued that the statute of repose began to run on January 31, 2001, when the Final Application for Payment was made.<sup>6</sup> By that date, the construction required by the contract had been completed. The Association argued that the contract was not completed until 3 days later, on February 2, 2001, when the final payment under the contract was made.<sup>7</sup> This 3-day difference would determine whether the association could proceed with its \$15 million lawsuit, which was filed 10 years after the final payment on February 2, 2011.<sup>8</sup>

The court found that the contract was not completed until the final payment was made under the contract. In explaining the reason for its decision, the court stated:

Completion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could

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<sup>2</sup> See *Kush*, 616 So. 2d at 19. (“The period of time established by a statute of repose commences to run from the date of an event specified in the statute, such as delivery of goods, closing on a real estate sale or the performance of a surgical operation. At the end of the time period the cause of action ceases to exist.” (citing *Carr v. Broward County*, 505 So. 2d 568, 70 (Fla. 4th DCA 1987))).

<sup>3</sup> See *Carr v. Broward County*, 541 So. 2d 92, 95 (Fla. 1989). In *Carr*, the Supreme Court recognized the balancing of public interests that take place when the Legislature enacts a statute of repose. Specifically, the *Carr* opinion stated, “The legislature, in enacting this statute of repose, reasonably decided that perpetual liability places an undue burden on manufacturers, and it decided that twelve years from the date of sale is a reasonable time for exposure to liability for manufacturing of a product.” *Id.* at 95 (quoting *Pullum v. Cincinnati, Inc.*, 476 So. 2d 657, 59 (Fla. 1985)). See also *Damiano v. McDaniel*, 689 So. 2d 1059, 61 (Fla. 1997) (stating that in a statute of repose governing medical malpractice actions, “the legislature attempted to balance the rights of injured persons against the exposure of health care providers to liability for endless periods of time.”).

<sup>4</sup> *Alexander v. Suncoast Builders*, 837 So. 2d 1056, 58 (Fla. 3d DCA 2002).

<sup>5</sup> *Cypress Fairway Condo. v. Bergeron Constr. Co.*, 164 So. 2d 706 (Fla. 5th DCA 2015).

<sup>6</sup> *Id.* at 707.

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

<sup>8</sup> *Id.* at 708.

have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.<sup>9</sup>

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

The limitations period or statute of repose for bringing an action alleging a construction defect or latent construction defect is specified in existing s. 95.11(3)(c), F.S. These 4-year and 10-year time periods begin to run from “the date of completion . . . of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.”

The bill clarifies when a construction contract is complete and causes the limitations periods to begin. Specifically, the applicable 4-year statute of repose for construction defects and 10-year statute of repose for latent construction defects begins on the “later of the date of final performance of all the contracted services or the date that final payment for such services becomes due.” As a result, the duration of a contractor’s liability will not be affected by the timing of a customer’s payments under the construction contract.

The bill takes effect July 1, 2017.

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

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

None.

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

None.

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

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

The bill provides more certainty in defining the duration of a contractor’s liability for a construction defect. As a result, there may be less incentive to litigate whether the statute of repose bars particular construction defect lawsuits.

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

C. **Government Sector Impact:**

The Office of the State Courts Administrator anticipates that the bill may result in a small reduction in judicial workload by limiting the number of disputed matters before the courts.<sup>10</sup>

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 95.11, 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 by Judiciary on March 14, 2017:**

The underlying bill defined the date of the completion of a construction contract as the date on which construction activities were completed, not including construction work to correct deficiencies. The committee substitute provides that the completion of a construction contract occurs on the later of the completion of construction activities or the date the final payment under the contract becomes due.

B. **Amendments:**

None.

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

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<sup>10</sup> Office of the State Courts Administrator, *2017 Judicial Impact Statement for SB 204* (Jan. 24, 2017).



606890

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/15/2017 | . |       |
|            | . |       |
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|            | . |       |

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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (c) of subsection (3) of section  
95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real  
property.—Actions other than for recovery of real property shall  
be commenced as follows:

(3) WITHIN FOUR YEARS.—





606890

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. Completion of the contract means the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.

Section 2. This act applies to causes of action that accrue on or after July 1, 2017.

Section 3. For the purpose of incorporating the amendment made by this act to section 95.11, Florida Statutes, in a reference thereto, subsection (2) of section 627.441, Florida Statutes, is reenacted to read:

627.441 Commercial general liability policies; coverage to



606890

contractors for completed operations.-

(2) A liability insurer must offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage, as specified in s. 255.0517(2)(b). The period of such coverage must be sufficient to protect against liability arising out of an action brought within the time limits provided in s. 95.11(3)(c).

Section 4. This act shall take effect July 1, 2017.

===== 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 limitations on actions other than  
for the recovery of real property; amending s. 95.11,  
F.S.; specifying the date of completion for specified  
contracts; providing applicability; reenacting s.  
627.441(2), F.S., relating to commercial general  
liability policy coverage to contractors for completed  
operations, to incorporate the amendment made by the  
act to s. 95.11, F.S., in a reference thereto;  
providing an effective date.

By Senator Passidomo

28-00360-17

2017204\_\_

A bill to be entitled

An act relating to actions founded on real property improvements; amending s. 95.11, F.S.; specifying when a contract has been completed between a professional engineer, registered architect, or licensed contractor and his or her employer; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 95.11, Florida Statutes, is amended to read:  
95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or construction of an improvement to real property, with the time running from the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest; except that, when the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her

Page 1 of 2

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

28-00360-17

2017204\_\_

employer, whichever date is latest. Completion of the contract shall be the last date the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, not including labor, services, or materials relating to correction of deficiencies in such engineer's, architect's, or contractor's previously performed work or materials supplied.

Section 2. This act shall take effect July 1, 2017.

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Ethics and Elections, *Chair*  
Healthy Policy, *Vice Chair*  
Appropriations Subcommittee on Health and Human Services  
Appropriations Subcommittee on Transportation, Tourism, and Economic Development  
Commerce and Tourism

### SELECT COMMITTEE:

Joint Select Committee on Collective Bargaining

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR KATHLEEN PASSIDOMO**

28th District

January 4, 2017

Honorable Greg Steube, Chair  
326 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

**Re: Senate Bill 204**

Dear Chairman Steube:

Senate Bill 204 and has been referred to the Judiciary Committee. Senate Bill 204 specifies when a contract has been completed between a professional engineer, registered architect, or licensed contractor and his or her employer, etc.

I respectfully request that you place SB 204 on your committee agenda at the earliest opportunity. I am available to speak with you at your convenience if you have any questions about the bill. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

Senator Kathleen Passidomo  
District 28

cc: Tom Cibula, Staff Director

### REPLY TO:

- ☐ 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- ☐ 318 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-6028

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

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/14/17

Meeting Date

SB 204

Bill Number (if applicable)

Topic Actions Founded on Real Property Improvements

Amendment Barcode (if applicable)

Name Jennifer Hatfield

Job Title \_\_\_\_\_

Address 411 Lenore Ct.

Street

Phone 941-345-3263

Rockledge

FL

32955

City

State

Zip

Email jen@wilsonmgmt.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FL Swimming Pool Assoc. & National Underground Utility Contractors

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

204

Bill Number (if applicable)

Topic Statute of Repose

Amendment Barcode (if applicable)

Name Rusty Payton

Job Title CEO

Address 2600 Central Blvd.

Street

Phone 850-567-1073

Tallahassee

FL

32317

City

State

Zip

Email rp@fhba.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

204

Bill Number (if applicable)

Topic Statute of Repose

Amendment Barcode (if applicable)

Name Chris Carmody

Job Title Attorney

Address 301 E. Pine St., Suite 1400

Phone 407-843-8880

Street

Orlando

City

FL

State

32801

Zip

Email ccarmody@gray-robinson.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Associated Builders & Contractors of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 172

INTRODUCER: Judiciary Committee; Children, Families, and Elder Affairs Committee; and Senators Passidomo and Mayfield

SUBJECT: Guardianship

DATE: March 15, 2017

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

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------|----------------|-----------|---------------|
| 1. | Crosier  | Hendon         | CF        | <b>Fav/CS</b> |
| 2. | Stallard | Cibula         | JU        | <b>Fav/CS</b> |
| 3. |          |                | RC        |               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 172 revises several aspects of Florida's guardianship statutes relating to the determination of a person's incapacity, a guardian's annual report on the incapacitated person over whom he or she has responsibility, what findings a court must make to allow a guardian to initiate a ward's divorce, and how much a guardian may spend on a ward's funeral and related expenses.

The Florida Statutes prescribe a process for courts to use in determining that an alleged incapacitated person is indeed incapacitated, and for appointing a guardian for the ward. A committee of experts aids the court in making this determination. Under the bill, the committee members' reports are due at least 10 days, instead of 5 days, before the incapacity hearing, unless they are not complete. However, the bill expressly authorizes a motion for continuance if the service deadline is missed. Also, the bill expressly permits the petitioner and the alleged incapacitated person to object to the admission of part or all of each report, and requires the court to assess the admissibility of these reports based on the rules of evidence.

The timeframe for the adjudicatory hearing is moved from not later than 14 days after the filing of the examining committee reports to between 10 and 30 days after the filing of the last-filed report. However, this 10-day minimum timeframe may be waived, permitting the hearing to occur sooner.



Under current law, guardians must file annual guardianship reports, which include 1-year guardianship plans. The filing deadlines differ depending on whether the court has required filing on a calendar-year basis. In a case where the court has not required filing on a calendar-year basis, the filing deadline is moved back 150 days. Moreover, in a case in which the court has *not* required filing on a calendar-year basis, the report for the forthcoming year must be filed by April 1, instead of between September 1 and December 1. The bill expressly states that the report remains in effect until a new report is filed.

And when it comes to authorizing a guardian to initiate a ward's divorce proceeding, current law requires the court to find, among other things, that the ward's spouse consents to the dissolution. The bill removes this requirement.

Under current law, after obtaining approval of the court pursuant to a petition for authorization to act, the guardian of a ward's property may, among a list of other things, pay reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate, up to \$6,000.<sup>1</sup> The bill removes this \$6,000 limit.

## **II. Present Situation:**

### **Guardianship in General**

Guardianship is a trust relationship in which one person, called the “guardian,”<sup>2</sup> acts as a fiduciary<sup>3</sup> for another, called the “ward.”<sup>4</sup> There are two main forms of guardianship: guardianship over the person and guardianship over the property; the latter may be limited or plenary.<sup>5</sup>

A court may establish a guardianship without the consent of an alleged incapacitated person if the court finds that this person is indeed incapacitated—that is, unable to manage his or her own affairs. Accordingly, the court then appoints a guardian to manage the ward's affairs. And commensurate to the incredible authority over a ward that is vested in a guardian, the law prescribes a rigorous process for determining that a person is incapacitated, and for appointing a trustworthy and competent guardian. Furthermore, the law places limits on the guardians ability to take particular, drastic or life-changing actions on the ward's behalf.

### **Procedure to Determine Incapacity**

In order for a guardianship over an incapacitated person to be established, the court must determine that the alleged incapacitated person is indeed incapacitated. The Florida Statutes specify the process for filing a petition to determine incapacity, as well as the process for providing and reading the petition to the alleged incapacitated person at issue.<sup>6</sup> Notice of the

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<sup>1</sup> Section 744.441, F.S.

<sup>2</sup> “Guardian” means a person who has been appointed by the court to act on behalf of a ward's person or property, or both. Section 744.102(9), F.S.

<sup>3</sup> See, e.g., *In re Guardianship of Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990).

<sup>4</sup> “Ward” means a person for whom a guardian has been appointed. Section 744.102(22), F.S.

<sup>5</sup> See generally, Section 744.102(9), F.S.

<sup>6</sup> Section 744.331(1), F.S. If there is a petition to appoint a guardian, this must also be filed, and served upon and read to the alleged incapacitated person.

filing of a petition to determine incapacity must be served on certain persons, including the attorney for the alleged incapacitated person.<sup>7</sup> And this notice must state the time and place of the hearing on the petition to determine incapacity. The notice must also state that an attorney has been appointed and that, if the person is determined incapable of exercising certain rights, then a guardian will be appointed to exercise those rights on his or her behalf.<sup>8</sup>

Within 5 days from the filing of a petition to determine incapacity, the court must appoint a three-member examining committee.<sup>9</sup> The committee members must meet the professional qualifications set forth in statute, and at least one must have knowledge of the type of incapacity alleged in the petition.<sup>10</sup>

Each committee member must examine the alleged incapacitated person, determine the person's ability to exercise certain rights as specified in statute, and submit a report within 15 days after appointment.<sup>11</sup> If two of the three examining committee members conclude that the person is incapacitated then a hearing on the petition must be set.<sup>12</sup> A copy of each examining committee member's report must be served on the petitioner and the attorney for the alleged incapacitated person within 3 days after filing and at least 5 days before a hearing is held on the petition.<sup>13</sup>

When the court appoints the examining committee, the court also sets the adjudicatory hearing on the petition for not more than 14 days after the filing of the examining committee reports.<sup>14</sup>

### **Filing of Annual Guardianship Report**

Among various other duties, a guardian of an incapacitated person must file an annual report.<sup>15</sup> This report must update information about the condition of the ward, specify the current needs of the ward and explain how those needs are proposed to be met in the coming year.<sup>16</sup>

If the court does not require a calendar-year filing, the guardian must file the annual guardianship plan between 60 and 90 days before the last day of the anniversary month that the letters of guardianship were signed. In this case, the plan must cover the coming fiscal year. If instead the court requires a calendar-year guardianship plan to be filed, the plan must be filed after September 1 but no later than December 1 of the current year.<sup>17</sup>

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

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

<sup>9</sup> Section 744.331(3)(a), F.S.

<sup>10</sup> *Id.* At least one member of the committee must be a physician, and each of the other two members must be a physician, a nurse practitioner, a registered nurse, another type of specified professional, or anyone else who the court determines to be qualified as specified in statute.

<sup>11</sup> Section 744.331(3)(e), F.S.

<sup>12</sup> Section 744.331(4), F.S.

<sup>13</sup> Section 744.331(3)(h), F.S.

<sup>14</sup> Section 744.331(5)(a), F.S. Upon good cause shown, the court may set the hearing for a later date.

<sup>15</sup> Section 744.367(1), F.S.

<sup>16</sup> Section 744.3675, F.S.

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

### **Procedure for Acquiring Extraordinary Authority**

Though a guardian has extensive authority to act on behalf of a ward, the law expressly prohibits guardians from taking certain drastic or life-changing actions on the ward's behalf. These actions include committing a ward to an institution without the process specified in statute, initiating a ward's divorce proceeding, or consenting on behalf of the ward for his sterilization.<sup>18</sup> However, a guardian may acquire the legal ability to do one or more of these things, referred to as "extraordinary authority."<sup>19</sup>

Before the court allows a guardian to exercise this extraordinary authority, the court must:<sup>20</sup>

- Appoint an independent attorney to act on the incapacitated person's behalf, and the attorney must have the opportunity to meet with the person and to present evidence and cross-examine witnesses at any hearing on the petition for authority to act;
- Receive as evidence independent medical, psychological, and social evaluations with respect to the incapacitated person by competent professionals or appoint its own experts to assist in the evaluations;
- Personally meet with the incapacitated person to obtain its own impression of the person's capacity, so as to afford the incapacitated person the full opportunity to express his or her personal views or desires with respect to the judicial proceeding and issue before the court;
- Find by clear and convincing evidence that the person lacks the capacity to make a decision about the issue before the court and that the incapacitated person's capacity is not likely to change in the foreseeable future;
- Be persuaded by clear and convincing evidence that the authority being requested is in the best interests of the incapacitated person; and
- *In the case of dissolution of marriage, find that the ward's spouse has consented to the dissolution.*

### **Powers of the Guardian of Property to Pay Reasonable Death Expenses**

Though the discussion above has focused on guardianship of a ward's person, guardianship may also pertain to a ward's property. After obtaining approval of the court pursuant to a petition to act, the types of guardians of a ward's property specified in statute may, among a list of other things, pay reasonable funeral, interment, and grave marker expenses for the ward from the ward's estate, *up to \$6,000*.<sup>21</sup>

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

### **Procedure to Determine Incapacity**

#### ***Reports of the Examining Committee Members***

In order for a guardianship over an incapacitated person to be established, the court must determine that the ward is indeed incapacitated. While the court makes this decision ultimately,

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<sup>18</sup> See ss. 744.3215(4) and 744.3725, F.S.

<sup>19</sup> Section 744.3725, F.S.

<sup>20</sup> *Id.* (Emphasis added).

<sup>21</sup> Section 744.441, F.S.

its determination is aided by the reports of a three-member examining committee, which is generally comprised of healthcare professionals.<sup>22</sup> The bill modifies the requirements for the committee members' filing of their reports and the requirements for the reports' service upon counsel. Also, the bill sets forth a standard and process for a petitioner or alleged incapacitated person to follow in seeking to bar the reports' introduction into evidence at the adjudicatory hearing.

The bill specifies that the reports must be filed *with the clerk of the court* within 15 days after appointment to the committee. In contrast, current law does not specify where these reports must be filed.

The bill, unlike current law, expressly provides that the reports must be *served by the clerk of the court*, on the petitioner and the attorney for the alleged incapacitated person. Also, the bill moves the date by which this service must occur, from at least 5 days before adjudicatory hearing to at least 10 days before the hearing. However, service need not occur in this timeframe if the reports are not complete. And if service is late on account of the reports not being complete, both sides may waive the 10-day service deadline or move for a continuance.<sup>23</sup> Lastly, the bill, in contrast to current law, specifies the manner of the clerk's service—it must be by electronic mail or U.S. mail.

The bill, unlike current statutory law, expressly states that the petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' report.<sup>24</sup> Specifically, these persons may make this objection by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing.<sup>25</sup> The court must apply the rules of evidence in determining the admission of these reports.<sup>26</sup>

### ***Timeframe for Holding the Adjudicatory Hearing***

The adjudicatory hearing is the court proceeding at which the court hears argument and admits evidence so that it may rule on whether the alleged incapacitated person is indeed incapacitated. The bill revises the timeframe in which this hearing must occur, from within 14 days after the admission of the reports of the examining committee members to between 10 and 30 days after the last filed report. However, this 10-day minimum timeframe may be waived, permitting the hearing to occur sooner.

### **Annual Guardianship Report**

Each year, a guardian is required to file an annual guardianship report, updating information about the condition of the ward and specifying the current needs of the ward and how those needs are proposed to be met in the coming year.

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<sup>22</sup> Section 744.331(3)(a), F.S. At least one member of the committee must be a physician, and each of the other two members must be a physician, a nurse practitioner, a registered nurse, another type of specified professional, or anyone else who the court determines to be qualified as specified in statute.

<sup>23</sup> The bill does not state that this motion would be granted, even upon proof of late service.

<sup>24</sup> The bill expressly states that these are the only people who may make this objection.

<sup>25</sup> The court may extend the time to file an objection.

<sup>26</sup> It is unclear as to whether the court may also apply other theories of law to exclude the reports.

Under current law, in a case where the court has not required filing on a calendar-year basis, guardian must file the report between 60 and 90 days before the last day of the anniversary month that the letters of guardianship were signed. The bill extends this deadline, to “within 90 days after the last day of the anniversary month that the letters of guardianship were signed . . . .”

Under current law, in a case in which the court has not required filing on a calendar-year basis, the report for the forthcoming year must be filed between September 1 and December 1 of the current year. The bill changes this deadline to April 1. Moreover, the bill gives effect to a filed and approved annual guardianship report until the court approves a subsequent plan.

### **Procedure for Acquiring Extraordinary Authority**

Though a guardian has extensive authority to act on behalf of a ward, the law expressly prohibits guardians from taking certain drastic or life-changing actions on behalf of the ward. One of these actions is the initiation of a ward’s divorce proceeding.<sup>27</sup> However, the court may grant a guardian the “extraordinary authority” to do one or more of these things.<sup>28</sup> But to do so, the court must take a number of actions and make a number of findings. And when it comes to authorizing a guardian to initiate a ward’s divorce proceeding, current law requires the court to find that the ward’s spouse consents to the dissolution. The bill removes this requirement.

### **Powers of the Guardian of Property to Pay Reasonable Death Expenses**

Under current law, after obtaining approval of the court pursuant to a petition for authorization to act, guardian of a ward’s property may, among a list of other things, pay reasonable funeral, interment, and grave marker expenses for the ward from the ward’s estate, up to \$6,000.<sup>29</sup> The bill removes this \$6,000 limit.

### **Effective Date**

The effective date of the bill is July 1, 2017.

## **IV. Constitutional Issues:**

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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

None.

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<sup>27</sup> See ss. 744.3215(4) and 744.3725, F.S.

<sup>28</sup> Section 744.3725, F.S.

<sup>29</sup> Section 744.441, F.S.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill allows guardians, with court approval, to spend more than \$6,000 on a ward's funeral, interment, and grave marker expenses.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 744.331, 744.3725, 744.441, 744.3215, and 744.367.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS/CS by Judiciary on March 14, 2017:**

The bill required the clerk of the court to serve the examining committee's reports on the petitioner's attorney and the attorney for the alleged incapacitated person at least 10 days before the adjudicatory hearing. Under the committee substitute, the service must be on the petitioner, not his or her attorney. Also, if the reports are not complete by 10 days before the hearing, they no longer need to be served by that deadline. Nonetheless, each side is expressly authorized to move for a continuance if this service deadline is missed.

Regarding the admission of these reports into evidence at the hearing, the committee substitute no longer expressly restricts the authority to object to only the alleged incapacitated person and the petitioner. Lastly, though the adjudicatory hearing still may

not occur until 10 days after the last committee report is filed, the committee substitute allows for waiver of this restriction.

**CS by Children, Families, and Elder Affairs on February 6, 2017:**

The amendment provides clarification that the annual guardianship plan is to be filed with the court within 90 days after the last day of the anniversary month that the letters of guardianship were signed unless the court requires calendar-year filing. If the court requires a calendar-year filing the guardianship plan is to be filed before April 1 of each year. The last annual guardianship plan approved by the court will remain in effect until the court approves the subsequent plan.

**B. Amendments:**

None.



695286

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/15/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 62 - 91  
and insert:  
petitioner and the attorney for the alleged incapacitated person  
by electronic mail delivery or United States mail and, upon  
service, shall file a certificate of service in the incapacity  
proceeding. The petitioner and the attorney for the alleged  
incapacitated person must be served with all reports at least 10  
days before the hearing on the petition, unless the reports are





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not complete, in which case the petitioner and the attorney for the alleged incapacitated person may waive the 10-day requirement and consent to the consideration of the reports by the court at the adjudicatory hearing. If such service is not timely carried out, the petitioner or the alleged incapacitated person may move for a continuance of the hearing ~~A copy of each committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.~~

(i) The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. The objection must state the basis upon which the challenge to admissibility is made. If an objection is timely filed and served, the court shall apply the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and serve the written objection.

(5) ADJUDICATORY HEARING.—

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The ~~date for the~~ adjudicatory hearing must be conducted at least 10 days, which time period may be waived, but no more than 30 days, after the filing of the last

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

And the title is amended as follows:



695286

40           Delete line 13  
41 and insert:  
42           reports; authorizing parties to agree to waive the  
43           timeframe; authorizing the petitioner and the alleged

By the Committee on Children, Families, and Elder Affairs; and  
Senator Passidomo

586-01711-17

2017172c1

1 A bill to be entitled  
2 An act relating to guardianship; amending s. 744.331,  
3 F.S.; requiring each examining committee member in a  
4 proceeding to determine incapacity to file his or her  
5 report with the clerk of the court within a specified  
6 timeframe after appointment; requiring the clerk of  
7 the court to serve each report on specified persons  
8 within a specified timeframe; requiring the clerk of  
9 the court to file a certificate of service of each  
10 report in the incapacity proceeding; revising the  
11 timeframe before the hearing on the petition within  
12 which specified parties must be served with all  
13 reports; authorizing the petitioner and the alleged  
14 incapacitated person to move for a continuance if  
15 service is not timely effectuated and to object to the  
16 introduction of all or any part of a report by filing  
17 and serving a written objection to admissibility on  
18 the other party within a specified timeframe;  
19 specifying that the admissibility of the report is  
20 governed by the rules of evidence; requiring that the  
21 adjudicatory hearing be conducted within a specified  
22 timeframe after the filing of the last filed report;  
23 amending s. 744.367, F.S.; increasing the time that a  
24 guardian has to file a required annual guardianship  
25 plan with the court if the court does not require  
26 filing on a calendar year basis; decreasing the time  
27 that a guardian has to file a required annual  
28 guardianship plan with the court if the court requires  
29 calendar-year filing; amending s. 744.3725, F.S.;  
30 eliminating the requirement that a court must first  
31 find that a ward's spouse has consented to dissolution

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2017172c1

32 of marriage before the court may authorize a guardian  
33 to exercise specified rights; amending s. 744.441,  
34 F.S.; removing the cap on funeral expenses that may be  
35 paid from a ward's estate; reenacting s. 744.3215(4),  
36 F.S., relating to the rights of persons determined  
37 incapacitated, to incorporate the amendment made to s.  
38 744.3725, F.S., in a reference thereto; providing an  
39 effective date.

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

42  
43 Section 1. Paragraphs (e) and (h) of subsection (3) and  
44 paragraph (a) of subsection (5) of section 744.331, Florida  
45 Statutes, are amended, and paragraph (i) is added to subsection  
46 (3) of that section, to read:

47 744.331 Procedures to determine incapacity.—

48 (3) EXAMINING COMMITTEE.—

49 (e) Each member of the examining committee shall examine  
50 the person. Each examining committee member must determine the  
51 alleged incapacitated person's ability to exercise those rights  
52 specified in s. 744.3215. In addition to the examination, each  
53 examining committee member must have access to, and may  
54 consider, previous examinations of the person, including, but  
55 not limited to, habilitation plans, school records, and  
56 psychological and psychosocial reports voluntarily offered for  
57 use by the alleged incapacitated person. Each member of the  
58 examining committee must file his or her report with the clerk  
59 of the court ~~submit a report~~ within 15 days after appointment.

60 (h) Within 3 days after receipt of each examining committee

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2017172c1

member's report, the clerk shall serve the report on the petitioner's counsel and the attorney for the alleged incapacitated person, by electronic mail delivery or U.S. mail, and, upon service, shall file a certificate of service in the incapacity proceeding. The petitioner's counsel and the attorney for the alleged incapacitated person must be served with all reports at least 10 days before the hearing on the petition. If such service is not timely effectuated, the petitioner or the alleged incapacitated person may move for a continuance of the hearing. A copy of each committee member's report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.

(i) The petitioner and the alleged incapacitated person may object to the introduction into evidence of all or any portion of the examining committee members' reports by filing and serving a written objection on the other party no later than 5 days before the adjudicatory hearing. The objection must state the basis upon which the challenge to admissibility is made. If an objection is timely filed and served, the court shall apply the rules of evidence in determining the reports' admissibility. For good cause shown, the court may extend the time to file and serve the written objection. Only the alleged incapacitated person and the petitioner are entitled to object to the admissibility of the reports, unless the court provides otherwise.

(5) ADJUDICATORY HEARING.—

(a) Upon appointment of the examining committee, the court shall set the date upon which the petition will be heard. The

586-01711-17

2017172c1

~~date for the~~ adjudicatory hearing must be conducted at least 10 days, but no more than 30 days, after the filing of the last filed report of the examining committee members ~~set no more than 14 days after the filing of the reports of the examining committee members~~, unless good cause is shown. The adjudicatory hearing must be conducted at the time and place specified in the notice of hearing and in a manner consistent with due process.

Section 2. Subsection (1) of section 744.367, Florida Statutes, is amended to read:

744.367 Duty to file annual guardianship report.—

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an annual guardianship plan within 90 days after at least 60 days, ~~but no more than 90 days, before~~ the last day of the anniversary month that the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan ~~for the forthcoming calendar year~~ must be filed on or before April 1 of each year. The latest annual guardianship plan approved by the court will remain in effect until the court approves a subsequent plan ~~after September 1 but no later than December 1 of the current year.~~

Section 3. Section 744.3725, Florida Statutes, is amended to read:

744.3725 Procedure for extraordinary authority.—Before the court may grant authority to a guardian to exercise any of the rights specified in s. 744.3215(4), the court must:

(1) Appoint an independent attorney to act on the incapacitated person's behalf, and the attorney must have the

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2017172c1

119 opportunity to meet with the person and to present evidence and  
 120 cross-examine witnesses at any hearing on the petition for  
 121 authority to act;

122 (2) Receive as evidence independent medical, psychological,  
 123 and social evaluations with respect to the incapacitated person  
 124 by competent professionals or appoint its own experts to assist  
 125 in the evaluations;

126 (3) Personally meet with the incapacitated person to obtain  
 127 its own impression of the person's capacity, so as to afford the  
 128 incapacitated person the full opportunity to express his or her  
 129 personal views or desires with respect to the judicial  
 130 proceeding and issue before the court;

131 (4) Find by clear and convincing evidence that the person  
 132 lacks the capacity to make a decision about the issue before the  
 133 court and that the incapacitated person's capacity is not likely  
 134 to change in the foreseeable future; and

135 (5) Be persuaded by clear and convincing evidence that the  
 136 authority being requested is in the best interests of the  
 137 incapacitated person. and

138 ~~(6) In the case of dissolution of marriage, find that the~~  
 139 ~~ward's spouse has consented to the dissolution.~~

140  
 141 The provisions of this section and s. 744.3215(4) are procedural  
 142 and do not establish any new or independent right to or  
 143 authority over the termination of parental rights, dissolution  
 144 of marriage, sterilization, abortion, or the termination of life  
 145 support systems.

146 Section 4. Subsection (16) of section 744.441, Florida  
 147 Statutes, is amended to read:

Page 5 of 7

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

586-01711-17

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148 744.441 Powers of guardian upon court approval.—After  
 149 obtaining approval of the court pursuant to a petition for  
 150 authorization to act, a plenary guardian of the property, or a  
 151 limited guardian of the property within the powers granted by  
 152 the order appointing the guardian or an approved annual or  
 153 amended guardianship report, may:

154 (16) Pay reasonable funeral, interment, and grave marker  
 155 expenses for the ward from the ward's estate, ~~up to a maximum of~~  
 156 ~~\$6,000.~~

157 Section 5. For the purpose of incorporating the amendment  
 158 made by this act to section 744.3725, Florida Statutes, in a  
 159 reference thereto, subsection (4) of section 744.3215, Florida  
 160 Statutes, is reenacted to read:

161 744.3215 Rights of persons determined incapacitated.—

162 (4) Without first obtaining specific authority from the  
 163 court, as described in s. 744.3725, a guardian may not:

164 (a) Commit the ward to a facility, institution, or licensed  
 165 service provider without formal placement proceeding, pursuant  
 166 to chapter 393, chapter 394, or chapter 397.

167 (b) Consent on behalf of the ward to the performance on the  
 168 ward of any experimental biomedical or behavioral procedure or  
 169 to the participation by the ward in any biomedical or behavioral  
 170 experiment. The court may permit such performance or  
 171 participation only if:

172 1. It is of direct benefit to, and is intended to preserve  
 173 the life of or prevent serious impairment to the mental or  
 174 physical health of the ward; or

175 2. It is intended to assist the ward to develop or regain  
 176 his or her abilities.

Page 6 of 7

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

586-01711-17

2017172c1

177 (c) Initiate a petition for dissolution of marriage for the  
178 ward.

179 (d) Consent on behalf of the ward to termination of the  
180 ward's parental rights.

181 (e) Consent on behalf of the ward to the performance of a  
182 sterilization or abortion procedure on the ward.

183 Section 6. This act shall take effect July 1, 2017.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** February 9, 2017

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I respectfully request that **Senate Bill #172**, relating to Guardianship, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

---

Senator Kathleen Passidomo  
Florida Senate, District 28

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17  
Meeting Date

172  
Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Sarah Butters

Job Title attorney

Address 4049 Shady View Ln

Phone 224-7000

Street

Tallahassee, FL

32311

City State Zip

Email sarah.butters@hklaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Real Property Probate + Trust Law, FL Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

172  
Bill Number (if applicable)

Topic 172

Amendment Barcode (if applicable)

Name Bryan Cherry

Job Title Associate

Address 205 S. Adams St.

Phone (850) 544-5673

Tall. FL. 32301  
City State Zip

Email bryan@adamustadvocates

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL. Public Guardian Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/14/17

Meeting Date

172

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name Ivonne Fernandez

Job Title Associate State Director

Address 200 W College Avenue

Phone 954-850-7262

Street

Tallahassee

FL

32301

City

State

Zip

Email ifernandez@aarfp.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing AARFP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/5/17

Meeting Date

172

Bill Number (if applicable)

Topic Guardianship

Amendment Barcode (if applicable)

Name BRIAN JOGERS

Job Title \_\_\_\_\_

Address 307 W Park Avenue

Phone 850-222-0191

Street Tallahassee FL 32301

Email brian@bhandassociates.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Academy of Elder Law Attorneys

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 398

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

SUBJECT: Estoppel Certificates

DATE: March 15, 2017

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

|    | ANALYST         | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|-----------------|----------------|-----------|---------------|
| 1. | <u>Oxamendi</u> | <u>McSwain</u> | <u>RI</u> | <b>Fav/CS</b> |
| 2. | <u>Davis</u>    | <u>Cibula</u>  | <u>JU</u> | <b>Fav/CS</b> |
| 3. | _____           | _____          | <u>RC</u> | _____         |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 398 revises requirements for estoppel certificates for condominium, cooperative, and homeowners' associations. Under current law, when an ownership interest in a condominium unit, cooperative unit, or homeowners' parcel is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a condominium, cooperative, or homeowners' association. Unpaid assessments may also become a lien on the property. Purchasers may request that the seller provide an estoppel certificate from the condominium, cooperative, or homeowners' association to protect against undisclosed financial obligations and to transfer title to the property free of any lien or encumbrance in favor of the association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.

The bill:

- Revises the period in which an association must respond to a request for an estoppel certificate from 15 days to 10 business days.
- Provides that an estoppel certificate delivered by hand, mail, or e-mail has a 30-day effective period, and a certificate sent by regular mail has a 35-day effective period.
- Specifies the information that the association must provide in the estoppel certificate.
- Prohibits an association from charging a fee for an amended estoppel certificate, and provides a new effective period of 30 days or 35 days, depending on the method used to deliver the amended certificate.

- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and his or her successors and assigns, who in good faith relies upon the certificate.
- Prohibits an association from charging a fee for preparing and delivering an estoppel certificate that is requested, if it is not delivered within 10 business days.
- Authorizes the use of a summary proceeding pursuant to s. 51.011, F.S., to compel compliance with the estoppel certificate requirements for a cooperative association, as existing law provides for condominium and homeowners' associations.
- Permits an association to charge a maximum fee of \$200 for the preparation and delivery of an estoppel certificate, if there are no delinquent amounts owed to the association.
- Permits an association to charge an additional \$100 fee for an expedited estoppel certificate delivered within 3 business days after a request for an expedited certificate.
- Permits an association to charge an additional maximum fee of \$200, if there is a delinquent amount owed to the association.
- Specifies the maximum fee that an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person and there are no past due monetary obligations owed to the association.
- Provides that a lender or purchaser who pays for the preparation of an estoppel certificate may not waive the right to reimbursement if the closing does not occur and the prevailing party in a suit to enforce a right of reimbursement shall be awarded damages, attorney fees, and costs.
- Authorizes a cooperative to charge a fee for preparing and delivering an estoppel certificate but the authorization must be established by a written resolution adopted by either the board or a written management, booking, or maintenance contract.

The bill has no fiscal impact on state government.

The bill provides an effective date of July 1, 2017.

## **II. Present Situation:**

### **Condominiums**

A condominium is a form of ownership of real property comprised entirely of units that may be owned by one or more persons, which have an undivided share in common elements.<sup>1</sup> The common elements are the portions of the condominium property not included in the units.<sup>2</sup> A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.<sup>3</sup> A declaration governs the relationship between the condominium unit owners and the condominium association.<sup>4</sup> A condominium association is administered by an elected board of administration that can assess costs for common expenses.<sup>5</sup>

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<sup>1</sup> Section 718.103(11), F.S.

<sup>2</sup> Section 718.103(8), F.S.

<sup>3</sup> Section 718.104(2), F.S.

<sup>4</sup> *Woodside Vill. Condo. Ass'n v. McClernan*, 806 So. 2d 452, 456 (Fla. 2002).

<sup>5</sup> Section 718.103(1) and (4), F.S.

## **Cooperative Associations**

A cooperative is a form of ownership of real property in which legal title vests in a corporation or other entity.<sup>6</sup> A cooperative differs from a condominium because the cooperative holds the legal title to the unit and all common elements. The units are not individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The cooperative association may assess costs for the maintenance of common expenses.<sup>7</sup>

## **Homeowners' Associations**

A homeowners' association is a Florida corporation responsible for the operation of a community in which the voting membership is composed of parcel owners or their agents, or a combination thereof. Membership in the association is a mandatory condition of parcel ownership.<sup>8</sup> A homeowners' association is administered by an elected board of directors that is authorized to impose assessments.<sup>9</sup>

## **Assessments**

An assessment is a unit or parcel owner's share of the funds required for the payment of the association's common expenses.<sup>10</sup> A special assessment is any assessment levied against a unit or parcel owner other than the assessment adopted the annual budget.<sup>11</sup>

Assessments that are unpaid may become a lien on the unit or parcel.<sup>12</sup> An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.<sup>13</sup> This liability is without prejudice to an owner's right to recover from the previous owner the amounts paid that were assessed during the time that the previous owner owned the property.<sup>14</sup>

## **Estoppel Certificates**

### ***Delivery Requirements***

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers may request that the seller provide an estoppel certificate from the condominium, cooperative, or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.<sup>15</sup>

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<sup>6</sup> Section 719.103(12), F.S.

