

Tab 1	CS/SB 38 by JU, Thurston ; (Identical to CS/H 06523) Relief of Jane Doe by the School Board of Miami-Dade County						
Tab 2	CS/SB 200 by JU, Cruz ; (Similar to CS/H 06515) Relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach and Others						
151056	A	S	RCS	GO, Cruz	Delete L.68 - 72:	04/10 03:24 PM	
Tab 3	SB 404 by Farmer ; (Identical to H 00573) Strategic Fuel Reserve						
Tab 4	CS/SB 548 by JU, Brandes ; (Similar to CS/H 00409) Electronic Legal Documents						
Tab 5	SB 602 by Perry ; (Identical to H 00407) Public Records						
227536	D	S	RCS	GO, Perry	Delete everything after	04/10 03:24 PM	
Tab 6	SB 784 by Gruters (CO-INTRODUCERS) Broxson, Albritton ; (Identical to H 00779) Retirement						
783474	D	S	RCS	GO, Gruters	Delete everything after	04/10 03:24 PM	
Tab 7	CS/SB 1224 by ED, Farmer ; (Compare to H 01163) Charter Schools						
944160	A	S	RCS	GO, Farmer	Delete L.105 - 578:	04/10 03:24 PM	
Tab 8	SB 1616 by Baxley (CO-INTRODUCERS) Albritton ; (Identical to H 00861) Local Government Financial Reporting						
Tab 9	CS/SB 1622 by CF, Montford ; (Similar to CS/H 01249) Public Records/Foster Parent and Foster Parent Applicant Names						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Wednesday, April 10, 2019

TIME: 1:30—3:30 p.m.

PLACE: 301 Senate Building

MEMBERS: Senator Hooper, Chair; Senator Rader, Vice Chair; Senators Albritton, Bean, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 38 Judiciary / Thurston (Identical CS/H 6523)	Relief of Jane Doe by the School Board of Miami-Dade County; Providing for the relief of Jane Doe by the School Board of Miami-Dade County; providing for an appropriation to compensate Jane Doe for injuries and damages sustained as a result of the negligence of the School Board of Miami-Dade County, etc. SM JU 04/01/2019 Fav/CS GO 04/10/2019 Favorable RC	Favorable Yeas 5 Nays 0
2	CS/SB 200 Judiciary / Cruz (Similar CS/H 6515)	Relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach and Others; Providing for the relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach, Palm Beach County, the City of Lake Worth, the City of Riviera Beach, and the Town of Palm Beach; providing for an appropriation to compensate his estate for injuries and damages sustained by Herminio Padilla, Jr., as a result of the negligence of the City of West Palm Beach, Palm Beach County, the City of Lake Worth, the City of Riviera Beach, and the Town of Palm Beach, etc. SM JU 04/01/2019 Fav/CS GO 04/10/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 0
3	SB 404 Farmer (Identical H 573)	Strategic Fuel Reserve; Creating the Florida Strategic Fuel Reserve Task Force within the Division of Emergency Management to develop a recommended strategic fuel reserve plan for an emergency or disaster, etc. IS 02/19/2019 Favorable GO 04/10/2019 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Wednesday, April 10, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 548 Judiciary / Brandes (Similar CS/H 409)	Electronic Legal Documents; Revising provisions relating to use of the office of notary public; authorizing online notarizations; specifying registration and qualification requirements for online notaries public; prescribing online notarization procedures; specifying the manner by which an online notary public must verify the identity of a principal or a witness, etc. JU 04/01/2019 Fav/CS GO 04/10/2019 Favorable RC	Favorable Yeas 5 Nays 0
5	SB 602 Perry (Identical H 407)	Public Records; Prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request, etc. GO 04/10/2019 Fav/CS JU RC	Fav/CS Yeas 5 Nays 0
6	SB 784 Gruters (Identical H 779)	Retirement; Specifying the minimum amount of the factor used to calculate the cost-of-living adjustment of benefits for certain retirees and beneficiaries of the Florida Retirement System, etc. GO 04/10/2019 Fav/CS AEG AP	Fav/CS Yeas 5 Nays 0
7	CS/SB 1224 Education / Farmer (Compare H 1163)	Charter Schools; Requiring the Department of Education to approve credentialing entities for a specified purpose; revising charter school application deadline requirements; requiring each charter school principal, governing board member, chief financial officer, or their equivalent, to meet certain certification requirements; authorizing virtual charter schools to provide part-time virtual instruction for certain students, etc. ED 03/19/2019 Temporarily Postponed ED 03/26/2019 Fav/CS GO 04/10/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Wednesday, April 10, 2019, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1616 Baxley (Identical H 861, Compare CS/H 7035, CS/S 7014)	Local Government Financial Reporting; Requiring county and municipal budget officers, respectively, to submit certain information to the Office of Economic and Demographic Research within a specified timeframe; requiring adopted budget amendments and final budgets to remain posted on each entity's official website for a specified period of time, etc. CA 03/26/2019 Favorable GO 04/10/2019 Favorable RC	Favorable Yeas 5 Nays 0
9	CS/SB 1622 Children, Families, and Elder Affairs / Montford (Similar CS/H 1249)	Public Records/Foster Parent and Foster Parent Applicant Names; Providing an exemption from public records requirements for the names of foster parent applicants and licensed foster parents, and the names of the spouses, minor children, and adult household members of such applicants and foster parents, which are held by the Department of Children and Families; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 04/01/2019 Fav/CS GO 04/10/2019 Favorable RC	Favorable Yeas 5 Nays 0
Other Related Meeting Documents			



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

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

DATE	COMM	ACTION
03/27/19	SM	Report Submitted
04/01/19	JU	Fav/CS
04/09/19	GO	Favorable
	RC	

March 27, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 38** – Judiciary Committee and Senator Thurston
HB 6523 – Representative Rodriguez
Relief of Jane Doe by the School Board of Miami-Dade County

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR THE REMAINING SETTLEMENT AMOUNT OF \$1.3 MILLION FROM THE MIAMI-DADE COUNTY SCHOOL BOARD FOR THE RAPE AND ATTEMPTED MURDER OF JANE DOE, A TEACHER, BY A STUDENT.

FINDINGS OF FACT:

On September 19, 2014, Ms. Jane Doe, a teacher at South Dade Senior High School, stayed late to finish some work at the request of her supervisor. While she was working, a student returned to her classroom around 4:30 p.m. As the student began to close the blinds, Ms. Doe attempted to gather her belongings and leave the room. The student then physically attacked Ms. Doe while she tried to fight him off. He slammed Ms. Doe's head to the ground, choked her with his hands until she was unconscious, and then raped her. The student then put Ms. Doe's phone in the trash can, placed the condom he used into her purse, stole her keys, left her unconscious on the floor of her classroom, and stole her car.