<sup>7</sup> See ss. 719.106(1)(g) and 719.107, F.S.

<sup>8</sup> Section 720.301(9), F.S.

<sup>9</sup> Section 720.303(2)(c)2., F.S.

<sup>10</sup> Sections 718.103(1), 719.103(1), and 720.301(1), F.S.

<sup>11</sup> Sections 718.103(24) and 719.103(23), F.S.

<sup>12</sup> Sections 718.116(5), 719.108(4), and 720.3085(1), F.S.

<sup>13</sup> Sections 718.116(1)(a), 719.108(1), and 720.3085(2)(b), F.S.

<sup>14</sup> *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (10th ed. 2014).

<sup>15</sup> Sections 718.116(8), 719.108(6), and 720.30851, F.S.

Within 15 days after receiving a written request for an estoppel certificate, the association must provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel.<sup>16</sup>

### ***Fees***

Condominium and homeowners' associations must establish the authority to charge a fee for an estoppel certificate by a written resolution adopted by the board or by a written management, bookkeeping, or maintenance contract.<sup>17</sup> The fee is payable upon the preparation of the certificate.<sup>18</sup> A cooperative association may charge a fee for the preparation of the certificate, but is not required to establish the fee amount in a written resolution or by a written management, bookkeeping, or maintenance contract.<sup>19</sup>

Condominium and cooperative associations may charge a "reasonable" fee for preparation of an estoppel certificate.<sup>20</sup> Neither the Legislature nor the courts have provided guidance on what constitutes a reasonable fee for an estoppel certificate. This has caused variations in the fee charged by associations for the preparation of an estoppel certificate.

### ***Payment and Refund of the Fee***

The fee for preparation of an estoppel certificate by a condominium or homeowners' association is payable upon the preparation of the certificate.<sup>21</sup> Chapter 719, F.S., does not have a comparable provision for cooperative associations.

For a condominium or homeowners' association, if the certificate is requested in conjunction with the sale or mortgage of a unit and the closing does not occur, the preparer of the certificate must refund the fee to a third party payor within 30 days after receipt of the request for refund. A written request for a refund must be made no later than 30 days after the closing date for which the certificate was sought and include reasonable documentation that the sale did not occur. Payment of the refund is a legal obligation of the owner, and the association may collect the refunded amount from that owner in the same manner as an assessment.<sup>22</sup> There is no corresponding requirement in chapter 719, F.S., for a refund of the fee for an estoppel certificate paid to a cooperative association.

### **Summary Proceedings**

A condominium association and a homeowners' association may be compelled to comply with the requirements of providing an estoppel certificate as required in ss. 718.116(8) and

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<sup>16</sup> *Id.*

<sup>17</sup> Sections 718.116(8)(d) and 720.30851(3), F.S.

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

<sup>19</sup> Section 719.108(6), F.S.

<sup>20</sup> Sections 718.116(8)(c) and 719.108(6), F.S. There is no corresponding requirement in chapter 720, F.S., that the fee charged by a homeowners' association be reasonable.

<sup>21</sup> Sections 718.116(8)(d) and 720.30851(3), F.S.

<sup>22</sup> Sections 718.116(8)(d) and 720.30851(3), F.S. There is no corresponding requirement in chapter 719, F.S., for a refund of the fee for an estoppel certificate paid to a cooperative association.

720.30851, F.S., respectively, by a summary proceeding pursuant to s. 51.011, F.S.<sup>23</sup> The prevailing party in the summary proceeding is entitled to recover reasonable attorney fees.<sup>24</sup> Current law does not provide a comparable provision to compel compliance with the estoppel certificate requirements for cooperative associations.

### ***Community Association Living Study Council***

After a series of public meetings in 2014, the Community Association Living Study Council,<sup>25</sup> by unanimous vote, made the following recommendations to the Legislature:

- That a reasonable cap be established for estoppel certificate fees and that such fees be tiered;
- The amount of the fee should depend on whether or not the owner is current in fees, delinquent in fees, or if the sale is a bulk purchase.<sup>26</sup>

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

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to revise the requirements for estoppel certificates issued by condominium, cooperative, and homeowners' associations, respectively.

#### **Delivery of Estoppel Certificates**

The bill revises the period in which an association must respond to a request for an estoppel certificate from 15 days to 10 *business* days. An association is required to designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate.

The bill requires that an association deliver an estoppel certificate by hand, mail, or e-mail to the requestor on the date of issuance. A certificate that is hand delivered or sent by electronic means has a 30-day effective period, and a certificate sent by regular mail has a 35-day effective period.

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<sup>23</sup> Section 51.011, F.S., specifies a summary procedure for actions that specifically authorize this procedure by statute or rule. Under the summary procedure, the defendant's answer must contain all defenses of law or fact and be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, be filed within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. No discovery postpones the time for trial except for good cause shown or by stipulation of the parties. Summary procedure provides for an immediate trial, if requested.

<sup>24</sup> See 718.116(8)(b) and 720.30851(2), F.S.

<sup>25</sup> The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of 7 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. The Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes appointed an ex officio nonvoting member. The Legislature abolished the Council in 2014. See ch. 2014-133, Laws of Fla.

<sup>26</sup> Final Report Community Association Living Study Council, *Final Report*, March 31, 2014, p. 6, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/2014CALSCReport.pdf> (last visited March 12, 2017).



### **Required Form**

The bill revises requirements for the issuance of an estoppel certificate to provide that an association must include all of the following information in substantially the following form in each certificate:<sup>27</sup>

- Date of issuance;
- Name of the unit or parcel owner(s) reflected in the books and records of the association;
- Unit designation and address;
- Parking or garage space number, if any;
- Storage locker number, if any;
- Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection but no fee may be charged for this information;
- Fee for the preparation and delivery of the estoppel certificate;
- Name of the requestor; and
- Assessment information and other information.

The bill requires that the "Assessment Information" provided by an association contains the following information in substantially the form provided in the bill:

- The amount of regular periodic assessment levied against the unit or parcel;
- The amount of regular periodic assessment paid to date;
- The date the next installment of the regular periodic assessment is due;
- An itemized list of all assessments, special assessments, and other moneys owed on the date the certificate is issued to the association by the unit or parcel owner; and
- An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due during the effective period of the estoppel certificate.

The bill provides that the association, at its option, may include additional information in the estoppel certificate. The bill also provides the form for the following "Other Information," which requires that the association answer specific questions. In the "Other Information" section, the association must:

- Provide the amount, if any, of a capital contribution fee, resale fee, transfer fee, or other fee due;
- Provide the amount, if any, of an association application fee;
- Provide the amount, if any, of a credit balance on the current account, and state whether the amount will be transferred to the new owner account or to the association;
- State whether the association's records include any notice to the unit or parcel owner of violation of rule or regulation;
- Indicate whether the rules or regulations of the association require the approval of the board of directors of the association required for the transfer of the unit or parcel, and if applicable, whether the board approved the transfer;
- Indicate whether the rules or regulations of the association provide a right of first refusal in favor of the members or association, and if applicable, include the applicable rules or regulations;

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<sup>27</sup> See ss. 718.116(8), 719.108(6), and 720.30851, F.S.

- Provide a list of utilities provided to the unit which are included in the assessments paid to the association;
- Provide a list of all recreational or land leases to the association affecting the unit;
- Provide a list of, and contact information for, all other associations of which the unit is a member;
- Provide a description of any litigation or administrative proceedings in which the association is a party;
- Provide contact information for all insurance maintained by the association; and
- Provide the signature of an officer or authorized agent of the association.

### **Amending Estoppel Certificates**

The bill permits the association to amend an estoppel certificate within the applicable effective period if additional information or a mistake becomes known. An association may not charge a fee for an amended estoppel certificate. An amended estoppel certificate:

- Becomes effective on the date it is issued and delivered if a sale or refinancing of the unit or parcel has not been completed during the effective period;
- Must be delivered on the date of issuance; and
- Has a new applicable effective period of 30 or 35 days, depending on the method used to deliver the amended certificate, beginning on the date the amended estoppel certificate is issued.

### **Effect of Estoppel Certificates**

The bill provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and his or her successors and assigns, who in good faith relies upon the certificate.

### **Requests from Designees or Mortgagees**

If an association receives a request for an estoppel certificate from a unit owner or the unit or parcel owner's designee, or a unit or parcel mortgagee or the unit or parcel mortgagee's designee and fails to deliver the estoppel certificate within 10 business days, it may not charge a fee for preparation and delivery of what estoppel certificate.

### **Summary Proceedings**

The bill provides for the use of a summary proceeding pursuant to s. 51.011, F.S., to compel compliance with the estoppel certificate requirements for a cooperative association. This provision is identical to the existing provisions in ss. 718.116(8)(b) and 720.30851(2), F.S., for condominium and homeowners' associations, respectively.

### **Fees – Single Units or Parcels**

The bill provides that an association may charge a reasonable fee for preparation and delivery of an estoppel certificate for a single unit or parcel. Current law does not authorize a delivery fee. The bill establishes a maximum fee of \$200 for the preparation and delivery of an estoppel

certificate, if there are no delinquent amounts owed to the association on the date the certificate is issued. The association may charge an additional \$100 fee for an expedited estoppel certificate delivered within 3 business days after the request for issuance of an expedited estoppel certificate. The association may charge an additional maximum fee of \$200, if there is a delinquent amount owed to the association.

### **Fees – Multiple Units or Parcels**

The bill provides the maximum fees that an association may charge when it receives simultaneous requests for estoppel certificates for multiple units or parcels owned by the same person and there are no past due monetary obligations owed to the association. The association may deliver the statement of moneys due in one or more estoppel certificates. However, the association may not charge a total fee that exceeds:

- \$750 for 25 or fewer units or parcels;
- \$1,000 for 26 to 50 units or parcels;
- \$1,500 for 51 to 100 units or parcels; or
- \$2,500 for more than 100 units or parcels.

### **Right to Reimbursement**

The bill provides that, a lender or purchaser who pays for the preparation of an estoppel certificate may not waive, by contract or agreement, the right to be reimbursed for the cost of the certificate if the closing on the property does not occur. The party that prevails in an action to enforce a right of reimbursement shall be awarded damages, applicable attorney fees, and costs.

### **Effective Date**

The bill provides an effective date of July 1, 2017.

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

### **D. Other Constitutional Issues:**

The bill establishes maximum fees for estoppel certificates, specifies timeframes for providing the certificate, and provides the form of the certificate. These provisions may affect existing management, bookkeeping, or maintenance contracts that provide for the

issuance of estoppel certificates and the fees for that service. Therefore, these provisions may implicate constitutional impairment of contract concerns.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

CS/CS/SB 398 may cause condominium, cooperative, and homeowners' associations to incur costs to prepare and deliver an estoppel certificate. The bill will also make the costs that purchasers pay for estoppel certificates more predictable.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

CS/CS/SB 398 (lines 46-49) requires that an association designate on its website a person or entity with a street or e-mail address for receipt of requests for estoppel certificates. No alternative method is provided if an association does not maintain a website, and the term "website" is not used in connection with the duties of associations in chapter 718 (Condominiums), chapter 719 (Cooperatives), or chapter 720 (Homeowners' Associations), F.S.<sup>28</sup>

**VII. Related Issues:**

The bill requires that an estoppel certificate include information on the form provided by the bill. Some of the information, if provided by a person who is not a lawyer, may constitute the unlicensed practice of law.

The Florida Bar has a standing committee that focuses on the unlicensed practice of law.<sup>29</sup> The committee issues advisory opinions to individuals or organizations seeking guidance as to whether certain activities constitute the unlicensed practice of law. In 1995, a community association manager (CAM) requested an advisory opinion to determine if certain practices constituted the unlicensed practice of law. The committee held hearings and issued a proposed advisory opinion that was reviewed by the Florida Supreme Court in 1996 when it determined that certain activities by a CAM were ministerial in nature and did not constitute the unlicensed practice of law because the activities that did not require significant legal expertise and interpretation to complete. Those activities include drafting certificates of assessments and

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<sup>28</sup> The term "website" is used in another context in s. 720.303(13)(d), F.S., a provision that expired July 1, 2016 and has not been re-enacted.

<sup>29</sup> See Florida Supreme Court, Standing Committees, Unlicensed Practice of Law, at: <https://www.floridabar.org/DIVEXE/BD/CMStanding.nsf/2021e58ed0c7505585256e45004b060d/494974ec1e28b2a785256c5b0055481e?OpenDocument> (Last visited February 14, 2017).

written notices of annual meetings.<sup>30</sup> The court found that other activities performed by a nonlawyer do constitute the unlicensed practice of law. Those activities include completing certain forms, determining the ownership of property in preparation of a statutory pre-lien letter, and determining facts and interpreting statutes for giving notices of meetings.

In 2015, the Florida Supreme Court determined that its previous advisory opinion should not be disturbed.<sup>31</sup> The Court concluded that certain activities were ministerial and do not constitute the unlicensed practice of law when performed by a CAM, including preparing a certificate of assessments due once the delinquent account is turned over to the association's lawyer, a foreclosure against the unit has commenced, or a member disputes in writing the amount due to the association.<sup>32</sup> The court found that a CAM engages in the unlicensed practice of law if he or she reviews title instruments to determine ownership of property for preparation of a pre-lien letter.<sup>33</sup> The court relied on a prior decision to determine if an activity constitutes the practice of law:

[I]n determining whether the giving of advice and counsel and the performance of services in legal matters for compensation constitute the practice of law it is safe to follow the rule that if the giving of [the] advice and performance of [the] services affect important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen, then the giving of such advice and the performance of such services by one for another as a course of conduct constitute the practice of law.<sup>34</sup>

The following information or questions that must be provided or answered in the form of the estoppel certificate provided in the bill may require the retention of legal counsel for preparation of a suitable response:

- Whether the rules or regulations of the association provide a right of first refusal in favor of the members or association, and if applicable, providing copies of the applicable rules or regulations; and
- Providing a list of utilities that are provided to the unit or parcel which are included in the assessments paid to the association.

## **VIII. Statutes Affected:**

This bill substantially amends sections 718.116, 719.108, and 720.30851 of the Florida Statutes.

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<sup>30</sup> *The Florida Bar re Advisory Opinion – Activities of Community Association Managers*, 681 So. 2d 1119, 1123 (Fla. 1996).

<sup>31</sup> *The Florida Bar re Advisory Opinion – Activities of Community Association Managers*, 164 So. 3d 650 (Fla. 2015).

<sup>32</sup> *Id.* at 657.

<sup>33</sup> *Id.* at 661, 662.

<sup>34</sup> *The Florida Bar re Advisory Opinion* 164 So. 3d at 655, quoting *State ex rel. Florida Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962), vacated on other grounds, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963).

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

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

**CS by Judiciary on March 14, 2017:**

The committee substitute removes virtually identical provisions from the underlying bill that pertained to condominiums, cooperatives, and homeowner associations. These provisions would have provided that:

- When the association fails to deliver a certificate within 15 business days, it waives any claim against a purchaser, mortgagee, and successors who would have relied on the certificate for an amount owed to the association through the date of closing that should have been reflected on the certificate; and
- The fee for preparing and delivering an estoppel certificate in conjunction with a sale or refinancing will be paid from the closing or settlement proceeds; but if the closing does not occur, the fee remains the obligation of the unit owner which may be collected as other assessments.

The committee substitute adds provisions pertaining to condominiums, cooperatives and homeowner associations which prohibit a lender or purchaser from waiving the right to reimbursement of the cost of an estoppel certificate and requiring a court to award the prevailing party in an action to enforce a right of reimbursement damages and applicable attorney fees and costs.

**CS by Regulated Industries on February 22, 2017:**

The committee substitute revises the form for the estoppel certificate in ss. 718.116(8)(a), 719.108(6)(a), and 720.30851(1), F.S., to:

- Require that it include the name of the unit or parcel owner(s) “reflected in the books and records of the association;”
- Delete the provision that requires the association to state whether the amount of any credit balance will be transferred to the new owner’s account or to the association;
- Require that it indicate whether the rules or regulations of the association require the approval of the board for the transfer of the unit or parcel, and if applicable, whether the board has approved the transfer; and
- Revise the requirement related to a description of litigation to require that the certificate provide a description of litigation or administrative proceedings in which the association is a party.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RS   | . |       |
| 03/15/2017 | . |       |
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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 149 - 552

and insert:

estoppel certificate.

(e)~~(b)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney ~~attorney's~~ fees.

(f)~~(e)~~ Notwithstanding any limitation on transfer fees



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11 contained in s. 718.112(2)(i), an the association or its  
12 authorized agent may charge a reasonable fee for the preparation  
13 and delivery of an estoppel certificate, which may not exceed  
14 \$200, if, on the date the certificate is issued, no delinquent  
15 amounts are owed to the association for the applicable unit. If  
16 an estoppel certificate is requested on an expedited basis and  
17 delivered within 3 business days after the request, the  
18 association may charge an additional fee of \$100. If a  
19 delinquent amount is owed to the association for the applicable  
20 unit, an additional fee for the estoppel certificate may not  
21 exceed \$200 for the preparation of the certificate. The amount  
22 of the fee must be included on the certificate.

23 (g) If estoppel certificates for multiple units owned by  
24 the same owner are simultaneously requested from the same  
25 association and there are no past due monetary obligations owed  
26 to the association, the statement of moneys due for those units  
27 may be delivered in one or more estoppel certificates, and, even  
28 though the fee for each unit shall be computed as set forth in  
29 paragraph (f), the total fee that the association may charge for  
30 the preparation and delivery of the estoppel certificates may  
31 not exceed, in the aggregate:

- 32 1. For 25 or fewer units, \$750.
- 33 2. For 26 to 50 units, \$1,000.
- 34 3. For 51 to 100 units, \$1,500.
- 35 4. For more than 100 units, \$2,500.

36 (h) ~~(d)~~ The authority to charge a fee for the preparation  
37 and delivery of the estoppel certificate must ~~shall~~ be  
38 established by a written resolution adopted by the board or  
39 provided by a written management, bookkeeping, or maintenance





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contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

Section 2. Subsection (6) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(6) Within 10 business ~~15~~ days after receiving a written or electronic request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.



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(a) The estoppel certificate must contain all of the following information and must be substantially in the following form:

1. Date of issuance:....
2. Name(s) of the unit owner(s) reflected in the books and records of the association:....
3. Unit designation and address:....
4. Parking or garage space number, if any:....
5. Storage locker number, if any:....
6. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.
7. Fee for the preparation and delivery of the estoppel certificate:....
8. Name of the requestor:....
9. Assessment information and other information:

ASSESSMENT INFORMATION:

- a. The regular periodic assessment levied against the unit is \$.... per ...(insert frequency of payment)....
- b. The regular periodic assessment is paid through ...(insert date paid through)....
- c. The next installment of the regular periodic assessment is due ...(insert due date)... in the amount of \$.....
- d. An itemized list of all assessments, special assessments, and other moneys owed by the unit owner on the date of issuance to the association for a specific unit is provided.
- e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due



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for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ...(Yes)... ...(No).... If yes, specify the type and amount of the fee.

g. What is the amount, if any, of an association application fee?

h. Is there a credit balance on the current account? ...(Yes)... ...(No)....

i. Is there any violation of rule or regulation noticed to the unit owner in the association official records? ...(Yes)... ...(No)....

j. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit? ...Yes... ...(No).... If yes, has the board approved the transfer of the unit? ...(Yes)... ..(No)....

k. Do rules or regulations applicable to the unit provide for a right of first refusal in favor of the members or association? ...(Yes)... ...(No).... If yes, include applicable rules or regulations.

l. Provide a list of utilities provided to the unit which are included in the assessments paid to the association.

m. Provide a list of all recreational or land leases to the



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association affecting the unit.

n. Provide a list of, and contact information for, all other associations of which the unit is a member.

o. Provide a description of any litigation or administrative proceedings in which the association is a party.

p. Provide contact information for all insurance maintained by the association.

q. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel certificate.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An 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.



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156       (d) If an association receives a request for an estoppel  
157 certificate from a unit owner or the unit owner's designee, or a  
158 unit mortgagee or the unit mortgagee's designee, and fails to  
159 deliver the estoppel certificate within 10 business days, a fee  
160 may not be charged for the preparation and delivery of that  
161 estoppel certificate.

162       (e) A summary proceeding pursuant to s. 51.011 may be  
163 brought to compel compliance with this subsection, and in any  
164 such action the prevailing party is entitled to recover  
165 reasonable attorney fees.

166       (f) Notwithstanding any limitation on transfer fees  
167 contained in s. 719.106(1)(i), an association or its authorized  
168 agent may charge a reasonable fee for the preparation and  
169 delivery of an estoppel certificate, which may not exceed \$200  
170 if, on the date the certificate is issued, no delinquent amounts  
171 are owed to the association for the applicable unit. If an  
172 estoppel certificate is requested on an expedited basis and  
173 delivered within 3 business days after the request, the  
174 association may charge an additional fee of \$100. If a  
175 delinquent amount is owed to the association for the applicable  
176 unit, an additional fee for the estoppel certificate may not  
177 exceed \$200.

178       (g) If estoppel certificates for multiple units owned by  
179 the same owner are simultaneously requested from the same  
180 association and there are no past due monetary obligations owed  
181 to the association, the statement of moneys due for those units  
182 may be delivered in one or more estoppel certificates, and, even  
183 though the fee for each unit shall be computed as set forth in  
184 paragraph (f), the total fee that the association may charge for



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the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, \$750.
2. For 26 to 50 units, \$1,000.
3. For 51 to 100 units, \$1,500.
4. For more than 100 units, \$2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section ~~by a unit owner or mortgagee, the association shall provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. Any person other than the unit owner who relies upon such certificate shall be protected thereby. Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), the association or its authorized agent may charge a reasonable fee for the preparation of the certificate.~~



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Section 3. Section 720.30851, Florida Statutes, is amended to read:

720.30851 Estoppel certificates.—Within 10 business ~~15~~ days after receiving a written or electronic ~~the date on which a~~ request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(1) The estoppel certificate must contain all of the following information and must be substantially in the following form:

(a) Date of issuance:....

(b) Name(s) of the parcel owner(s) reflected in the books and records of the association:....

(c) Parcel designation and address:....

(d) Parking or garage space number, if any:....

(e) Storage locker number, if any:....

(f) Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.

(g) Fee for the preparation and delivery of the estoppel certificate:....

(h) Name of the requestor:....

(i) Assessment information and other information:



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ASSESSMENT INFORMATION:

1. The regular periodic assessment levied against the parcel is \$.... per ...(insert frequency of payment)....

2. The regular periodic assessment is paid through ...(insert date paid through)....

3. The next installment of the regular periodic assessment is due ...(insert due date)... in the amount of \$.....

4. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the parcel owner for a specific parcel is provided.

5. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

6. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ...(Yes)... ...(No).... If yes, specify the type and amount of the fee.

7. What is the amount, if any, of an association application fee?

8. Is there a credit balance on the current account? ...(Yes)... ...(No)....

9. Is there any violation of rule or regulation noticed to





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the parcel owner in the association official records?

...(Yes)... ...(No)....

10. Do the rules and regulations of the association  
applicable to the parcel require approval by the board of  
directors of the association for the transfer of the parcel?

...(Yes)... ...(No).... If yes, has the board approved the  
transfer of the parcel? ...(Yes)... ...(No)....

11. Do rules or regulations applicable to the parcel  
provide for a right of first refusal in favor of the members or  
association? ...(Yes)... ...(No).... If yes, include applicable  
rules or regulations.

12. Provide a list of utilities provided to the parcel  
which are included in the assessments paid to the association.

13. Provide a list of all recreational or land leases to  
the association affecting the parcel.

14. Provide a list of, and contact information for, all  
other associations of which the parcel is a member.

15. Provide a description of any litigation or  
administrative proceedings in which the association is a party.

16. Provide contact information for all insurance  
maintained by the association.

17. Provide the signature of an officer or authorized agent  
of the association.

The association, at its option, may include additional  
information in the estoppel certificate.

(2) An estoppel certificate that is hand delivered or sent  
by electronic means has a 30-day effective period. An estoppel  
certificate that is sent by regular mail has a 35-day effective



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period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the parcel has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(3) An 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.

(4) If an association receives a request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate ~~for an estoppel certificate is received from a parcel owner or mortgagee, or his or her designee, the association shall provide a certificate signed by an officer or authorized agent of the association stating all assessments and other moneys owed to the association by the parcel owner or mortgagee with respect to the parcel. An association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate.~~

~~(1) Any person other than a parcel owner who relies upon a~~



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~~certificate receives the benefits and protection thereof.~~

~~(5)(2)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this section, and the prevailing party is entitled to recover reasonable attorney ~~attorney's~~ fees.

(6) An association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$200 if on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable parcel. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable parcel, an additional fee for the estoppel certificate may not exceed \$200.

(7) If estoppel certificates for multiple parcels owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those parcels may be delivered in one or more estoppel certificates, and, even though the fee for each parcel shall be computed as set forth in subsection (6), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

(a) For 25 or fewer parcels, \$750.

(b) For 26 to 50 parcels, \$1,000.

(c) For 51 to 100 parcels, \$1,500.

(d) For more than 100 parcels, \$2,500.

~~(8)(3)~~ The authority to charge a fee for the preparation



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and delivery of the estoppel certificate must ~~shall~~ be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

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

And the title is amended as follows:

Delete lines 13 - 32

and insert:

and form of delivery; prohibiting an association from charging a preparation and delivery fee or making certain claims if it fails to deliver an estoppel certificate within certain timeframes; revising fee requirements for preparing and delivering an estoppel certificate under various circumstances; authorizing



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the statement of moneys due to be delivered in one or  
more estoppel certificates under certain  
circumstances; providing limits on a total fee charged  
for the preparation and delivery of estoppel  
certificates; certificates; requiring that the  
authority to charge a fee for the preparation and  
delivery of estoppel certificates be established by a  
specified written resolution or provided by a certain  
type of contract; providing that the right to  
reimbursement may not be waived or modified by a  
contract or agreement; requiring that the prevailing  
party in an action to enforce a right to reimbursement  
be awarded certain damages, fees, and costs;



147378

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/15/2017 | . |       |
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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment to Amendment (164802)**

Delete line 205  
and insert:  
provided in this section. The right to reimbursement may not be  
waived or modified by any contract or agreement. The prevailing  
party in any action brought to enforce a right of reimbursement  
shall be awarded damages and all applicable attorney fees and  
costs ~~by a unit owner or mortgagee, the~~

By the Committee on Regulated Industries; and Senator Passidomo

580-01968-17

2017398c1

1 A bill to be entitled  
 2 An act relating to estoppel certificates; amending ss.  
 3 718.116, 719.108, and 720.30851, F.S.; revising  
 4 requirements relating to the issuance of an estoppel  
 5 certificate to specified persons; requiring a  
 6 condominium, cooperative, or homeowners' association  
 7 to designate a street or e-mail address on its website  
 8 for estoppel certificate requests; specifying delivery  
 9 requirements for an estoppel certificate; requiring  
 10 that an estoppel certificate contain certain  
 11 information; providing an effective period for an  
 12 estoppel certificate based upon the date of issuance  
 13 and form of delivery; providing that an association  
 14 waives a specified claim against a person or such  
 15 person's successors or assigns who in good faith rely  
 16 on the estoppel certificate; prohibiting an  
 17 association from charging a preparation and delivery  
 18 fee or making certain claims if it fails to deliver an  
 19 estoppel certificate within certain timeframes;  
 20 revising fee requirements for preparing and delivering  
 21 an estoppel certificate under various circumstances;  
 22 authorizing the statement of moneys due to be  
 23 delivered in one or more estoppel certificates under  
 24 certain circumstances; providing limits on a total fee  
 25 charged for the preparation and delivery of estoppel  
 26 certificates; requiring the fee for an estoppel  
 27 certificate to be paid from specified proceeds under  
 28 certain circumstances; requiring that the authority to  
 29 charge a fee for the estoppel certificate be

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

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30 established by a specified written resolution or  
 31 provided by a written management, bookkeeping, or  
 32 maintenance contract; deleting obsolete provisions;  
 33 conforming provisions to changes made by the act;  
 34 providing an effective date.  
 35

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

37  
 38 Section 1. Subsection (8) of section 718.116, Florida  
 39 Statutes, is amended to read:

40 718.116 Assessments; liability; lien and priority;  
 41 interest; collection.—

42 (8) Within 10 business ~~15~~ days after receiving a written or  
 43 electronic request therefor from a unit owner or the unit  
 44 owner's ~~his or her~~ designee, or a unit mortgagee or the unit  
 45 mortgagee's ~~his or her~~ designee, the association shall issue the  
 46 estoppel ~~provide a~~ certificate. Each association shall designate  
 47 on its website a person or entity with a street or e-mail  
 48 address for receipt of a request for an estoppel certificate  
 49 issued pursuant to this section. The estoppel certificate must  
 50 be provided by hand delivery, regular mail, or e-mail to the  
 51 requestor on the date of issuance of the estoppel certificate  
 52 signed by an officer or agent of the association stating all  
 53 assessments and other moneys owed to the association by the unit  
 54 owner with respect to the condominium parcel.

55 (a) The estoppel certificate must contain all of the  
 56 following information and must be substantially in the following  
 57 form:

58 1. Date of issuance:....

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

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2. Name(s) of the unit owner(s) reflected in the books and records of the association:....

3. Unit designation and address:....

4. Parking or garage space number, if any:....

5. Storage locker number, if any:....

6. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.

7. Fee for the preparation and delivery of the estoppel certificate:....

8. Name of the requestor:....

9. Assessment information and other information:

ASSESSMENT INFORMATION:

a. The regular periodic assessment levied against the unit is \$.... per ...(insert frequency of payment)....

b. The regular periodic assessment is paid through ...(insert date paid through)....

c. The next installment of the regular periodic assessment is due ...(insert due date)... in the amount of \$....

d. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the unit owner for a specific unit is provided.

e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may

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assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ...(Yes)... ...(No).... If yes, specify the type and the amount of the fee.

g. What is the amount, if any, of an association application fee?

h. Is there a credit balance on the current account? ...(Yes)... ...(No)....

i. Is there any violation of rule or regulation noticed to the unit owner in the association official records? ...(Yes)... ...(No)....

j. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit? ...(Yes)... ...(No).... If yes, has the board approved the transfer of the unit? ...(Yes)... ...(No)....

k. Do rules or regulations applicable to the unit provide for a right of first refusal in favor of the members or association? ...(Yes)... ...(No).... If yes, include applicable rules or regulations.

l. Provide a list of utilities provided to the unit which are included in the assessments paid to the association.

m. Provide a list of all recreational or land leases to the association affecting the unit.

n. Provide a list of, and contact information for, all other associations of which the unit is a member.



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o. Provide a description of any litigation or administrative proceedings in which the association is a party.

p. Provide contact information for all insurance maintained by the association.

q. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel. Any person other than the owner who relies upon such certificate shall be protected thereby.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An 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.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a

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unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate. If the association fails to deliver the estoppel certificate within 15 business days, the association waives any claim, including a claim for a lien against the unit, against a purchaser and mortgagee of the unit who would have relied on the estoppel certificate, and the purchaser's and mortgagee's successors and assigns, for any amount that is owed to the association through the date of closing and that should have been shown on the estoppel certificate.

(e) ~~(b)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney ~~attorney's~~ fees.

(f) ~~(e)~~ Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an ~~the~~ association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$200 if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed \$200 for the preparation of the certificate. The amount of the fee must be included on the certificate.

(g)1. If estoppel certificates for multiple units owned by

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the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

a. For 25 or fewer units, \$750.

b. For 26 to 50 units, \$1,000.

c. For 51 to 100 units, \$1,500.

d. For more than 100 units, \$2,500.

2. If an estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the fee for the preparation and delivery of the estoppel certificate shall be paid to the association from the closing or settlement proceeds. If the closing does not occur, the fee for the preparation and delivery of the estoppel certificate remains the obligation of the unit owner, and the association may collect the fee in the same manner as an assessment against the unit. An association may not require the payment of any other fee as a condition for the preparation or delivery of an estoppel certificate.

~~(h)(d)~~ The authority to charge a fee for the preparation and delivery of the estoppel certificate ~~must shall~~ be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~and is payable upon the preparation of the certificate.~~ If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later

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~~than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.~~

Section 2. Subsection (6) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.-

(6) Within 10 business ~~15~~ days after receiving a written or electronic request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(a) The estoppel certificate must contain all of the following information and must be substantially in the following form:

1. Date of issuance:....

2. Name(s) of the unit owner(s) reflected in the books and records of the association:....

3. Unit designation and address:....

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233 4. Parking or garage space number, if any:....  
 234 5. Storage locker number, if any:....  
 235 6. Attorney's name and contact information if the account  
 236 is delinquent and has been turned over to an attorney for  
 237 collection. No fee may be charged for this information.  
 238 7. Fee for the preparation and delivery of the estoppel  
 239 certificate:....  
 240 8. Name of the requestor:....  
 241 9. Assessment information and other information:  
 242  
 243 ASSESSMENT INFORMATION:  
 244 a. The regular periodic assessment levied against the unit  
 245 is \$.... per ...(insert frequency of payment)....  
 246 b. The regular periodic assessment is paid through  
 247 ...(insert date paid through)....  
 248 c. The next installment of the regular periodic assessment  
 249 is due ...(insert due date)... in the amount of \$.....  
 250 d. An itemized list of all assessments, special  
 251 assessments, and other moneys owed by the unit owner on the date  
 252 of issuance to the association for a specific unit is provided.  
 253 e. An itemized list of any additional assessments, special  
 254 assessments, and other moneys that are scheduled to become due  
 255 for each day after the date of issuance for the effective period  
 256 of the estoppel certificate is provided. In calculating the  
 257 amounts that are scheduled to become due, the association may  
 258 assume that any delinquent amounts will remain delinquent during  
 259 the effective period of the estoppel certificate.

OTHER INFORMATION:

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262 f. Is there a capital contribution fee, resale fee,  
 263 transfer fee, or other fee due? ...(Yes)... ...(No).... If yes,  
 264 specify the type and amount of the fee.  
 265 g. What is the amount, if any, of an association  
 266 application fee?  
 267 h. Is there a credit balance on the current account?  
 268 ...(Yes)... ...(No)....  
 269 i. Is there any violation of rule or regulation noticed to  
 270 the unit owner in the association official records? ...(Yes)...  
 271 ...(No)....  
 272 j. Do the rules and regulations of the association  
 273 applicable to the unit require approval by the board of  
 274 directors of the association for the transfer of the unit?  
 275 ...Yes... ...(No).... If yes, has the board approved the  
 276 transfer of the unit? ...(Yes)... ..(No)....  
 277 k. Do rules or regulations applicable to the unit provide  
 278 for a right of first refusal in favor of the members or  
 279 association? ...(Yes)... ...(No).... If yes, include applicable  
 280 rules or regulations.  
 281 l. Provide a list of utilities provided to the unit which  
 282 are included in the assessments paid to the association.  
 283 m. Provide a list of all recreational or land leases to the  
 284 association affecting the unit.  
 285 n. Provide a list of, and contact information for, all  
 286 other associations of which the unit is a member.  
 287 o. Provide a description of any litigation or  
 288 administrative proceedings in which the association is a party.  
 289 p. Provide contact information for all insurance maintained  
 290 by the association.

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291 g. Provide the signature of an officer or authorized agent  
 292 of the association.

293  
 294 The association, at its option, may include additional  
 295 information in the estoppel certificate.

296 (b) An estoppel certificate that is hand delivered or sent  
 297 by electronic means has a 30-day effective period. An estoppel  
 298 certificate that is sent by regular mail has a 35-day effective  
 299 period. If additional information or a mistake related to the  
 300 estoppel certificate becomes known to the association within the  
 301 effective period, an amended estoppel certificate may be  
 302 delivered and becomes effective if a sale or refinancing of the  
 303 unit has not been completed during the effective period. A fee  
 304 may not be charged for an amended estoppel certificate. An  
 305 amended estoppel certificate must be delivered on the date of  
 306 issuance, and a new 30-day or 35-day effective period begins on  
 307 such date.

308 (c) An association waives the right to collect any moneys  
 309 owed in excess of the amounts specified in the estoppel  
 310 certificate from any person who in good faith relies upon the  
 311 estoppel certificate and from the person's successors and  
 312 assigns.

313 (d) If an association receives a request for an estoppel  
 314 certificate from a unit owner or the unit owner's designee, or a  
 315 unit mortgagee or the unit mortgagee's designee, and fails to  
 316 deliver the estoppel certificate within 10 business days, a fee  
 317 may not be charged for the preparation and delivery of that  
 318 estoppel certificate. If the association fails to deliver the  
 319 estoppel certificate within 15 business days, the association

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320 waives any claim, including a claim for a lien against the unit,  
 321 against a purchaser and mortgagee of the unit who would have  
 322 relied on the estoppel certificate, and the purchaser's and  
 323 mortgagee's successors and assigns, for any amount that is owed  
 324 to the association through the date of closing and that should  
 325 have been shown on the estoppel certificate.