When Ms. Doe regained consciousness, her clothing was removed from the lower half of her body and there were

clumps of hair and smears of blood on the floor of her classroom. Ms. Doe was able to find another employee who called emergency personnel.

Approximately five hours after the attack, the student was apprehended while driving Ms. Doe's vehicle. He confessed and was charged with attempted felony murder, sexual battery of a physically incapacitated victim, robbery, and grand theft.

Due to the effects of the attack, Ms. Doe was not able to testify in a criminal trial so the student entered a plea deal. On April 20, 2019, he was sentenced to 25 years in state prison.

In addition to physical injuries, Ms. Doe suffered psychological injuries including depression, post-traumatic stress disorder, gastrointestinal issues, fear of being alone and leaving the house, nightmares, anxiety, mood swings, suicidal thoughts, and panic attacks.

Background Information

At the special master hearing, and in voluminous documentation provided during the claim bill process and hearing, information related to Ms. Doe's teaching background and that student's behavioral history was submitted to the undersigned. The most relevant portions of the information are summarized below.

Ms. Jane Doe

In 2012, Ms. Doe earned a bachelor's degree in Exceptional Student Education. During the 2012 – 2013 school year, Ms. Doe was hired by the School Board of Miami Dade County to teach students who were deaf and hard of hearing, which is the area within which she studied and specialized.

During the 2013 – 2014 school year, while studying for a master's degree in speech and language, Ms. Doe was assigned to a middle school where she taught a class of nine students who were deaf and hearing impaired.

Ms. Doe did not have a contract for the 2014 – 2015 school year but was considered "surplus" and reassigned to South Dade Senior High School. Her new assignment began in August 2014 and she taught history, economics, and

government to high school students with emotional and behavioral disorders. Ms. Doe had no prior experience in any of these content areas, nor was she a behavioral management teacher or trained to teach students with emotional or behavioral disorders.

The student was assigned to Ms. Doe's 2014 – 2015 class. She was unaware of his prior history and she had not received self-defense training or attended security or crisis management training.

Ms. Doe was in her third year of teaching, was 4'11", and weighed 105 pounds.

The Student

The student was an individual with known, escalating emotional and behavioral concerns related to aggression, and defiance of authority figures.

In addition to incidents where the school district had direct knowledge, on June 26, 2013, 15 months before the attack on Ms. Doe, the student was arrested and charged with a second-degree felony under section 836.10, Florida Statutes (2013), for written threats to kill or do bodily injury. He never went to trial because, on May 12, 2014, a juvenile court found him incompetent to stand trial and determined he would not attain competency.

The student was 6'1" and weighed 200 pounds.

LITIGATION HISTORY:

Ms. Doe filed suit in May 2016 and subsequently settled the matter in early 2018 for \$3 million. Ms. Doe received \$1.7 million from insurance proceeds through Gallagher Bassett and United Educators Insurance and pursues the remaining \$1.3 million in this claim bill. As part of the settlement, the school board agreed not to oppose or support the claim bill.

CONCLUSIONS OF LAW:

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

Generally, the underlying tortious cause of action in a claim bill is a negligence claim for which sovereign immunity is waived up to caps identified in section 768.28(5), Florida Statutes. However, in this particular matter, the claimant was

an employee of the school district and received workers' compensation.¹ Workers' compensation is an exclusive remedy² unless one of the egregious statutory exceptions is demonstrated by an employee working in furtherance of the employer.³

A narrow exception to workers' compensation immunity is provided when the claimant can demonstrate that an intentional tort, as defined by the statute, was committed. The exception relevant to the analysis of this claim bill requires the claimant to demonstrate that an intentional tort causing injury or death was committed.⁴

The statute defines "intentional tort" for the purpose of identifying exceptions to workers' compensation immunity. The relevant definition of "intentional tort" in this matter, which under the statute must be demonstrated by clear and convincing evidence, requires that the:

- (1) employer engaged in conduct the employer knew, based on prior similar accidents or explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and
- (2) employee was not aware of the risk because the danger was not apparent, and
- (3) employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.⁵

Regarding the intentional tort exception to workers' compensation immunity, the Florida Supreme Court has applied the standard of "substantial certainty."⁶ The Court

¹ Although not argued at the claim bill hearing, claimant submitted information that litigation would have included federal claims alleging violations of 42 U.S.C. §1983 and 20 U.S.C. §§1681 et seq. (Title IX). The settlement agreement forecloses any claims by claimant against the respondent with regard to this matter.

² See section 440.11(1), Florida Statutes, which provides that "[t]he liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death" except as provided in certain situations.

³ See *Ramsey v. Dewitt Excavating, Inc.*, 248 So.3d 1270, 1272 (Fla. 2018); *Bakerman v. The Bombay Co., Inc.*, 961 So.2d 259, 261 – 261 (Fla. 2007) (stating, in reference to the comprehensive Florida Workers' Compensation scheme in Chapter 440, that "employers that comply with the provisions of the chapter are given immunity from civil suit by the employee, except in the most egregious circumstances").

⁴ Section 440.11(1)(b), Florida Statutes.

⁵ *Id.*

⁶ See *Bakerman*, 961 So.2d at 262 (citing and quoting *Turner v. PCR, Inc.*, 754 So.2d 683 (Fla. 2000)).

provided that “[u]nder an objective test for the substantial certainty standard, an analysis of the circumstances in a case would be required to determine whether a reasonable person would understand that the employer’s conduct was ‘substantially certain’ to result in injury or death to the employee.”⁷ Concealment of a danger is not necessarily required, but rather a factor, in determining substantial certainty as a matter of law, and whether a plaintiff has demonstrated substantial certainty would be a question for a jury.⁸

Although the elements of the intentional tort exception may be difficult to demonstrate by clear and convincing evidence, it is possible that a jury would have found for Ms. Doe in the present matter.

Employer’s Prior Knowledge of a Known Danger

The record shows that the school district knew of the student’s significant behavioral issues, including his violent tendencies and proceeded to assign Ms. Doe (whose experience was with deaf and hearing-impaired students) to a classroom of students with emotional and behavioral disorders – including the student who subsequently attacked Ms. Doe. A jury could find that the student’s escalating behavior and violent prior actions provided explicit warning to the employer of the danger he posed to others.

Employee Unaware of Risk

Ms. Doe was unaware of the student’s history of defiance, violence, and recent threat to kill or do bodily harm to another. She had just started in her new role in August and she was attacked by the student in September. Ms. Doe provides that she did not receive any warning regarding the student or his history. Additionally, she was not provided the requisite self-defense, safety, and crisis management training which may have also alerted her to the risks associated with her new role.

Concealment by Employer as to Prevent Informed Judgment of Employee about Whether to Perform the Work

A jury may also have found that failure to warn Ms. Doe was concealment or misrepresentation of the risks associated

⁷ *Id.*

⁸ *Id.* at 263 – 265.

with her new assignment – especially because she had not yet received any training pertaining to her new job working with students who had emotional and behavioral disorders.

Given the information presented by the claimant, it is possible that a jury could have found that the school district's conduct was substantially certain to result in injury to Ms. Doe.

IMPACT OF PAYMENT:

The School Board of Miami-Dade County stated that funds for this claim bill would be paid by the school district from the general revenue fund "which funds all aspects" of the school district.

ATTORNEY FEES:

The bill provides that attorney fees may not exceed 25 percent of the total amount awarded.

Claimant seeks the remaining \$1.3 million of a \$3 million settlement agreement with the respondent.

Outstanding costs total \$3,084.56.

CONCLUSION:

Based upon the information provided by the claimant before, during, and after the special master hearing, the undersigned finds that evidence exists for a jury to have found in favor of Ms. Doe's claim under an exception to workers' compensation immunity.

While it is also possible that a jury may have been able to find for the school district, the details and perspective of that argument is less clear as the school district (pursuant to the settlement agreement not to oppose or support the claim bill) did not present a case at the claim bill hearing.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

Instead of a limit on the percentage of the proceeds of the claim bill that may be paid as attorney fees, the committee specifies dollar amounts that may be paid for attorney fees, lobbying fees, and costs and similar expenses.

By the Committee on Judiciary; and Senator Thurston

590-03699-19

201938c1

A bill to be entitled

An act for the relief of Jane Doe by the School Board of Miami-Dade County; providing for an appropriation to compensate Jane Doe for injuries and damages sustained as a result of the negligence of the School Board of Miami-Dade County; providing limitations on attorney fees, lobbying fees, and certain costs and expenses; providing an effective date.

WHEREAS, Jane Doe was hired by the School Board of Miami-Dade County during the 2012-2013 school year as an itinerant teacher for students who were deaf and hard of hearing, and entered into a 1-year employment contract under which she traveled and taught at 10 elementary and middle schools during that school year, and

WHEREAS, Jane Doe was transferred during the 2013-2014 school year to Miami Centennial Middle School, where she taught a class of nine middle school students, all of whom were deaf or hard of hearing, and

WHEREAS, Jane Doe was reassigned in August 2014 by the School Board of Miami-Dade County to South Dade Senior High School, where she taught history, economics, and government to high school students with emotional and behavioral disorders, and

WHEREAS, Jane Doe's former position at Miami Centennial Middle School, for which she was qualified, remained unfilled for the 2014-2015 school year, and the School Board of Miami-Dade County knew that Jane Doe was not certified or licensed to teach students with emotional and behavioral disorders or to

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590-03699-19

201938c1

teach the subjects of history, economics, or government, and

WHEREAS, the School Board of Miami-Dade County is required to provide teachers who teach students with emotional and behavioral disorders with self-defense training and to ensure that they receive instruction in security and crisis management, but Jane Doe did not receive any such training or instruction, or any other training, before assuming her new position at South Dade Senior High School, and

WHEREAS, South Dade Senior High School had at least 3,500 enrolled students, one of the largest student populations in the nation, during the time of Jane Doe's reassignment and during the 2013-2014 and 2014-2015 school years the school had one of the highest rates in the Miami-Dade County Public Schools of student safety incidents reported to the Department of Education, and

WHEREAS, during the 2012-2013 school year, at least 145 fights were reported at South Dade Senior High School, and it was among the top 10 schools in South Florida for reported assaults, batteries, fighting, vandalism, theft, burglaries, and tobacco use, and

WHEREAS, during the 2013-2014 school year, 119 fights were reported at South Dade Senior High School, and it was among the worst in the district for violent and drug-related incidents, and

WHEREAS, in June 2013, before enrolling as a student in South Dade Senior High School, Victor Nash was arrested by the Miami-Dade Police Department and charged with making written threats to kill or do bodily harm, a violation of s. 836.10, Florida Statutes, a felony of the second degree, and he was

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59 subsequently charged by petition in that case, and
 60 WHEREAS, following the commencement of the criminal case,
 61 Mr. Nash was deemed incompetent to stand trial and began
 62 receiving restoration services from the Department of Juvenile
 63 Justice pursuant to s. 985.19, Florida Statutes, and, in May
 64 2014, a juvenile court determined that Mr. Nash would never
 65 attain competence, and
 66 WHEREAS, the School Board of Miami-Dade County knew or
 67 should have known of the court's determination of permanent lack
 68 of competency and, despite the determination, 3 months later
 69 elected to enroll Mr. Nash in South Dade Senior High School,
 70 where he was assigned to Jane Doe's class, and
 71 WHEREAS, the School Board of Miami-Dade County knew that
 72 Mr. Nash was a student with emotional and behavioral disorders,
 73 and it never notified Jane Doe about the charges filed against
 74 him, in violation of s. 985.04(4), Florida Statutes, his
 75 dangerous propensities, or that a court had recently deemed him
 76 mentally incompetent, and
 77 WHEREAS, on September 19, 2014, Jane Doe was instructed by
 78 a superior to stay on campus after regular school hours to call
 79 students' parents regarding their individual education plans,
 80 and
 81 WHEREAS, Mr. Nash remained on campus for at least 2 hours
 82 after the final bell rang and ultimately went to Jane Doe's
 83 classroom, where he found her alone, and
 84 WHEREAS, as Jane Doe attempted to leave the classroom after
 85 becoming alarmed at Mr. Nash's behavior, Mr. Nash violently
 86 grabbed her and slammed her to the ground, causing her to hit
 87 her head, and then choked her until she lost consciousness, and