326 (e) A summary proceeding pursuant to s. 51.011 may be  
 327 brought to compel compliance with this subsection, and in any  
 328 such action the prevailing party is entitled to recover  
 329 reasonable attorney fees.

330 (f) Notwithstanding any limitation on transfer fees  
 331 contained in s. 719.106(1)(i), an association or its authorized  
 332 agent may charge a reasonable fee for the preparation and  
 333 delivery of an estoppel certificate, which may not exceed \$200  
 334 if, on the date the certificate is issued, no delinquent amounts  
 335 are owed to the association for the applicable unit. If an  
 336 estoppel certificate is requested on an expedited basis and  
 337 delivered within 3 business days after the request, the  
 338 association may charge an additional fee of \$100. If a  
 339 delinquent amount is owed to the association for the applicable  
 340 unit, an additional fee for the estoppel certificate may not  
 341 exceed \$200.

342 (g)1. If estoppel certificates for multiple units owned by  
 343 the same owner are simultaneously requested from the same  
 344 association and there are no past due monetary obligations owed  
 345 to the association, the statement of moneys due for those units  
 346 may be delivered in one or more estoppel certificates, and, even  
 347 though the fee for each unit shall be computed as set forth in  
 348 paragraph (f), the total fee that the association may charge for

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the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

- a. For 25 or fewer units, \$750.
- b. For 26 to 50 units, \$1,000.
- c. For 51 to 100 units, \$1,500.
- d. For more than 100 units, \$2,500.

2. If an estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the fee for the preparation and delivery of the estoppel certificate shall be paid to the association from the closing or settlement proceeds. If the closing does not occur, the fee for the preparation and delivery of the estoppel certificate remains the obligation of the unit owner, and the association may collect the fee in the same manner as an assessment against the unit. An association may not require the payment of any other fee as a condition for the preparation or delivery of an estoppel certificate.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~by a unit owner or mortgagee, the association shall provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. Any person other than the unit owner who relies upon such certificate shall be protected thereby. Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), the association or its authorized agent may charge a reasonable fee for the preparation of the certificate.~~

Section 3. Section 720.30851, Florida Statutes, is amended

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to read:

720.30851 Estoppel certificates.—Within 10 business ~~15~~ days after receiving a written or electronic ~~the date on which a~~ request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(1) The estoppel certificate must contain all of the following information and must be substantially in the following form:

- (a) Date of issuance:....
- (b) Name(s) of the parcel owner(s) reflected in the books and records of the association:....
- (c) Parcel designation and address:....
- (d) Parking or garage space number, if any:....
- (e) Storage locker number, if any:....
- (f) Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.
- (g) Fee for the preparation and delivery of the estoppel certificate:....
- (h) Name of the requestor:....
- (i) Assessment information and other information:

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ASSESSMENT INFORMATION:

1. The regular periodic assessment levied against the parcel is \$.... per ...(insert frequency of payment)....
2. The regular periodic assessment is paid through ...(insert date paid through)....
3. The next installment of the regular periodic assessment is due ...(insert due date)... in the amount of \$....
4. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the parcel owner for a specific parcel is provided.
5. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

6. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? ...(Yes)... ...(No).... If yes, specify the type and amount of the fee.
7. What is the amount, if any, of an association application fee?
8. Is there a credit balance on the current account? ...(Yes)... ...(No)....
9. Is there any violation of rule or regulation noticed to the parcel owner in the association official records?

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... (Yes)... ...(No)....

10. Do the rules and regulations of the association applicable to the parcel require approval by the board of directors of the association for the transfer of the parcel? ...(Yes)... ...(No).... If yes, has the board approved the transfer of the parcel? ...(Yes)... ...(No)....
11. Do rules or regulations applicable to the parcel provide for a right of first refusal in favor of the members or association? ...(Yes)... ...(No).... If yes, include applicable rules or regulations.
12. Provide a list of utilities provided to the parcel which are included in the assessments paid to the association.
13. Provide a list of all recreational or land leases to the association affecting the parcel.
14. Provide a list of, and contact information for, all other associations of which the parcel is a member.
15. Provide a description of any litigation or administrative proceedings in which the association is a party.
16. Provide contact information for all insurance maintained by the association.
17. Provide the signature of an officer or authorized agent of the association.
- The association, at its option, may include additional information in the estoppel certificate.
- (2) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a mistake related to the

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estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the parcel has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(3) An 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.

(4) If an association receives a request for an estoppel certificate from a parcel owner or the parcel owner's designee, or a parcel mortgagee or the parcel mortgagee's designee, and fails to deliver an estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate. If the association fails to deliver the estoppel certificate within 15 business days, the association waives any claim, including a claim for a lien against the parcel, against a purchaser and mortgagee of the parcel who would have relied on the estoppel certificate, and the purchaser's and mortgagee's successors and assigns, for any amount that is owed to the association through the date of closing and that should have been shown on the ~~for an~~ estoppel certificate ~~is received from a parcel owner or mortgagee, or his or her designee, the association shall provide a certificate signed by an officer or authorized agent of the association~~

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~~stating all assessments and other moneys owed to the association by the parcel owner or mortgagee with respect to the parcel. An association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate.~~

~~(1) Any person other than a parcel owner who relies upon a certificate receives the benefits and protection thereof.~~

~~(5)(2)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this section, and the prevailing party is entitled to recover reasonable attorney ~~attorney's~~ fees.

(6) An association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed \$200 if on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable parcel. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of \$100. If a delinquent amount is owed to the association for the applicable parcel, an additional fee for the estoppel certificate may not exceed \$200.

(7) (a) If estoppel certificates for multiple parcels owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those parcels may be delivered in one or more estoppel certificates, and, even though the fee for each parcel shall be computed as set forth in subsection (6), the total fee that the association may charge for the preparation and delivery of the estoppel

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523 certificates may not exceed, in the aggregate:  
 524     1. For 25 or fewer parcels, \$750.  
 525     2. For 26 to 50 parcels, \$1,000.  
 526     3. For 51 to 100 parcels, \$1,500.  
 527     4. For more than 100 parcels, \$2,500.  
 528     (b) If an estoppel certificate is requested in conjunction  
 529 with the sale or refinancing of a parcel, the fee for the  
 530 preparation and delivery of the estoppel certificate shall be  
 531 paid to the association from the closing or settlement proceeds.  
 532 If the closing does not occur, the fee for the preparation and  
 533 delivery of the estoppel certificate remains the obligation of  
 534 the parcel owner, and the association may collect the fee in the  
 535 same manner as an assessment against the parcel. An association  
 536 may not require the payment of any other fee as a condition for  
 537 the preparation or delivery of an estoppel certificate.  
 538     (8)(3) The authority to charge a fee for the preparation  
 539 and delivery of the estoppel certificate must shall be  
 540 established by a written resolution adopted by the board or  
 541 provided by a written management, bookkeeping, or maintenance  
 542 contract and is payable upon the preparation of the certificate.  
 543 If the certificate is requested in conjunction with the sale or  
 544 mortgage of a parcel but the closing does not occur and no later  
 545 than 30 days after the closing date for which the certificate  
 546 was sought the preparer receives a written request, accompanied  
 547 by reasonable documentation, that the sale did not occur from a  
 548 payor that is not the parcel owner, the fee shall be refunded to  
 549 that payor within 30 days after receipt of the request. The  
 550 refund is the obligation of the parcel owner, and the  
 551 association may collect it from that owner in the same manner as

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552 ~~an assessment as provided in this section.~~  
 553     Section 4. This act shall take effect July 1, 2017.

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The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** February 22, 2017

---

I respectfully request that **Senate Bill #398**, relating to Estoppel Certificates, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

---

Senator Kathleen Passidomo  
Florida Senate, District 28

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

398  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Richard Pinsky

Job Title \_\_\_\_\_

Address 106 E. College Ave #1200

Phone \_\_\_\_\_

Street

Tallahassee

FL.

32301

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Cyber Citizens

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

SB 398

Bill Number (if applicable)

Topic Estoppel Certificate

Amendment Barcode (if applicable)

Name Ron Book

Job Title \_\_\_\_\_

Address 104 W. Jeffers

Phone 850-224-3427

Street

TLH

32301

Email ron@TLBookPA.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing First Service Residential

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14

Meeting Date

398

Bill Number (if applicable)

Topic Estoppel

Amendment Barcode (if applicable)

Name Greg Black

Job Title Attorney

Address 119 S. Monroe St. Suite 200

Phone 205-9000

Street

Tallahassee

City

FL

State

32301

Zip

Email greg.black@mhdlaw.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ATFS, LLC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14  
Meeting Date

398  
Bill Number (if applicable)

Topic Estoppel Certificates

Amendment Barcode (if applicable)

Name Ashley Kalitcheh

Job Title Attorney

Address 101 E. College Ave. Ste 502  
Street  
TLH FL 32301  
City State Zip

Phone 227 9578

Email AKalitcheh@propertyconsult.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Old Republic National Title Co.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

398

Bill Number (if applicable)

Topic Estoppel Certificate Reform

Amendment Barcode (if applicable)

Name DAVID DANIEL

Job Title \_\_\_\_\_

Address 31 EAST PARK AVENUE

Phone 921-12-224-5081

Street

Tallahassee

FL

32301

City

State

Zip

Email ddaniel@smithbryanand  
myers.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA LAND TITLE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/14/17

Meeting Date

398

Bill Number (if applicable)

Topic Estoppel

Amendment Barcode (if applicable)

Name Rusty Payton

Job Title CEO

Address 2600 Centennial Blvd  
Street

Phone 850-567-1073

Tallahassee FL 32317  
City State Zip

Email rp@flhba.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/2017

*Meeting Date*

398

*Bill Number (if applicable)*

Topic Estoppel Certificates

*Amendment Barcode (if applicable)*

Name Danielle Scoggins

Job Title Sr. Public Policy Representative

Address 200 South Monroe Street

Phone 8502241400

*Street*

Tallahassee

Florida

32301

*City*

*State*

*Zip*

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Realtors

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

398

Bill Number (if applicable)

Topic Estoppel Certificates

Amendment Barcode (if applicable)

Name Travis Moore

Job Title \_\_\_\_\_

Address P.O. Box 2020

Street

Phone 727.421.6902

St. Petersburg

FL

33731

City

State

Zip

Email travis@moore-relations.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing First Service Residential & Community Associations Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

398

Bill Number (if applicable)

Meeting Date

Topic Estoppel

Amendment Barcode (if applicable)

Name Sean Stafford

Job Title Consultant

Address 115 East Park

Phone 727-5000

Street

City

Tallahassee

State

FL

Zip

32301

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Associa

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17  
Meeting Date

398  
Bill Number (if applicable)

Topic Estoppel S13 398 A 164802

164802  
Amendment Barcode (if applicable)

Name Mark Anderson

Job Title \_\_\_\_\_

Address 106 South Monroe Street  
Street  
Tallahassee FL 32301  
City State Zip

Phone 813-205-0058

Email Mark@Consultanderson.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing CEOMC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 724

INTRODUCER: Judiciary Committee and Senator Passidomo

SUBJECT: Estates

DATE: March 15, 2017

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

|    | ANALYST  | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|----------|----------------|-----------|---------------|
| 1. | Stallard | Cibula         | JU        | <b>Fav/CS</b> |
| 2. |          |                | BI        |               |
| 3. |          |                | RC        |               |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 724 modifies several sections of the Estates and Trusts chapter of the Florida Statutes relating to the “elective share”—that is, the 30 percent portion of a decedent’s estate that a surviving spouse may elect to take regardless of what is provided to him or her in the decedent’s testamentary plan.

Also, the bill expressly includes the decedent’s protected homestead in the “elective estate.” For the purpose of this calculation, homestead is valued differently depending on the interest that the surviving spouse would have in the homestead.

As the bill includes the value of the homestead in the elective share, it also prescribes how the homestead must be valued for the purposes of calculating the elective estate. Under the bill, if the surviving spouse receives a full, outright (“fee simple”) interest, the homestead is valued at its fair market value as of the decedent’s death.

But under current estate law, the surviving spouse is not entitled to the entire homestead if the decedent is also survived by at least one descendant. In these situations, the surviving spouse may choose the exclusive right to use the property for his or her life. Alternatively, the spouse may take a one-half interest in the homestead as a tenant-in-common, with the descendant(s). Commensurate to the surviving spouse’s limited ownership interest in these situations, the bill prescribes reduced homestead valuations for the purposes of the elective estate calculation. If the surviving spouse elects to take a life estate in the homestead, or if the surviving spouse elects to

take a one-half interest in the homestead, the homestead is valued at one-half of its fair market value on the decedent's date of death.

Current law authorizes an award of attorneys' fees and costs only where an election is made or attempted in bad faith. The bill expands the prospect of recovering these fees and costs in two ways. First, the bill expands the types of actions in which fees and costs may be granted. Second, an award of fees and costs no longer must be predicated on bad faith.

The bill also expands the time in which a surviving spouse may move for an extension to choose the elective share, expands the application of interest penalties for late payment by those who are liable to contribute to the elective share, and adds a clause designed to "save" trusts that would qualify as "elective share trusts" if not for a particular deficiency.

## **II. Present Situation:**

### **Elective Share**

The law affords people broad authority to determine what will happen to their assets when they die. To exercise this authority, people may use one or more of a host of available tools, perhaps the best-known of which is a will. Other tools include trusts, beneficiary designations on bank accounts and any number of other items, and life insurance policies.

However, the authority of a person to determine the destination of his or her property upon his or her death is subject to a host of limitations. One of these limitations, which applies to people who are married at the time of their death, is called the "elective share." This provision of Florida law entitles a decedent's spouse to elect to receive a certain percentage of the estate, *regardless of what a will or other testamentary instrument says*. This percentage is called the "elective share."

The elective share is 30 percent of the net value of the "elective estate." Section 732.2035, F.S., lists the decedent's assets that are included in the elective estate. These assets include the probate estate, as well as several categories of assets that do not pass through probate.

### ***Homestead Not Included in Elective Estate***

In Florida, the basic concept of a homestead is a home that is protected from most creditors and actions of courts. Homestead includes \$2,000 of personal property, but its main component is real property.

Homestead property is specifically excluded from the elective estate.<sup>1</sup> As such, when calculating the elective estate, the value of the homestead is not included.

### ***Deadlines to Choose the Elective Share***

In order to exercise the option to take the elective share, a surviving spouse must file his or her election with the court. The surviving spouse must file the election by the earlier of 6 months after the date the surviving spouse is served with the estate's Letters of Administration or 2 years

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<sup>1</sup> Section 732.2045(1)(i), F.S.

after the death of the surviving spouse.<sup>2</sup> Within these timeframes, the surviving spouse may petition the court for good cause for an extension of time to make the election.<sup>3</sup>

### ***Contribution to the Elective Share***

The elective share is available to a surviving spouse, even to one whom the decedent purposefully did not provide for in the decedent's testamentary plan. In a case in which a surviving spouse is not left assets equal to at least 30 percent of the elective estate in the testamentary plan, the amounts due the surviving spouse will need to come from assets that may be allocated to other persons. The statutes require this money to be paid from a progression of different asset types until the elective share is satisfied. These classes of assets are as follows:<sup>4</sup>

Class 1.—The decedent's probate estate and revocable trusts.

Class 2.—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(2), (3), or (6), F.S. and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(5) and (7), F.S.

Class 3.—Recipients of all other property interests, other than protected charitable interests, included in the elective estate.

For purposes of [these classes], a protected charitable interest is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift or income tax laws.<sup>5</sup>

Beneficiaries who have received a distribution of property that it included in the elective estate, as well as “direct recipients,”<sup>6</sup> are liable to contribute to satisfying the elective share.<sup>7</sup> These persons may have received property, rather than money, from the decedent's estate.

Instead of making a cash payment of the dollar amount for which one of these persons is liable, a beneficiary or direct recipient may contribute a proportional part of all property received. This person may also satisfy their contribution obligation by doing one of two things with respect to any property interest received before the date of the court's order of contribution. As one option, he or she may contribute all of the property. Or if the property has been sold or exchanged before

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<sup>2</sup> Section 732.2135(1), F.S.

<sup>3</sup> Section 732.2135(2), F.S.

<sup>4</sup> Section 732.2075(2), F.S.

<sup>5</sup> As an example, assume these simplistic facts: a man dies with two adult children, \$1,000,000 probate assets, no house, and a will that leaves his entire estate to his two children in equal parts. Also, assume that the assets are elective share assets, and that the wife files for her elective share. Here, the children, who would otherwise get \$500,000 each, will each need to contribute \$150,000 to satisfy the wife's elective share.

<sup>6</sup> “Direct recipient” is defined to include “the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent . . . , by right of survivorship, or by beneficiary designation under a governing instrument.” Section 732.2025(1), F.S.

<sup>7</sup> Section 732.2085(1), F.S.

the date the spouse's election was filed, the liable person may pay an amount equal to the value of the property on the date it was sold or exchanged, less reasonable costs of the sale.<sup>8</sup> Moreover, if a person pays the value of the property on the date of a sale or exchange, or if a person contributes all of the property received,<sup>9</sup> no further contribution is required as to the property. And that amount satisfies his or her contribution liability, even if it is less than the amount he or she would otherwise owe. Accordingly, the balance is then reapportioned among the other members of the class.<sup>10</sup>

Ultimately, it is the duty of the court to determine the elective share and all necessary contribution. And those who owe a contribution must pay interest on the contribution at the statutory interest rate. This interest begins accruing 90 days after the contribution order.

### ***Elective Share Trusts***

The law grants a decedent's estate several options as to the form of the transfer of an elective share. One option, of course, is to give the surviving spouse assets outright. But, in lieu of giving assets to the spouse outright, the law permits the decedent's estate to satisfy the elective share by merely placing assets into a trust for the benefit of the surviving spouse—an elective share trust. And the law seeks to ensure that the trust *actually* benefits the surviving spouse.

Accordingly, by definition, an elective share trust must authorize the surviving spouse to require the trustee either to make non-productive trust property productive or to convert it within a reasonable time.<sup>11</sup>

But even if a trust was intended to be an elective share trust and contains the other two elements of an elective share trust, the law contains no mechanism to allow the surviving spouse to nonetheless convert non-productive trust assets, thus "saving" the trust from failing the test. This type of savings mechanism exists in Florida law for a marital deduction trust.<sup>12</sup>

### ***Attorney's Fees and Costs for Bad-Faith Elections***

If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.<sup>13</sup>

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

### **Elective Share**

In Florida law, the "elective share" is the 30 percent portion of a decedent's "elective estate" that a surviving spouse may elect to take regardless of what is provided to him or her in the decedent's testamentary plan.

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<sup>8</sup> Section 732.2085(2), F.S.

<sup>9</sup> That is, in the manner described in s. 732.2085(2)(b), F.S.

<sup>10</sup> Section 732.2085(3)(a), F.S.

<sup>11</sup> Section 732.2025(2), F.S.

<sup>12</sup> Section 738.606, F.S.

<sup>13</sup> Section 732.2135, F.S.

***Homestead is Included in the Elective Estate***

A homestead as provided in Article X, s. 4 of the State Constitution is designed to protect one's home from most creditors and court actions. Homestead includes \$2,000 of personal property, but its main component is real property.

Under current law, homestead property is specifically excluded from the elective estate.<sup>14</sup> As such, the value of the homestead is not factored in when calculation of the elective estate.

The bill expressly includes homestead property in the elective estate, unless the surviving spouse has waived his or her homestead rights.

***Valuation of Homestead for the Purpose of Valuation of the Elective Estate***

Because a decedent's homestead is included in the elective estate under the bill, and because the surviving spouse who chooses the elective share will get a percentage of the elective estate, it is necessary to determine the value of the homestead for the purposes of this calculation. The bill requires one of three different valuations of homestead property depending on the circumstances of a given situation.

Under the homestead statute, it is possible that the homestead would simply pass to a surviving spouse—that is, in “fee simple.” However, the situation is not so simple if the decedent is survived by a spouse *and* one or more descendants. In this situation, the surviving spouse may take one of two interests in the decedent's homestead property.

One option is to take a “life estate” in the property. Essentially, a “life estate” is the right to use the property for the surviving spouse's life, but not to devise it upon his or her death.<sup>15</sup> The other interest the surviving spouse may take in the property is an undivided, one-half interest as a tenant-in-common.<sup>16</sup> Accordingly, the bill provides different valuations of the homestead, for elective share purposes, depending on each of the three interests described above.

If the surviving spouse receives a fee simple interest, the homestead is valued at its fair market value on the date of the decedent's death. If the surviving spouse elects to take a life estate in the homestead, or if the surviving spouse elects to take a one-half interest in the homestead, the homestead is valued at one-half of its fair market value on the decedent's death date.

***Deadline to Choose the Elective Share***

In order to exercise the option to take the elective share, a surviving spouse must file his or her election with the court. The surviving spouse must file the election by the earlier of 6 months after the date the surviving spouse is served with the estate's Letters of Administration, or 2 years after the death of the surviving spouse.<sup>17</sup> Under current law, the surviving spouse may,

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<sup>14</sup> Section 732.2045(1)(i), F.S.

<sup>15</sup> Section 732.401(1), F.S.

<sup>16</sup> Section 732.401(2), F.S.

<sup>17</sup> Section 732.2135(1), F.S.



*within these timeframes*, petition the court for good cause for an extension of time to make the election.<sup>18</sup> The bill modifies this scheme.

The bill maintains that the surviving spouse may move for an extension with the same timeframes, and the bill maintains the 2-year absolute outer limit. However, the bill also permits a surviving spouse to move for an extension within 40 days after the termination of the proceedings specified in the bill.

### ***Contribution to the Elective Share***

Beneficiaries who have received a distribution of property that it included in the elective estate, as well as “direct recipients,”<sup>19</sup> are liable to contribute to satisfying the elective share, both under current law and under the bill.<sup>20</sup> These persons may have received property, rather than money, from the decedent’s estate.

Under the bill, as under current law, instead of making a cash payment of the dollar amount for which one of these persons is liable, a beneficiary or direct recipient may contribute a proportional part of all property received. This person may also satisfy their contribution obligation by doing one of two things with respect to any property interest received before the date of the court’s order of contribution. As one option, he or she may contribute all of the property. Or if the property has been sold or exchanged before the date the spouse’s election was filed, the liable person may pay an amount equal to the value of the property on the date it was sold or exchanged, less reasonable costs of the sale.<sup>21</sup> Moreover, if a person pays the value of the property on the date of a sale or exchange, or if a person contributes all of the property received,<sup>22</sup> no further contribution is required as to the property. And that amount satisfies his or her contribution liability, even if it is less than the amount he or she would otherwise owe.<sup>23</sup>

However, under the bill, if this person’s required contribution is not fully paid by 2 years after the date of the death of the decedent, the person must pay interest at the statutory rate on any portion of the required contribution that remains unpaid.

Ultimately, it is the duty of the court to determine the elective share and all necessary contributions. And those who owe a contribution must, as a general matter, pay interest on the contribution at the statutory interest rate. This interest begins accruing 90 days after the contribution order under current law. The bill maintains this provision, but also imposes interest on any amount of the elective share not satisfied within 2 years of the date of the decedent’s death, *regardless of whether an order of contribution was entered*.

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<sup>18</sup> Section 732.2135(2), F.S.

<sup>19</sup> “Direct recipient” is defined to include “the decedent’s probate estate and any other person who receives property included in the elective estate by transfer from the decedent . . . , by right of survivorship, or by beneficiary designation under a governing instrument.” Section 732.2025(1), F.S.

<sup>20</sup> Section 732.2085(1), F.S.

<sup>21</sup> Section 732.2085(2), F.S.

<sup>22</sup> That is, in the manner described in s. 732.2085(2)(b), F.S.

<sup>23</sup> Accordingly, the balance is then reapportioned among the other members of the class. Section 732.2085(3)(a), F.S.

### ***Attorney's Fees and Costs***

In current law, if the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.<sup>24</sup> The bill significantly expands the scope of this provision.

The bill removes the bad faith requirement, and the bill does not limit assessments of attorney's fees and costs to instances where someone makes or pursues an election.

Under the bill, the court may award fees and costs in *any proceeding* under the elective share statutes in which there is a dispute over:

- The entitled to of the amount of the elective share;
- The property interests included in the elective or its value; or
- The satisfaction of the elective share.

Moreover, the bill specifies that when the court award costs and fees, it may do one or more of the following:

- Direct payment from the estate;
- Direct payment from a party's interest in the elective share or the elective estate; or
- Enter a judgment that can be satisfied from other property of a party.

If the personal representative fails to file a petition to determine the amount of the elective share, as required by the Probate Rules, he or she may be liable for additional costs. Specifically, if the electing spouse or any of the other persons mentioned in the bill file the petition that the personal representative failed to file, he or she may be awarded the reasonable costs, including attorney's fees, incurred in connection with the preparation and filing of the petition.<sup>25</sup>

### ***Elective Share Trusts***

By definition, elective share trusts must provide the surviving spouse with the ability to have non-productive trust assets converted to productive assets. However, current law does not provide a way to "save" a trust that fails to meet this requirement, though the trust otherwise meets the definition of an elective share trust and was intended to be an elective share trust. The bill changes this.

The bill authorizes a surviving spouse who is intended to benefit from an elective share trust to force the trustee to make the trust productive. Thus, the bill "saves" trusts that do not otherwise give the spouse this authority, but that are otherwise legally sufficient.

### ***Effective Date***

The bill takes effect July 1, 2017.

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<sup>24</sup> Section 732.2135, F.S.

<sup>25</sup> The removal of the bad-faith requirement, the expansion of the types of people who may seek fees and costs, and the expansion of the types of proceedings for which the non-prevailing party may have to pay costs could encourage settlement of these matters. Additionally, it could discourage the very initiation of some proceedings, given the associated risk of being the non-prevailing party and having to pay fees and costs.

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 732.2025, 732.2035, 732.2045, 732.2055, 732.2065, 732.2075, 732.2085, 732.2095, 732.2115, 732.2135, 732.2145, and 738.606.

This bill creates section 732.2151, 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 March 14, 2017:**

The bill created a tiered-rate structure, depending on the length of the marriage, to determine the amount of the elective share. These rates varied from 10 percent of the elective estate to 40 percent of the elective estate. The committee substitute removes this structure, returning to the current law's 30 percent, flat rate.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 03/15/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 265 - 286.

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

And the title is amended as follows:

Delete lines 12 - 14

and insert:

amending

By Senator Passidomo

28-00984-17

2017724\_\_

A bill to be entitled

An act relating to estates; amending s. 732.2025, F.S.; conforming cross-references; amending s. 732.2035, F.S.; providing that a decedent's property interest in the protected homestead is included in the elective estate; amending s. 732.2045, F.S.; revising the circumstances under which the decedent's property interest in the protected homestead is excluded from the elective estate; amending s. 732.2055, F.S.; providing for the valuation of the decedent's protected homestead under certain circumstances; amending s. 732.2065, F.S.; providing elective share percentages as determined by the length of the surviving spouse's marriage to the decedent; amending s. 732.2075, F.S.; conforming cross-references; amending s. 732.2085, F.S.; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share with respect to certain property; amending s. 732.2095, F.S.; revising provisions relating to the valuation of a surviving spouse's interest in property to include protected homestead; conforming cross-references; amending s. 732.2115, F.S.; conforming a cross-reference; amending s. 732.2135, F.S.; revising the period within which a specified person may petition the court for an extension of time for making an election; removing a provision authorizing assessment of attorney fees and costs if an election is made in bad faith; amending s. 732.2145, F.S.; requiring the payment of interest on any unpaid portion of a person's required contribution toward the elective share after a certain date; creating s. 732.2151, F.S.; providing for the award of

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fees and costs in certain elective share proceedings; providing that a court may direct payment from certain sources; providing applicability; amending s. 738.606, F.S.; providing that a surviving spouse may require a trustee of a marital or elective share trust to make property productive of income; providing applicability; providing an effective date.

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

Section 1. Subsections (1) and (9) of section 732.2025, Florida Statutes, are amended to read:

732.2025 Definitions.—As used in ss. 732.2025-732.2155, the term:

(1) "Direct recipient" means the decedent's probate estate and any other person who receives property included in the elective estate by transfer from the decedent, including transfers described in s. 732.2035(9) ~~s. 732.2035(8)~~, by right of survivorship, or by beneficiary designation under a governing instrument. For this purpose, a beneficiary of an insurance policy on the decedent's life, the net cash surrender value of which is included in the elective estate, is treated as having received property included in the elective estate. In the case of property held in trust, "direct recipient" includes the trustee but excludes the beneficiaries of the trust.

(9) "Revocable trust" means a trust that is includable in the elective estate under s. 732.2035(5) ~~s. 732.2035(4)~~.

Section 2. Section 732.2035, Florida Statutes, is amended to read:

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732.2035 Property entering into elective estate.—Except as provided in s. 732.2045, the elective estate consists of the sum of the values as determined under s. 732.2055 of the following property interests:

(1) The decedent's probate estate.

(2) The decedent's interest in property which constitutes the protected homestead of the decedent.

(3) The decedent's ownership interest in accounts or securities registered in "Pay On Death," "Transfer On Death," "In Trust For," or coownership with right of survivorship form. For this purpose, "decedent's ownership interest" means, in the case of accounts or securities held in tenancy by the entirety, one-half of the value of the account or security, and in all other cases, that portion of the accounts or securities which the decedent had, immediately before death, the right to withdraw or use without the duty to account to any person.

(4)(3) The decedent's fractional interest in property, other than property described in subsection (3)(2) or subsection (8)(7), held by the decedent in joint tenancy with right of survivorship or in tenancy by the entirety. For this purpose, "decedent's fractional interest in property" means the value of the property divided by the number of tenants.

(5)(4) That portion of property, other than property described in subsection (2) and subsection (3), transferred by the decedent to the extent that at the time of the decedent's death the transfer was revocable by the decedent alone or in conjunction with any other person. This subsection does not apply to a transfer that is revocable by the decedent only with the consent of all persons having a beneficial interest in the

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property.

(6) (a) ~~(5)(a)~~ That portion of property, other than property described in subsection (2)(3), subsection (4), subsection (5), or subsection (8)(7), transferred by the decedent to the extent that at the time of the decedent's death:

1. The decedent possessed the right to, or in fact enjoyed the possession or use of, the income or principal of the property; or

2. The principal of the property could, in the discretion of any person other than the spouse of the decedent, be distributed or appointed to or for the benefit of the decedent.

In the application of this subsection, a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement shall be treated as a right to that portion of the income of the property necessary to equal the annuity, unitrust, or other payment.

(b) The amount included under this subsection is:

1. With respect to subparagraph (a)1., the value of the portion of the property to which the decedent's right or enjoyment related, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate; and

2. With respect to subparagraph (a)2., the value of the portion subject to the discretion, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate.

(c) This subsection does not apply to any property if the decedent's only interests in the property are that:

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1. The property could be distributed to or for the benefit of the decedent only with the consent of all persons having a beneficial interest in the property; or

2. The income or principal of the property could be distributed to or for the benefit of the decedent only through the exercise or in default of an exercise of a general power of appointment held by any person other than the decedent; or

3. The income or principal of the property is or could be distributed in satisfaction of the decedent's obligation of support; or

4. The decedent had a contingent right to receive principal, other than at the discretion of any person, which contingency was beyond the control of the decedent and which had not in fact occurred at the decedent's death.

(7)~~(6)~~ The decedent's beneficial interest in the net cash surrender value immediately before death of any policy of insurance on the decedent's life.

(8)~~(7)~~ The value of amounts payable to or for the benefit of any person by reason of surviving the decedent under any public or private pension, retirement, or deferred compensation plan, or any similar arrangement, other than benefits payable under the federal Railroad Retirement Act or the federal Social Security System. In the case of a defined contribution plan as defined in s. 414(i) of the Internal Revenue Code of 1986, as amended, this subsection shall not apply to the excess of the proceeds of any insurance policy on the decedent's life over the net cash surrender value of the policy immediately before the decedent's death.

(9)~~(8)~~ Property that was transferred during the 1-year

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period preceding the decedent's death as a result of a transfer by the decedent if the transfer was either of the following types:

(a) Any property transferred as a result of the termination of a right or interest in, or power over, property that would have been included in the elective estate under subsection (5)~~(4)~~ or subsection (6)~~(5)~~ if the right, interest, or power had not terminated until the decedent's death.

(b) Any transfer of property to the extent not otherwise included in the elective estate, made to or for the benefit of any person, except:

1. Any transfer of property for medical or educational expenses to the extent it qualifies for exclusion from the United States gift tax under s. 2503(e) of the Internal Revenue Code, as amended; and

2. After the application of subparagraph 1., the first annual exclusion amount of property transferred to or for the benefit of each donee during the 1-year period, but only to the extent the transfer qualifies for exclusion from the United States gift tax under s. 2503(b) or (c) of the Internal Revenue Code, as amended. For purposes of this subparagraph, the term "annual exclusion amount" means the amount of one annual exclusion under s. 2503(b) or (c) of the Internal Revenue Code, as amended.

(c) Except as provided in paragraph (d), for purposes of this subsection:

1. A "termination" with respect to a right or interest in property occurs when the decedent transfers or relinquishes the right or interest, and, with respect to a power over property, a

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termination occurs when the power terminates by exercise, release, lapse, default, or otherwise.

2. A distribution from a trust the income or principal of which is subject to subsection ~~(5)(4)~~, subsection ~~(6)(5)~~, or subsection ~~(10)(9)~~ shall be treated as a transfer of property by the decedent and not as a termination of a right or interest in, or a power over, property.

(d) Notwithstanding anything in paragraph (c) to the contrary:

1. A "termination" with respect to a right or interest in property does not occur when the right or interest terminates by the terms of the governing instrument unless the termination is determined by reference to the death of the decedent and the court finds that a principal purpose for the terms of the instrument relating to the termination was avoidance of the elective share.

2. A distribution from a trust is not subject to this subsection if the distribution is required by the terms of the governing instrument unless the event triggering the distribution is determined by reference to the death of the decedent and the court finds that a principal purpose of the terms of the governing instrument relating to the distribution is avoidance of the elective share.

~~(10)(9)~~ Property transferred in satisfaction of the elective share.

Section 3. Paragraph (i) of subsection (1) of section 732.2045, Florida Statutes, is amended to read:

732.2045 Exclusions and overlapping application.—

(1) EXCLUSIONS.—Section 732.2035 does not apply to:

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(i) Property which constitutes the protected homestead of the decedent if the surviving spouse validly waived his or her homestead rights as provided under s. 732.702, or otherwise under applicable law, and such spouse did not receive any interest in the protected homestead upon the decedent's death whether held by the decedent or by a trust at the decedent's death.

Section 4. Section 732.2055, Florida Statutes, is amended to read:

732.2055 Valuation of the elective estate.—For purposes of s. 732.2035, "value" means:

(1)(a) In the case of protected homestead:

1. If the surviving spouse receives a fee simple interest, the fair market value of the protected homestead on the date of the decedent's death.

2. If the spouse takes a life estate as provided in s. 732.401(1), or validly elects to take an undivided one-half interest as a tenant in common as provided in s. 732.401(2), one-half of the fair market value of the protected homestead on the date of the decedent's death.

3. If the surviving spouse validly waived his or her homestead rights as provided under s. 732.702 or otherwise under applicable law, but nevertheless receives an interest in the protected homestead, other than an interest described in s. 732.401, including an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

(b) For purposes of this subsection, the term "fair market value" means the net of the aggregate amount, as of the date of

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the decedent's death, of all mortgages, liens, and security interests to which the protected homestead is subject and for which the decedent is liable, but only to the extent that such amount is not otherwise deducted as a claim paid or payable from the elective estate.

(2) In the case of any policy of insurance on the decedent's life includable under s. 732.2035(5), (6), or (7) ~~s. 732.2035(4), (5), or (6)~~, the net cash surrender value of the policy immediately before the decedent's death.

(3) ~~(2)~~ In the case of any policy of insurance on the decedent's life includable under s. 732.2035(9) ~~s. 732.2035(8)~~, the net cash surrender value of the policy on the date of the termination or transfer.

(4) ~~(3)~~ In the case of amounts includable under s. 732.2035(8) ~~s. 732.2035(7)~~, the transfer tax value of the amounts on the date of the decedent's death.

(5) ~~(4)~~ In the case of other property included under s. 732.2035(9) ~~s. 732.2035(8)~~, the fair market value of the property on the date of the termination or transfer, computed after deducting any mortgages, liens, or security interests on the property as of that date.

(6) ~~(5)~~ In the case of all other property, the fair market value of the property on the date of the decedent's death, computed after deducting from the total value of the property:

(a) All claims paid or payable from the elective estate; and

(b) To the extent they are not deducted under paragraph (a), all mortgages, liens, or security interests on the property.

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Section 5. Section 732.2065, Florida Statutes, is amended to read:

732.2065 Amount of the elective share.—The elective share to which a surviving spouse is entitled is determined based upon the number of years of the surviving spouse's marriage to the decedent, determined as of the date of the decedent's death, as follows:

(1) If the decedent and the surviving spouse were last married to each other for less than 5 full years, the elective share is an amount equal to 10 percent of the elective estate.

(2) If the decedent and the surviving spouse were last married to each other for at least 5 full years but less than 15 full years, the elective share is an amount equal to 20 percent of the elective estate.

(3) If the decedent and the surviving spouse were last married to each other for at least 15 full years but less than 25 full years, the elective share is an amount equal to 30 percent of the elective estate.