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201938c1

88 WHEREAS, Mr. Nash proceeded to rape Jane Doe in her
 89 classroom and then threw away her cell phone, took her car keys
 90 from her purse, and located her vehicle in the school's faculty
 91 parking lot and drove it off of school property, and
 92 WHEREAS, Mr. Nash was later apprehended in Jane Doe's
 93 vehicle by an officer of the Homestead Police Department, and
 94 WHEREAS, as a result of this incident, in the criminal case
 95 *State of Florida v. Victor Marshall Nash*, No. F14021341 (Fla.
 96 11th Cir. Ct. 2014), Mr. Nash was charged with and pled guilty
 97 to attempted first degree murder, sexual battery causing great
 98 bodily harm, strong-arm robbery, and grand theft auto, and
 99 WHEREAS, the attempted murder and the sexual battery of
 100 Jane Doe by Mr. Nash and the grossly negligent, indifferent, and
 101 reckless conduct and breach of trust and confidence by the
 102 School Board of Miami-Dade County resulted in the loss of her
 103 virginity and have caused Jane Doe severe and permanent
 104 psychological injuries, severe depression, physical and mental
 105 pain and suffering, gastrointestinal distress, constant fear,
 106 nightmares, weight gain, anxiety, mood swings, and the loss of
 107 capacity for the enjoyment of life, and she has suffered loss of
 108 earnings and a loss of ability to earn money in the future, and
 109 WHEREAS, the injuries suffered by Jane Doe are persistent,
 110 permanent, and debilitating in nature, and
 111 WHEREAS, in resolving a civil action brought by Jane Doe,
 112 *Jane Doe v. the School Board of Miami-Dade County, Florida*, No.
 113 16-011821-CA-01 (Fla. 11th Cir. Ct. 2016), the parties signed a
 114 settlement agreement on April 9, 2018, under the terms of which
 115 a total amount of \$3 million was to be paid to Jane Doe, of
 116 which the School Board of Miami-Dade County paid \$200,000

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117 pursuant to s. 768.28, Florida Statutes, and its insurer paid
118 \$1.5 million, and the payment of the remaining \$1.3 million is
119 conditioned upon passage of this claim bill, NOW, THEREFORE,
120

121 Be It Enacted by the Legislature of the State of Florida:
122

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

125 Section 2. The School Board of Miami-Dade County is
126 authorized and directed to appropriate from funds of the school
127 board not otherwise encumbered and to draw a warrant in the sum
128 of \$1.3 million payable to Jane Doe as compensation for injuries
129 and damages sustained.

130 Section 3. The amount paid by the School Board of Miami-
131 Dade County pursuant to s. 768.28, Florida Statutes, and by its
132 insurer under the terms of the settlement agreement and the
133 amount awarded under this act are intended to provide the sole
134 compensation for all present and future claims arising out of
135 the factual situation described in this act which resulted in
136 injuries and damages to Jane Doe. Of the amount awarded under
137 this act, the total amount paid for attorney fees may not exceed
138 \$260,000, the total amount paid for lobbying fees may not exceed
139 \$65,000, and the total amount paid for costs or other similar
140 expenses may not exceed \$3,084.56.

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



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
409 The Capitol

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

DATE	COMM	ACTION
03/27/19	SM	Report Submitted
04/01/19	JU	Fav/CS
04/10/19	GO	Fav/CS
	RC	

March 27, 2019

The Honorable Bill Galvano
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/CS/SB 200** – Governmental Oversight and Accountability
Committee; Judiciary Committee and Senator Cruz
HB 6515 – Representative Fernandez-Barquin
Relief of Estate of Herminio Padilla, Jr., by the City of West Palm Beach
and Others

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED, SETTLED CLAIM FOR \$100,000 FROM THE CITY OF WEST PALM BEACH, PALM BEACH COUNTY, THE CITY OF LAKE WORTH, THE CITY OF RIVIERA BEACH, AND THE TOWN OF PALM BEACH TO THE ESTATE OF MR. HERMINIO PADILLA, JR., AS A RESULT OF HIS WRONGFUL DEATH.

FINDINGS OF FACT:

On January 17, 2015, shortly after midnight, Mr. Herminio Padilla, Jr., 48, was at work at the East Central Regional Water Reclamation Facility. As he was walking on a catwalk above a sewage basin, the grate on which Mr. Padilla was standing fell out of the catwalk causing Mr. Padilla to fall into the basin and drown.

The City of West Palm Beach conducted an internal audit of the facility in February 2014, which revealed shortcomings, including management issues.¹

¹ City of West Palm Beach Internal Auditor, Investigative Audit of East Central Regional Water Reclamation Facility Report (Feb. 21, 2014), 10 – 11.

In October 2014, the facility hired Brown and Caldwell to conduct a walk-through of the facility and provide a report. The report noted that many of the grates and guardrails were severely corroded and in need of immediate replacement or repair.²

An employee stated he had told management about a number of issues, including unfit grating that was in need of replacement. He said he had previously made a statement to others at the facility that “it was not if[,] but when[,] they pull a rotting corpse out that maybe things would change.”³

After Mr. Padilla’s death, the City hired WJE Engineers to investigate why the grate collapsed. The engineers and the West Palm Beach Police reported similar findings. Namely, that the grate only had two fasteners on the south side (none on the north, east, or west edges) and seemed to have slipped toward the south edge and off of the north edge.⁴ Mr. Padilla and the grate fell through and into the basin below. There was no net or safety mechanism in place to catch someone who may fall from the catwalks above the basins.

The City of West Palm Beach holds the title to, owns, and operates, the facility. West Palm Beach confirmed that Mr. Padilla. was an employee and the city owned, operated and maintained the facility.

All five respondents share usage of the facility pursuant to an interlocal agreement. The settlement divides payment of the claim bill award by each respondent’s usage percentage at the time they entered into the interlocal agreement in 1991. Payment would be divided as follows:

- West Palm Beach – \$54,091.00
- Palm Beach County – \$22,727.00⁵
- City of Lake Worth – \$11,363.50
- City of Riviera Beach – \$7,273.00
- Town of Palm Beach – \$4,545.50

² Brown and Caldwell Report, (Dec. 17, 2014).

³ Patrick Tranchese, (Jan. 18, 2015).

⁴ See WJE Engineers Report (Feb. 17, 2015), 4; West Palm Beach Police Department Report (Jan. 30, 2015).

⁵ Parties agree there was a scrivener’s error in the settlement where Palm Beach County’s percentage of the \$100,000 claim was listed as \$22,272.00 when it should be \$22,727.00. The bill should be amended to reflect the same.

Mr. Padilla was divorced and left three adult sons. His family received \$7,500 in funeral expenses from workers' compensation, \$80,000 from a \$40,000 double indemnity life insurance policy Mr. Padilla had through his employer, and another \$5,000 from an accidental death policy.

POSITIONS OF
RESPONDENTS:

All five respondents support this claim bill and did not contest the claim at the special master hearing.

The City of West Palm Beach concedes that it owns, operates, and maintains the facility and confirmed that Mr. Padilla was an employee working within the scope of his employment when the accident occurred. The City has also commemorated a bench and named a road at the plant in memory of Mr. Padilla.

The other respondents did not contest the bill or give an argument at the hearing. However, had litigation continued, respondents had arguments denying the allegations and liability. They also would have argued that they did not own or operate the facility and therefore did not owe a duty of care. If found to be owners or operators, they were prepared to argue that they were entitled to workers' compensation immunity and did not have notice of dangerous conditions. The suit was settled in mediation.

These arguments, in accordance with the settlement agreement not to oppose the bill, were not presented at the claim bill hearing.

CONCLUSIONS OF LAW:

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

Generally, the underlying tortious cause of action in a claim bill is a negligence claim for which sovereign immunity is waived up to caps identified in section 768.28(5), Florida Statutes. However, in this particular matter, the claimant was an employee of the City of West Palm Beach. Workers' compensation is an exclusive remedy⁶ unless one of the

⁶ See section 440.11(1), Florida Statutes, which provides that "[t]he liability of an employer prescribed in s. 440.10 shall be exclusive and in place of all other liability, including vicarious liability, of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death" except as provided in certain situations.

egregious statutory exceptions is demonstrated by an employee working in furtherance of the employer.⁷

A narrow exception to workers' compensation immunity is provided when the claimant can demonstrate that an intentional tort, as defined by the statute, was committed. The exception relevant to the analysis of this claim bill requires the claimant to demonstrate that an intentional tort causing injury or death was committed.⁸

The statute defines "intentional tort" for the purpose of identifying exceptions to workers' compensation immunity. The relevant definition of "intentional tort" in this matter, which under the statute must be demonstrated by clear and convincing evidence, requires that the:

- (1) employer engaged in conduct the employer knew, based on prior similar accidents or explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee, and
- (2) employee was not aware of the risk because the danger was not apparent, and
- (3) employer deliberately concealed or misrepresented the danger so as to prevent the employee from exercising informed judgment about whether to perform the work.⁹

Regarding the intentional tort exception to workers' compensation immunity, the Florida Supreme Court has applied the standard of "substantial certainty."¹⁰ The Court provided that "[u]nder an objective test for the substantial certainty standard, an analysis of the circumstances in a case would be required to determine whether a reasonable person would understand that the employer's conduct was 'substantially certain' to result in injury or death to the employee."¹¹ Concealment of a danger is not necessarily required, but rather a factor, in determining substantial certainty as a matter of law, and whether a plaintiff has

⁷ See *Ramsey v. Dewitt Excavating, Inc.*, 248 So.3d 1270, 1272 (Fla. 2018); *Bakerman v. The Bombay Co., Inc.*, 961 So.2d 259, 261 – 261 (Fla. 2007) (stating, in reference to the comprehensive Florida Workers' Compensation scheme in Chapter 440, that "employers that comply with the provisions of the chapter are given immunity from civil suit by the employee, except in the most egregious circumstances").

⁸ Section 440.11(1)(b), Florida Statutes.

⁹ *Id.*

¹⁰ See *Bakerman*, 961 So.2d at 262 (citing and quoting *Turner v. PCR, Inc.*, 754 So.2d 683 (Fla. 2000)).

¹¹ *Id.*

demonstrated substantial certainty would be a question for a jury.¹²

Although the elements of the intentional tort exception may be difficult to demonstrate by clear and convincing evidence, it is possible that a jury would have found for the claimant in this matter.

Employer's Prior Knowledge of a Known Danger

The employer had prior knowledge of maintenance issues by way of employee complaints and at least two reports regarding the status of the facility. The reports identified grates that were not secure and noted the need for grates to be repaired or replaced immediately. The employer had to know that, especially without a safety net or safety mechanism below a catwalk over a basin, an employee could fall to their demise if grates were not secure.

Employee Unaware of the Risk

There is no indication in the record that Mr. Padilla had any prior knowledge of the maintenance concerns regarding the grating in the facility.

Concealment by Employer as to Prevent Informed Judgment of Employee about Whether to Perform the Work

The record does not indicate whether the employer made employees aware of the maintenance and safety concerns at the facility. There is no information suggesting that Mr. Padilla, himself, was ever aware of the risks of walking on the catwalk grating.

LITIGATION HISTORY:

Stephen P. Padilla filed suit against all five respondents for the wrongful death of his father while also asserting negligence claims with regard to the operation and maintenance of the facility.

On October of 2018, the case settled during mediation for \$300,000 and, as a condition of the settlement agreement, the respondents would not contest this \$100,000 claim bill.

IMPACT OF PAYMENT:

The respondents have all represented that they are able to pay their respective portions of the claim and encourage the passage of this claim bill. Respondents are self-insured and

¹² *Id.* at 263 – 265.

state that the amounts due fall within their self-insured retention.

ATTORNEY FEES:

The bill provides that attorney fees may not exceed 25 percent of the amount of the amount awarded.

RECOMMENDED
AMENDMENT:

Parties agree there was a scrivener's error in the settlement where Palm Beach County's percentage of the \$100,000 claim was listed as \$22,272.00 when it should be \$22,727.00. The bill should be amended to reflect the same.

The parties have also provided agreed upon language, which may also be considered as an amendment.

CONCLUSION:

Based upon the information provided by the claimant before and during the special master hearing, the undersigned finds that evidence exists for a jury to have found in favor of Mr. Stephen Padilla's claim, on behalf of the estate, against the City of West Palm Beach under an exception to workers' compensation immunity.

While there is a question as to liability of the other respondents, the undersigned did not have the benefit of hearing arguments from those parties due to the settlement agreement precluding them from opposing the bill.

All respondents have agreed to pay a percentage, as previously outlined, of the award in this claim bill and support its passage.

Respectfully submitted,

Christie M. Letarte
Senate Special Master

cc: Secretary of the Senate

CS/CS by Governmental Oversight and Accountability on April 10, 2019:

The committee substitute sets the maximum amounts paid from this claims bill for attorney fees at \$20,000; for lobbying fees at \$5,000; and for other costs at \$5,000.

CS by Judiciary:

The committee substitute changes Palm Beach County's payment to \$22,727 from \$22,272 in the underlying bill.



151056

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 68 - 72

and insert:

provide the sole compensation for all past, present, and future
claims arising out of the factual situation alleged in this act
which resulted in the death of Herminio Padilla, Jr. Of the
amount awarded under this act, the total amount paid for
attorney fees may not exceed \$20,000, the total amount paid for
lobbying fees may not exceed \$5,000, and the total amount paid



151056

11 for costs or other similar expenses may not exceed \$5,000.

12

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

14 And the title is amended as follows:

15 Delete lines 11 - 50

16 and insert:

17 providing a limitation on the payment of fees and
18 costs; providing an effective date.