(4) If the decedent and the surviving spouse were last married to each other for 25 full years or more, the elective share is an amount equal to 40 percent of the elective estate. ~~is an amount equal to 30 percent of the elective estate.~~

Section 6. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and paragraph (c) of subsection (3) of section 732.2075, Florida Statutes, are amended to read:

732.2075 Sources from which elective share payable; abatement.—

(1) Unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust

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referred to in the decedent's will, the following are applied first to satisfy the elective share:

(b) To the extent paid to or for the benefit of the surviving spouse, amounts payable under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~.

(2) If, after the application of subsection (1), the elective share is not fully satisfied, the unsatisfied balance shall be allocated entirely to one class of direct recipients of the remaining elective estate and apportioned among those recipients, and if the elective share amount is not fully satisfied, to the next class of direct recipients, in the following order of priority, until the elective share amount is satisfied:

(b) Class 2.—Recipients of property interests, other than protected charitable interests, included in the elective estate under s. 732.2035(3), (4), or (7) ~~s. 732.2035(2), (3), or (6)~~ and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, other than protected charitable interests, included under s. 732.2035(6) and (8) ~~s. 732.2035(5) and (7)~~.

For purposes of this subsection, a protected charitable interest is any interest for which a charitable deduction with respect to the transfer of the property was allowed or allowable to the decedent or the decedent's spouse under the United States gift or income tax laws.

(3) If, after the application of subsections (1) and (2), the elective share amount is not fully satisfied, the additional amount due to the surviving spouse shall be determined and

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satisfied as follows:

(c) If there is more than one trust to which this subsection could apply, unless otherwise provided in the decedent's will or, in the absence of a provision in the decedent's will, in a trust referred to in the decedent's will, the unsatisfied balance shall be apportioned pro rata to all such trusts in proportion to the value, as determined under s. 732.2095(2)(f) ~~s. 732.2095(2)(d)~~, of the surviving spouse's beneficial interests in the trusts.

Section 7. Paragraph (a) of subsection (3) of section 732.2085, Florida Statutes, is amended to read:

732.2085 Liability of direct recipients and beneficiaries.—

(3) If a person pays the value of the property on the date of a sale or exchange or contributes all of the property received, as provided in paragraph (2)(b):

(a) No further contribution toward satisfaction of the elective share shall be required with respect to that property. However, if a person's required contribution is not fully paid by 2 years after the date of the death of the decedent, such person must also pay interest at the statutory rate on any portion of the required contribution that remains unpaid.

Section 8. Section 732.2095, Florida Statutes, is amended to read:

732.2095 Valuation of property used to satisfy elective share.—

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

(a) "Applicable valuation date" means:

1. In the case of transfers in satisfaction of the elective share, the date of the decedent's death.

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2. In the case of property held in a qualifying special needs trust on the date of the decedent's death, the date of the decedent's death.

3. In the case of other property irrevocably transferred to or for the benefit of the surviving spouse during the decedent's life, the date of the transfer.

4. In the case of property distributed to the surviving spouse by the personal representative, the date of distribution.

5. Except as provided in subparagraphs 1., 2., and 3., in the case of property passing in trust for the surviving spouse, the date or dates the trust is funded in satisfaction of the elective share.

6. In the case of property described in s. 732.2035(2), (3), or (4) ~~s. 732.2035(2) or (3)~~, the date of the decedent's death.

7. In the case of proceeds of any policy of insurance payable to the surviving spouse, the date of the decedent's death.

8. In the case of amounts payable to the surviving spouse under any plan or arrangement described in s. 732.2035(8) ~~s. 732.2035(7)~~, the date of the decedent's death.

9. In all other cases, the date of the decedent's death or the date the surviving spouse first comes into possession of the property, whichever occurs later.

(b) "Qualifying power of appointment" means a general power of appointment that is exercisable alone and in all events by the decedent's spouse in favor of the spouse or the spouse's estate. For this purpose, a general power to appoint by will is a qualifying power of appointment if the power may be exercised

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by the spouse in favor of the spouse's estate without the consent of any other person.

(c) "Qualifying invasion power" means a power held by the surviving spouse or the trustee of an elective share trust to invade trust principal for the health, support, and maintenance of the spouse. The power may, but need not, provide that the other resources of the spouse are to be taken into account in any exercise of the power.

(2) Except as provided in this subsection, the value of property for purposes of s. 732.2075 is the fair market value of the property on the applicable valuation date.

(a) If the surviving spouse has a life interest in property not in trust that entitles the spouse to the use of the property for life, including, without limitation, a life estate in protected homestead as provided in s. 732.401(1), the value of the spouse's interest is one-half of the value of the property on the applicable valuation date.

(b) If the surviving spouse elects to take an undivided one-half interest in protected homestead as a tenant in common as provided in s. 732.401(2), the value of the spouse's interest is one-half of the value of the property on the applicable valuation date.

(c) If the surviving spouse validly waived his or her homestead rights as provided in s. 732.702 or otherwise under applicable law but nevertheless receives an interest in protected homestead, other than an interest described in s. 732.401, including, without limitation, an interest in trust, the value of the spouse's interest is determined as property interests that are not protected homestead.

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410 ~~(d)(b)~~ If the surviving spouse has an interest in a trust,  
 411 or portion of a trust, which meets the requirements of an  
 412 elective share trust, the value of the spouse's interest is a  
 413 percentage of the value of the principal of the trust, or trust  
 414 portion, on the applicable valuation date as follows:

415 1. One hundred percent if the trust instrument includes  
 416 both a qualifying invasion power and a qualifying power of  
 417 appointment.

418 2. Eighty percent if the trust instrument includes a  
 419 qualifying invasion power but no qualifying power of  
 420 appointment.

421 3. Fifty percent in all other cases.

422 ~~(e)(e)~~ If the surviving spouse is a beneficiary of a trust,  
 423 or portion of a trust, which meets the requirements of a  
 424 qualifying special needs trust, the value of the principal of  
 425 the trust, or trust portion, on the applicable valuation date.

426 ~~(f)(d)~~ If the surviving spouse has an interest in a trust  
 427 that does not meet the requirements of either an elective share  
 428 trust or a qualifying special needs trust, the value of the  
 429 spouse's interest is the transfer tax value of the interest on  
 430 the applicable valuation date; however, the aggregate value of  
 431 all of the spouse's interests in the trust shall not exceed one-  
 432 half of the value of the trust principal on the applicable  
 433 valuation date.

434 ~~(g)(e)~~ In the case of any policy of insurance on the  
 435 decedent's life the proceeds of which are payable outright or to  
 436 a trust described in paragraph ~~(d)(b)~~, paragraph ~~(e)(e)~~, or  
 437 paragraph ~~(f)(d)~~, the value of the policy for purposes of s.  
 438 732.2075 and paragraphs (d), (e), and (f) ~~(b), (e), and (d)~~ is

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439 the net proceeds.

440 ~~(h)(f)~~ In the case of a right to one or more payments from  
 441 an annuity or under a similar contractual arrangement or under  
 442 any plan or arrangement described in s. 732.2035(8) ~~or~~  
 443 ~~732.2035(7)~~, the value of the right to payments for purposes of  
 444 s. 732.2075 and paragraphs (d), (e), and (f) ~~(b), (e), and (d)~~  
 445 is the transfer tax value of the right on the applicable  
 446 valuation date.

447 Section 9. Section 732.2115, Florida Statutes, is amended  
 448 to read:

449 732.2115 Protection of payors and other third parties.—  
 450 Although a property interest is included in the decedent's  
 451 elective estate under s. 732.2035(3)-(9) ~~or 732.2035(2)-(8)~~, a  
 452 payor or other third party is not liable for paying,  
 453 distributing, or transferring the property to a beneficiary  
 454 designated in a governing instrument, or for taking any other  
 455 action in good faith reliance on the validity of a governing  
 456 instrument.

457 Section 10. Section 732.2135, Florida Statutes, is amended  
 458 to read:

459 732.2135 Time of election; extensions; withdrawal.—

460 (1) Except as provided in subsection (2), the election must  
 461 be filed on or before the earlier of the date that is 6 months  
 462 after the date of service of a copy of the notice of  
 463 administration on the surviving spouse, or an attorney in fact  
 464 or guardian of the property of the surviving spouse, or the date  
 465 that is 2 years after the date of the decedent's death.

466 (2) Within the period provided in subsection (1), or 40  
 467 days after the date of termination of any proceeding which

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affects the amount the spouse is entitled to receive under s. 732.2075(1), whichever is later, but no more than 2 years after the decedent's death, the surviving spouse or an attorney in fact or guardian of the property of the surviving spouse may petition the court for an extension of time for making an election. For good cause shown, the court may extend the time for election. If the court grants the petition for an extension, the election must be filed within the time allowed by the extension.

(3) The surviving spouse or an attorney in fact, guardian of the property, or personal representative of the surviving spouse may withdraw an election at any time within 8 months after the decedent's death and before the court's order of contribution.

(4) A petition for an extension of the time for making the election or for approval to make the election shall toll the time for making the election.

~~(5) If the court determines that an election is made or pursued in bad faith, the court may assess attorney's fees and costs against the surviving spouse or the surviving spouse's estate.~~

Section 11. Subsection (1) of section 732.2145, Florida Statutes, is amended to read:

732.2145 Order of contribution; personal representative's duty to collect contribution.—

(1) The court shall determine the elective share and contribution. Any amount of the elective share not satisfied within 2 years of the date of death of the decedent shall bear interest at the statutory rate until fully satisfied, even if an

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order of contribution has not yet been entered. Contributions shall bear interest at the statutory rate beginning 90 days after the order of contribution. The order is prima facie correct in proceedings in any court or jurisdiction.

Section 12. Section 732.2151, Florida Statutes, is created to read:

732.2151 Award of fees and costs in elective share proceedings.—

(1) The court may award taxable costs as in chancery actions, including attorney fees, in any proceeding under this part in which there is an objection to or dispute over:

(a) The entitlement to or the amount of the elective share;

(b) The property interests included in the elective estate, or its value; or

(c) The satisfaction of the elective share.

(2) When awarding taxable costs or attorney fees, the court may do one or more of the following:

(a) Direct payment from the estate.

(b) Direct payment from a party's interest in the elective share or the elective estate.

(c) Enter a judgement that can be satisfied from other property of the party.

(3) In addition to any of the fees that may be awarded under subsections (1) and (2), if the personal representative does not file a petition to determine the amount of the elective share as required by the Florida Probate Rules, the electing spouse or the attorney in fact, guardian of the property, or personal representative of the electing spouse may be awarded from the estate reasonable costs, including attorney fees,

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526 incurred in connection with the preparation and filing of the  
 527 petition.

528 (4) This section applies to all proceedings commenced on or  
 529 after July 1, 2017, without regard to the date of the decedent's  
 530 death.

531 Section 13. Subsection (1) of section 738.606, Florida  
 532 Statutes, is amended to read:

533 738.606 Property not productive of income.—

534 (1) If a marital deduction under the Internal Revenue Code  
 535 or comparable law of any state is allowed for all or part of a  
 536 trust, or if assets are transferred to a trust that satisfies  
 537 the requirements of s. 732.2025(2)(a) and (c), and such assets  
 538 have been used in whole or in part to satisfy an election by a  
 539 surviving spouse under s. 732.2125 and the income of which must  
 540 be distributed to the grantor's spouse and the assets of which  
 541 consist substantially of property that, in the aggregate, does  
 542 not provide the spouse with sufficient income from or use of the  
 543 trust assets, and if the amounts the trustee transfers from  
 544 principal to income under s. 738.104 and distributes to the  
 545 spouse from principal pursuant to the terms of the trust are  
 546 insufficient to provide the spouse with the beneficial enjoyment  
 547 required to obtain the marital deduction, even though, in the  
 548 case of an elective share trust, a marital deduction is not made  
 549 or is only partially made, the spouse may require the trustee of  
 550 such marital trust or elective share trust to make property  
 551 productive of income, convert property within a reasonable time,  
 552 or exercise the power conferred by ss. 738.104 and 738.1041. The  
 553 trustee may decide which action or combination of actions to  
 554 take.

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555 Section 14. Applicability.—Except as otherwise provided in  
 556 this act, the amendments made by this act apply to decedents  
 557 whose death occurred on or after July 1, 2017.

558 Section 15. This act shall take effect July 1, 2017.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** February 17, 2017

---

I respectfully request that **Senate Bill #724**, relating to Estates, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

---

Senator Kathleen Passidomo  
Florida Senate, District 28



THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 727  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

724

Bill Number (if applicable)

Topic elective share

Amendment Barcode (if applicable)

Name Sarah Butters

Job Title attorney

Address 4049 Shady View Ln

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Tallahassee, FL 32311

City

State

Zip

Email Sarah.butters@hklaw

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Real Property Probate + Trust Law, FL Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

724

Bill Number (if applicable)

Topic Estates

Amendment Barcode (if applicable)

Name Kevin Cabrera

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32301

Email Cabrera@sostrategiesy.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Family Law Section Florida Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 312

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Eyewitness Identification

DATE: March 13, 2017

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Cellon  | Hrdlicka       | CJ        | <b>Fav/CS</b>    |
| 2. | Parks   | Cibula         | JU        | <b>Favorable</b> |
| 3. |         |                | RC        |                  |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

SB 312 creates procedures for state, county, and municipal law enforcement agencies to follow when they have a “lineup” for an eyewitness to identify a suspect. The procedures apply whenever a law enforcement agency is investigating a crime and showing potential suspects to an eyewitness for identification. These procedures require the use of a lineup administrator who is unaware of which person in a live lineup is the suspect. For photo lineups, the procedures prohibit the photo administrator from knowing which photograph is presented to the eyewitness.

The bill further provides that the Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement are responsible for educating police departments on of implementing the new guidelines.

**II. Present Situation:**

Eyewitness misidentification of crime suspects has contributed to 64 percent of the Florida cases in which DNA evidence later exonerated the defendant.<sup>1</sup> Of the 349 DNA exonerations nationwide, more than 70 percent had a mistaken identification issue.<sup>2</sup>

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<sup>1</sup> This represents nine of the 14 DNA-based exonerations in Florida. Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

<sup>2</sup> Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

## **Lineups**

A lineup should be familiar to anyone who has seen police work depicted in popular media. During a lineup, officers ask an eyewitness to a crime to identify the suspect from among various people lined up in a room or from their pictures (usually the other people bear a resemblance to the suspect). If the eyewitness correctly identifies the actual suspect from the lineup, the identification can be used as evidence in a case against the suspect.

While a lineup is thus a valuable tool for officers, concerns have arisen that the eyewitness can be unduly influenced by several factors, most notably having an officer present who knows which person is the suspect.

## **Standards for Lineups**

The FDLE, in collaboration with several other law enforcement organizations, published standards in 2011 which strive to establish neutral lineups.<sup>3</sup> The FDLE standards are intended to allow officers the flexibility of implementing a neutral lineup procedure.<sup>4</sup>

Guidelines and commentary instruct agencies to:

- Keep administration neutral by using someone unaffiliated with the investigation to administer the lineup;
- Inform an eyewitness of the goals of the procedure beforehand; and
- Obtain an acknowledgement from the eyewitness before proceeding.<sup>5</sup>

The guidelines also encourage officers to follow consistent and specific procedures.<sup>6</sup> Being guidelines, they are not binding.

## **Florida Law Enforcement Training**

The Criminal Justice Standards and Training Commission (CJSTC), created within the Florida Department of Law Enforcement, is responsible for, among other things, establishing uniform minimum training standards for training officers in the various criminal justice disciplines and establishing minimum curricular requirements for criminal justice training schools.<sup>7</sup>

Additionally, the CJSTC is tasked with designing, implementing, maintaining, evaluating, revising, or adopting certain statutorily approved training programs. These programs include basic recruit, advanced, career development, and specialized training.<sup>8</sup>

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<sup>3</sup> Florida Department of Law Enforcement, Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification (Rev. Jun. 15, 2011)

<https://www.fdle.state.fl.us/cms/Guidelines/Documents/Standards.aspx>.

<sup>4</sup> Florida Department of Law Enforcement, Eyewitness Guidelines, <https://www.fdle.state.fl.us/cms/Guidelines/Eyewitness-Guidelines.aspx> (last visited Mar. 11, 2017).

<sup>5</sup> Florida Department of Law Enforcement, Eyewitness Guidelines Commentary (Rev. Jun. 15, 2011), <https://www.fdle.state.fl.us/cms/Guidelines/Documents/EyewitnessGuidelinesCommentary.aspx>.

<sup>6</sup> *Id.*

<sup>7</sup> Sections 943.11 and 943.12(5) and (8), F.S.

<sup>8</sup> Section 943.17(1)(a)-(e), F.S.

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

The bill codifies many of the standards for conducting live and photo lineups which were developed in 2011 by the Florida Department of Law Enforcement and associations representing sheriffs, police chiefs, and prosecuting attorneys.

#### **Lineup Procedures**

The new procedures, which are codified in s. 92.70, F.S., cover live lineups, where the “suspects” are shown in person to the eyewitness, and photo lineups, where pictures of the “suspects” are shown to the eyewitness.

Under the bill, any live lineup in a law enforcement investigation must be conducted by an “independent administrator,” someone “who is not participating in the investigation ... and is unaware of which person in the lineup is the suspect.” If an independent administrator cannot be found, no live lineup may be conducted.

A photo lineup should also be conducted with an independent administrator, but if one cannot be found, the agency can use any technique that “achieves neutral administration,” as long as the administrator of the lineup has no idea which pictures the eyewitness is viewing at which time. Specific examples include using an “automated computer program” to show the pictures to the eyewitness, and giving the photos to the eyewitness from a shuffled and randomly numbered stack of folders.

Before the lineup is given, the bill also requires the agency to instruct the eyewitness:

- 1) The perpetrator might or might not be in the lineup;
- 2) The lineup administrator does not know the suspect’s identity (this instruction need not be given if an alternative method is used in lieu of using an independent administrator);
- 3) The eyewitness should not feel compelled to make an identification;
- 4) It is as important to exclude innocent persons as it is to identify the perpetrator; and
- 5) The investigation will continue with or without an identification.

#### **Remedies for Improper Lineups**

The bill also specifies consequences in subsequent judicial proceedings of the failure of a law enforcement agency to follow the required procedures. Notably, this section is not included in the FDLE standards on which the bill is modeled.

The failure to properly administer the lineup may be considered by the judge on a motion to suppress the eyewitness identification. The failure to follow procedures is also admissible in support of claims of eyewitness misidentification. Finally, the jury must be instructed that it may consider evidence of compliance or noncompliance with the procedures to determine the reliability of eyewitness identifications when compliance with the procedures is at issue.

**Criminal Justice Standards and Training Commission**

In addition to the procedures for lineups, the bill directs the Criminal Justice Standards and Training Commission to consult with the Department of Law Enforcement to create educational materials and provide training programs on conducting lineups.

The bill takes effect on October 1, 2017.

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

Article VII, s. 18 of the State Constitution restricts the authority of the Legislature to enact legislation requiring counties and municipalities to spend funds or take actions requiring the expenditure of funds. However, section (d) of s. 18 exempts criminal laws from these restrictions. Accordingly, the authority of the Legislature to enact this bill is not restricted because the bill relates to criminal laws.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Standards and Training Commission, through the Department of Law Enforcement does not anticipate any new expenditures as a result of the bill. Its current materials and training are already consistent with the requirements of the bill.<sup>9</sup>

**VI. Technical Deficiencies:**

None.

---

<sup>9</sup> Florida Department of Law Enforcement, 2017 Legislative Bill Analysis for CS/SB 312 (Feb. 22, 2017).

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 92.70, 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 by Criminal Justice on February 21, 2017:**

The CS eliminated the Criminal Justice Standards and Training responsibility of specifying and approving alternative lineup procedures as these are described in the bill.

**B. Amendments:**

None.



By the Committee on Criminal Justice; and Senator Baxley

591-01907-17

2017312c1

A bill to be entitled

An act relating to eyewitness identification; creating s. 92.70, F.S.; providing a short title; defining terms; requiring state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures; requiring eyewitnesses to sign an acknowledgment that they have received the instructions about the lineup procedures from the law enforcement agency; requiring lineup administrators to document the refusal of an eyewitness to acknowledge such receipt; specifying remedies for failing to adhere to the eyewitness identification procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and provide training programs on how to conduct lineups; providing an effective date.

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

Section 1. Section 92.70, Florida Statutes, is created to read:

92.70 Eyewitness identification.-

(1) SHORT TITLE.-This section may be cited as the "Eyewitness Identification Reform Act."

(2) DEFINITIONS.-As used in this section, the term:

(a) "Eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.

(b) "Independent administrator" means a person who is not

Page 1 of 4

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

591-01907-17

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participating in the investigation of a criminal offense and is unaware of which person in the lineup is the suspect.

(c) "Lineup" means a photo lineup or live lineup.

(d) "Lineup administrator" means the person who conducts a lineup.

(e) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

(f) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

(3) EYEWITNESS IDENTIFICATION PROCEDURES.-A lineup conducted in this state by a state, county, municipal, or other law enforcement agency must meet all of the following requirements:

(a) The lineup must be conducted by an independent administrator. However, in lieu of using an independent administrator, a law enforcement agency may conduct a photo lineup eyewitness identification procedure using an alternative method specified in subparagraph 1., subparagraph 2., or subparagraph 3. Any alternative method must be carefully structured to achieve neutral administration and to prevent the lineup administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

1. An automated computer program that can automatically administer the photo lineup directly to an eyewitness and

Page 2 of 4

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

591-01907-17

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59 prevent the lineup administrator from seeing which photograph  
 60 the eyewitness is viewing until after the procedure is  
 61 completed.

62 2. A procedure in which photographs are placed in folders,  
 63 randomly numbered, and shuffled and then presented to an  
 64 eyewitness such that the lineup administrator cannot see or  
 65 track which photograph is being presented to the eyewitness  
 66 until after the procedure is completed.

67 3. Any other procedure that achieves neutral administration  
 68 and prevents the lineup administrator from knowing which  
 69 photograph is being presented to the eyewitness during the  
 70 identification procedure.

71 (b) Before a lineup, the eyewitness must be instructed  
 72 that:

73 1. The perpetrator might or might not be in the lineup;

74 2. The lineup administrator does not know the suspect's  
 75 identity, except that this instruction need not be given when a  
 76 specified and approved alternative method of neutral  
 77 administration is used;

78 3. The eyewitness should not feel compelled to make an  
 79 identification;

80 4. It is as important to exclude innocent persons as it is  
 81 to identify the perpetrator; and

82 5. The investigation will continue with or without an  
 83 identification.

84  
 85 The eyewitness shall acknowledge, in writing, having received a  
 86 copy of the lineup instructions. If the eyewitness refuses to  
 87 sign a document acknowledging receipt of the instructions, the

591-01907-17

2017312c1

88 lineup administrator must document the refusal of the eyewitness  
 89 to sign a document acknowledging receipt of the instructions,  
 90 and the lineup administrator must sign the acknowledgment  
 91 document himself or herself.

92 (4) REMEDIES.—All of the following remedies are available  
 93 as consequences of compliance or noncompliance with any  
 94 requirement of this section:

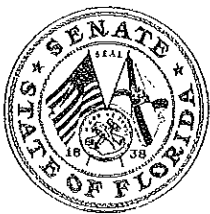
95 (a)1. A failure on the part of a person to comply with any  
 96 requirement of this section shall be considered by the court  
 97 when adjudicating motions to suppress eyewitness identification.

98 2. A failure on the part of a person to comply with any  
 99 requirement of this section is admissible in support of a claim  
 100 of eyewitness misidentification, as long as such evidence is  
 101 otherwise admissible.

102 (b) If evidence of compliance or noncompliance with any  
 103 requirement of this section is presented at trial, the jury  
 104 shall be instructed that the jury may consider credible evidence  
 105 of compliance or noncompliance to determine the reliability of  
 106 eyewitness identifications.

107 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards  
 108 and Training Commission, in consultation with the Department of  
 109 Law Enforcement, shall create educational materials and provide  
 110 training programs on how to conduct lineups in compliance with  
 111 this section.

112 Section 2. This act shall take effect October 1, 2017.



**SENATOR DENNIS BAXLEY**  
12th District

## THE FLORIDA SENATE

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Criminal Justice, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and  
Human Services  
Transportation

**SELECT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

February 21, 2017

The Honorable Senator Greg Steube  
326 Senate Office Building  
Tallahassee, Florida 32399

Dear Chairman Steube,

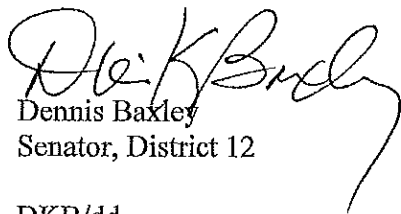
I respectfully request you place Senate Bill 312, relating to Eyewitness Protection on your Criminal Justice agenda at your earliest convenience.

This bill requires state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures. It includes that a lineup must be conducted by an independent administrator or an alternative method such as using a computer or photo lineup.

It passed its first committee of reference, Criminal Justice with a 7-0 vote.

I appreciate your favorable consideration.

Onward & Upward,

  
Dennis Baxley  
Senator, District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

## THE FLORIDA SENATE

## APPEARANCE RECORD

March 14, 2017

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

CS/SB 312

Meeting Date

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Honorable Bob Dillinger

Job Title Public Defender, 6th Circuit

Address 14250 49th Street, North

Phone 727-464-6516

Street

Clearwater

FL

33762

City

State

Zip

Email bdilling@wearethehope.org

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

March 14, 2017

Meeting Date

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

SB 312

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Ken Albano

Job Title Chief of Police

Address 2636 Mitcham Drive

Phone 850-219-3681

Street

Tallahassee FL 32308

Email bhoward@fpca.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

312

Bill Number (if applicable)

Topic Eyewitness Identification

Amendment Barcode (if applicable)

Name Seth Miller

Job Title Executive Director

Address 1100 E. Park Ave.  
Street

Phone 850-561-6767

Tallahassee FL 32301  
City State Zip

Email smiller@floridainnocence.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Innocence Project of Florida, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

SB 312

Bill Number (if applicable)

Topic Eyewitness ID-SB 312

Amendment Barcode (if applicable)

Name Michelle Feldman

Job Title Policy Advocate

Address 40 Worth Street, Suite 701

Phone \_\_\_\_\_

Street

New York

NY

State

10013

Zip

Email M.Feldman@innocenceproject.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Innocence Project

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/2017

Meeting Date

3/2

Bill Number (if applicable)

Topic eyewitness Identification

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0224

Street Tallahassee State FL Zip 32301

Email jorge@flaportals.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla Assoc of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

March 14, 2017  
Meeting Date

SB 312  
Bill Number (if applicable)

Topic Criminal Justice

Amendment Barcode (if applicable)

Name Monique Gillum

Job Title Policy Strategist

Address 106 College Ave  
Street  
Tallahassee, FL  
City State Zip

Phone 334-425-7574

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Southern Poverty Law Center

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

312

Bill Number (if applicable)

Topic Eye witness Identification

Amendment Barcode (if applicable)

Name Mercer Fecrington

Job Title Lobbyist

Address 2617 Melon Drive

Phone 877-2165

Street

Tallahassee FL 32308

Email

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriff Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 436

INTRODUCER: Senators Baxley and Steube

SUBJECT: Religious Expression in Public Schools

DATE: March 13, 2017

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

| ANALYST              | STAFF DIRECTOR | REFERENCE | ACTION           |
|----------------------|----------------|-----------|------------------|
| 1. <u>Benvenisty</u> | <u>Graf</u>    | <u>ED</u> | <b>Favorable</b> |
| 2. <u>Stallard</u>   | <u>Cibula</u>  | <u>JU</u> | <b>Favorable</b> |

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**I. Summary:**

SB 436 creates the “Florida Student and School Personnel Religious Liberties Act,” protecting K-12 public school students, their parents, and school personnel from discrimination based on their religious belief and expression.

The bill protects students from discrimination based on their religion in several ways. Regarding coursework, the bill requires that students’ work be graded according to the expected academic standards, without regard for any religious content. Also, if students in a given school setting are permitted to wear clothing, jewelry, or accessories that display a secular message or symbol, then students may also wear items displaying religious messages or symbols. Moreover, the bill authorizes students to express themselves in a religious manner, and to engage in and organize religious activities to the same extent as secular expressions and activities are permitted.

The bill protects school personnel from discrimination in several ways. First, school districts may not discriminate against their employees on religious grounds. Also, school personnel may not be barred from joining in certain types of student-initiated religious activities. This protection includes several caveats, including that the activity must be on school grounds, occur at reasonable times before or after school, be voluntary, and not conflict with the duties of the employee joining the student-initiated activity.

The bill protects religious groups from discrimination by requiring school districts to permit these groups access to the same facilities for assembly that it permits such access to secular groups.

The bill requires school districts to adopt a policy establishing a “limited public forum” for student speakers at certain school events. This policy must include certain elements set forth in the bill. Also, the policy must include or be comprised entirely of the model limited public forum policy that the bill requires the Florida Department of Education to develop and publish.

## **II. Present Situation:**

### **Federal and State Law Pertaining to Religious Liberty**

#### ***Provisions in the Constitutions of Florida and the United States***

The relationship between religion and government in the United States is governed by the First Amendment to the U.S. Constitution, which prevents the government from establishing religion and protects privately initiated expression and activities from government interference and discrimination.<sup>1</sup>

The First Amendment to the U.S. Constitution states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or 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.

Similarly, Article I, section 3 of the Florida Constitution states:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety.

Both the U.S. Constitution and the Florida Constitution contain an Establishment Clause, Free Exercise Clause, and protect individual freedom of speech and expression.<sup>2</sup>

#### ***Establishment of Religion***

The Establishment Clause of the First Amendment to the U.S. Constitution requires the government, including public school officials, to maintain neutrality in its treatment of religion.<sup>3</sup> Accordingly, teachers and other school personnel, as government officials, may not lead students in prayer, devotional readings from religious texts, or other religious practices.<sup>4</sup>

#### ***Free Exercise of Religion***

The protections of the Free Exercise Clause direct that no law may discriminate against some or all religious beliefs or regulate or prohibit conduct undertaken for religious reasons.<sup>5</sup> Florida courts have generally interpreted Florida's Free Exercise Clause as coequal to the federal clause.<sup>6</sup>

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<sup>1</sup> U.S. CONST. amend. I.

<sup>2</sup> U.S. CONST. amend. I; FLA. CONST. art. I, s. 3.

<sup>3</sup> U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited March 3, 2017); see also *Everson v. Board of Education*, 330 U.S. 1, 18 (1947).

<sup>4</sup> *Engle v. Vitale*, 370 U.S. 421 (1962) (invalidating state laws directing the use of teacher-led prayer in public schools) and *School District of Abington Township Pennsylvania et al. v. Shempp et al.*, 374 U.S. 203 (1963) (invalidating state laws requiring public schools to begin the school day with Bible readings).

<sup>5</sup> *Church of the Lukimi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

<sup>6</sup> *Warner v. City of Boca Raton*, 887 So. 2d 1023, 1030 (citing *Toca v. State*, 834 So. 2d 204, 208 (Fla. 2d DCA 2002)).

### ***Free Speech and Expression***

Both the U.S. Constitution and Florida Constitution provide that every person may speak, write, and publish sentiments on all subjects.<sup>7</sup>

However, an individual's freedom of speech or expression may be limited by the government if the speech or expression occurs on government-owned property, such as a public elementary, middle, or high school, or at a public university.<sup>8</sup> Such limitations are determined by the type of public forum created on government property.<sup>9</sup> There are three types of public forums:<sup>10</sup>

- A “traditional” or “open public forum”<sup>11</sup> is a place with a longstanding tradition of freedom of expression, such as a public park or street corner. In an open public forum, the government may only impose content-neutral time, place, and manner restrictions on speech and expression.<sup>12</sup>
- A “designated” or “limited public forum”<sup>13</sup> is a place with a more limited history of expressive activity, usually only for certain groups or topics. Examples may include a university meeting hall.<sup>14</sup> Such limitations must serve a compelling state interest.<sup>15</sup>
- A “closed public forum” is a place that is not traditionally open to public expression, such as a military base.<sup>16</sup>

Generally, student speech and religious expression are protected by the First Amendment of the U.S. Constitution.<sup>17</sup> However, such rights may be limited.<sup>18</sup> A student's right to freedom of speech and expression is protected to the extent it does not “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school and without colliding with the rights of others.”<sup>19</sup>

Students may pray, read religious texts, or study religious materials in a non-disruptive manner when not engaged in school activities or instruction.<sup>20</sup> School authorities are permitted to

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<sup>7</sup> U.S. CONST. amend. 1 (Congress shall make no law abridging the freedom of speech.); Art. I, s. 4, Fla. Const. (Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right.).

<sup>8</sup> *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).

<sup>9</sup> *Id.* at 678-79.

<sup>10</sup> *Id.*

<sup>11</sup> First Amendment Schools, *What is a public forum?* <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13012>, (last visited March 3, 2017); see *Perry Education Association v. Perry Local Educators Association*, 460 U.S. 37, 45-46 (1992).

<sup>12</sup> *Perry*, 460 U.S. at 45-46.

<sup>13</sup> First Amendment Schools, *What is a public forum?* <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13012>, (last visited March 3, 2017); see *Perry*, 460 U.S. at 45-46.

<sup>14</sup> *Perry*, 460 U.S. at 45-46.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506, 513-514 (1969) (stating “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.”); see *Mergens*, 496 U.S. at 230, 250 (1990) and *Chandler v. Siegelman*, 230 F.3d 1313, 1316-1317 (11th Cir. 2001) *cert. denied*, 533 U.S. 916 (2001) (religious expression).

<sup>18</sup> *Tinker*, 393 U.S. at 506, 512-13.

<sup>19</sup> *Id.* at 513.

<sup>20</sup> U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited March 3, 2017).

regulate such activities, but must do so in a manner that does not discriminate against religious expression.<sup>21</sup>

## Florida Statutes

### *The Religious Freedom Restoration Act*

Additionally, the Florida Religious Freedom Restoration Act (RFRA) specifically protects a person's right to the free exercise of religion.<sup>22</sup> The RFRA provides that, as a general matter, the government may not substantially burden a person's free exercise of religion.<sup>23</sup> However, the government may substantially burden a person's exercise of religion if the government demonstrates that the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest.<sup>24</sup>

### *The Florida Education Code*

Florida law authorizes a district school board to adopt a policy allowing an inspirational message by students at a student assembly.<sup>25</sup> The policy must provide that students who are responsible for organizing any student-led portion of a student assembly must:<sup>26</sup>

- Have sole discretion in determining whether an inspirational message is to be delivered; and
- Choose the student volunteers to deliver the message. The student volunteers must be solely responsible for the preparation and content of the inspirational message.

School district personnel are prohibited from participating in, or otherwise influencing, the determination of whether an inspirational message is to be delivered or selecting the student volunteers to deliver the inspirational message.<sup>27</sup> Additionally, school district personnel may not monitor or otherwise review the content of a student volunteer's inspirational message.<sup>28</sup>

The Florida Department of Education is required annually to distribute the federal guidelines on "Religious Expression in Public Schools" published by the U.S. Department of Education to all district school board members, district superintendents, school principals, and teachers for informational purposes.<sup>29</sup>

Florida law requires each district school board to adopt a code of student conduct for elementary schools and a code of student conduct for middle and high schools, and distribute the appropriate code to teachers, school personnel, students, and parents at the beginning of each school year.<sup>30</sup>

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<sup>21</sup> *Board of Education of Westside Community Schools, etc. et al. v. Mergens et al.*, 496 U.S. 226 (1990).

<sup>22</sup> See ch. 761, F.S.

<sup>23</sup> This burden might be a law, rule, or regulation—e.g., a statute that prohibited students from praying in the company of their classmates.

<sup>24</sup> Section 761.03, F.S.

<sup>25</sup> Section 1001.432(1), F.S.

<sup>26</sup> *Id.* at (1)(a).

<sup>27</sup> *Id.* at (1)(b)1.

<sup>28</sup> *Id.* at (1)(b)2.

<sup>29</sup> Section 1002.205, F.S.; see also U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited March 3, 2017).

<sup>30</sup> Section 1006.07(2), F.S.

The code of student conduct must include, but is not limited to, an explanation of the responsibilities of each student with regard to appropriate dress and must prohibit clothing that exposes underwear or body parts in an indecent or vulgar manner, or that disrupts the orderly learning environment.<sup>31</sup>

Additionally, each district school board is authorized to adopt policies requiring students to wear uniforms or impose other dress-related requirements, if a district school board finds that the policies are necessary for the safety and welfare of the student body or school personnel.<sup>32</sup>

In 2016, the Legislature enacted the Students Attired for Education (SAFE) Act to create an incentive payment for school districts and charter schools that implement a standard student attire policy for all students in kindergarten through grade 8.<sup>33</sup> The standard attire policy must:<sup>34</sup>

- Apply to all students in kindergarten through grade 8 in the school district or charter school, regardless of individual school grade configurations;
- Prohibit certain types or styles of clothing and require solid-colored clothing and fabrics for pants, skirts, shorts, or similar clothing and require short-or-long sleeved shirts with collars; and
- Allow reasonable accommodations based on student's religion, disability, or medical condition.