19

20 WHEREAS, on January 17, 2015, Herminio Padilla, Jr., was an
21 employee of the City of West Palm Beach as a wastewater plant
22 operator, and

23 WHEREAS, shortly after midnight on January 17, 2015, while
24 working at the water reclamation facility, Mr. Padilla was
25 walking on an elevated catwalk over a sewage basin when a grate
26 allegedly and unexpectedly collapsed, causing him to fall into
27 the basin, and

28 WHEREAS, at the time of this event, no one was present in
29 the area, other than Mr. Padilla, and Mr. Padilla sank in the
30 basin and drowned, and

31 WHEREAS, the Estate of Herminio Padilla, Jr., filed a
32 lawsuit against his employer, the City of West Palm Beach, who
33 owns and operates the water reclamation facility, as well as
34 Palm Beach County, the City of Lake Worth, the City of Riviera
35 Beach, and the Town of Palm Beach, who have a beneficial
36 interest in the water reclamation facility where the accident
37 occurred, and

38 WHEREAS, it is alleged that, before the drowning occurred,
39 the City of West Palm Beach as the owner and operator of the



151056

40 water reclamation facility hired an engineering firm to perform
41 a visual inspection of the facility and the firm identified
42 several safety issues that required immediate attention, and

43 WHEREAS, subsequent to the drowning, the City of West Palm
44 Beach as the owner and operator of the water reclamation
45 facility hired a separate engineering company to perform an
46 analysis of the drowning which revealed that the grate that
47 collapsed was missing an attachment which caused it to slide off
48 the supporting ledge, and

49 WHEREAS, subsequent to the drowning, an e-mail written by
50 another employee of the facility alleged that complaints about
51 other catwalks at the facility were brought to the attention of
52 the City of West Palm Beach before the drowning, and

53 WHEREAS, on October 17, 2018, the parties participated in
54 mediation and a settlement in the amount of \$400,000 was
55 reached, as a compromise with no defendant admitting liability,
56 and of which the City of West Palm Beach, Palm Beach County, the
57 City of Lake Worth, the City of Riviera Beach, and the Town of
58 Palm Beach have collectively paid the statutory limit of
59 \$300,000, and \$100,000 remaining to be paid by the City of West
60 Palm Beach, Palm Beach County, the City of Lake Worth, the City
61 of Riviera Beach, and the Town of Palm Beach collectively upon
62 approval of a claim bill, NOW, THEREFORE,

By the Committee on Judiciary; and Senator Cruz

590-03700-19

2019200c1

1 A bill to be entitled
 2 An act for the relief of the Estate of Herminio
 3 Padilla, Jr., by the City of West Palm Beach, Palm
 4 Beach County, the City of Lake Worth, the City of
 5 Riviera Beach, and the Town of Palm Beach; providing
 6 for an appropriation to compensate his estate for
 7 injuries and damages sustained by Herminio Padilla,
 8 Jr., as a result of the negligence of the City of West
 9 Palm Beach, Palm Beach County, the City of Lake Worth,
 10 the City of Riviera Beach, and the Town of Palm Beach;
 11 providing a limitation on the payment of attorney
 12 fees; providing an effective date.
 13
 14 WHEREAS, on January 17, 2015, Herminio Padilla, Jr., was an
 15 employee of the City of West Palm Beach as a wastewater plant
 16 operator, and
 17 WHEREAS, shortly after midnight on January 17, 2015, while
 18 at a water reclamation facility, Mr. Padilla was walking on an
 19 elevated catwalk over a sewage basin when suddenly and
 20 unexpectedly one of the catwalk grates collapsed, causing him to
 21 fall into the basin, and
 22 WHEREAS, at the time of this event, no one was present, no
 23 lifesaving equipment was nearby, and Mr. Padilla sank in the
 24 basin and drowned, and
 25 WHEREAS, the Estate of Herminio Padilla, Jr., filed a
 26 lawsuit against the City of West Palm Beach, Palm Beach County,
 27 the City of Lake Worth, the City of Riviera Beach, and the Town
 28 of Palm Beach, all of which owned the water reclamation facility
 29 in which the drowning occurred, and

Page 1 of 3

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

590-03700-19

2019200c1

30 WHEREAS, through discovery related to the lawsuit, it was
 31 revealed that, before the drowning occurred, the owners of the
 32 water reclamation facility hired an engineering firm to inspect
 33 the facilities and the firm identified several safety issues
 34 that required immediate attention, and
 35 WHEREAS, subsequent to the drowning, the owners of the
 36 water reclamation facility hired a separate engineering company
 37 to perform a causal analysis of the drowning which revealed
 38 multiple structural defects relating to the catwalk and grates
 39 that collapsed, and
 40 WHEREAS, an e-mail written by an employee of the facility
 41 at issue, dated January 18, 2015, indicated that a mechanic
 42 brought the issue of the grate to the attention of the owners
 43 one week before the drowning occurred, and
 44 WHEREAS, on October 17, 2018, the parties participated in
 45 mediation and a settlement in the amount of \$400,000 was
 46 reached, of which the City of West Palm Beach, Palm Beach
 47 County, the City of Lake Worth, the City of Riviera Beach, and
 48 the Town of Palm Beach collectively have paid the statutory
 49 limit of \$300,000, with approximately \$100,000 remaining to be
 50 paid, NOW, THEREFORE,
 51
 52 Be It Enacted by the Legislature of the State of Florida:
 53
 54 Section 1. The facts stated in the preamble to this act are
 55 found and declared to be true.
 56 Section 2. The City of West Palm Beach, Palm Beach County, the
 57 City of Lake Worth, the City of Riviera Beach, and the Town of
 58 Palm Beach are authorized and directed to appropriate from funds

Page 2 of 3

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

590-03700-19

2019200c1

59 not otherwise encumbered and to draw warrants in the sums of
60 \$54,091, \$22,727, \$11,363.50, \$7,273, and \$4,545.50,
61 respectively, payable to Stephen P. Padilla, as personal
62 representative of the Estate of Herminio Padilla, Jr., as
63 compensation for injuries and damages sustained.

64 Section 3. The amounts paid by the City of West Palm Beach,
65 Palm Beach County, the City of Lake Worth, the City of Riviera
66 Beach, and the Town of Palm Beach pursuant to s. 768.28, Florida
67 Statutes, and the amount awarded under this act are intended to
68 provide the sole compensation for all present and future claims
69 arising out of the factual situation described in this act which
70 resulted in the death of Herminio Padilla, Jr. The total amount
71 paid for attorney fees relating to this claim may not exceed 25
72 percent of the amount awarded under this act.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 404

INTRODUCER: Senator Farmer

SUBJECT: Strategic Fuel Reserve

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	Favorable
2.	<u>Hackett</u>	<u>McVane</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 404 creates the Florida Strategic Fuel Reserve Task Force (task force) within the Florida Division of Emergency Management (FDEM) to develop a recommended strategic fuel reserve plan for the state to respond to private and public fuel needs in the event of an emergency or disaster. The FDEM must provide administrative and support services relating to the functions of the task force.

The Governor, President of the Senate, and Speaker of the House of Representatives must each appoint three persons to sit on the nine member task force. The task force must elect a chair and vice chair and submit a recommended strategic fuel reserve plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by April 30, 2020. The task force terminates on June 30, 2020.

The bill takes effect on July 1, 2019.

II. Present Situation:

Florida Division of Emergency Management

The FDEM within the Executive Office of the Governor administers programs to rapidly apply all available aid to impacted communities stricken by emergency.¹ The FDEM is responsible for maintaining a comprehensive statewide program of emergency management to ensure that Florida is prepared to respond to emergencies, recover from them, and mitigate against their impacts. In doing so, the FDEM coordinates efforts with and among the federal government, other state agencies, local governments, school boards, and private agencies that have a role in

¹ Section 14.2016, F.S.

emergency management.² The FDEM is organized by functional area to include the bureaus of Mitigation, Preparedness, Response, and Recovery.

State Emergency Response Team

The State Emergency Response Team (SERT) serves as the primary operational mechanism through which state assistance to local governments is managed.³ To facilitate effective operations, the SERT is organized into 18 groups called Emergency Support Functions (ESF).⁴ Each ESF focuses on a specific mission area and is led by a representative from the state agency that best reflects the authorities, resources, and capabilities of the ESF.

Emergency Support Function 12 – Fuels

The purpose of ESF 12 (Fuels) is to promulgate the policies and procedures to be used by partner agencies in responding to and recovering from shortages and disruptions in the supply and delivery of transportation fuels, electricity, natural gas, and other forms of energy and fuels that, impact or threaten, significant numbers of citizens and visitors. The primary agencies providing leadership to ESF 12 are the Public Service Commission and the FDEM. Partner agencies in ESF 12 include, but are not limited to, the Florida Department of Agriculture and Consumer Services, Florida Department of Environmental Protection, Florida Department of Health, Florida Department of Management Services, Florida Department of Transportation, Florida National Guard, Florida Petroleum Council, Florida Petroleum Marketers Association, Florida Propane Association, Florida Trucking Association, and other industry trade groups and associations.⁵

Operations in ESF 12 involve close coordination with private sector providers of energy and transportation fuels such as propane, fuel oil, diesel fuel, and gasoline. The FDEM is primarily responsible for monitoring and coordinating with private sector suppliers of such fuels to ensure that adequate supplies of other energy and transportation fuels are available and deliverable for normal community functioning.⁶ Energy planners from the FDEM Bureaus of Response and Preparedness work alongside ESF 12 prior to an emergency or disaster to develop and maintain plans and procedures to ensure an adequate supply of fuels to support emergency response and recovery operations.⁷

Task Force Requirements under Section 20.03, Florida Statutes

Section 20.03(8) defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution

² Section 252.35(1), F.S.

³ FDEM, The State of Florida 2018 Comprehensive Emergency Management Plan, 6 (2018), <https://www.floridadisaster.org/globalassets/cemp/2018-state-cemp.pdf> (last visited February 4, 2019).

⁴ Id.

⁵ FDEM, The State of Florida 2018 Comprehensive Emergency Management Plan, Appendix XII – Emergency Support Function 12 – Energy (2018), <https://www.floridadisaster.org/globalassets/cemp/2018-state-cemp.pdf> (last visited February 6, 2019).

⁶ Id.

⁷ FDEM, Natural Hazards, <https://www.floridadisaster.org/dem/preparedness/natural-hazards/> (last visited February 4, 2019).

or policy alternative related to that problem.” This provision specifies that the existence of the task force terminates upon the completion of its assignment.

III. Effect of Proposed Changes:

Section 1 creates the Florida Strategic Fuel Reserve Task Force within the FDEM to develop a recommended strategic fuel reserve plan for the state to respond to private and public fuel needs in the event of an emergency or disaster, as defined in s. 252.34, F.S. The FDEM must provide administrative and support services relating to the functions of the task force.

The Governor, President of the Senate, and Speaker of the House of Representatives must each appoint three persons to sit on the nine member task force. The task force must elect a chair and vice chair and submit a recommended strategic fuel reserve plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by April 30, 2020. The task force terminates on June 30, 2020.

Section 2 provides that the bill takes effect on July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill directs the FDEM to provide administrative and support services relating to the functions of the Florida Strategic Fuel Reserve Task Force. According to the FDEM, the agency may incur an estimated \$569,000 in contractor and staff costs.⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill does not amend the Florida Statutes but does create an undesignated section of Florida law.

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

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

None.

B. Amendments:

None.

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

⁸ Email from Jared Rosenstein, Legislative Affairs Director, Florida Division of Emergency Management, RE: SB 404, (February 12, 2019), on file with Florida Senate Infrastructure and Security committee.

By Senator Farmer

34-00718-19

2019404__

1 A bill to be entitled
 2 An act relating to a strategic fuel reserve; creating
 3 the Florida Strategic Fuel Reserve Task Force within
 4 the Division of Emergency Management to develop a
 5 recommended strategic fuel reserve plan for an
 6 emergency or disaster; requiring the division to
 7 provide administrative and support services to the
 8 task force; specifying the membership of the task
 9 force; requiring the task force to elect a chair and a
 10 vice chair; requiring the task force to submit a
 11 recommended plan to the Governor and the Legislature
 12 by a specified date; providing an expiration date;
 13 providing an effective date.
 14

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

16
 17 Section 1. (1) The Florida Strategic Fuel Reserve Task
 18 Force, a task force as defined in s. 20.03(8), Florida Statutes,
 19 is created within the Division of Emergency Management within
 20 the Executive Office of the Governor to develop a recommended
 21 strategic fuel reserve plan for the state to respond to private
 22 and public fuel needs in the event of an emergency or disaster,
 23 as those terms are defined in s. 252.34, Florida Statutes.

24 (2) The division shall provide administrative and support
 25 services relating to the functions of the task force.

26 (3) The task force shall consist of the following members:

27 (a) Three persons appointed by the President of the Senate.

28 (b) Three persons appointed by the Speaker of the House of
 29 Representatives.

Page 1 of 2

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34-00718-19

2019404__

30 (c) Three persons appointed by the Governor.
 31 (4) The task force shall elect a chair and vice chair.
 32 (5) The task force shall submit a recommended strategic
 33 fuel reserve plan to the Governor, the President of the Senate,
 34 and the Speaker of the House of Representatives by April 30,
 35 2020.
 36 (6) This section expires on June 30, 2020.
 37 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, Vice Chair
Approps. Subcommittee on Health & Human Services
Innovation, Industry and Technology
Rules
Joint Committee on Public Counsel Oversight

SENATOR GARY M. FARMER, JR.