A district school board or charter school governing board that implements a districtwide or schoolwide standard attire policy, respectively, is immune from civil liability resulting from adoption of the policy in accordance with Florida law.<sup>35</sup>

## **Federal Statutes**

### ***The Civil Rights Act of 1964***

Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination based on race, color, religion, sex, and national origin.<sup>36</sup> As such, a school district may not discriminate against an employee on the basis of his or her religion. For purposes of the Civil Rights Act, the term "religion" includes all aspects of religious observance, practice, or belief.<sup>37</sup>

### ***The Equal Access Act***

The Equal Access Act<sup>38</sup> makes it unlawful for any public secondary school that receives federal financial assistance and maintains a limited open forum<sup>39</sup> to deny equal access or fair opportunity

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<sup>31</sup> *Id.* at (2)(d)1.

<sup>32</sup> Section 1001.43(1)(b), F.S.

<sup>33</sup> Section 1011.78, F.S.

<sup>34</sup> *Id.* at (3).

<sup>35</sup> *Id.* at (5).

<sup>36</sup> 42 U.S.C. s. 2000e.; U.S. Equal Employment Opportunity Commission, *Title VII of the Civil Rights Act of 1964*, <https://www.eeoc.gov/laws/statutes/titlevii.cfm> (last visited March 3, 2017).

<sup>37</sup> 42 U.S.C. s. 2000e(j).

<sup>38</sup> 20 U.S.C. s. 4071.

<sup>39</sup> A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurricular related student groups to meet on school premises during instructional time. 20 U.S.C. s. 4071(b). This is

to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of religious, political, philosophical, or other content of speech at such meetings.<sup>40</sup>

A public secondary school is deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that:<sup>41</sup>

- The meeting is voluntary and student-initiated;
- There is no sponsorship of the meeting by the school, the government, or its agents or employees;
- Employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;
- The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
- Nonschool persons do not direct, conduct, control, or regularly attend such activities of student groups.

The U.S. Supreme Court has held that the Equal Access Act does not violate the Establishment Clause of the First Amendment to the U.S. Constitution.<sup>42</sup> The Equal Access Act applies to public secondary schools<sup>43</sup> and does not address the applicability of the Act to elementary or middle schools.<sup>44</sup>

### ***Federal Funding Conditioned on School Districts Not Restricting Prayer in School***

A school district is responsible for the operation, control, and supervision of all public schools within the school district.<sup>45</sup> As a condition of receiving federal funds, a school district must certify in writing to the Florida Department of Education that the school district has no policy that prevents, or otherwise denies participation in, constitutionally protected prayer in public schools.<sup>46</sup>

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a different standard from the “limited public forum” specified in SB 436. See *East High Gay Straight Alliance v. Board of Education of Salt Lake City School District*, 81 F. Supp. 2d 1199, 1200 n.1 (D. Utah 1999) (citing *Mergens*, 496 U.S. at 242).

<sup>40</sup> 20 U.S.C. s. 4071(a).

<sup>41</sup> *Id.* at (c).

<sup>42</sup> *Mergens*, 496 U.S. at 253.

<sup>43</sup> A “secondary school” means a public school which provides secondary education as determined by state law. 20 U.S.C. 4072(1). A secondary school in Florida is described as a high school. Section 1003.01(2), F.S.

<sup>44</sup> The U.S. Supreme Court has noted that no meaning can be derived from the decision by Congress not to address elementary schools in the Equal Access Act. *Good News Club v. Milford Central School*, 533 U.S. 98, 118 n.8 (2001).

<sup>45</sup> FLA. CONST. art. IX, s. 4(b).

<sup>46</sup> 20 U.S.C. s. 7904(b); see also Florida Department of Education, *Guidelines in Annual Certification Regarding Constitutionally Protected Prayer in all Public Elementary and Secondary Schools* (Oct. 28, 2016), Memorandum DPS:2016-168; U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited March 3, 2017); s. 1002.205, F.S.



### III. Effect of Proposed Changes:

#### **Discrimination Against Students, Parents, and School Personnel for Religion Prohibited**

The bill prohibits a school district from discriminating against a student, parent, or school personnel on the basis of a religious viewpoint or religious expression.

#### **Non-discrimination Regarding Student Religious Expression**

Under the bill, a school district must treat a student's voluntary expression of a religious viewpoint on an otherwise permissible subject in the same way that it would treat the expression of a secular viewpoint.

#### ***Student Religious Expression in Coursework and Attire***

The bill requires public schools to evaluate each student's work on expected academic criteria relating to the course curriculum and requirements, at least as to assignments that require a student to express his or her viewpoint.<sup>47</sup>

Similarly, the bill prohibits discrimination against religious clothing, accessories, and jewelry. Specifically, a school district must permit the wearing of clothing, accessories, and jewelry that display a religious message just as the school district would if these items were secular.<sup>48</sup>

#### ***Student Prayer and Religious Activities***

The bill also authorizes a student to pray or engage in and organize religious activities before, during, and after the school day to the same extent that students may engage in secular activities, expression, or groups. Further, the bill authorizes a group that meets for prayer or religious speech to advertise or announce its meetings to the same extent that a secular group may advertise or announce its meetings. This right appears to be consistent with the federal Equal Access Act, which applies to public secondary schools.<sup>49</sup> Also, students at these schools may organize during non-instructional time.<sup>50</sup> The bill appears to guarantee this right for students in public elementary and middle schools as well.

The bill authorizes a student to express his or her religious beliefs via homework, artwork, and other written and oral assignments free from discrimination based on their religious content of the student's work. This authority appears to be consistent with federal guidance on "Religious

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<sup>47</sup> The second and third sentences of paragraph (3)(a) seem to express the same basic idea, except where the third sentence limits the prohibition on discrimination against religious viewpoints in coursework to those assignments that *require* a student to express his or her viewpoint.

<sup>48</sup> Examples of clothing, accessories, and jewelry that display a religious message or symbol may include a rosary necklace (see *Chalifoux v. New Caney Independent School District*, 976 F. Supp. 659 (S.D. Tex. 1997), a yarmulke (see *Menora v. Illinois High School Association*, 683 F.2d 1030 (7th Cir. 1982)), long, braided hair of particular religious significance (see *A.A. ex rel. Betenbaugh v. Needville Independent School District*, 611 F.3d 248 (5th Cir. 2010)), and a hijab (United States' Memorandum of Law in Support of Its Cross-Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment, *Hearn et al. v. Muskogee Public School District*, C.A. No.: CIV 03-598-S (E.D. Okla. May 6, 2004)).

<sup>49</sup> 20 U.S.C. s. 4071.

<sup>50</sup> "A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time." *Id.* at (b).

Expression and Prayer in Class Assignments.”<sup>51</sup> Such assignments must be evaluated based on relevant academic standards, and neither penalized nor rewarded on account of religious content.<sup>52</sup>

### **Religious Liberty for School Personnel**

Under the bill, a school district may not prohibit its personnel from attending religious activities that are:

- On school property;
- Student-initiated;
- Voluntary;
- At reasonable times before or after school; and
- Not in conflict with the responsibilities or assignments of the attending personnel.

Also, the bill expressly requires school districts to comply with Title VII of the Civil Rights Act of 1964, which prohibits an employer from discriminating against an employee on the basis of religion.

### **Non-discrimination Regarding Access for Religious Groups**

The bill requires school districts to permit religious groups to assemble in the same facilities in which they permit a secular group to assemble. Therefore, for example, if a school grants afterschool access to its gymnasium for an environmentalist group’s event, it must permit a Jewish group to meet in the school’s gymnasium as well.

### **School Districts Required to Create “Limited Public Forum” Policies**

In addition, the bill provides that a school district may not prevent school personnel from participating in religious activities on school grounds if the activities are initiated by students at reasonable times before or after the school day if the activities are voluntary and do not conflict with the responsibilities or assignments of these personnel.<sup>53</sup>

The bill also requires a school district to adopt a policy that establishes a limited public forum for student speakers at any school event at which a student is to speak publicly. The policy must require the school district to:

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<sup>51</sup> U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited March 3, 2017). As an example, if a teacher’s assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer should be judged on the basis of academic standards, such as literary quality. *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> Presently, pursuant to the Establishment Clause of the First Amendment to the U.S. Constitution, teachers, school administrators, or other school employees generally may not actively participate in prayer or similar religious activities with students on school grounds, unless the overall context makes clear such employees are not participating in their official capacity. U.S. Department of Education, *Guidance on Constitutionally Protected Prayer in Public Elementary and Secondary Schools*, [https://www2.ed.gov/policy/gen/guid/religionandschools/prayer\\_guidance.html](https://www2.ed.gov/policy/gen/guid/religionandschools/prayer_guidance.html) (last visited March 3, 2017). For example, teachers may meet with other teachers for prayer or Bible study to the same extent that they may engage in other conversations or nonreligious activities. Similarly, teachers may participate in their personal capacities in privately sponsored baccalaureate ceremonies. *Id.*

- Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious viewpoint on an otherwise permissible subject;
- Provide a method based on neutral criteria for the selection of student speakers at school events, activities, and graduation ceremonies;
- Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and
- State in written or oral form that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the school district. The school district must deliver this disclaimer at all graduation events and any other event at which a student speaks publicly.

Additionally, the bill provides that a limited public forum may not exclude student expression of a religious viewpoint on an otherwise permissible subject. Currently, district school boards have the discretion to decide whether to establish a limited public forum.<sup>54</sup> Consequently, a district school board that has not yet adopted a policy may need to adopt a policy establishing a limited public forum for student speakers to meet the requirements of this bill.

### **Responsibility of the Department of Education**

The bill requires the Florida Department of Education to develop and publish on its website a model "limited public forum" policy, which each district school board must adopt and implement, regarding a limited public forum and the voluntary expression of religious viewpoints by students and school personnel in public schools. The model policy may assist the school districts in adopting a uniform policy regarding religious expression in public schools, which may facilitate consistency in implementation of the policy.

The bill takes effect on July 1, 2017.

## **IV. Constitutional Issues:**

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the State Constitution.

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

None.

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

None.

<sup>54</sup> See *Perry*, 460 U.S. at 45-46. A limited public forum is a place with a more limited history of expressive activity, usually only for certain groups or topics. Examples may include a university meeting hall. Such limitations must serve a compelling state interest. First Amendment Schools, *What is a public forum?* <http://www.firstamendmentschools.org/freedoms/faq.aspx?id=13012>, (last visited March 3, 2017).

**D. Other Constitutional Issues:**

The provisions of the bill appear to be substantially consistent with provisions of federal law, state law, and court opinions interpreting the right to religious freedom under the state and federal constitutions. These laws and court opinions are discussed in the present situation.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill requires the Florida Department of Education to develop a model limited public forum policy, which school districts are required to adopt. School districts may be permitted to supplement the model policy. Creating and adopting these policies may involve some amount of cost to the Department of Education and each school district.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an unnumbered section 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 Baxley

12-00655-17

2017436\_\_

A bill to be entitled

An act relating to religious expression in public schools; providing a short title; prohibiting a school district from discriminating against students, parents, or school personnel on the basis of religious viewpoints or expression; prohibiting penalty or reward for a student's religious expression in coursework, artwork, or other specified assignments; authorizing a student to wear clothing, accessories, and jewelry displaying religious messages or symbols; authorizing a student to pray or engage in religious activities or expression; authorizing a student to organize prayer groups, religious clubs, and other religious gatherings; prohibiting a school district from preventing school personnel from participating in voluntary, student-initiated religious activities on school grounds under specified circumstances; requiring a school district to comply with the federal requirements in Title VII of the Civil Rights Act of 1964; requiring that a school district provide religious groups with equal access to school facilities; authorizing religious groups to advertise or announce meetings in the same manner and to the same extent as secular groups; requiring that a school district adopt a limited public forum policy and deliver a disclaimer at school events; requiring that the Department of Education develop and publish a model policy regarding a limited public forum and religious expression; requiring that each district school board adopt and implement such model policy; providing an effective date.

Page 1 of 4

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

12-00655-17

2017436\_\_

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

Section 1. Religious expression in public schools.—

(1) This section may be cited as the "Florida Student and School Personnel Religious Liberties Act."

(2) A school district may not discriminate against a student, parent, or school personnel on the basis of a religious viewpoint or religious expression. A school district shall treat a student's voluntary expression of a religious viewpoint on an otherwise permissible subject in the same manner that the school district treats a student's voluntary expression of a secular viewpoint.

(3) (a) A student may express his or her religious beliefs in coursework, artwork, and other written and oral assignments free from discrimination. A student's homework and classroom assignments shall be evaluated, regardless of their religious content, based on expected academic standards relating to the course curriculum and requirements. A student may not be penalized or rewarded based on the religious content of his or her work if the coursework, artwork, or other written or oral assignments require a student's viewpoint to be expressed.

(b) A student may wear clothing, accessories, and jewelry that display a religious message or symbol in the same manner and to the same extent that secular types of clothing, accessories, and jewelry that display messages or symbols are permitted to be worn.

(4) (a) A student may pray or engage in religious activities or religious expression before, during, and after the school day in the same manner and to the same extent that a student may

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

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2017436

engage in secular activities or expression. A student may organize prayer groups, religious clubs, and other religious gatherings before, during, and after the school day in the same manner and to the same extent that a student is permitted to organize secular activities and groups.

(b)1. A school district may not prevent school personnel from participating in religious activities on school grounds that are initiated by students at reasonable times before or after the school day if such activities are voluntary and do not conflict with the responsibilities or assignments of such personnel.

2. A school district shall comply with the federal requirements in Title VII of the Civil Rights Act of 1964, which prohibits an employer from discriminating against an employee on the basis of religion.

(c) A school district shall give a religious group access to the same school facilities for assembling as given to secular groups without discrimination based on the religious content of the group's expression. A group that meets for prayer or other religious speech may advertise or announce its meetings in the same manner and to the same extent that a secular group may advertise or announce its meetings.

(5) (a) A school district shall adopt a policy that establishes a limited public forum for student speakers at any school event at which a student is to speak publicly. The limited public forum policy shall require the school district to:

1. Provide the forum in a manner that does not discriminate against a student's voluntary expression of a religious

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viewpoint on an otherwise permissible subject;

2. Provide a method based on neutral criteria for the selection of student speakers at school events, activities, and graduation ceremonies;

3. Ensure that a student speaker does not engage in obscene, vulgar, offensively lewd, or indecent speech; and

4. State in written or oral form that the student's speech does not reflect the endorsement, sponsorship, position, or expression of the school district.

(b) The school district shall deliver the disclaimer required in subparagraph (a)4. at all graduation events and any other event at which a student speaks publicly.

(c) Student expression of a religious viewpoint on an otherwise permissible subject may not be excluded from the limited public forum.

(6) The Department of Education shall develop a model policy regarding a limited public forum and voluntary expression of religious viewpoints by students and school personnel in public schools pursuant to this section. The department shall publish the model policy on its website. Each district school board shall adopt and implement the department's model policy.

Section 2. This act shall take effect July 1, 2017.

# THE FLORIDA SENATE

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Criminal Justice, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Health and  
Human Services  
Transportation

**SELECT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR DENNIS BAXLEY**  
12th District

March 6, 2017

The Honorable Senator Greg Steube  
326 Senate Office Building  
Tallahassee, Florida 32399

Dear Chairman Steube,

I respectfully request you place Senate Bill 436, relating to Religious Expression in Public Schools on the Judiciary agenda at your earliest convenience.

This bill prohibits a school district from discriminating against students on the basis of religion, prohibits penalty or reward for a student's religious expression in any coursework, activities, clothing or jewelry. Authorizes a student to pray or engage in religious activities or expression, including prayer groups, religious clubs, and other religious gatherings. Prohibits a school district from preventing school personnel from participating in voluntary, student-initiated religious activities on school grounds. Authorizes religious groups to advertise or announce meetings in the same manner and to the same extent as secular groups. Requires that a school district adopt a limited public forum policy and deliver a disclaimer at school events. Requires DOE develop model for school districts. Districts must implement such model.

I appreciate your favorable consideration.

Onward & Upward,

Dennis Baxley  
Senator, District 12

DKB/dd

cc: Tom Cibula, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012  
Email: [baxley.dennis@flsenate.gov](mailto:baxley.dennis@flsenate.gov)

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

Meeting Date

436

Bill Number (if applicable)

Topic RELIGIOUS LIBERTIES Act

Amendment Barcode (if applicable)

Name BENJAMIN BURGOS

Job Title \_\_\_\_\_

Address 7135 ROYAL GEORGE CT-  
Street

Phone 813-403-9138

WESLEY FL 33545  
City State Zip

Email benbargos55@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing TEMPLE ELIJAH ASSEMBLIES OF GOD

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2.13.17

Meeting Date

436

Bill Number (if applicable)

Topic RELIGIOUS EXPRESSION PUBLIC SCHOOLS

Amendment Barcode (if applicable)

Name BILL BUNKLEY

Job Title PRESIDENT

Address PO Box 341644  
Street

Phone 813-264-2972

TAMPA FL 33694  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ETHICS AND RELIGIOUS LIBERTY COMMISSION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/14/17  
Meeting Date

436  
Bill Number (if applicable)

Topic FLORIDA STUDENT & SCHOOL PERSONNEL RELIGION LIBERTY ACT Amendment Barcode (if applicable)

Name MANUE/TAMAR GO

Job Title \_\_\_\_\_

Address 3800 SW 62 AVE  
Street

Phone 786 389 7221

Miami FL 33153  
City State Zip

Email MANUE.TAMARGO@STMAIL.FL

Speaking: ☐ For ☐ Against ☐ Information

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

Representing CHRISTIAN FAMILY CONFERENCE (CFC) FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

3-14-17

Meeting Date

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

SB-436

Bill Number (if applicable)

Topic I.S.P. R.L.

Amendment Barcode (if applicable)

Name George L Rosario

Job Title Councilman

Address 1101 Peregrino St.

Street

Crowland

City

FL

State

34736

Zip

Phone 352-404-7218

Email georgerosario657@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Crowland.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

03-14-17  
Meeting Date

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

SB-436  
Bill Number (if applicable)

Topic Florida Student & School Personnel Religious Liberty  
Amendment Barcode (if applicable)

Name Ruth Villamizar

Job Title COMIB President, Hispanic Pastor

Address 5790 A Fox Hollow Dr  
Boca Raton  
City State Zip

Phone 954 657 1410

Email Pastor@Diosvive.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing COMIB - Hispanic Pastor Broward

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-17

Meeting Date

SB-436  
Bill Number (if applicable)

Topic Florida student and school Personal Redress Amendment Barcode (if applicable)

Name Maria Negron

Job Title Casa del Dios Viviente

Address 606 NW 20 Ave

Street

Pompano Beach FL 33069

City

State

Zip

Phone 561-674-3946

Email galaxyrivera59@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

SB-436

~~HB 303~~  
Bill Number (if applicable)

Topic ~~HB 303~~ SB-436

Amendment Barcode (if applicable)

Name Nathan Taylor

Job Title

Address 17882 Gourd Neck Loop  
Street

Phone 305 494 4018

City

State

Zip

Email n.taylor@nrealt.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing LAKE COUNTY

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

031417

Meeting Date

436

Bill Number (if applicable)

Topic Religious Liberty Act

Amendment Barcode (if applicable)

Name Marilyn Sobat

Job Title

Address 3016 SW 51 St

Street

Phone 813-842-8788

DANIA Bch

City

FL

State

33312

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Christian Family Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

7-14-17

Meeting Date

436

Bill Number (if applicable)

Topic Florida Student School Personnel Religion Amendment Barcode (if applicable)

Name Abraham Aguilera

Job Title Eddy Sender

Address 125018 St apt #1

Street

Miami

City

FL

State

33139

Zip

Phone 786-2869290

Email aguilera.abraham@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing United Hispanic Industries - Cuban Family

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-17  
Meeting Date

436  
303  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name CHRIS WALKER

Job Title \_\_\_\_\_

Address 195 Blackstone Creek Rd  
Street

Phone \_\_\_\_\_

Graveland FL 34786  
City State Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Lake County

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/13/2017

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 436  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/2017

*Meeting Date*

SB 436

*Bill Number (if applicable)*

Topic Religious Expression in Schools

*Amendment Barcode (if applicable)*

Name Brandon Haught

Job Title High School Science Teacher

Address 830 Airport Road

Phone 352-434-9267

*Street*

Port Orange

FL

32128

Email bhaught@flascience.org

*City*

*State*

*Zip*

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Citizens for Science

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/14/17

Meeting Date

SB436

Bill Number (if applicable)

Topic Religious Expression

Amendment Barcode (if applicable)

Name Gabriel Garcia-Vera

Job Title Field & Advocacy Manager

Address 8325 NE 2nd Ave

Phone

Street

Miami

FL

33138

City

State

Zip

Email gaby@latinainstitute.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Latina Advocacy Network

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/14

Meeting Date

SB436

Bill Number (if applicable)

Topic SB436 Religious Expression Amendment Barcode (if applicable)

Name Denise Spivey / League of Women Voters

Job Title Professor of History

Address 7 Marie Cir.

Street

Phone 407 539-4157

Crawfordville, FL 32327

City

State

Zip

Email spiveyda@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-14-17

Meeting Date

SB-434

Bill Number (if applicable)

Topic

Waive in support

Amendment Barcode (if applicable)

Name

Hannah Willard

Job Title

Policy Director

Address

D.D. Hwy 13184

Phone

407-451-5460

Street

St. Pete

FL

33733

Email

hannah@epfl.org

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☒

Against

(The Chair will read this information into the record.)

Representing

Equality Florida

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

436

Bill Number (if applicable)

Topic Religious Expression

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title Legislative Advocate

Address 540 Beverly Ct

Street

Phone 772 204 1792

Tallahassee

FL

32301

City

State

Zip

Email lwrfadvoce@

gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against

(The Chair will read this information into the record.)

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

436  
Bill Number (if applicable) \_\_\_\_\_

Topic Religious Freedom in Public Schools

Amendment Barcode (if applicable) \_\_\_\_\_

Name Pam Olsen

Job Title President, Florida Prayer Network

Address PO Box 14017

Phone 850-906-9170

Street

TLH

FL

32317

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



THE FLORIDA SENATE

# APPEARANCE RECORD

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

MARCH 14, 2017

Meeting Date

436

Bill Number (if applicable)

Topic RELIGIOUS LIBERTY ACT

Amendment Barcode (if applicable)

Name NATHANIEL J. WILCOX

Job Title \_\_\_\_\_

Address 3111 NW 135 ST

Phone 786-488-2979

Street

OPA-LOCKA FL 33054

City

State

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing CHRISTIAN FAMILY COALITION

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

03/14/17

Meeting Date

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

SB-436

Bill Number (if applicable)

Topic Florida Student & School Personnel Religious Liberties Act Amendment Barcode (if applicable)

Name Daniel Diaz

Job Title Broward & Palm Beach Coordinator

Address 3051 N. Course Dr # 712

Street

Pompano Beach FL 33069

City

State

Zip

Phone 786-423-2325

Email diazkoft@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Christian Family Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/2017  
Meeting Date

SB-436  
Bill Number (if applicable)

Topic SB-436

Amendment Barcode (if applicable)

Name Armando V. Pomar

Job Title Pres. CEO

Address 7710 Abbott Ave  
Street

Phone 786-285-4010

Miami Beach FL 33141  
City State Zip

Email armando.v.pomar@grubel.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Christian Family Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/12

Meeting Date

436

Bill Number (if applicable)

Topic Florida Student + School Personnel

Amendment Barcode (if applicable)

Name Anthony Verdugo Religious Liberties Act

Job Title Executive Director

Address 6850 SW 24th St.

Phone 786-447-6431

Street

Miami

City

FL

State

33165

Zip

Email IndeeLO@hotmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Christian Family Coalition (CFC) Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3.14.17

Meeting Date

436

Bill Number (if applicable)

Topic Religious Liberties Act

Amendment Barcode (if applicable)

Name GILBERTO RODRIGUEZ

Job Title Pastor

Address 21021 STATE RD 54

Phone 813 701-8903

Street

Lotz

FL

33558

City

State

Zip

Email templeelias@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing ~~lot~~ temple ELIJAH ASSEMBLIES OF GOD, INC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-17

Meeting Date

436

Bill Number (if applicable)

Topic Religious Liberties Act

Amendment Barcode (if applicable)

Name Jose L. Melendez Jr

Job Title CFC

Address 3114 Ashmonte Dr

Phone 813-949-7915

Street

Land O Lakes FL 34638

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Temple Elijah Assemblies OF GOD JCFC

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-17

Meeting Date

SB 436

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Rev. Joe Perramone

Job Title Pastor / Educator

Address 6099 Lat Thomas Hwy

Phone 850-510-0587

Street

Quincy

FL

City

State

Zip

Email revjoe@stcatholic.org

3/14/17

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Equality FL - FL Clergy United

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

436  
~~CSA 113303~~  
Bill Number (if applicable)

Topic Religion in Schools

Amendment Barcode (if applicable)

Name Saif Hamideh

Job Title Legislative director

Address 842 Tanglewood Circle  
Street

Phone \_\_\_\_\_

Wiston FL 33321  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Emerge USA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)



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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: SR 574

INTRODUCER: Senator Rader

SUBJECT: United Nations Security Council Resolution 2334

DATE: February 9, 2017

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Brown   | Cibula         | JU        | <b>Favorable</b> |
| 2. |         |                | RC        |                  |

---

**I. Summary:**

SR 574 proclaims the Senate's opposition to United Nations Security Council Resolution 2334, adopted December 23, 2016. Resolution 2334 claims in contravention of longstanding U.S. policy that "the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace."

The United States, as a member of the Security Council, abstained from voting on Resolution 2334.

Among the bases for opposing the Resolution of the Security Council, the Senate resolution states that:

- The passage of Resolution 2334 undermines the long-standing position of the U.S. to oppose and veto Security Council resolutions that attempt to impose solutions that are one-sided and anti-Israel;
- The passage of Resolution 2334 undermines the prospect of Israelis and Palestinians to resume productive, direct, bilateral negotiations;
- Future measures to impose an agreement or parameters for an agreement will set back the peace process and harm the security of Israel.

The Senate resolution further directs the Secretary of State to dispatch copies of this memorial to the President of the United States, the President and Secretary of the U.S. Senate, the Speaker and Clerk for the U.S. House of Representatives, and the Israeli Embassy in Washington, D.C.

Legislative resolutions have no force of law. Rather, a legislative resolution is a request, or a formal petition to the U.S. Congress to act on a particular subject.

## II. Present Situation:

### United Nations Security Council

The United Nations Security Council, established in the United Nations Charter, is permanently headquartered at the United Nations Headquarters in New York City.<sup>1</sup> The Security Council is composed of 15 members, five of which are permanent and 10 non-permanent. The General Assembly of the UN elects the 10 non-permanent members to serve on a -year term.

The five permanent members are:

- The United States
- China
- France
- Russian Federation
- The United Kingdom

The 10 non-permanent members are:

- Bolivia
- Egypt
- Ethiopia
- Italy
- Japan
- Kazakhstan
- Senegal
- Sweden
- Ukraine
- Uruguay<sup>2</sup>

Only members of the Security Council may vote on resolutions.<sup>3</sup> A permanent member may cast a negative vote or a veto.<sup>4</sup>

Functions and powers of the Security Council are:

- To maintain international peace and security in accordance with the principles and purposes of the UN;
- To investigate any dispute or situation which might lead to international friction;
- To recommend methods of adjusting disputes or terms of settlement;
- To formulate plans for establishing a system to regulate armaments;
- To determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;

---

<sup>1</sup> United Nations Security Council, What is the Security Council, <http://www.un.org/en/sc/about/> (last visited Mar. 10, 2017).

<sup>2</sup> United Nations Security Council, Current Members, <http://www.un.org/en/sc/members/index.shtml> (last visited Mar. 10, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> United Nations Security Council, About the Repertoire, <http://www.un.org/en/sc/about/faq.shtml> (last visited Mar. 10, 2017).

- To call on members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
- To take military action against an aggressor;
- To recommend the admission of new members;
- To exercise trusteeship functions of the UN in strategic areas; and
- To recommend to the general assembly the appointment of the Secretary-General; and together with the assembly, to elect the judges of the International Court of Justice.<sup>5</sup>

All members of the UN are expected to accept and carry out the decisions of the Security Council, in accordance with the present Charter.<sup>6</sup>

### **United Nations Security Council Resolution 2334**

On December 23, 2016, the United Nations Security Council adopted UN Security Council Resolution 2334. The Resolution claims that areas Israel began to occupy in 1967 are Palestinian territory and that Israeli settlements in those areas, including East Jerusalem, have no legal validity.

Resolution 2334, provides, in part:

*The Security Council,*

*Condemning* all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions,

*Reaffirms* that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace,

*Reiterates* its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard,

*Underlines* that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations,

*Stresses* that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution,

---

<sup>5</sup> United Nations Security Council, Functions and Powers, <http://www.un.org/en/sc/about/functions.shtml> (last visited Mar. 10, 2017).

<sup>6</sup> *Id.*

*Urges in this regard* the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a comprehensive, just and lasting peace in the Middle East on the basis of the relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967; and *underscores* in this regard the importance of the ongoing efforts to advance the Arab Peace Initiative, the initiative of France for the convening of an international peace conference, the recent efforts of the Quartet, as well as the efforts of Egypt and the Russian Federation ...<sup>7</sup>

Fourteen countries voted to adopt the resolution, with the United States abstaining. The representative of the United States stated that abstaining from the vote followed the long-standing position of the U.S. that the Israeli settlements undermined Israel's security and eroded prospects for peace and stability.<sup>8</sup>

### III. Effect of Proposed Changes:

SR 574 proclaims the Senate's opposition to the United Nations Security Council Resolution 2334, adopted December 23, 2016.

The key provisions of the Senate resolution state:

- The passage of Resolution 2334 undermines the long-standing position of the U.S. to oppose and veto Security Council resolutions that attempt to impose solutions that are one-sided and anti-Israel.
- The passage of Resolution 2334 undermines the prospect of Israelis and Palestinians resuming productive, direct, bilateral negotiations.
- Future measures to impose an agreement or parameters for an agreement will set back the peace process and harm the security of Israel.
- The U.S. should oppose and veto future one-sided, anti-Israel Security Council resolutions that seek to impose solutions to final-status issues.

The bill further directs the Secretary of State to dispatch copies of this memorial to the President of the United States, the President and Secretary of the U.S. Senate, the Speaker and Clerk for the U.S. House of Representatives, and the Israeli Embassy in Washington, D.C.

Resolutions are aspirational, in that they have no force of law. A resolution is a request, or a formal petition to the U.S. Congress to act on a particular subject. Legislative resolutions are not subject to the Governor's veto power and are not presented to the Governor for review.

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<sup>7</sup> United Nations Security Council Resolution 2334 (2016), <http://www.un.org/webcast/pdfs/SRES2334-2016.pdf>.

<sup>8</sup> United Nations, *Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms: 14 Delegations in Favour of Resolution 2334 (2016) as United States Abstains* (Dec. 23 2016), <https://www.un.org/press/en/2016/sc12657.doc.htm>.

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

As resolutions are aspirational in nature, and a request of Congress, they do not create a mandate on a municipality or a county.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

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

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

None.

B. Amendments:

None.

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

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The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** February 21, 2017

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I respectfully request that **Senate Resolution #574**, relating to United Nations Security Council Resolution 2334, be placed on the:

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

A handwritten signature in cursive script that reads "Kevin Rader".

---

Senator Kevin J. Rader  
Florida Senate, District 29

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

574  
Bill Number (if applicable)

Topic UN resolution 2334

Amendment Barcode (if applicable) \_\_\_\_\_

Name Saif Hamidch

Job Title Legislative Director

Address 842 Tanglewood Circle

Phone 954-817-2047

Street

City

State

Zip

Weston

FL

33327

Email ide

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Emerge USA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 574  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1052

INTRODUCER: Senator Simmons

SUBJECT: Justifiable Use of Force

DATE: March 13, 2017

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Brown   | Cibula         | JU        | <b>Pre-meeting</b> |
| 2. |         |                | RC        |                    |

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## **I. Summary:**

SB 1052 corrects an apparent drafting error caused by 2014 legislation amending s. 776.013(3), F.S., a statute governing the right to self-defense in a person's dwelling, residence, or vehicle. The relevant provision now states, "A person who is *attacked* in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force.

As a result of the error, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force are clear—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.

Accordingly, the bill revises s. 776.013(3), F.S., in a way that is consistent with the other statutory provisions governing the right to use defensive force.

## **II. Present Situation:**

### **Stand Your Ground law**

In 2005, the Legislature enacted into law chapter 2005-27, Laws of Fla., commonly known as the "Stand Your Ground" (SYG) law. The law expanded the common law Castle Doctrine and abrogated the common law duty to retreat on the part of the defender. These changes were incorporated into chapter 776, F.S., which governs the justifiable use of force.

### ***The Castle Doctrine and Home Protection***

The Castle Doctrine, a doctrine dating back to common law, provided that when faced with an intruder, a person had no duty to retreat from his or her home, the proverbial "castle." Rather, the

defender had the right to stay in the home and protect himself or herself with force, including deadly force.<sup>1</sup>

The SYG law expanded the concept of the Castle Doctrine in two main ways. First, the law extended the concept of a person's "castle" to include a dwelling, residence, or occupied vehicle.<sup>2</sup> As a result, a person who acts in self-defense in this expanded castle generally has no duty to retreat before acting in self-defense.

Second, the SYG law created a presumption that a person within a "castle" has a reasonable fear of imminent peril of death or great bodily harm if two conditions are met.<sup>3</sup> First, the intruder must have entered or be in the process of unlawfully and forcibly entering the dwelling, residence, or occupied vehicle or be attempting to forcibly remove a person. Second, the defender must know or had reason to believe that an unlawful and forcible entry had occurred or was occurring.<sup>4</sup>

### ***Defense of Self or Others***

The 2005 changes to the self-defense law also generally eliminated the duty to retreat before using force outside of a person's dwelling, residence, or occupied vehicle. When acting in self-defense or in defense of others, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes the force is necessary to defend himself or herself or another against an imminent use of unlawful force.<sup>5</sup> The person may use deadly force, if the person reasonably believes the force is necessary to prevent imminent death or great bodily harm to himself or herself. However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.<sup>6</sup>

### ***Defense of Property***

When acting in defense of property, a person does not have a duty to retreat and may use non-deadly force, if the person reasonably believes that the force is necessary to stop a trespasser's

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<sup>1</sup> *Recent Development: Florida Legislation; Florida Legislation—The Controversy over Florida's New "Stand Your Ground" Law—Fla. Stat. S. 776.013(2005)*, 33 FLA. ST. U.L.REV. 351, 355 (Fall 2005).

<sup>2</sup> Section 776.013(5), F.S., defines a dwelling as a temporary or permanent building or conveyance of any kind, including an attached porch with or without a roof, mobile or immobile, including a tent, provided that it is designed for nighttime lodging. A residence is a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest. A vehicle is a conveyance of any kind, whether or not motorized provided that it is designed to transport people or property.

<sup>3</sup> Conversely, s. 776.013(4), F.S., presumes that a person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle intends to commit an unlawful act involving force or violence.

<sup>4</sup> Section 776.013(1) and (2), F.S. The presumption does not apply if the person against whom defensive force is used or threatened has the right to be in or is a lawful resident of the location and against whom there is no injunction for protection; the person sought to be removed is in the lawful custody or guardianship of the person against whom the defensive force is used or threatened; the person who uses or threatens to use defensive force is committing a crime or using the location to further a criminal act; or the person against whom defensive force is used or threatened is a law enforcement officer entering the premises pursuant to an official duty and who identifies him or herself as a law enforcement officer. Section 776.013(2), F.S.

<sup>5</sup> Section 776.012(1), F.S.

<sup>6</sup> Section 776.012(2), F.S.

entry on personal or real property other than a dwelling.<sup>7</sup> A person may use deadly force, if the person reasonably believes deadly force is needed to prevent a forcible felony.<sup>8</sup> However, the common law duty to retreat before using deadly force still applies to a person who is engaged in criminal activity or is not in a place where he or she has a right to be.<sup>9</sup>

### **Stand Your Ground Law in other States**

At least 22 states have a version of the Stand Your Ground law. These laws provide that a defender does not have a duty to retreat from an attacker in any place in which the defender is lawfully present.<sup>10</sup> These states having SYG laws include Alabama, Arizona, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia.<sup>11</sup> Nine of these states have adopted laws with specific language providing that a person may stand his or her ground.<sup>12</sup>

### **2014 Changes to Laws Governing the Justifiable Use of Force**

In 2014, the Legislature revised chapter 776, F.S., which governs the justifiable use of force and includes the SYG law.<sup>13</sup> The main change to the chapter was to clarify that a person who can lawfully use force in self-defense may also threaten to use force in self-defense. Further, the changes provided that a person who lawfully threatens to use force in self-defense retains all the rights and immunities under the SYG law.

However, the changes to s. 776.013(3), F.S., which authorize a person to threaten to use defensive force in his or her dwelling, residence, or vehicle contain an apparent drafting error. This error could cause the statute to be read to require that a person be attacked before he or she has the right to use defensive force. The problematic revisions to the 2014 legislation are shown below:

(3) A person ~~who is not engaged in an unlawful activity and~~ who is attacked in his or her dwelling, residence, or vehicle ~~in any other place where he or she has a~~

<sup>7</sup> Section 776.031(1), F.S.

<sup>8</sup> A forcible felony is defined to include the following offenses: “treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.” Section 776.08, F.S.

<sup>9</sup> Section 776.031(2), F.S.

<sup>10</sup> *Self-defense and “Stand Your Ground,”* National Conference of State Legislatures (Aug. 30, 2013).

<http://www.ncsl.org/issues-research/justice/self-defense-and-stand-your-ground.aspx> (last visited Jan. 10, 2017).

<sup>11</sup> Alabama (s. 13A-3-20, 23); Arizona (s. 13-405); Florida (ch. 776, F.S.); Georgia (ss. 16-3-23, 16-3-23-1, 16-3-24); Indiana (s. 35-41-3-2); Kansas (ss. 21-5222, 21-5223, 21-5224, 21-5225, 21-5230); Kentucky (ss. 503.050, 503.055, 503.080); Louisiana (ss. 14:19, 14:20); Michigan (s. 780.972); Mississippi (s. 97-3-15); Montana (s. 45-3-110); Nevada (ss. 200.120, 200.160); New Hampshire (s. 627:4); North Carolina (ss. 14-51.2, 14-51.3); Oklahoma (s. 1289.25); Pennsylvania (title 18, s. 505); South Carolina (ss. 16-11-440, 16-11-450); South Dakota (s. 22-18-4); Tennessee (s. 39-11-614); Texas (ss. 9.31, 9.32, 9.41, 9.42, 9.43); Utah (ss. 76-2-402, 76-2-405, 76-2-407); West Virginia (s. 55-7-22).

<sup>12</sup> States including Stand Your Ground language in self-defense laws are: Alabama (s. 13A-3-23(b)), Florida (s. 776.013, F.S.), Georgia (s. 16-3-23.1), Kansas (s. 21-5320), Kentucky (s. 503.055), Louisiana (s. 14:19), Oklahoma (s. 1289.25), Pennsylvania (title 18, s. 505), and South Carolina (s. 16-11-440(C)).

<sup>13</sup> Chapter 2014-195, Laws of Fla.

~~right to be~~ has no duty to retreat and has the right to stand his or her ground and ~~use or threaten to use meet force with~~ force, including deadly force, if he or she ~~uses or threatens to use force in accordance with s. 776.012(1) or (2) or s. 776.031(1) or (2) reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.~~

A requirement that a person be attacked before he or she has the right to use or threaten to use force in self-defense is inconsistent with other provisions of chapter 776, F.S. These other provisions clearly indicate that the right to use force or threaten to use force in self-defense begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.<sup>14</sup>

### III. Effect of Proposed Changes:

This bill clarifies, s. 776.013, F.S., the statute which defines a person's rights to self-defense when the person is in a dwelling, residence, or vehicle.

Currently, s. 776.013(3), F.S., contains a provision that is inconsistent with other provisions of chapter 776, F.S., which govern the right to self-defense. The problematic language states, "A person who is attacked in his or her dwelling, residence, or vehicle has no duty to retreat" and has the right to use or threaten to use defensive force.

As written, the statute implies that a person's rights to self-defense do not begin until the person is physically attacked. However, another subsection of the same statute and other statutes governing the right to use defensive force are clear—the right to use force or threaten to use force begins when a person reasonably believes that using or threatening to use force is necessary to prevent or terminate another person's use of unlawful force.

Accordingly, the bill revises s. 776.013(3), F.S., in a way that is consistent with the other statutory provisions governing the right to use defensive force.

The changes made by the bill are detailed below by overlaying the subsection of s. 776.013, F.S., stricken by the bill with the new subsection created by the bill.

~~(1) Notwithstanding any other provision of this chapter, a (3) A person who is attacked in his or threatened with the use of force in a her dwelling, residence, or vehicle in which the person has a right to be has no duty to retreat and has the right to stand his or her ground by using and use or threatening threaten to use force, including deadly force, if he or she reasonably believes that such conduct is necessary to prevent imminent death uses or great bodily harm to himself, herself, threatens to use force in accordance with s. 776.012(1) or another (2) or to prevent the imminent commission of a forcible felony. s. 776.031(1) or (2).~~

This bill takes effect July 1, 2017.

<sup>14</sup> See ss. 776.012, 776.013(1) and 4, and 776.031, F.S.

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The changes made by the bill minimize the risk that s. 776.013(3), F.S., can be read out of context with the other provisions of chapter 776, F.S., and used as the basis for arresting a person who lawfully uses force in self-defense.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 776.013, Florida Statutes.

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

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

None.

B. Amendments:

None.

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

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244652

LEGISLATIVE ACTION

Senate

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House

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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 24 - 32  
and insert:

(1) A person who is in a dwelling, residence, or vehicle in  
which the person has a right to be has no duty to retreat and  
has the right to stand his or her ground and use or threaten to  
use:

(a) Non-deadly force against another when and to the extent  
that the person reasonably believes that such conduct is  
necessary to defend himself or herself or another against the





244652

other's imminent use of unlawful force; or

(b) Deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

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

And the title is amended as follows:

Delete lines 3 - 10

and insert:

s. 776.013, F.S.; clarifying the right to use defensive force by a person who is in a dwelling, residence, or occupied vehicle; authorizing the person to use force when the person reasonably believes such force is necessary to defend against the imminent use of unlawful force or to prevent the imminent commission of a forcible felony; conforming a cross-

By Senator Simmons

9-00578B-17

20171052\_\_

A bill to be entitled

An act relating to justifiable use of force; amending s. 776.013, F.S.; specifying that a person who is attacked or threatened with the use of force in a dwelling, residence, or vehicle in which the person has the right to be has no duty to retreat and has the right to stand his or her ground by using or threatening to use force upon a reasonable belief of necessity to prevent imminent death, great bodily harm, or a forcible felony; conforming a cross-reference; deleting provisions relating to using or threatening to use force under certain circumstances; providing an effective date.

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

Section 1. Present subsections (1) and (2) of section 776.013, Florida Statutes, are redesignated as subsections (2) and (3), respectively, a new subsection (1) is added to that section, and present subsections (2) and (3) of that section are amended, to read:

776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.—

(1) Notwithstanding any other provision of this chapter, a person who is attacked or threatened with the use of force in a dwelling, residence, or vehicle in which the person has a right to be has no duty to retreat and has the right to stand his or her ground by using or threatening to use force, including deadly force, if he or she reasonably believes that such conduct

9-00578B-17

20171052\_\_

is necessary to prevent imminent death or great bodily harm to himself, herself, or another or to prevent the imminent commission of a forcible felony.

(3)-(2) The presumption set forth in subsection (2) ~~(1)~~ does not apply if:

(a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or

(c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or

(d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

~~(3) A person who is attacked in his or her dwelling,~~

9-00578B-17

20171052

59 ~~residence, or vehicle has no duty to retreat and has the right~~  
60 ~~to stand his or her ground and use or threaten to use force,~~  
61 ~~including deadly force, if he or she uses or threatens to use~~  
62 ~~force in accordance with s. 776.012(1) or (2) or s. 776.031(1)~~  
63 ~~or (2).~~

64 Section 2. This act shall take effect July 1, 2017.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** March 6, 2017

---

I respectfully request that **Senate Bill 1052**, relating to Justifiable Use of Force, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons", written over a horizontal line.

Senator David Simmons  
Florida Senate, District 9

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

March 14, 2017

*Meeting Date*

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

1052

*Bill Number (if applicable)*

244652

*Amendment Barcode (if applicable)*

Topic Justifiable Use of Force

Name Honorable Stacy Scott

Job Title Public Defender, 8th Circuit

Address 151 SW 2nd Avenue

*Street*

Gainesville

*City*

FL

*State*

32601

*Zip*

Phone 352-338-7370

Email scotts@pdo8.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, Inc.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

March 14, 2017

*Meeting Date*

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

SB-1052

*Bill Number (if applicable)*Topic Glitch Bill/ Justifiable Use of Force*Amendment Barcode (if applicable)*Name Marion Hammer

Job Title \_\_\_\_\_

Address P.O. Box 1387Phone 850-222-9518*Street*TallahasseeFlorida32302

Email \_\_\_\_\_

*City**State**Zip*Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing National Rifle Association & Unified Sportsmen of FloridaAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 1052

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☒ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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3.14.17  
Meeting Date

SB1052  
Bill Number (if applicable)

Topic SB1052

Amendment Barcode (if applicable)

Name Melissa Franklin

Job Title Creative Director

Address 2110 S. Gadsden St.  
Street

Phone 850 264 4881

Tally FL 32301  
City State Zip

Email melisfranklin@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Chapter of Moms Demand Action for  
Gun Sense in America

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

1052

Bill Number (if applicable)

Topic Stand your Ground

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title legislative advocate

Address 540 Beverly Ct

Phone 772 204 1792

Street

Tallahassee

City

FL

State

32301

Zip

Email lwvadvocacy@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

3/14/2017

Meeting Date

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

1052

Bill Number (if applicable)

Topic Justifiable Use of Force

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroes Street

Phone (850) 681-0024

City Tallahassee State FL Zip 32301

Email jorge@laportayrson.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLA Association of Criminal Defense Lawyers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB1270

INTRODUCER: Judiciary Committee and Senator Young

SUBJECT: Compensatory Damages for Injury or Death of a Pet

DATE: March 15, 2017

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------|----------------|-----------|---------------|
| 1. | Parks   | Cibula         | JU        | <b>FAV/CS</b> |
| 2. |         |                | AG        |               |
| 3. |         |                | RC        |               |

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1270 specifies the damages available to the owner of a dead or injured pet dog or cat.

If the injury or death is caused by negligence, the damages may include the cost of veterinary care and the fair market value of the pet. If the injury or death is caused by gross negligence, damages may also include damages of up to \$5,000 for the loss of companionship, love, and affection of the pet. However, the bill does not limit liability of a defendant for noneconomic damages if he or she intentionally injures or kills a person's dog or cat to inflict emotional distress.

Lastly, the bill provides that it does not apply in cases involving veterinarians, government or nonprofit animal control or welfare entities, or a dog that is killing or worrying livestock.

## II. Present Situation:

### Pets in Florida

In Florida, a dog or cat falls under the definition of “domestic animal.”<sup>1</sup> Domestic animals are considered personal property.<sup>2</sup> Like other kinds of property, this means that owners of domestic animals are entitled to recover for damage to them; the proper measure of damages for loss of personal property generally is its market value on the date of the damage.<sup>3</sup>

The Florida Statutes lack a general standard for damages when a domestic animal is harmed.<sup>4</sup> The damages standard has been set by case law, and the courts are conflicted. Courts acknowledge that pets are like family members to many pet owners. However, courts do not uniformly allow a pet owner to recover noneconomic damages for the loss of a pet in the same circumstances in which those damages are allowed for the loss of a child.

### Negligent Harm

Florida follows a modified version of the “impact rule” regarding damages in negligence cases.<sup>5</sup> The basic impact rule states that a plaintiff in a negligence action cannot recover damages for noneconomic (emotional) harm, unless he or she proves that the harm arose from a “physical impact” he suffered in the negligent act.<sup>6</sup> Under the modified version of the rule used in Florida, the physical impact can occur during the act itself, or it can occur if the emotional harm “cause[s] a demonstrable physical injury such as death, paralysis, muscular impairment, or similar objectively discernible physical impairment.”<sup>7</sup>

The Florida Supreme Court has explained the purpose of the impact rule as follows:

The impact rule has been traditionally applied primarily as a limitation to assure a tangible validity of claims for emotional or psychological harm. . . . Florida jurisprudence has generally reasoned that such assurance is necessary because, unlike physical injury, emotional harm may not readily align with traditional tort law damage principles. Our courts have explained that the existence of emotional harm is difficult to prove, resultant damages are not easily quantified, and the precise cause of such injury can be elusive. . . . This Court has also theorized that without the impact rule, Florida courts may be inundated with litigation based solely on psychological injury.<sup>8</sup>

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<sup>1</sup> A “domestic animal” is “any equine or bovine animal, goat, sheep, swine, domestic cat, dog, poultry, ostrich, emu, rhea, or other domesticated beast or bird.” s. 585.01(10), F.S. This definition only applies within chapter 585, F.S., but it is referred to by s. 767.01, F.S., the dog bite statute, and courts have generally kept to this definition as well.

<sup>2</sup> *Kennedy v. Byas*, 867 So.2d 1195, 1197 (Fla. 1st Dist. App. 2004) (citations omitted).

<sup>3</sup> *Allied Van Lines, Inc. v. McNab*, 331 So. 2d 319, 320 (Fla. 2d Dist. App. 1976), *aff’d sub nom. Allied Van Lines, Inc. v. Bratton*, 351 So. 2d 344 (Fla. 1977).

<sup>4</sup> See generally s. 767.01, F.S., which holds dog owners liable for damage their dogs do to people or domestic animals.

<sup>5</sup> See *Zell v. Meek*, 665 So. 2d 1048 (Fla. 1995).

<sup>6</sup> *Id.*

<sup>7</sup> *Brown v. Cadillac Motor Car Div.*, 468 So. 2d 903, 904 (Fla. 1985).

<sup>8</sup> *Welker v. Southern Baptist Hosp. of Fla. Inc.*, 864 So. 2d 1178, 87 (Fla. 1st DCA 2004), *rev’d on other grounds, Southern Baptist Hosp. of Fla., Inc. v. Welker*, 908 So. 2d 317 (Fla. 2005) (quoting *Rowell v. Holt*, 850 So. 2d 474, 477-78 (Fla. 2003));

However, exceptions to the impact rule allow a plaintiff to recover damages for emotional harm when he or she has not suffered a physical impact. The impact rule, for example, does not bar a parent from recovering damages for emotional harm for the loss of a child due to medical malpractice.<sup>9</sup>

In some cases, the courts have applied the impact rule to bar the recovery of damages for the negligent loss of a pet. In *Kennedy v. Byas*, the First District Court of Appeal ruled that if a person negligently harms a domestic animal, he is not liable for emotional damages to the animal's owner.<sup>10</sup> In *Kennedy*, the defendant was a veterinarian who was sued by the owner of a dog he had treated.<sup>11</sup> The court declined to create an exception to the "impact rule," stating that emotional harm was irrecoverable because the harm to the dog did not physically impact the plaintiff.<sup>12</sup> The *Kennedy* court refused to subject veterinarians and others whose negligence might harm an animal to liability for emotional harm absent a physical impact, citing concerns about over-burdening the court system with more negligence cases.<sup>13</sup>

The *Kennedy* court noted that its ruling conflicted with the rulings of the Third District Court of Appeal in two earlier veterinary malpractice cases.<sup>14</sup> The court asked the Supreme Court to rule on its conflict with the Third District, but the case was voluntarily dismissed before the Supreme Court could hear it.<sup>15</sup>

### Malicious Harm

While the Florida Supreme Court has thus not ruled on the viability of noneconomic damages when a domestic animal was harmed through negligence, it has ruled on their use in cases when the animal was harmed maliciously.<sup>16</sup>

In *La Porte v. Associated Independents*, the Court held that if someone intentionally or maliciously harms a domestic animal, that person is liable for any resulting emotional harm to the animal's owner, regardless of the physical impact of the act itself on the owner.<sup>17</sup> The dog owner in *La Porte* sued a garbage collector after its employee threw a garbage can at her dog and killed it in front of her.<sup>18</sup> The Court said that "the affection of the master for his dog is a very real

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see also *Gracey v. Eaker*, 837 So 2d 348, 355 (Fla. 2002) (explaining that "allowing recovery for injuries resulting from purely emotional distress would open the floodgates for fictitious or speculative claims." (quoting *R.J. v. Humana of Fla. Inc.*, 652 So. 2d 360, 362 (Fla. 1995))).

<sup>9</sup> *Welker v. Southern Baptist Hosp. of Fla. Inc.*, 864 So. 2d 1178, 87 (Fla. 1st DCA 2004), remanded, *Southern Baptist Hosp. of Fla., Inc. v. Welker*, 908 So. 2d 317 (Fla. 2005).

<sup>10</sup> *Kennedy v. Byas*, 867 So.2d 1195, 1197 (Fla. 1st Dist. App. 2004).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.* (citing *Johnson v. Wander*, 592 So.2d 1225 (Fla. 3d Dist. App. 1992) and *Knowles Animal Hosp., Inc. v. Wills*, 360 So. 2d 37 (Fla. 3d DCA 1978)). In both Third District cases, the court allowed emotional harm to be considered by the jury when awarding damages.

<sup>15</sup> *Kennedy v. Byas*, Docket Information, Sup. Ct. of Fla. (2004).

<sup>16</sup> See *Kennedy*, 867 So. 2d at 1198 (distinguishing *La Porte*, *infra*, because it dealt with malicious harm to an animal rather than negligent harm).

<sup>17</sup> *La Porte v. Assoc. Indeps., Inc.*, 163 So. 2d 267, 269 (Fla. 1964).

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

thing” to be considered in awarding punitive damages, noting that the owner’s value of her particular dog likely exceeded the market value of a similar dog.<sup>19</sup>

The Florida Statutes also provide for criminal punishment in the event of malicious harm to a domestic animal.<sup>20</sup>

### **Veterinary Care and Noneconomic Damages**

A requirement that a person who harms a domestic animal pay for “reasonable and necessary veterinary care” does not appear in the Florida Statutes or in any Florida court cases. However, several states have recently included the phrase in animal-harm statutes.<sup>21</sup>

Punitive damages are a kind of noneconomic damages which have been used in Florida to compensate victims for emotional harm.<sup>22</sup> The Florida Statutes provide for recovery of punitive damages in any civil action if the trier of fact finds by clear and convincing evidence that the defendant is guilty of either “intentional misconduct” or “gross negligence.”<sup>23</sup> A punitive damages award may not normally exceed the greater of \$500,000 or three times the compensatory (economic) damages award.<sup>24</sup>

Other states, including Nevada, have also adopted language barring noneconomic damages or otherwise limiting recoveries in domestic animal negligence cases.<sup>25</sup> Still others provide for punitive damages in negligence cases involving animals, but do not allow for emotional causes of action.<sup>26</sup>

A Tennessee statute provides for noneconomic damages of up to \$5,000, but only if the pet was negligently harmed on the owner’s property or while under his control.<sup>27</sup> The Tennessee statute also clearly states that the statute does not permit noneconomic damages in negligence actions against veterinarians.<sup>28</sup>

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

### **Liability for Pet Harmers**

This bill defines liability in actions for damages arising from harm to a “pet,” which is “a domesticated dog or cat normally maintained in the household of its owner.”

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<sup>19</sup> *Id.*

<sup>20</sup> Section 828.12, F.S.

<sup>21</sup> Phil Goldberg, *Courts and Legislatures Have Kept the Proper Leash on Pet Injury Lawsuits: Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Values, and Animal Welfare*, 6 STAN. J. ANIMAL L. & POL’Y 30, 61 (2013) (citations omitted).

<sup>22</sup> See, e.g. *LaPorte v. Assoc. Indeps., Inc.*, 163 So. 2d 267 (Fla. 1964) (using “punitive” language throughout).

<sup>23</sup> Section 768.72(2), F.S. Gross negligence uses the same definition proposed in the bill (*infra* Section III).

<sup>24</sup> Section 768.73(1), F.S.

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

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

<sup>27</sup> Tenn. Code. 44-17-403 (2003).

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

In a simple negligence action, the person who harms a pet is liable for monetary losses suffered by the owner of the pet. This includes the cost of reasonable and necessary veterinary care due to the harm, plus any loss in the fair market value of the pet as measured just before the harm.

“Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances.”<sup>29</sup>

The bill also provides for an award of up to \$5,000 in noneconomic damages for loss of the pet’s companionship. This limit only applies in cases where the harm was caused by the gross negligence of the defendant and the action solely concerns the direct harm to the pet. “‘Gross negligence’ means that [the defendant’s] conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.”<sup>30</sup>

Noneconomic damages do not have a limit if “for causes of action for intentional infliction of emotional distress.” Intentional infliction of emotional distress has been described as conduct that is “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.”<sup>31</sup>

Under the *expressio unius* canon of statutory construction, courts interpret the mention of one thing in a statute as implying the exclusion of other unmentioned things.<sup>32</sup> As a result, courts will likely interpret the bill as eliminating the awards of punitive damages for the death of a pet by specifying the types of damages that are authorized. However, the availability of damages for emotional harm may offset the loss of the potential for punitive damages.<sup>33</sup>

### Exceptions

The bill does not apply in several situations. First, the bill does not apply to actions taken against a licensed veterinarian for harm to a pet. As a result, the liability of veterinarians for malpractice will continue to be defined by appellate court opinions, which are in conflict.

The bill also does not apply to actions taken against a nonprofit entity or government agency if it negligently causes the death of a pet while acting on behalf of public health or animal welfare.

Finally, the bill does not cover any killing of a dog that is “killing or worrying livestock.”

### Effective Date

The bill takes effect July 1, 2017.

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<sup>29</sup> Fla. Std. Jury Instr. 401.4.

<sup>30</sup> Fla. Std. Jury Instr. 503.1b.(1).

<sup>31</sup> *Metropolitan Life Ins. Co. v. McCarson*, 467 So. 2d 277, 278-79 (Fla. 1985) (quoting Section 46, Restatement (Second) of Torts (1965)).

<sup>32</sup> *Moonlit Waters Apts., Inc. v. Cauley*, 666 So. 2d 898, 900 (Fla. 1996) (citation omitted).

<sup>33</sup> See *Siegle v. Lee Cty.*, 198 So. 3d 773, 775 (Fla. 2d DCA 2016) (holding that county’s decision to list situations when code provision prohibited defenses showed county’s intent to allow those defenses in all situations not listed).

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill by authorizing larger amounts of damages than are currently authorized in some parts of the state may create a sufficient financial incentive for lawsuits in the death of a pet. However, the bill also creates a “cap” for those kinds of damages.

**C. Government Sector Impact:**

Judicial workloads will increase to the extent the bill results in more actions for damages for the death of a pet dog or cat.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an unnumbered section 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 March 15, 2017:**

The committee substitute clarifies that only a pet owner can bring an action for the injury or death of his pet, as opposed to watchdog groups or other third parties.

- B. **Amendments:**

None.



388014

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/15/2017 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

---

The Committee on Judiciary (Young) recommended the following:

**Senate Amendment**

Delete lines 15 - 16  
and insert:

(2) The owner of a pet may bring an action for the recovery  
of damages arising out of the injury or death of the owner's pet  
and in any such action brought by the owner, the defendant is  
liable for:

By Senator Young

18-01647B-17

20171270\_\_

1 A bill to be entitled  
2 An act relating to compensatory damages for injury or  
3 death of a pet; providing a definition; specifying  
4 liability for compensatory damages for the injury or  
5 death of a pet; providing applicability; providing an  
6 effective date.  
7  
8 Be It Enacted by the Legislature of the State of Florida:  
9  
10 Section 1. Liability for compensatory damages for injury or  
11 death of pet.  
12 (1) As used in this section, the term "pet" means a  
13 domesticated dog or cat normally maintained in or near the  
14 household of its owner.  
15 (2) In any action for the recovery of damages arising out  
16 of the injury or death of a pet, the defendant is liable for:  
17 (a) Monetary losses for reasonable and necessary veterinary  
18 care of the pet due to the injury or death of the pet.  
19 (b) Monetary loss in the fair market value of the pet due  
20 to the injury or death of the pet.  
21 (c) If the injury or death of the pet was caused by the  
22 gross negligence of the defendant, noneconomic damages of up to  
23 \$5,000 for the loss of the reasonably expected companionship,  
24 love, and affection of the pet.  
25 (3) Limits for noneconomic damages under paragraph (2)(c)  
26 do not apply to causes of action for intentional infliction of  
27 emotional distress or any other civil action other than the  
28 direct and sole loss of a pet.  
29 (4) This section does not apply to:

Page 1 of 2

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

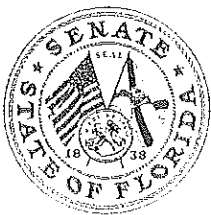
18-01647B-17

20171270\_\_

30 (a) Any veterinarian licensed under chapter 474, Florida  
31 Statutes.  
32 (b) Any nonprofit entity or governmental agency or their  
33 employees negligently causing the death of a pet while acting on  
34 the behalf of public health or animal welfare.  
35 (c) Any killing of a dog that is killing or worrying  
36 livestock as defined in s. 588.13, Florida Statutes.  
37 Section 2. This act shall take effect July 1, 2017.  
38

Page 2 of 2

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Pre-K - 12  
Education, *Vice Chair*  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Regulated Industries

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

**SENATOR DANA YOUNG**

18th District

March 9, 2017

Senator Greg Steube, Chair  
Senate Judiciary Committee  
515 Knott Building  
404 S. Monroe Street  
Tallahassee, Florida 32399-1100

Dear Chairman Steube,

My Senate Bill 1270, Compensatory Damages for Injury or Death of a Pet has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Dana Young".

Dana Young  
State Senator - 18<sup>th</sup> District

DY:mfh

### REPLY TO:

- ☐ 1211 N. Westshore Blvd. Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

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

JOE NEGRON  
President of the Senate

ANITERE FLORES  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/19/2017

Meeting Date

1270

Bill Number (if applicable)

Topic 1

Amendment Barcode (if applicable)

Name ~~Kent~~ Kent McClure

Job Title General Counsel

Address 1325 G Street, NW #700

Street

Washington DC

City

State

20005

Zip

Phone 202-637-2440

Email kmccclure@ahi.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Animac Health Institute

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17  
Meeting Date

1270  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Rick Sutliff

Job Title President - Florida Veterinary Medical Association

Address 3101 Plummer Cove Rd Phone 904-386-9619  
Street  
Jacksonville FL 32223 Email drsutliff@bellsouth.net  
City State Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1270  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

S-001 (10/20/11)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

March 14, 2017

*Meeting Date*

SB-1270

*Bill Number (if applicable)*

388014

*Amendment Barcode (if applicable)*

Topic Compensatory Damages for Pets

Name Marion Hammer

Job Title \_\_\_\_\_

Address P.O. Box 1387

*Street*

Tallahassee

*City*

Florida

*State*

32302

*Zip*

Phone 850-222-9518

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing National Rifle Association & Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/14/17  
Meeting Date

1270  
Bill Number (if applicable)

Topic Compensatory Damages for Injury Loss Pet Amendment Barcode (if applicable)

Name Kate MacFall

Job Title State director

Address 1624 Republic Circle  
Street  
Tallahassee FL 32308  
City State Zip

Phone 850 508-1001

Email KMacFall@HSUS.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Humane Society of the United States

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17  
Meeting Date

1270  
Bill Number (if applicable)

Topic COMPENSATORY DAMAGES

Amendment Barcode (if applicable)

Name JENNIFER HOBGOOD

Job Title STATE LEGISLATIVE DIRECTOR

Address P O BOX 20554

Phone 4455245

Street

TALLAHASSEE FL

State

32316

Zip

Email jenhobgood@aspcar.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing ASPCA (AMERICAN SOCIETY for THE PREVENTION of CRUELTY to ANIMALS)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: SB 1062

INTRODUCER: Senator Powell

SUBJECT: Public Records/Protective Injunction Petitions

DATE: March 13, 2017

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Brown   | Cibula         | JU        | <b>Favorable</b> |
| 2. |         |                | GO        |                  |
| 3. |         |                | RC        |                  |

---

**I. Summary:**

SB 1062 creates a new public records exemption. The bill makes a petition for injunction and its contents confidential and exempt from disclosure if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

This bill applies to all types of injunctions for protection, including injunctions against domestic violence,<sup>1</sup> repeat violence,<sup>2</sup> dating violence,<sup>3</sup> sexual violence,<sup>4</sup> and stalking.

The bill requires petitions for a protective injunction that are confidential and exempt under this bill to be removed from publicly available websites. The process for removal differs depending on when the petition is placed on a website. If a petition is placed on a website, and later dismissed on or after July 1, 2017, which is the effective date of the bill, the webmaster with the clerk of the court or county recorder is responsible for removing the petition. If the petition is placed on the website before July 1, 2017, the respondent named in the petition must first request removal in writing. The person requesting removal must deliver the request by mail, fax, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

The bill includes a statement of public necessity.

This public record exemption is subject to the Open Government Sunset Review Act and stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

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<sup>1</sup> Section 741.30(1), F.S.

<sup>2</sup> Section 784.046(2), F.S.

<sup>3</sup> *Id.*

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

## II. Present Situation:

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>5</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>6</sup>

In addition to the State Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>7</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>8</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>9</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>10</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>11</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>12</sup>

The Legislature may create an exemption to public records requirements.<sup>13</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>14</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>15</sup> A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>16</sup>

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<sup>5</sup> FLA. CONST., art. I, s. 24(a).

<sup>6</sup> FLA. CONST., art. I, s. 24(a).

<sup>7</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>8</sup> Public records laws are found throughout the Florida Statutes.

<sup>9</sup> Section 119.01(1), F.S.

<sup>10</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” 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.”

<sup>11</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>12</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>13</sup> FLA. CONST., art. I, s. 24(c).

<sup>14</sup> FLA. CONST., art. I, s. 24(c).

<sup>15</sup> FLA. CONST., art. I, s. 24(c).

<sup>16</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.<sup>17</sup> It requires the automatic repeal of the exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>18</sup> 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 to meet such public purpose.<sup>19</sup>

## Injunctions

A person may petition the court for several types of injunctions for protection, including injunctions against domestic violence,<sup>20</sup> repeat violence,<sup>21</sup> dating violence<sup>22</sup> sexual violence,<sup>23</sup> and stalking.<sup>24</sup>

Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.<sup>25</sup>

Repeat violence constitutes two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.<sup>26</sup>

Dating violence is violence between individuals who have or have had a continuing and significant romantic relationship.<sup>27</sup> The existence of a dating relationship is determined based on the following:

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement; and
- The frequency and type of interaction must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

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

<sup>17</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System.

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

<sup>20</sup> Section 741.30(1), F.S.

<sup>21</sup> Section 784.046(2), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Section 784.0485(1), F.S.

<sup>25</sup> Section 741.28(2), F.S.

<sup>26</sup> Section 784.046(1)(b), F.S.

<sup>27</sup> Section 784.046(1)(d), F.S.

Sexual violence is any one incident of:

- Sexual battery;
- A lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney.<sup>28</sup>

A form for a petition for injunction against domestic violence is provided in Florida law.<sup>29</sup> A similar form for a petition for injunction for protection against the other types of violence noted above is provided in sections 784.046(4)(b) and 784.0485(3)(b), F.S.

Upon the filing of a petition for a protective injunction, the court must hold a hearing at the earliest possible time.<sup>30</sup>

If an immediate and present danger of domestic violence appears to exist, the court may grant a temporary injunction ex parte prior to the full hearing.<sup>31</sup>

### **Florida Family Law Rules of Procedure**

The Florida Family Law Rules of Procedure protect from disclosure certain sensitive information recorded in family law cases.<sup>32</sup> The main types of cases governed by the Florida Family Law Rules of Procedure are matters arising from dissolution of marriage, annulment, support including child support, paternity, adoption, and injunctions for protection.<sup>33</sup> Rule 12.004(a), Florida Family Law Rules of Procedure, authorizes a judge hearing a family law case to access and review files of any related case. However, parties, judges, and court personnel are prohibited from disclosing confidential information and documents contained in related case files unless disclosure complies with state and federal law.<sup>34</sup>

A petitioner for a domestic violence injunction may request that his or her address be kept confidential and exempt from public records disclosure pursuant to statute,<sup>35</sup> and the address is then considered a confidential court record.<sup>36</sup>

The Federal Parent Locator Service (FPLS) helps state and local child support agencies locate parents for participation in child support.<sup>37</sup> A family violence indicator is a notation in the FPLS that has been placed on a record when a state has reasonable evidence of domestic violence or

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<sup>28</sup> Section 784.046(1)(c), F.S.

<sup>29</sup> Section 741.30(3)(b), F.S., provides a petition for injunction for protection against domestic violence.

<sup>30</sup> Sections 741.30(4) and 784.046(5), F.S.

<sup>31</sup> Section 741.30(5)(a), F.S.

<sup>32</sup> RULE 12.012, FLA. FAM. L. R. P.

<sup>33</sup> RULE 12.010(a)(1), FLA. FAM. L. R. P.

<sup>34</sup> RULES 12.004(c) and 12.007(c), FLA. FAM. L. R. P.

<sup>35</sup> Section 741.30(3)(b), F.S., authorizes a petitioner to furnish his or her address in a separate confidential filing.

<sup>36</sup> RULE 12.007(b), FLA. FAM. L. R. P.

<sup>37</sup> The Federal Office of Child Support Enforcement administers the program. More at <http://www.acf.hhs.gov/programs/css/fpls> (Last visited Feb. 8, 2016).

child abuse.<sup>38</sup> In parent locator cases, a state court may override a family violence indicator to release information from the FPLS.<sup>39</sup> The state clerk of the court, however, must ensure the protection of records of open cases relating to family violence. All court records in these proceedings are confidential and not available for public inspection until the court issues a final judgment.<sup>40</sup>

### III. Effect of Proposed Changes:

This bill creates a new public records exemption. The bill makes a petition for injunction and its contents confidential and exempt from disclosure if the petition is dismissed without a hearing or at an ex parte hearing due to a failure to state a claim, lack of jurisdiction, or based on insufficiency of the petition itself without an injunction being issued.

This bill applies to all types of injunctions for protection, including injunctions against domestic violence,<sup>41</sup> repeat violence,<sup>42</sup> dating violence,<sup>43</sup> sexual violence,<sup>44</sup> and stalking.

The bill includes a statement of public necessity. Regarding the public records exemption on injunctions that are dismissed, the public necessity asserted to justify the exemption is that the records may be defamatory to the person named in the petition and cause unwarranted damage to his or her reputation. Further, the only way to protect the reputation of the person named in the petition is by removing the petition and its contents.

The bill requires petitions for a protective injunction that are confidential and exempt under this bill to be removed from publicly available websites. The process for removal, however, differs depending on when the petition is placed on a website. If a petition is placed on a website, and later dismissed on or after the effective date of the bill, the webmaster with the clerk of the court or county recorder must remove the petition and any related documents. If the petition is placed on the website prior to the effective date of the bill, it is the responsibility of the person named in the petition to request removal. The request must be in writing, signed, and include the case name and number, document heading, and page number. The person requesting removal must deliver the request by mail, fax, electronic transmission, or in person to the clerk of the court. The clerk may not charge a fee for removal.

This public record exemption is subject to the Open Government Sunset Review Act and stand repealed on October 2, 2022, unless reviewed and saved from repeal through legislative reenactment.

The bill takes effect July 1, 2017.

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<sup>38</sup> RULE 12.650(b)(4), FLA. FAM. L. R. P.

<sup>39</sup> 42 U.S.C. s. 653; RULE 12.650(a), FLA. FAM. L. R. P.

<sup>40</sup> RULE 12.650(b)(4)(i), FLA. FAM. L. R. P.

<sup>41</sup> Section 741.30(1), F.S.

<sup>42</sup> Section 784.046(2), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

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

The bill does not appear to require counties or municipalities to take an action requiring the significant 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 in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution, requires the exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement appears to support the public policy for the exemption.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Article I, s. 24(c) of the Florida Constitution, requires all proposed public records exemptions to be no broader than the stated purpose or public necessity. The justification of necessity provided in this bill for a petition for injunction is that disclosure could otherwise defame and damage the reputation of the person identified in the petition.

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

None.

**B. Private Sector Impact:**

This bill may preserve the reputation of a person named in a petition for injunction that is made confidential and exempt. Protecting a person's reputation may prevent negative financial consequences from being named as a respondent in a petition for a protective injunction.



C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0714, 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 Powell

30-00972-17

20171062\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.0714, F.S.; providing an exemption from public  
 4 records requirements for petitions, and the contents  
 5 thereof, for certain protective injunctions that are  
 6 dismissed in certain circumstances; requiring the  
 7 removal of petitions dismissed before, on, or after a  
 8 specified date from publicly accessible records;  
 9 providing for future legislative review and repeal of  
 10 the exemption; providing a statement of public  
 11 necessity; providing an effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Paragraph (k) is added to subsection (1) of  
 16 section 119.0714, Florida Statutes, to read:  
 17 119.0714 Court files; court records; official records.—  
 18 (1) COURT FILES.—Nothing in this chapter shall be construed  
 19 to exempt from s. 119.07(1) a public record that was made a part  
 20 of a court file and that is not specifically closed by order of  
 21 court, except:  
 22 (k)1. A petition, and the contents thereof, for an  
 23 injunction for protection against domestic violence, repeat  
 24 violence, dating violence, sexual violence, stalking, or  
 25 cyberstalking which is dismissed without a hearing or at an ex  
 26 parte hearing due to failure to state a claim, lack of  
 27 jurisdiction, or any reason having to do with the sufficiency of  
 28 the petition itself without an injunction being issued.  
 29 2.a. A petition, and the contents thereof, described in

Page 1 of 3

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

30-00972-17

20171062\_\_

30 subparagraph 1. which is dismissed on or after July 1, 2017,  
 31 must be removed from all publicly accessible records upon  
 32 dismissal.  
 33 b. A petition, and the contents thereof, described in  
 34 subparagraph 1. which are dismissed before July 1, 2017, shall  
 35 be removed upon request by an individual named in the petition  
 36 as a respondent. The request must be in the form of a signed,  
 37 legibly written request specifying the case name, case number,  
 38 document heading, and page number. The request must be delivered  
 39 by mail, facsimile, or electronic transmission or in person to  
 40 the clerk of the court. A fee may not be charged for such  
 41 removal.  
 42 3. This paragraph is subject to the Open Government Sunset  
 43 Review Act in accordance with s. 119.15 and shall stand repealed  
 44 on October 2, 2022, unless reviewed and saved from repeal  
 45 through reenactment by the Legislature.  
 46 Section 2. The Legislature finds that it is a public  
 47 necessity that a petition, and the contents thereof, for an  
 48 injunction for protection against domestic violence, repeat  
 49 violence, dating violence, sexual violence, stalking, or  
 50 cyberstalking which is dismissed without a hearing or at an ex  
 51 parte hearing due to failure to state a claim, lack of  
 52 jurisdiction, or any reason having to do with the sufficiency of  
 53 the petition itself without an injunction being issued be made  
 54 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 55 s. 24(a), Article I of the State Constitution. The Legislature  
 56 finds that the existence of, and the unverified allegations  
 57 contained in, such a petition may be defamatory to an individual  
 58 named in it and cause unwarranted damage to the reputation of

Page 2 of 3

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

30-00972-17

20171062\_\_

59 such individual. The Legislature further finds that correction  
60 of the public record by the removal of such a petition, and the  
61 contents thereof, is the sole means of protecting the reputation  
62 of such individual.

63 Section 3. This act shall take effect July 1, 2017.



The Florida Senate

## Committee Agenda Request

**To:** Senator Greg Steube, Chair  
Committee on Judiciary

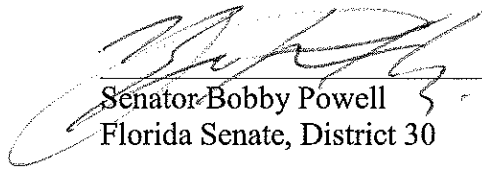
**Subject:** Committee Agenda Request

**Date:** March 9, 2017

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I respectfully request that **Senate Bill #1062**, relating to Public Records/Protective Injunctions Petitions, be placed on the:

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

  
\_\_\_\_\_  
Senator Bobby Powell  
Florida Senate, District 30

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

1062

Bill Number (if applicable)

Topic Public Records Protective Injunctions

Amendment Barcode (if applicable)

Name Mercer Fearington

Job Title Lobbyist

Address 2617 Melan Dr

Phone 877 2165

Street

Tallahassee

FL

32308

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 1062  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

*Street*

SAINT PETERSBURG

FLORIDA

33705

*City*

*State*

*Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 262

INTRODUCER: Senator Steube

SUBJECT: Health Insurance

DATE: March 6, 2017

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

|    | ANALYST   | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|-----------|----------------|-----------|--------------------|
| 1. | Billmeier | Knudson        | BI        | <b>Favorable</b>   |
| 2. | Davis     | Cibula         | JU        | <b>Pre-meeting</b> |
| 3. |           |                | RC        |                    |

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## **I. Summary:**

SB 262 increases the liability exposure of Health Maintenance Organizations for the negligence of health care providers who are not employees of the HMO and creates causes of action for other misconduct by an HMO.

The bill repeals several provisions of statute which expressly provide that HMOs, health insurers, prepaid health clinics, and prepaid health service organizations are not vicariously liable for the negligence non-employee health care providers. As a result, these organizations may be liable for the negligence of non-employee health care providers under theories of agency or apparent agency.

Additionally, the bill amends the Health Maintenance Organization Act to provide civil causes of action against HMOs for violations of the act and for acting in bad faith when failing to provide a covered service. The bill provides that any person may bring a civil action against a health maintenance organization if the HMO fails to provide a covered service when the HMO in good faith should have provided the service had it acted fairly and reasonably toward the person and with due regard for his or her interests. The covered service must be medically reasonable or necessary in the independent medical judgment of the treating physician.

The bill creates individual causes of action against HMOs for violations of specified provisions of the HMO Act such as the prompt pay statute, statutes relating to unfair trade practices, and statutes relating to quality assurance.

## **II. Present Situation:**

Health maintenance organizations (“HMOs”) provide, either directly or through arrangements with other persons, comprehensive health care services that subscribers are entitled to receive pursuant to a contract. Services may include emergency care, inpatient hospital services,

physician care, ambulatory diagnostic treatment, and preventive health care services. Service providers, such as physicians, may be employees or partners in the HMO or they may contract with the HMO to provide services.<sup>1</sup> HMOs are regulated by parts I and III of chapter 641, F.S.<sup>2</sup>

### **Civil Liability of HMOs**

#### ***Civil Remedies Against Insurers***

Section 624.155, F.S., authorizes various individual causes of action against insurers, including health insurers. It provides that any person may bring an action against an insurer when the person is damaged when the insurer does not attempt “in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for her or his interests.”<sup>3</sup> However, s. 641.201, F.S., which broadly exempts HMOs from many provisions of the Florida Insurance Code, effectively exempts HMOs from the requirement under s. 624.155, F.S., to act in good faith.

#### ***Legislative History***

In the late 1990s and early 2000s, the Legislature considered creating individual causes of actions for misconduct by HMOs similar to the causes of action that may be brought against insurers under s. 624.155, F.S. Specifically, in 1996, the Legislature passed CS/HB 1853, which created civil causes of action against HMOs, created a bad faith cause of action similar to the cause of action for bad faith against insurers in s. 624.155, F.S., and provided for plaintiff attorney fees in certain situations. The Governor vetoed that bill. The Legislature considered similar bills providing for causes of action against HMOs in 1997-2001 but those bills did not pass.<sup>4</sup>

#### ***Litigation History***

In *Greene v. Well Care HMO, Inc.*,<sup>5</sup> the court considered whether a patient could bring an action against her HMO under the HMO Act<sup>6</sup> and whether a patient could bring a bad faith action. In that case, the patient’s physician recommended treatment, but the HMO denied coverage. The patient sought a second opinion and that physician agreed with the first doctor’s recommendation. The HMO denied coverage in violation of the policy terms.<sup>7</sup> The court held that the HMO Act did not provide for a private cause of action against an HMO. The court also held that s. 624.155, F.S., which generally authorizes private causes of actions against insurers who engage in prohibited practices, did not apply to HMOs.<sup>8</sup>

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<sup>1</sup> Section 641.19(12), F.S.

<sup>2</sup> Section 641.201, F.S.

<sup>3</sup> Section 624.155(1)(b)1., F.S.

<sup>4</sup> See, e.g., HB 1547 (1997 Regular Session), SB 490 (1998 Regular Session), SB 216 (1999 Regular Session), SB 2154 (2000), and SB 2292 (2001 Regular Session).

<sup>5</sup> *Greene v. Well Care HMO, Inc.*, 778 So. 2d 1037 (Fla. 4th DCA 2001).

<sup>6</sup> Section 641.17, F.S., names part I of ch. 641, F.S., the “Health Maintenance Organization Act.”

<sup>7</sup> *Greene*, 778 So. 2d at 1039.

<sup>8</sup> *Id.* at 1039-1041.



In 2003, the Florida Supreme Court issued a decision in *Villazon v. Prudential Helath Care Plan*,<sup>9</sup> and agreed with the *Greene* court. The Court held that the HMO Act does not provide a private cause of action for violation of the Act's requirements. However, the Court held that the fact that there is no statutory cause of action does not preclude a common law negligence claim based on the same facts.<sup>10</sup> In *Villazon*, the plaintiff alleged that the physicians who had contracted with the HMO were agents or apparent agents of the HMO and, therefore, the HMO was responsible for the physicians' negligence and vicariously liable<sup>11</sup> for the death of his wife.<sup>12</sup> The Court held that the existence of an agency relationship is generally a question to be determined by the trier of fact.<sup>13</sup> As a result, the Court reversed the lower court's summary judgment that the HMO was not vicariously liable for the negligence of the plaintiff's treating physician.

### ***Legislative Response***

In response to *Villazon*, the Legislature amended ss. 641.19 and 641.51, F.S., to provide that the HMO is not vicariously liable for the negligence of health care providers unless the provider is an employee of the HMO. The statutory amendments prohibited causes of action based on agency or apparent agency relationships.<sup>14</sup> The Legislature also created s. 768.0981, F.S., which provides:

An entity licensed or certified under chapter 624, chapter 636, or chapter 641 shall not be liable for the medical negligence of a health care provider with whom the licensed or certified entity has entered into a contract, other than an employee of such licensed or certified entity, unless the licensed or certified entity expressly directs or exercises actual control over the specific conduct that caused injury.<sup>15</sup>

### **ERISA Preemption**

The Employee Retirement Income Security Act of 1974 (ERISA), limits the remedies available to persons covered under private sector employer plans and preempts certain state laws. ERISA may preempt civil remedies in state courts, whether pursued under common law theories of liability or pursuant to a statutory cause of action.

Most employer-sponsored health insurance and HMO plans are ERISA plans. However, ERISA does not apply to governmental plans and church plans and has no application to individual health insurance plans. ERISA has a civil enforcement clause that provides a remedy in federal court for denied employee benefits. Employees and enrollees have a federal cause of action to either obtain the actual benefit that was denied, payment for the benefit, or a decree granting the

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<sup>9</sup> *Villazon v. Prudential Health Care Plan*, 843 So. 2d 842, 852 (Fla. 2003).

<sup>10</sup> *Id.* at 852.

<sup>11</sup> Vicarious liability occurs when one person, although entirely innocent of any wrongdoing, is held responsible for the wrongful act of another. See 38 Florida Jurisprudence 2d s. 101. For example, an employer can be held vicariously liable for a tort committed by an employee.

<sup>12</sup> *Villazon*, 843 So. 2d at 845.

<sup>13</sup> *Id.*, at 853.

<sup>14</sup> See 2003-416, Laws of Fla.

<sup>15</sup> Chapter 624 is the Insurance Code, chapter 636 pertains to prepaid limited health service organizations and discount medical plan organizations, and chapter 641 pertains to health care service programs.

administration of future benefits.<sup>16</sup> State tort remedies, on the other hand, allow for the recovery of pain and suffering, lost wages, and cost of future medical services.

In *Villazon*, the Florida Supreme Court held that ERISA did not preempt an action against an HMO alleging common law negligence and violations of the HMO Act.<sup>17</sup> A year after *Villazon*, the United States Supreme Court considered whether a Texas statute imposing liability on HMOs for failure to exercise ordinary care in making coverage decision was preempted by ERISA.<sup>18</sup> The court held that federal preemption applied and the remedies were limited to federal remedies.

Whether a claim against an ERISA plan is preempted is a fact-specific question. In *Badal v. Hinsdale Mem. Hosp.*,<sup>19</sup> the court held that the claim was not preempted when the HMO was a defendant in the case under a theory of vicarious liability where the plaintiff alleged the HMO was responsible for the acts of its employees or agent. In determining whether ERISA preemption applies in medical malpractice cases, courts seem to look to see whether the malpractice is based on actions of a treating physician versus whether the injury was caused by a denial of coverage. In *Land v. Cigna Healthcare of Fla.*,<sup>20</sup> the court found ERISA preemption in a case where the treating physician ordered hospital admission for a patient, but the HMO nurse did not approve a hospital stay.

### III. Effect of Proposed Changes:

#### Vicarious Liability

The bill repeals provisions in ss. 641.19 and 641.51, F.S., providing that an HMO arranging the provision of health care services does not create an actual agency, apparent agency, or employer-employee relationship for purposes of vicarious liability except when the provider is an actual employee of the HMO.

The bill also repeals s. 768.0981, F.S. That statute provides that an entity such as an insurer, prepaid limited health service organization, HMO, or prepaid health clinic<sup>21</sup> is not liable for the medical negligence of a health care provider with whom the entity has entered into a contract unless the entity expressly directs or exercises actual control over the specific conduct that caused injury.

As a result repeal of provisions limiting actions based on theories of vicarious liability, an HMO will be liable for the negligence of a treating physician who is not an employee of the HMO if the specific facts of the case show that an actual agency or apparent agency relationship existed between the HMO and the treating physician.

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<sup>16</sup> 29 U.S.C. s. 1132(a)(1).

<sup>17</sup> *Villazon*, 843 So. 2d at 850-851.

<sup>18</sup> *Aetna Health v. Davila*, 542 U.S. 200 (2004).

<sup>19</sup> *Badal v. Hinsdale Mem. Hosp.*, 2007 U.S. Dist. LEXIS 34713 (N.D. Ill. May 8, 2007).

<sup>20</sup> *Land v. Cigna Health Care of Fla.*, 381 F.3d 1274 (11th Cir. 2004).

<sup>21</sup> Section 768.0981, F.S., specifically refers to entities licensed or certified under ch. 624, F.S., ch. 636, F.S., or ch. 641, F.S.

In effect, the bill revives the effect of the Florida Supreme Court's opinion in *Villazon v. Prudential Health Care Plan*, which was superseded by statute. Contracts between an HMO and a treating physician which label the physician as an independent contractor will not be sufficient to make an HMO immune from liability for the physician's negligence. The nature of the relationship and the HMO's liability will be based on whether the HMO had the right to control the activities of the physician in light of the totality of the circumstances.

### **HMO Bad Faith Liability**

The bill creates a cause of action for bad faith against HMOs in specified situations. Specifically, it provides that a person may bring a civil action against an HMO if a person to whom a duty is owed suffers damage because of an HMO's failure to provide a covered service. The covered service must be one that the HMO should have been provided had the HMO acted in good faith and had acted fairly and reasonably toward the person with due regard for his or her interests. The service must have been medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the HMO.

The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages. In a bad faith action brought pursuant to the provisions of this bill, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

### **Causes of Action for Violations of the HMO Act**

The bill creates an individual cause of action against an HMO if a person to whom a duty is owed suffers damage as a result of an HMO's violation of specified statutes: s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), and s. 641.51, F.S. In an action alleging violations of these statutes, the court must award a prevailing plaintiff reasonable attorney fees as part of the costs.

Section 641.3155, F.S., is known as the "prompt pay" law. It requires the HMO to provide notice of receipt of provider claims within specified times, to deny or contest provider claims within specified times, and to pay provider claims within specified times.

Subsection 641.3903(5), F.S., prohibits certain unfair claim settlement practices by HMOs. An HMO may not:

- Attempt to settle claims on the basis of an application or any other material document which was altered without notice to, or knowledge or consent of, the subscriber or group of subscribers to a health maintenance organization; or
- Make a material misrepresentation to the subscriber for the purpose and with the intent of effecting settlement of claims, loss, or damage under a health maintenance contract on less favorable terms than those provided in, and contemplated by, the contract.
- Engage in the practices below with such frequency as to indicate a general business practice of engaging in a unfair settlement practice:
  - Failing to adopt and implement standards for the proper investigation of claims;
  - Misrepresenting pertinent facts or contract provisions relating to coverage at issue;

- Failing to acknowledge and act promptly upon communications with respect to claims;
- Denying claims without conducting reasonable investigations based upon available information;
- Failing to affirm or deny coverage of claims upon written request of the subscriber within a reasonable time not to exceed 30 days after a claim or proof-of-loss statements have been completed and documents pertinent to the claim have been requested in a timely manner and received by the health maintenance organization;
- Failing to promptly provide a reasonable explanation in writing to the subscriber of the basis in the health maintenance contract in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;
- Failing to provide, upon written request of a subscriber, itemized statements verifying that services and supplies were furnished, where such statement is necessary for the submission of other insurance claims covered by individual specified disease or limited benefit policies;
- Failing to provide any subscriber with services, care, or treatment contracted for pursuant to any health maintenance contract without a reasonable basis to believe that a legitimate defense exists for not providing such services, care, or treatment; or
- Engaging in systematic down coding with the intent to deny reimbursement otherwise due.

Subsection 641.3903(10), F.S., prohibits an HMO from knowingly collecting any sum as a premium or charge for health maintenance coverage, which is not then provided or is not in due course to be provided. An HMO may not knowingly collect as a premium or charge for health maintenance coverage any sum in excess of or less than the premium or charge applicable to health maintenance coverage, in accordance with the applicable classifications and rates as filed with the Office of Insurance Regulation.

Subsection 641.3903(12), F.S., prohibits an HMO from engaging in or attempting to engage in discriminatory practices that discourage participation on the basis of the actual or perceived health status of Medicaid recipients. The statute also prohibits an HMO from refusing to provide services or care to a subscriber solely because medical services may be or have been sought for injuries resulting from an assault, battery, sexual assault, sexual battery, or any other offense by a family or household member or by another who is or was residing in the same dwelling unit.

Subsection 641.3903(13), F.S., prohibits an HMO from knowingly misleading potential enrollees as to the availability of providers.

Subsection 641.3903(14), F.S., prohibits any retaliatory action by an HMO against a contracted provider on the basis that the provider communicated information to the provider's patient regarding care or treatment options when the provider deems knowledge of such information by the patient to be in the best interest of the patient.

Section 641.51, F.S., requires an HMO to establish a quality assurance program and creates a requirement for second medical opinions in some cases. The HMO:

- Shall ensure that the health care services provided to subscribers shall be rendered under reasonable standards of quality of care consistent with the prevailing standards of medical practice in the community;

- Shall have an ongoing internal quality assurance program for its health care services;
- Shall not have the right to control the professional judgment of a physician;
- Shall ensure that only a physician holding an active, unencumbered license may render an adverse determination regarding a service provided by a physician licensed in Florida;
- Shall give the subscriber the right to a second medical opinion in any instance in which the subscriber disputes the organization's or the physician's opinion of the reasonableness or necessity of surgical procedures or is subject to a serious injury or illness;
- Shall develop and maintain a policy to determine when exceptional referrals to out-of-network specially qualified providers should be provided to address the unique medical needs of a subscriber;
- Shall develop and maintain written policies and procedures for the provision of standing referrals to subscribers with chronic and disabling conditions which require ongoing specialty care;
- Shall allow subscribers undergoing active treatment to continue coverage and care when medically necessary, through completion of treatment of a condition for which the subscriber was receiving care at the time of the termination of a provider contract;
- Release specified data to the Agency for Health Care Administration;
- Adopt recommendations for preventive pediatric health care which are consistent with the requirements for health checkups for children developed for the Medicaid program;
- Allow, without prior authorization, a female subscriber, to visit a contracted obstetrician/gynecologist for one annual visit and for medically necessary follow-up care; and
- Allow a contracted primary care physician to send a subscriber to a contracted licensed ophthalmologist under specified circumstances.

The bill provides that a person bringing an action for these violations of the HMO Act need not prove that the violation was committed with such frequency as to indicate a general business practice.

The bill provides that an HMO is liable for all of the claimant's damages or \$500 per violation, whichever is greater, for violations of the above-cited statutes. The court may award damages, including damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive damages.

### **ERISA Preemption**

Federal preemption may limit this bill's application in situations where an ERISA plan makes a decision to deny coverage. As discussed in *Davila* and subsequent cases, courts will have to review the facts of each case to determine whether preemption applies in cases related to coverage decisions. In addition to cases related to denial of coverage, courts have found ERISA preemption in cases related to a prompt pay law<sup>22</sup> and related to payment to medical providers.<sup>23</sup>

The provisions of the bill will apply to non-ERISA plans. It is not known how many persons covered under HMO plans are covered under plans that would be excluded from portions of this

<sup>22</sup> *America's Health Ins. v. Hudgens*, 742 F.3d 1319 (11<sup>th</sup> Cir. 2014).

<sup>23</sup> *Gables Ins. Recovery, Inc. v. Blue Cross & Blue Shield of Fla., Inc.*, 813 F.3d 1333 (11<sup>th</sup> Cir. 2015).

bill and how many persons are covered under plans that would be subject to all the provisions of the bill. A court noted that there is a trend in Georgia for employers to provide self-funded ERISA plans to their employees.<sup>24</sup> Subsequent to *Davila*, Texas passed a law to specifically exclude ERISA plans from the Texas Health Care Liability Act.<sup>25</sup> A 2005 bill analysis of the Texas legislation noted that there are only a few non-ERISA group health plans offered in Texas.<sup>26</sup>

### **Effective Date**

The bill has an effective date of October 1, 2017.

### **Retroactivity**

This bill provides that the repeal of s. 768.0981, F.S., and amendments to ss. 641.19, 641.51, and 641.3917, F.S., apply to causes of action accruing on or after October 1, 2017. The bill is not retroactive and does not apply to ongoing litigation or to causes of action accruing before October 1, 2017.

## **IV. Constitutional Issues:**

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

None.

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

None.

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

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

According to the Office of Insurance Regulation, the bill increases the exposure to lawsuits for health insurers, HMOs, prepaid health clinics, and prepaid limited health service organizations. This increased exposure may lead to more expensive premiums for consumers.<sup>27</sup>

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<sup>24</sup> *America's Health Ins. v. Hudgens*, 742 F.3d at 1324-1325.

<sup>25</sup> Texas Civil Practice and Remedies Code s. 88.0015.

<sup>26</sup> SB 554 Bill Analysis, Texas, March 17, 2005 (on file with the Committee on Banking and Insurance).

<sup>27</sup> Office of Insurance Regulation, *2017 Agency Legislative Bill Analysis for SB 262*, (Feb. 17, 2017) (on file with the Senate Committee on Judiciary).

C. Government Sector Impact:

According to the Office of Insurance Regulation, the increased exposure to the above mentioned groups may lead to higher premiums under the state group health insurance plan.<sup>28</sup>

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 641.19, 641.51, and 641.3917, Florida Statutes. This bill repeals section 768.0981, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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

By Senator Steube

23-00399B-17

2017262\_\_

A bill to be entitled

An act relating to health insurance; amending s.

641.19, F.S.; revising definitions; amending s.

641.51, F.S.; deleting a provision that provides that

health maintenance organizations are not vicariously

liable for certain medical negligence except under

certain circumstances; amending s. 641.3917, F.S.;

authorizing specified persons to bring a civil action

against a health maintenance organization for certain

violations; providing for construction; specifying a

health maintenance organization's liability for such

violations; repealing s. 768.0981, F.S., relating to a

limitation on actions against insurers, prepaid

limited health service organizations, health

maintenance organizations, or prepaid health clinics;

providing applicability; providing an effective date.

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

Section 1. Subsections (11), (12), and (18) of section 641.19, Florida Statutes, are amended to read:

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

(11) "Health maintenance contract" means any contract entered into by a health maintenance organization with a subscriber or group of subscribers to provide ~~coverage for~~ comprehensive health care services in exchange for a prepaid per capita or prepaid aggregate fixed sum.

(12) "Health maintenance organization" means any organization authorized under this part which:

(a) Provides, ~~through arrangements with other persons,~~ emergency care; ~~inpatient hospital services;~~ physician care, including care provided by physicians licensed under chapters

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

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458, 459, 460, and 461; ~~and~~ ambulatory diagnostic treatment; ~~and~~ preventive health care services.

(b) Provides, either directly or through arrangements with other persons, health care services to persons enrolled with such organization, on a prepaid per capita or prepaid aggregate fixed-sum basis.

(c) Provides, either directly or through arrangements with other persons, comprehensive health care services which subscribers are entitled to receive pursuant to a contract.

(d) Provides physician services, by physicians licensed under chapters 458, 459, 460, and 461, directly through physicians who are either employees or partners of such organization or under arrangements with a physician or any group of physicians.

(e) If offering services through a managed care system, has a system in which a primary physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 is designated for each subscriber upon request of a subscriber requesting service by a physician licensed under any of those chapters, and is responsible for coordinating the health care of the subscriber of the respectively requested service and for referring the subscriber to other providers of the same discipline when necessary. Each female subscriber may select as her primary physician an obstetrician/gynecologist who has agreed to serve as a primary physician and is in the health maintenance organization's provider network.

~~Except in cases in which the health care provider is an employee of the health maintenance organization, the fact that the health~~

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



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~~maintenance organization arranges for the provision of health care services under this chapter does not create an actual agency, apparent agency, or employer-employee relationship between the health care provider and the health maintenance organization for purposes of vicarious liability for the medical negligence of the health care provider.~~

(18) "Subscriber" means an entity or individual who has contracted, or on whose behalf a contract has been entered into, with a health maintenance organization for health care services coverage or other persons who also receive health care services coverage as a result of the contract.

Section 2. Subsection (3) of section 641.51, Florida Statutes, is amended to read:

641.51 Quality assurance program; second medical opinion requirement.—

(3) The health maintenance organization shall not have the right to control the professional judgment of a physician licensed under chapter 458, chapter 459, chapter 460, or chapter 461 concerning the proper course of treatment of a subscriber. However, this subsection shall not be considered to restrict a utilization management program established by an organization or to affect an organization's decision as to payment for covered services. ~~Except in cases in which the health care provider is an employee of the health maintenance organization, the health maintenance organization shall not be vicariously liable for the medical negligence of the health care provider, whether such claim is alleged under a theory of actual agency, apparent agency, or employer-employee relationship.~~

Section 3. Section 641.3917, Florida Statutes, is amended

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to read:

641.3917 Civil liability.—

(1) The provisions of this part are cumulative to rights under the general civil and common law, and no action of the department or office shall abrogate such rights to damage or other relief in any court.

(2) Any person to whom a duty is owed may bring a civil action against a health maintenance organization when such person suffers damages as a result of the health maintenance organization's:

(a) Violation of s. 641.3155, s. 641.3903(5), (10), (12), (13), or (14), or s. 641.51; or

(b) Failure to provide a covered service, when the health maintenance organization in good faith should have provided such service had it acted fairly and reasonably toward the subscriber or enrollee and with due regard for his or her interests, and such service is medically reasonable or necessary in the independent medical judgment of a treating physician under contract with, or another physician authorized by, the health maintenance organization.

A person bringing an action under this subsection need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(3) The health maintenance organization is liable for all of the claimant's damages or \$500 per violation, whichever is greater. The court may also award compensatory damages, including, but not limited to, damages for mental anguish, loss of dignity, and any other intangible injuries, and punitive

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120 damages. In an action or proceeding brought under this  
121 subsection, the court shall award a prevailing plaintiff  
122 reasonable attorney fees as part of the costs.

123 Section 4. Section 768.0981, Florida Statutes, is repealed.

124 Section 5. The amendments to ss. 641.19, 641.51, and  
125 641.3917, Florida Statutes, made by this act and the repeal of  
126 s. 768.0981, Florida Statutes, by this act apply to causes of  
127 action accruing on or after the effective date of this act.

128 Section 6. This act shall take effect October 1, 2017.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

262

Bill Number (if applicable)

Topic Vicarious Liability

Amendment Barcode (if applicable)

Name Chris Chaney

Job Title Lobbyist

Address 204 South Monroe Street

Phone 222-8900

Street

Tallahassee

FL

32301

City

State

Zip

Email cc@cardenaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-2017

Meeting Date

SB 262

Bill Number (if applicable)

Topic HEALTH INSURANCE

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAISTONE PINES DRIVE

Phone 878-7364

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17  
Meeting Date

SB 262  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name JEFF SCOTT

Job Title \_\_\_\_\_

Address 1430 Piedmont Dr. E.  
Street

Phone 850 251-2439

Tallahassee FL 32308  
City State Zip

Email jscott@flmedical.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Medical Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

262

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Chris Noland

Job Title \_\_\_\_\_

Address 1000 Riverside Ave #240

Street

Jacksonville, FL 32204

City

State

Zip

Phone 904-233-3051

Email nolandlaw@aol.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chapter, American College of Surgeons

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/12

Meeting Date

SB 262

Bill Number (if applicable)

Topic Health Care

Amendment Barcode (if applicable)

Name Wences Truendo

Job Title Vice president + General Counsel

Address 200 W. College Ave  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Association of Health Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

SB262

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Jason M. Goldman, MD

Job Title MD

Address 3001 Coral Hills Dr #340

Street

Phone 786-371-6483

Coral Springs FL 33065

City

State

Zip

Email goldmanmd@bellsouth.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Gene Florida Chapter ACP

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/2017

Meeting Date

Topic \_\_\_\_\_

Bill Number 262  
(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH  
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-17

Meeting Date

SB262

Bill Number (if applicable)

Topic Health Insurance

Amendment Barcode (if applicable)

Name Joy Ryan

Job Title

Address 325 W. College Ave.

Street

Phone 425-4000

Tally

City

32301

State

Zip

Email joy@meenanlawfirm.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

(The Chair will read this information into the record.)

Representing America's Health Insurance Plans

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

262  
Bill Number (if applicable)

Topic HEALTH INSUR.

Amendment Barcode (if applicable)

Name GEORGE MERDS

Job Title ATTORNEY

Address 301 S. BRONOUGH

Phone 850 577-9090

Street

City TALLA

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLA. JUSTICE REFORM INSTITUTE

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

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

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 80

INTRODUCER: Judiciary Committee; Community Affairs Committee; and Senator Steube

SUBJECT: Public Records

DATE: March 15, 2017

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------|----------------|-----------|------------------|
| 1. | Kim     | Ferrin         | GO        | <b>Favorable</b> |
| 2. | Cochran | Yeatman        | CA        | <b>Fav/CS</b>    |
| 3. | Brown   | Cibula         | JU        | <b>Fav/CS</b>    |

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 80 generally requires a court to award attorney fees and enforcement costs in actions to enforce public records laws if the court determines that an agency unlawfully refused access to a public record and the plaintiff provided written notice identifying the public records request to an agency records custodian at least 5 business days before filing the action.

The 5-day notice period excludes holidays and weekends. Advance written notice is not required if the agency does not prominently post contact information for its records custodian in the agency's primary administrative building in which public records are kept and on the agency's website, if the agency has a website.

However, if the court determines that a plaintiff requested records or filed the enforcement action based on an improper purpose, the court must award reasonable costs and attorney fees against the plaintiff. An improper purpose is one in which a person requests records mainly to harass an agency, cause a violation of the public records law, or for frivolous purpose.

The bill further specifies that monetary damages are not available in an action to enforce the public records laws.

## II. Present Situation:

### Public Records Requirements

The Florida Constitution provides that every individual has a right of access to public records that are made or received in connection with official public business.<sup>1</sup> This right applies to records of the legislative, executive, and judicial branches.<sup>2</sup>

The Public Records Act, codified in ch. 119, F.S., authorizes guarantees every person's right to inspect and copy any state or local government public record<sup>3</sup> at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.<sup>4</sup> The Public Records Act also applies to a private contractor if that private business acts on behalf of a governmental entity.<sup>5</sup>

An agency, as defined by ch. 119, F.S., may not impose greater conditions on responding to a public records request than those required by law. For example, an agency may not require a person seeking a public record to disclose his or her background.<sup>6</sup> Nor may an agency require an individual to put his or her request in writing as a condition of production, or to disclose his or her name, address, or other contact information.<sup>7</sup> An agency must honor a request whether a person requests records by phone, in writing, or in person, if the request is sufficient to identify the records sought.<sup>8</sup>

### Custodian of Public Records

Pursuant to s. 119.011(5), F.S., a custodian of public records is “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”

A custodian of public records is required to perform statutorily required duties such as maintaining records in fireproof vaults, repairing records and complying with retention schedules set by the Department of State.<sup>9</sup> Section 119.07, F.S., also provides that a public records custodian has duties that include:

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

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

<sup>3</sup> Section 119.011(12), F.S., defines “public record” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

<sup>4</sup> Section 119.07(1)(a), F.S.

<sup>5</sup> Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>6</sup> *Bevan v. Wanichka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA Fla. 1987).

<sup>7</sup> Op. Att’y Gen. Informal Opinion, pg. 1 (Dec. 16, 2003). *Chandler v. City of Greenacres*, 140 So. 3d 7, 7 (Fla. 4th DCA 2014).

<sup>8</sup> Op. Att’y Gen. Fla. 80-57, pg. 3 (1980).

<sup>9</sup> Section 119.021, F.S.

- Acknowledging public records requests and responding to those requests in good faith;<sup>10</sup>
- Producing records after redacting exempt information or providing the statutory citation for an exemption if the entire document is exempt;<sup>11</sup>
- Maintaining records that are the subject of public records litigation;<sup>12</sup>
- Ensuring that public records are secure if they are provided electronically;<sup>13</sup>
- Providing supervision if someone wishes to photograph records;<sup>14</sup> and
- Providing certified copies of public records upon payment of a fee.<sup>15</sup>

Public records custodians are also responsible for supervising the production of records by agency personnel. Section 119.07(1)(a), F.S., provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied . . . at any reasonable time, under reasonable conditions, and under reasonable supervision by the custodian of the public records.”

### **Enforcing Public Records Laws and Attorney Fees**

Article I, section 24(c), Florida Constitution, requires the Legislature to enact laws governing the enforcement of public records requirements, including the “maintenance, control, destruction, disposal, and disposition of records.”

Under s. 119.11, F.S., a person may enforce his or her right to inspect a public record by filing a lawsuit against an agency. In those lawsuits, the court must set an immediate hearing, giving the case priority over other cases.<sup>16</sup> If a court orders an agency to open its records for inspection, the agency must comply within 48 hours.<sup>17</sup>

Section 119.12, F.S., provides that if a court finds that an agency unlawfully refused access to a public record, the court will order the public agency to pay costs and attorney fees related to the enforcement lawsuit.<sup>18</sup> An unjustified delay in turning over public records is also considered an unlawful refusal, and a court will award attorney fees even if the delay was not willful or if the delay was due to incompetence.<sup>19</sup> When a court awards attorney fees in a public records case, the

<sup>10</sup> Section 119.07(1)(c), F.S.

<sup>11</sup> Section 119.07(1)(d)-(f), F.S.

<sup>12</sup> Section 119.07(1)(g)-(i), F.S.

<sup>13</sup> Section 119.07(2), F.S.

<sup>14</sup> Section 119.07(3), F.S.

<sup>15</sup> Section 119.07(4), F.S.

<sup>16</sup> Section 119.11(1), F.S.

<sup>17</sup> Section 119.11(2), F.S.

<sup>18</sup> Section 119.12, F.S. In 1984, the Legislature amended the public records attorney fee provision, deleting language which would permit attorney fees to be awarded only when records are “unreasonably” refused and replaced it with “unlawfully” refused. Ch. 84-298, s. 7, Laws of Fla. The Florida Supreme Court stated what once the Legislature amended s. 119.12, F.S., from “unreasonable” refusal to “unlawful” refusal, the Legislature “eliminated the potential that an award for attorney’s fees would be denied just because the public agency acted reasonably in violating the Public Records Act...The public agency’s failure to comply, rather than its good or bad faith in doing so, became the relevant inquiry.” *Bd. of Trs. v. Lee*, 189 So. 3d 120, 126 (Fla. 2016). Based on the Legislature’s removal of the word “unreasonably,” a court concluded that good faith or honest mistakes do not excuse a defendant from being assessed attorney fees.” *News and Sun-Sentinel Co. v. Palm Beach County*, 517 So. 2d 743, 744 (Fla. 4th DCA 1987), partially disapproved of in *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 30 (Fla. 1993).

<sup>19</sup> *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655-656 (Fla. 1st DCA 2014); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

court does not have to find that the public agency acted in good faith, bad faith, or unreasonably.”<sup>20</sup>

Enforcement lawsuits are composed of two parts, the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.<sup>21</sup> Once the requestor files suit, the court will require a public agency to pay the requestor’s attorney fees even after the agency has produced the records.<sup>22</sup> The Florida Supreme Court stated that the policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial, and that granting attorney fees makes it more likely that agencies will comply with public records laws.<sup>23</sup>

The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.<sup>24</sup> Open meetings laws also include an attorney fee provision. Section 286.0114(7)(a), F.S., provides:

(a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.

(b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

### **Public Records Requests, Settlements and Attorney Fees**

Over the past few years, governmental entities have been sued based on a failure to provide public records in cases that appear to be motivated solely to force a settlement and generate attorney fees by a person making a sham public records request. Governmental entities often settle the public records complaints because settlements are less costly than litigation.

The Town of Gulf Stream filed a federal lawsuit against a resident, the Citizen’s Awareness Foundation, Inc., Our Public Records LLC, and other defendants based on their abuse of public records laws.<sup>25</sup> The Town of Gulf Stream alleged that the defendants sent sham public records requests that were intended to be overlooked. Then the defendants asked for settlements that

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<sup>20</sup> *Bd. of Trs. v. Lee*, 189 So. 3d 130 (Fla. 2016).

<sup>21</sup> *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

<sup>22</sup> *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5th DCA 1996); *Cookston v. Office of the Pub. Defender*, 204 So.3d 480, 482-483 (Fla. 5th DCA 2016).

<sup>23</sup> *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

<sup>24</sup> FLA. CONST., art. I, s. 24(b).

<sup>25</sup> *Town of Gulf Stream v. O’Boyle*, 2015 U.S. Dist. LEXIS 84778 (S.D. Fla. 2015).

were higher than actual attorney fees and costs either before or after filing a lawsuit.<sup>26</sup> The case was dismissed by a federal judge, who stated:

To the extent Defendants are abusing the rights afforded them by the Florida public records laws, those abuses must be addressed in the individual lawsuits filed, or through a change in the laws by the Florida Legislature.<sup>27</sup>

Counties and state agencies have also been targeted for frivolous lawsuits. In upholding the trial court's decision to refuse attorney fees to plaintiff known as Consumer Rights, LLC, the First District Court of Appeal stated:

The plaintiff made the request in a suspicious email that could not be easily verified, directed it to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months without saying anything and then sued the county, claiming a right to attorney fees.<sup>28</sup>

The First District Court found that the manner in which the public records request was made, as well as the fact that the County ultimately provided the requested record when it became apparent that the email was not spam, indicated that there was no refusal to provide the requested records.<sup>29</sup> Because there was no refusal, there was no basis for awarding attorney fees.

Consumer Rights, LLC, also filed an enforcement lawsuit seeking attorney fees against the Department of Economic Opportunity. The court ruled against the plaintiff on procedural grounds in denying attorney fees, but noted the existence of evidence to support the state agency's allegations that Consumer Rights, LLC, was engaged in a "scheme [that] was designed to generate fees."<sup>30</sup>

### **Public Records and Private Contractors**

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services or act on behalf of the public agency.<sup>31</sup> Contractors can be individuals or business entities.<sup>32</sup> Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws.<sup>33</sup> These duties include keeping public records, providing the public an opportunity to inspect or copy a public record, and redacting exempt information.<sup>34</sup> A request for a contractor's records must be

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<sup>26</sup> *Id.* at 4.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> *Consumer Rights, LLC, v. Union County, Fla.*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015).

<sup>29</sup> *Id.* at 886-887; *Citizens Awareness Found., Inc., v. Wantman Grp., Inc.*, 195 So. 3d 396, 397 (Fla. 4th DCA 2016).

<sup>30</sup> *State v. Consumer Rights, LLC*, 181 So. 3d 1239, 1241 (Fla. 1st DCA 2015).

<sup>31</sup> Section 119.0701(1)(b), F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992); Op. Att'y Gen. Fla. Informal Opinion, pg. 2 (Dec. 31, 2014).

<sup>32</sup> Section 119.0701(1)(a), F.S.

<sup>33</sup> Section 119.011(2), s. 119.0701, F.S.; *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

<sup>34</sup> Section 119.0701(2)(b), F.S.



submitted to the agency. The agency will then request the records from the contractor or arrange for the public to inspect the requested records.<sup>35</sup>

If a contractor fails to comply with a public records request, the requestor may sue the contractor.<sup>36</sup> Enforcement costs, including attorney fees, will be awarded only if the contractor unlawfully refused to comply with the request and the requestor provided written notice to the agency that the contractor had not complied with the public records request.<sup>37</sup> The requestor must mail or email the notice at least 8 days before filing suit.<sup>38</sup>

If the contractor fulfills the public records request within 8 days, then the contractor is no longer liable for the enforcement costs.<sup>39</sup> The law is silent on whether an agency would be liable for attorney fees after the contractor has fulfilled the public records request. If a contractor fails to fulfill the public records request within 8 days, the contractor will be liable for enforcement costs.

### **When a Private Contractor is an Agency for Public Records Purposes**

Pursuant to s. 119.011(2), F.S., an “agency” in the Public Records Act includes a “public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” In addition, s. 119.0701(1)(a), F.S., defines a contractor as an “individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency.”

To determine if a contractor is acting on behalf of a public agency, a totality of factors test may be applied.<sup>40</sup> Some of the factors a court may consider include:

- Whether the public agency created the contractor;
- How much public funding was involved;
- How much the public agency regulated the contractor;
- The comingling of decision making processes;
- Whether the contractor was performing a government function; and
- The goals of the contractor.<sup>41</sup>

### **Private Contractors and Public Records Lawsuits**

Private contractors have also been subject to these abusive lawsuits for sham public records requests. In one such case, a circuit court judge in Duval County declined to award attorney fees in a public records enforcement case.<sup>42</sup> According to the court order, the plaintiff made two

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<sup>35</sup> Section 119.0701(2)(b)2. and (3), F.S.

<sup>36</sup> Section 119.0701(4), F.S.

<sup>37</sup> Section 119.0701(4)(a), F.S.

<sup>38</sup> Section 119.0701(4)(a)2., F.S.

<sup>39</sup> Section 119.0701(4)(a), F.S.

<sup>40</sup> *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029, 1031 (Fla. 1992).

<sup>41</sup> *Id.* at 1032.

<sup>42</sup> *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla 4th Cir. Ct. 2014),

[http://myfloridalegal.com/sun.nsf/cases/D51822B4D29A8BBB85257F6C00430F83/\\$file/Gray\\_v\\_Lutheran.pdf](http://myfloridalegal.com/sun.nsf/cases/D51822B4D29A8BBB85257F6C00430F83/$file/Gray_v_Lutheran.pdf).

separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records. The court found that the manner in which the plaintiff (and his companions) made the request ensured that “they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request.”<sup>43</sup>

The court found that the plaintiff’s method of requesting public records was an abuse of public records laws, amounting to “nothing more than a scam.”<sup>44</sup> The Final Order stated that the plaintiff and his attorney, who had an arrangement to split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”<sup>45</sup> The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases.

The court opined:

If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the [Public Records] Act for financial gain.<sup>46</sup>

The First District Court of Appeal affirmed the trial court’s decision on December 16, 2015.<sup>47</sup>

Another case followed a similar fact pattern.<sup>48</sup> The court found that the contractor believed that the email was spam and did not comply with the request.<sup>49</sup> The court ruled that the contractor had not refused to provide records, and therefore, no fees were due.<sup>50</sup> The court stated public records laws “should not be applied in a way that encourages the manufacture of public records requests designed to obtain no response, for the purpose of generating attorney’s fees.”<sup>51</sup>

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

The bill requires a court to award attorney fees and enforcement costs in actions to enforce public records laws if the court determines that:

- The agency unlawfully refused a person access to a public record; and

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

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

<sup>47</sup> *Lutheran Social Services of Northeast Florida, Inc.*, 179 So. 3d 322 (Fla. 1st DCA 2015).

<sup>48</sup> *Citizens Awareness Found. Inc., v. Wantman Grp., Inc.*, 195 So.3d 396 (Fla. 4th DCA 2016).

<sup>49</sup> *Id.* at 397-398.

<sup>50</sup> *Id.* at 401-402.

<sup>51</sup> *Id.* at 401.

- The plaintiff provided written notice of the public records request to the agency custodian of public records at least 5 business days before filing a civil action.

However, if the court determines that a plaintiff made the request for an improper purpose, the court must award reasonable costs and attorney fees against the plaintiff. An improper purpose is one in which a person requests records mainly to harass the agency, cause a violation of the public records law, or for frivolous purpose.

The 5-day notice period excludes holidays and weekends. Advance written notice is not required if the agency does not prominently post contact information for the custodian of public records in the agency's primary administrative building in which public records are kept and on the agency's website, if the agency has a website.

The bill also specifies monetary damages are not available in an action to enforce the public records laws.

Current law does not require a plaintiff to provide advance notice of the intent to file a lawsuit to enforce the public records laws. Further, current law does not authorize a court to assess costs and fees against a plaintiff for a frivolous record requests.

The bill takes effect upon becoming a law, and applies prospectively to public records requests made on or after its effective date.

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

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

None.

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

None.

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

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Private entities that are agencies under the public records laws may spend less in settlements and attorney fees related to public records requests.

**C. Government Sector Impact:**

Governmental entities may spend less in settlements and in defending against lawsuits related to public records requests because the courts are given more discretion in awarding fees.

Current case law states that the enforcement action (the part of the lawsuit that seeks access to the public records) is independent of the part of the lawsuit that seeks an award for attorney fees and costs.<sup>52</sup> A plaintiff may seek attorney fees and costs if the public agency has unlawfully refused access to the public records, even though the public agency ultimately provided the requested records.

To the extent that this bill deters frivolous filings of lawsuits, the court may experience fewer filings and court hearings. Likewise, the bill may reduce the workload for governmental entities that are currently processing frivolous requests and defending themselves in lawsuits.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.12, 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 Committee on March 14, 2017:**

The CS generally requires a court to assess reasonable costs and fees against an agency that unlawfully refuses to permit access to a public record. The underlying bill generally gave courts discretion to make these awards, whether against the agency or a plaintiff who requested records or a plaintiff who filed an enforcement action for an improper purpose.

The committee substitute also specifies that monetary damages are not available in actions to enforce the public records laws and provides that it applies to records requests made after the bill takes effect.

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<sup>52</sup> *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Cookston v. Office of the Pub. Defender*, LEXIS 10858 at 6 (Fla. 5th DCA July 15, 2016); *Schweickert v. Citrus Cnty. Fla. Bd.*, 193 So. 3d 1075 (Fla. 5th DCA 2016).

**CS by Community Affairs Committee on March 7, 2017:**

- Adds guidance for the court when determining whether a public record was unlawfully refused for inspection.
- Provides that attorney fees may be awarded against a complainant if the court finds an action was filed in bad faith or was frivolous.
- Adds that if a complainant can show by a preponderance of the evidence that the agency intentionally or willfully refused to permit a public record to be inspected or copied, the court shall award the reasonable costs of enforcement and attorney fees against the agency.
- Removes the phrase “listed in the notice” for clarity.

**B. Amendments:**

None.



304520

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RS   | . |       |
| 03/15/2017 | . |       |
|            | . |       |
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The Committee on Judiciary (Steube) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 119.12, Florida Statutes, is amended to  
read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce  
the provisions of this chapter ~~and if the court determines that~~  
~~such agency unlawfully refused to permit a public record to be~~  
~~inspected or copied~~, the court shall assess and award, ~~against~~



304520

12 ~~the agency responsible,~~ the reasonable costs of enforcement,  
13 including reasonable attorney attorneys' fees, against the  
14 responsible agency if the court determines that:

15 (a) The agency unlawfully refused to permit a public record  
16 to be inspected or copied; and

17 (b) The complainant provided written notice identifying the  
18 public record request to the agency's custodian of public  
19 records at least 5 business days before filing the civil action,  
20 except as provided under subsection (2). The notice period  
21 begins on the day the written notice of the request is received  
22 by the custodian of public records, excluding Saturday, Sunday,  
23 and legal holidays, and runs until 5 business days have elapsed.

24 (2) The complainant is not required to provide written  
25 notice of the public record request to the agency's custodian of  
26 public records as provided in paragraph (1)(b) if the agency  
27 does not prominently post the contact information for the  
28 agency's custodian of public records in the agency's primary  
29 administrative building in which public records are routinely  
30 created, sent, received, maintained, and requested and on the  
31 agency's website, if the agency has a website.

32 (3) The court shall determine whether the complainant  
33 requested to inspect or copy a public record or participated in  
34 the civil action for an improper purpose. If the court  
35 determines there was an improper purpose, the court may not  
36 assess and award the reasonable costs of enforcement, including  
37 reasonable attorney fees, to the complainant, and shall assess  
38 and award against the complainant and to the agency the  
39 reasonable costs, including reasonable attorney fees, incurred  
40 by the agency in responding to the civil action. For purposes of



304520

this subsection, the term "improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to harass or cause unnecessary delay in the actions of the agency, for frivolous purpose, or to needlessly increase the costs of the actions of the agency.

(4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

Section 2. This act applies only to public records requests made on or after the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; revising the circumstances under which a court must assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, F.S.; specifying circumstances under which a complainant is not required to provide certain written notice of a public records request; requiring a court to determine whether a complainant requested





304520

70 to inspect or copy a public record or participated in  
71 a civil action for an improper purpose; prohibiting  
72 the assessment and award of the reasonable costs of  
73 enforcement to a complainant who acted with an  
74 improper purpose; requiring the court to assess and  
75 award reasonable costs against the complainant if he  
76 or she is found to have acted with an improper  
77 purpose; defining the term "improper purpose";  
78 providing for construction and applicability;  
79 providing an effective date.



304888

LEGISLATIVE ACTION

|            |   |       |
|------------|---|-------|
| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/15/2017 | . |       |
|            | . |       |
|            | . |       |
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The Committee on Judiciary (Steube) recommended the following:

**Senate Substitute for Amendment (304520) (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 119.12, Florida Statutes, is amended to  
read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce  
the provisions of this chapter ~~and if the court determines that~~  
~~such agency unlawfully refused to permit a public record to be~~



304888

~~inspected or copied~~, the court shall assess and award, ~~against~~  
~~the agency responsible~~, the reasonable costs of enforcement,  
including reasonable attorney attorneys' fees, against the  
responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record  
to be inspected or copied; and

(b) The complainant provided written notice identifying the  
public record request to the agency's custodian of public  
records at least 5 business days before filing the civil action,  
except as provided under subsection (2). The notice period  
begins on the day the written notice of the request is received  
by the custodian of public records, excluding Saturday, Sunday,  
and legal holidays, and runs until 5 business days have elapsed.

(2) The complainant is not required to provide written  
notice of the public record request to the agency's custodian of  
public records as provided in paragraph (1)(b) if the agency  
does not prominently post the contact information for the  
agency's custodian of public records in the agency's primary  
administrative building in which public records are routinely  
created, sent, received, maintained, and requested and on the  
agency's website, if the agency has a website.

(3) The court shall determine whether the complainant  
requested to inspect or copy a public record or participated in  
the civil action for an improper purpose. If the court  
determines there was an improper purpose, the court may not  
assess and award the reasonable costs of enforcement, including  
reasonable attorney fees, to the complainant, and shall assess  
and award against the complainant and to the agency the  
reasonable costs, including reasonable attorney fees, incurred



304888

by the agency in responding to the civil action. For purposes of this subsection, the term "improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to harass the agency, cause a violation of this chapter, or for frivolous purpose.

(4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

Section 2. This act applies only to public records requests made on or after the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; revising the circumstances under which a court must assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, F.S.; specifying circumstances under which a complainant is not required to provide certain written notice of a public records request; requiring a court to determine whether a complainant requested



304888

70 to inspect or copy a public record or participated in  
71 a civil action for an improper purpose; prohibiting  
72 the assessment and award of the reasonable costs of  
73 enforcement to a complainant who acted with an  
74 improper purpose; requiring the court to assess and  
75 award reasonable costs against the complainant if he  
76 or she is found to have acted with an improper  
77 purpose; defining the term "improper purpose";  
78 providing for construction and applicability;  
79 providing an effective date.

By the Committee on Community Affairs; and Senator Steube

578-02148-17

201780c1

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; requiring a complainant to timely provide written notice of a public records request in order to be entitled to the reasonable costs of enforcement, including attorney fees, in certain civil actions for enforcement of ch. 119, F.S.; providing that the award of such attorney fees is within the discretion of the court; specifying factors for a court to consider in determining whether an agency unlawfully refused to permit a public record to be inspected or copied; authorizing a court to assess and award attorney fees against a complainant if certain conditions exist; specifying circumstances under which a court must assess and award the reasonable costs of enforcement against an agency; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 ~~Attorney~~ ~~Attorney's~~ fees.—

(1) If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that the complainant provided written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the civil action and the such agency unlawfully refused to permit a public record to be inspected or copied, the court may shall assess and award, against the

Page 1 of 2

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

578-02148-17

201780c1

responsible agency ~~responsible,~~ the reasonable costs of enforcement, including reasonable attorney ~~attorneys'~~ fees.

(2) (a) In determining whether the responsible agency unlawfully refused to permit a public record to be inspected or copied, the court shall consider if the request to inspect or copy the public record was made in bad faith or was made to harass the agency or to cause a violation of this chapter and if the responsible agency responded in good faith to the request to inspect or copy the records.

(b) The court may assess and award reasonable attorney fees against the complainant filing such an action if the court finds the action was filed in bad faith or was frivolous.

(c) If the complainant shows by the preponderance of the evidence that the agency intentionally or willfully refused to permit a public record listed in the notice to be inspected or copied, the court shall, after making such a finding, assess and award the reasonable costs of enforcement against the responsible agency, including reasonable attorney fees.

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

3-15-17

Meeting Date

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

80

Bill Number (if applicable)

304888

Amendment Barcode (if applicable)

Topic SB 80 amendment

Name Casey Cook

Job Title SR. Legislative Advocate

Address PO Box 1257

Street

Tallahassee

City

FL

State

32302

Zip

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17  
Meeting Date

80  
Bill Number (if applicable)

304888  
Amendment Barcode (if applicable)

Topic public records

Name Barbara Petersen

Job Title President

Address 317 E Park Ave

Phone 224-4555

Street  
Tallahassee FL 32301  
City State Zip

Email sunshine@floridafaf.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing First Amendment Endor

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/16  
Meeting Date

SB 80  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Buddy JACOBS

Job Title General Counsel Fla. Prosecuting Attorneys Assoc.

Address 961687 Gateway Blvd.  
Street

Phone 904-261-3643

Fernandina Beach FL 32034  
City State Zip

Email ajacobs@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing State Attorneys of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

14 Nov 17

Meeting Date

80

Bill Number (if applicable)

304520

Amendment Barcode (if applicable)

Topic Public Records

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St.

Street

Tall

City

FL

State

32301

Zip

Phone 850.510.9922

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Society of Association Executives (FSAE)

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

20

Bill Number (if applicable)

304888 SDA

Amendment Barcode (if applicable)

Topic Public Records

Name Kelly Quintero

Job Title legislative Advocate

Address 540 Beverly Ct

Street

Tallahassee

City

FL

State

32301

Zip

Phone 772 204 1792

Email lwvfadvocacy@

gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing League of Women Voters of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

80

Meeting Date \_\_\_\_\_

Bill Number (if applicable) \_\_\_\_\_

Topic SB80

Amendment Barcode (if applicable) \_\_\_\_\_

Name Casey Cook

Job Title Senior Legislative Advocate

Address PO Box 1757

Phone \_\_\_\_\_

Street

Tallahassee

FL

State

32302

Zip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

SB 80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Bill Barrett

Job Title Lobbyist

Address 4001 Hudson Terr

Phone 321-403-6410

Street

Tampa FL 33618

City

State

Zip

Email bbarrett.spg@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing City of St. Cloud

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

*Meeting Date*

Topic \_\_\_\_\_

Bill Number 80  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: ☐ For ☐ Against ☒ Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-14-17

Meeting Date

SB 80

Bill Number (if applicable)

Topic Barbara Lemley  
Name SB 80

304888

Amendment Barcode (if applicable)

Job Title citizen

Address 393 NW Fairway Dr

Phone 386 365-7259

Street

LC

FL

State

32055

Zip

Email barbjoffords@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing self tax payer

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3/14/17

Meeting Date

SB 0080

Bill Number (if applicable)

304888

Amendment Barcode (if applicable)

Topic Public Records

Name O.D. ELLIOTT

Job Title RETIRED

Address 101 - 78th Ave NE

Street

ST. PETE.

City

FL.

State

33702

Zip

Phone 727-608-6027

Email odebt1477@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)



**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3-14-17

Meeting Date

80

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name LAURA YOUNANS

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17  
Meeting Date

SB 80  
Bill Number (if applicable)

304898  
Amendment Barcode (if applicable)

Topic Public Records

Name Ben Wilcox

Job Title \_\_\_\_\_

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Common Cause FI

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

SB 80  
Bill Number (if applicable)  
304520  
Amendment Barcode (if applicable)

Topic Public Records

Name Vicki Long

Job Title EVP / CEO

Address 104 East Jefferson St

Phone 850 222-7590

Street

Tallahassee

FL

32301

City

State

Zip

Email vlong@airafla.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA ASSOCIATION of the American Institute of Architects

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title Attorney

Address 315 S. Calhoun St., Ste. 830

Phone 222-5702

Street

Tallahassee

FL

32301

City

State

Zip

Email clyonellw-law.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Association of Special Districts

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/2017

Meeting Date

SB/80

Bill Number (if applicable)

304520

Amendment Barcode (if applicable)

Topic Public Records Law

Name Jaimie Ross

Job Title CEO Florida Housing Coalition

Address 1367 E Lafayette Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-212-0587 (cell)

Email ross@flhousing.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Housing Coalition

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/2017

Meeting Date

80

Bill Number (if applicable)

304520

Amendment Barcode (if applicable)

Topic Public Records

Name Frank Rudd

Job Title President

Address 2410 Mahan Dr

Street

Tallahassee

City

State

FL

Zip

32308

Phone \_\_\_\_\_

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Society of Association Executives

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

March 14, 2017

Meeting Date

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

SB 80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Ken Albano

Job Title Chief of Police

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee FL 32308

City

State

Zip

Email bhoward@fpcr.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/14/17

Meeting Date

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

80

Bill Number (if applicable)

304520

Amendment Barcode (if applicable)

Topic Public Records

Name Allen Douglas

Job Title Executive Director

Address 125 S. Gadsden St

Street

Phone 224 7121

Tallahassee FL

City

State

32301

Zip

Email allen@fleng.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Engineering Society

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)



THE FLORIDA SENATE

APPEARANCE RECORD

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

14 March  
Meeting Date

SB 80  
Bill Number (if applicable)

304520  
Amendment Barcode (if applicable)

Topic Public Records

Name Christian D. Malesic

Job Title President / CEO

Address 1005 E. Strawbridge Ave.  
Street  
Melbourne FL 32901  
City State Zip

Phone 321 724 5400  
Email christian@melbourne  
RegionalChamber.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Melbourne Regional Chamber

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

5/17/17

Meeting Date

S 1380

Bill Number (if applicable)

304988

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Rich Templin

Job Title \_\_\_\_\_

Address 135 S Monroe Blvd.

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850 570 9953

Email rtemplin@flaflcia.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

# APPEARANCE RECORD

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

3-14-17

Meeting Date

SB 0080

Bill Number (if applicable)

304888

Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name ALBERT CANNO

Job Title SEPR

Address 4945 37 AVE N

Street

Phone 727-742-1640

ST. PETERSBURG

City

FL

State

33710

Zip

Email FLMAILMAN3@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against

(The Chair will read this information into the record.)

Representing SEPR

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

SB 80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Natalie King

Job Title Vice-President

Address 113 E. College Ave.

Street

Tallahassee

City

FL

State

33

Zip

Phone (813) 924-8218

Email Natalie@rsaconsultingllc.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Charter School Leaders Hillsborough

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/17

Meeting Date

80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Alan Shelby

Job Title Executive Vice President

Address 7149 402 East Jefferson St.

Phone 950-222-5646

Street

Tall.

City

FL

State

32301

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Forestry Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

SB 80

Bill Number (if applicable)

304520

Amendment Barcode (if applicable)

Topic Public Records Reform

Name DAVID DANIEL

Job Title \_\_\_\_\_

Address 311 EAST POMEYANE

Street

Tallahassee

City

FLORIDA

State

32301

Zip

Phone 224-5081

Email daniel@smithbryanandmyers.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA SURVEYING AND MAPPING SOCIETY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

SB 80

~~304888~~

Bill Number (if applicable)

304888

Amendment Barcode (if applicable)

Meeting Date

Topic SB 80

Name Stewart Liker

Job Title Pub/Editor Columbia County Observer

Address 247 SW Lander Ct

Phone 352 2154500

Street

City FT

State FL

Zip 32038

Email stewLiker@ColumbiaCountyObserver.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/14/17

Meeting Date

80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Merle Fearington

Job Title Lobbyist

Address 2617 Melon Dr

Phone 877 2165

Street

Tallahassee

City

FL

State

32308

Zip

Email

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)



# CourtSmart Tag Report

**Room:** EL 110

**Case No.:**

**Type:**

**Caption:** Senate Judiciary Committee

**Judge:**

**Started:** 3/14/2017 2:07:49 PM

**Ends:** 3/14/2017 3:53:52 PM **Length:** 01:46:04

2:07:47 PM Meeting called to order by Chair Steube  
2:07:51 PM Roll call by Administrative Assistant Joyce Butler  
2:08:01 PM Quorum present  
2:08:12 PM Comments from Chair Steube  
2:08:21 PM Introduction of Tab 1, SB 34 by Chair Steube  
2:08:40 PM Explanation of SB 34 by Senator Braynon  
2:10:19 PM Introduction of Amendment Barcode No. 700252  
2:10:24 PM Explanation of Amendment Barcode No. 700252 by Senator Braynon  
2:10:43 PM Amendment Barcode No. 700252 adopted  
2:10:55 PM Brian Pitts waives in support  
2:11:02 PM Closure waived by Senator Braynon  
2:11:07 PM Roll call by Administrative Assistant Joyce Butler  
2:11:14 PM CS/SB 34 reported favorably  
2:11:33 PM Introduction of Tab 10, SB 1270 introduced by Chair Steube  
2:11:39 PM Explanation of SB 1270 by Senator Young  
2:12:56 PM Introduction of Amendment Barcode No. 388014 by Chair Steube  
2:13:01 PM Explanation of Amendment Barcode No. 388014 by Senator Young  
2:13:10 PM Amendment Barcode No. 388014 adopted  
2:13:15 PM Question from Senator Benacquisto  
2:13:51 PM Response from Senator Young  
2:14:23 PM Question from Senator Powell  
2:14:29 PM Response from Senator Young  
2:15:25 PM Speaker Kent McClure, General Counsel, Animal Health Institute  
2:20:15 PM Speaker Rick Sutliff, President, Florida Veterinary Medical Association  
2:20:42 PM Speaker Brian Pitts, Justice-2-Jesus  
2:22:36 PM Speaker Marion Hammer, National Rifle Association & Unified Sportsmen of Florida  
2:23:00 PM Closure by Senator Young  
2:23:22 PM Roll call on CS/SB 1270 by Administrative Assistant Joyce Butler  
2:23:38 PM CS/CS 1270 reported favorably  
2:23:59 PM Introduction of Tab 2, SB 204 by Chair Steube  
2:24:07 PM Explanation of SB 204 by Senator Passidomo  
2:25:04 PM Introduction of Amendment Barcode No. 606890 by Chair Steube  
2:25:14 PM Explanation of Amendment Barcode No. 606890 by Senator Passidomo  
2:25:43 PM Amendment Barcode No. 606890 adopted  
2:25:58 PM Jennifer Hatfield, Florida Swimming Pool Association & National Underground Utility Contractors waives in support  
2:26:09 PM Rusty Payton, CEO, Florida Home Builders Association waives in support  
2:26:15 PM Chris Carmody, Attorney, Associated Builders & Contractors of Florida waives in support  
2:26:28 PM Closure waived  
2:26:29 PM Roll call on CS/SB 204 by Administrative Assistant Joyce Butler  
2:26:41 PM CS/SB 204 reported favorably

2:27:00 PM Introduction of Tab 3, CS/SB 172 by Chair Steube  
2:27:05 PM Explanation of CS/SB 172 by Senator Passidomo  
2:28:06 PM Introduction of Amendment Barcode No. 695286  
2:28:16 PM Explanation of Amendment Barcode No. 695286 by Senator Passidomo  
2:28:41 PM Amendment Barcode No. 695286 adopted  
2:28:57 PM Sarah Butlers, Attorney waives in support  
2:29:07 PM Bryan Cherry, Associate, Florida Public Guardian Coalition waives in support  
2:29:13 PM Ivonne Fernandez, Associate State Director, AARP waives in support  
2:29:18 PM Brian Jogerst, Academy of Elder Law Attorneys waives in support  
2:29:28 PM Closure waived  
2:29:33 PM Roll call on CS/SB 172 by Administrative Assistant Joyce Butler  
2:29:53 PM CS/CS/SB 172 reported favorably  
2:30:19 PM Introduction of Tab 9, SB 1052 by Chair Steube  
2:31:15 PM Sen. Simmons recommends SB 1052 be TP'd until next week  
2:32:15 PM SB 1052 TP'd  
2:32:23 PM Introduction of Tab 4, CS/SB 398 by Chair Steube  
2:32:28 PM Explanation of CS/SB 398 by Senator Passidomo  
2:32:43 PM Introduction of Amendment Barcode No. 164802 by Chair Steube  
2:32:51 PM Explanation of Amendment Barcode No. 164802 by Senator Passidomo  
2:33:08 PM Amendment Barcode No. 164802 adopted  
2:33:15 PM Introduction of Amendment Barcode No. 147378 by Chair Steube  
2:33:22 PM Amendment Barcode No. 147378 adopted  
2:33:38 PM Explanation of bill as amended by Senator Passidomo  
2:34:20 PM Question from Senator Thurston  
2:34:40 PM Response from Senator Passidomo  
2:35:42 PM Richard Pensky, Cyber Citizens waives in support  
2:35:49 PM Speaker Ron Book, First Service Residential in support  
2:37:19 PM Greg Black, Attorney, ATFS, LLC waives in support  
2:37:22 PM Ashley Kalifel, Attorney, Old Republic National Title Company waives in support  
2:37:30 PM David Daniel, Florida Land Title Association waives in support  
2:37:31 PM Rusty Payton, CEO, Florida Home Builders Association waives in support  
2:37:34 PM Danielle Scoggins, Sr. Public Policy Representative, Florida Realtors waives in support  
2:38:43 PM Speaker Travis Moore, First Service Residential & Community in opposition  
2:39:50 PM Sean Stafford, Consultant waives in support  
2:39:59 PM Mark Anderson, CEOMC in opposition  
2:40:06 PM Question/comments from Senator Passidomo  
2:40:35 PM Comments from Senator Benacquisto  
2:41:04 PM Comments from Chair Steube  
2:41:12 PM Closure by Senator Passidomo  
2:41:49 PM Roll call on CS/CS/SB 398 by Administrative Assistant Joyce Butler  
2:41:59 PM CS/CS/SB 398 reported favorably  
2:42:19 PM Introduction of Tab 5, SB 724 by Chair Steube  
2:42:26 PM Explanation of SB 724 by Senator Passidomo  
2:43:47 PM Introduction of Amendment Barcode No. 877786 by Chair Steube  
2:43:53 PM Explanation of Amendment Barcode No. 877786 by Senator Passidomo  
2:43:59 PM Amendment Barcode No. 877786 adopted  
2:44:12 PM Speaker Brian Pitts, Justice-2-Jesus  
2:48:57 PM Sarah Butlers, Attorney waives in support  
2:49:08 PM Kevin Cabrera, Family Law Section, Florida Bar waives in support  
2:49:19 PM Closure waived  
2:49:24 PM Roll call on CS/SB 724 by Administrative Assistant Joyce Butler  
2:49:33 PM CS/SB 724 reported favorably

2:49:50 PM Introduction of Tab 6, CS/SB 312 by Chair Steube  
2:49:57 PM Explanation of CS/SB 312 by Senator Baxley  
2:52:19 PM Speaker Honorable Bob Dillinger, Public Defender, 6th Circuit in support  
2:53:36 PM Ken Albino, The Florida Police Chiefs Association waives in support  
2:54:21 PM Speaker Seth Miller, Executive Director, Innocence Project of Florida, Inc.  
2:55:21 PM Question from Senator Thurston  
2:55:29 PM Response from Mr. Miller  
2:55:44 PM Speaker Michelle Feldman, Policy Advocate, Innocence Project in support  
2:58:19 PM Jorge Chamizo, Florida Association of Criminal Defense Lawyers waives in support  
2:58:29 PM Monique Gillum, Southern Poverty Law Center waives in support  
2:58:35 PM Mercer Fearington, Florida Sheriff's Association waives in support  
2:58:49 PM Closure by Senator Baxley  
2:58:59 PM Roll call on CS/SB 312 by Administrative Assistant Joyce Butler  
2:59:24 PM CS/SB 312 reported favorably  
2:59:52 PM Introduction of Tab 7, SB 436 by Chair Steube  
2:59:57 PM Explanation of SB 436 by Senator Baxley  
3:02:32 PM Question from Senator Gibson  
3:02:38 PM Response from Senator Baxley  
3:05:49 PM Follow-up question from Senator Gibson  
3:06:05 PM Response from Senator Baxley  
3:07:07 PM Additional question from Senator Gibson  
3:07:13 PM Response from Senator Baxley  
3:07:27 PM Additional question from Senator Gibson  
3:07:39 PM Response from Senator Baxley  
3:09:20 PM Question from Senator Powell  
3:09:43 PM Response from Senator Baxley  
3:10:15 PM Question from Senator Garcia  
3:10:28 PM Comments from Chair Steube  
3:10:47 PM Benjamin Burges waives in support  
3:10:54 PM Bill Bunkley, Florida Ethics and Religious Liberty Commission waives in support  
3:11:01 PM Charlene C. in support  
3:11:07 PM Manuel Tamargo, Christian Family Coalition waives in support  
3:11:15 PM George Rosario waives in support  
3:11:23 PM Ruth Villamizor waives in support  
3:11:30 PM Maria Negron waives in support  
3:11:39 PM Nathan Taylor waives in support  
3:11:44 PM Marilyn Sobat waives in support  
3:11:53 PM Eddy Serudgy waives in support  
3:12:02 PM Chris Walker waives in support  
3:12:09 PM Speaker Brian Pitts, Justice-2-Jesus  
3:15:23 PM Speaker Brandon Haught, High School Science Teacher in opposition  
3:17:41 PM Gabriel Garcia-Vera waives in opposition  
3:17:48 PM Denise Spivey, League of Women Voters waives in opposition  
3:17:54 PM Hannah Willard waives in opposition  
3:18:02 PM Kelly Quintero waives in opposition  
3:18:32 PM Speaker Pam Olsen, President, Florida Prayer Network in support  
3:20:07 PM Speaker Nathaniel Wilcox, Christian Family Coalition in support  
3:21:54 PM Speaker Daniel Diaz, Broward & Palm Beach Coordinator in support  
3:23:09 PM Armando Pomar in support  
3:23:16 PM Anthony Verugo in support  
3:23:43 PM Speaker Pastor Gilberto Rodriguez, Temple Elijah Assemblies of God, Inc. in support  
3:27:22 PM

3:27:41 PM  
3:27:42 PM Speaker Jose Melendez in support  
3:28:23 PM Speaker Rev. Joe Parramore  
3:29:00 PM  
3:30:09 PM Comments from Chair Steube  
3:30:16 PM Comments from Tom Cibula  
3:31:10 PM Comments from Chair Steube  
3:31:19 PM Comments from Senator Gibson  
3:35:23 PM Comments from Senator Garcia  
3:37:06 PM Closure on SB 436 by Senator Baxley  
3:37:40 PM Roll call on SB 436 by Administrative Assistant Joyce Butler  
3:37:48 PM SB 436 reported favorably  
3:38:13 PM Motion from Senator Mayfield to be shown as voting in the affirmative on 34, 1270, 204, 172, 398, 724  
3:38:33 PM Introduction of Tab 8, SR 574 by Chair Steube  
3:38:39 PM Explanation of SR 574 by Senator Rader  
3:39:12 PM Comments from Chair Steube  
3:39:24 PM Speaker Saif Hamiden, Legislative Director, Emerge USA in opposition  
3:40:11 PM Brian Pitts, Justice-2-Jesus waives in support  
3:40:17 PM Closure waived  
3:40:20 PM Roll call on SR 574 by Administrative Assistant Joyce Butler  
3:40:27 PM SR 754 reported favorably  
3:40:52 PM Chair passed to Senator Benacquisto  
3:41:12 PM Explanation of CS/SB 80 by Senator Steube  
3:41:23 PM Amendment Barcode No. 304520 introduced by Chair Benacquisto  
3:41:33 PM Explanation of Amendment Barcode No. 304520  
3:42:05 PM Comments from Chair Benacquisto  
3:42:15 PM Speaker Casey Cook, Florida League of Cities for Amendment  
3:42:39 PM Speaker Barbara Peterson in support of Amendment  
3:43:10 PM Comments from Chair Benacquisto  
3:43:14 PM Amendment Barcode No. 304520 adopted  
3:43:29 PM Buddy Jacobs waives in support  
3:43:46 PM Speaker Barney Bishop, President & CEO, Florida Society of Association Executives  
3:44:33 PM Kelly Quintero, League of Women Voters of Florida waives in support  
3:44:37 PM Casey Cook, Florida League of Cities waives in support  
3:44:40 PM Bill Barrett, City of St. Cloud in support  
3:44:43 PM Speaker Brian Pitts, Justice-2-Jesus  
3:46:08 PM Mercer Fearington waives in support  
3:46:12 PM O.D. Elliott waives in support  
3:46:15 PM Laura Youmans waives in support  
3:46:19 PM Ben Wilcox waives in support  
3:46:30 PM Vicki Long, Florida Association of the American Institute of Architects waives in support  
3:46:33 PM Chris Lyon, Florida Association of Special Districts waives in support  
3:46:38 PM Jaimie Ross, Florida Housing Coalition waives in support  
3:46:42 PM Frank Rudd, Florida Society of Association Executives waives in support  
3:46:46 PM Ken Albano, The Florida Police Chiefs Association waives in support  
3:46:50 PM Allen Douglas, Florida Engineering Society waives in support  
3:46:55 PM Christian Malesic, Melbourne Regional Chamber waives in support  
3:46:58 PM Comments from Chair Benacquisto  
3:47:30 PM Speaker Rich Templin, Florida AFL-CIO in support  
3:47:49 PM Albert Carroll waives in support  
3:47:53 PM Natalie King, Charter School Leaders Hillsborough waives in support

**3:48:01 PM** Alan Shelby, Florida Forestry Association waives in support  
**3:48:04 PM** David Daniel, Florida Surveying and Mapping Society waives in support  
**3:48:07 PM** Barbara Lemley waives in support  
**3:48:17 PM** Speaker Stewart Lilker in support  
**3:49:07 PM** Comments Chair Benacquisto  
**3:49:12 PM** Closure by Senator Steube  
**3:49:22 PM** Roll call on CS/CS/SB 80 by Administrative Assistant Joyce Butler  
**3:49:31 PM** CS/CS/SB 80 reported favorably  
**3:49:54 PM** Chair passed to Senator Steube  
**3:49:58 PM** Introduction of SB 1062 by Chair Steube  
**3:50:03 PM** Explanation of SB 1062 by Senator Powell  
**3:50:32 PM** Mercer Fearington, Florida Sheriffs Association waives in support  
**3:50:37 PM** Speaker Brian Pitts, Justice-2-Jesus  
**3:52:11 PM** Closure by Senator Powell  
**3:52:16 PM** Roll call by Administrative Assistant Joyce Butler on SB 1062  
**3:52:43 PM** SB 1062 reported favorably  
**3:53:06 PM** Motion by Senator Benacquisto to TP SB 262  
**3:53:20 PM** Senator Flores to be shown voting in the affirmative on 1270 and 34  
**3:53:31 PM** Senator Garcia to be shown voting in the affirmative on 1270, 34 and 204  
**3:53:38 PM** Senator Benacquisto moves to adjourn