34th District

February 20, 2019

Chair Hooper
Committee on Governmental Oversight and Accountability
404 South Monroe Street
Tallahassee, FL 32399-1100
Sent via email to Hooper.Ed@FLSenate.Gov

Chair Hooper,

I respectfully request that you place SB 404 relating to Strategic Fuel Serve on the agenda of the Committee on Governmental Oversight and Accountability at your earliest convenience.

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

Thank you,

A handwritten signature in black ink, appearing to read "Gary Farmer".

Senator Gary Farmer
District 34

CC:

Ed Hooper, Vice Chair
Joe McVaney, Staff Director
Tamra Redig, Committee Administrative Assistant
Brian Flaherty, Legislative Assistant to Senator Hooper
Mari Riba, Legislative Assistant to Senator Hooper
Charles Smith, Legislative Assistant to Senator Hooper

REPLY TO:

- Broward College Campus, 111 East Las Olas Boulevard, Suite 913, Fort Lauderdale, Florida 33301 (954) 467-4227
- 216 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5034

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

404

Bill Number (if applicable)

Topic Petroleum Supply

Amendment Barcode (if applicable)

Name DAVID MICA

Job Title Director

Address 215 S. Monroe

Phone 561-6300

Street Tallahassee FL 32301

Email

Speaking: For [] Against [x] Information []

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

Representing Florida Petroleum Council

Appearing at request of Chair: Yes [] No [x]

Lobbyist registered with Legislature: Yes [x] 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)

4/18/19

Meeting Date

SB 404

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Director Jared Moskowitz

Job Title _____

Address 2855 Shumard Oak Blvd

Phone 954-600-4949

Street

Tallahassee

FL

State

Zip

Email _____

Speaking: For Against Information

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

Representing DEM

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)

4-10-19 Meeting Date

404 Bill Number (if applicable)

Topic STRATEGIC Fuel Reserve

Amendment Barcode (if applicable)

Name MARTHA De CASTRO

Job Title VP Nursing & CLIN CARE POLICY

Address 306 E College Street

Phone 850 222 9880

Trent FL City State Zip

Email martha@pha.org

Speaking: [X] For [] Against [] Information

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

Representing Florida Hospital Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 548

INTRODUCER: Judiciary Committee and Senator Brandes

SUBJECT: Electronic Legal Documents

DATE: April 9, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Fav/CS
2.	Hackett	McVaney	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 548 authorizes the use of remote online notarizations and recognizes the legal validity of certain electronic legal documents in Florida.

Specifically, the bill:

- Permits notaries, civil-law notaries, and commissioners of deeds to register as online notaries and provide remote online notarizations through two-way, remote audio-visual communication technology.
- Requires substantial record-keeping and security protocols for online notaries, including third-party identify verification (credentials analysis), and provides for the use of Remote Online Notarization (RON) platforms and software to facilitate online notarizations.
- Authorizes online notarization oversight, rulemaking, and training by the Department of State.
- Permits an online notary to notarize electronic signatures on wills, powers of attorney, and documents conveying real property, and requires the notary to issue a colloquy in the case of wills and powers of attorney enumerating certain powers, such as changing a beneficiary, and other documents that are either testamentary or deal with end-of-life decisions.
- Permits an online notary to notarize the electronic signature of a principle signer and witnesses to an electronic will, powers of attorney, and other similar documents through audio-visual communication technology.
- Provides that electronic wills may become self-proving if a qualified custodian is appointed to maintain custody of the will until the testator's death.

- Authorizes witnesses to appear remotely to attest to the principle's signing of a document but requires a remote witness's identity be verified through third party credential analysis.
- Provides that any document signed by a vulnerable adult is voidable when the witness appears remotely.

The bill takes effect January 1, 2020, except that the Department of State's rulemaking authority takes effect upon becoming law.

II. Present Situation:

Part 1: Notaries Public in Florida

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

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

- Administer oaths or affirmations.⁷
- Take acknowledgments.⁸
- Solemnize marriages.⁹
- Attest to photocopies.¹⁰

¹ Art. II, s. 5, FLA. CONST.

² 58 AM. JUR. 2D Notaries Public § 1.

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

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

⁵ Section 117.01(1), F.S.

⁶ Executive Office of the Governor, State of Florida, *Governor's Reference Manual for Notaries Public*, p. 13 (Dec. 13, 2016), available at https://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf.

⁷ Section 117.03, F.S.

⁸ Section 117.04, F.S.

⁹ Section 117.045, F.S.

¹⁰ Section 117.05(12)(a), F.S.

- Verify vehicle identification numbers (VINs).¹¹
- Certify the contents of a safe-deposit box.¹²

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

A notary public may provide an electronic signature so long as it is (1) unique, (2) verifiable, (3) under the notary's sole control, and (4) attached to a document in a way revealing any subsequent alteration.¹⁵ In other words, the electronic signature must not be easily replicated.

When a signature must be accompanied by a notary public seal, the requirement is met when the notary public includes his or her full legal name, the words "Notary Public State of Florida," the expiration date of the notary's commission, and the notary's commission number.¹⁶ The seal may also be applied to a physical paper copy using a rubber stamp containing the foregoing information.¹⁷

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

Becoming a Notary Public in Florida

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

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

To apply to become a notary public in Florida, the application form provided by the Department of State must be completed, signed, sworn, and filed along with the appropriate applications

¹¹ Section 319.23(3)(a)2., F.S.

¹² Section 655.94(1), F.S.

¹³ See n. 5, *supra*.

¹⁴ Section 117.05(2), F.S.

¹⁵ Section 117.021(2), F.S.

¹⁶ Section 117.021(3), F.S.

¹⁷ Section 117.05(3), F.S.

¹⁸ Art. IV, s. 7, FLA. CONST.; s. 117.01(4), F.S.

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

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

²¹ See n. 5, *supra*.

fees.²² Because the bond must be attached, the bonding agency usually submits the application in both a paper and electronic format.²³ The oath of office and notary bond must accompany the notary's application when filed with the Department of State.²⁴

Applicants must also provide or attach the following as part of the application:

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

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

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

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

Remote Online Notarization (RON)

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

One article explains how remote online notarization works:

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

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

²³ See n. 6 at p. 7, *supra*.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Section 117.05(5), F.S.

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

transaction is recorded and secured on the cloud in compliance with retention rules; both the signer and the notary can get copies.

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

Virginia was the first to enact a remote online notarization or RON law in 2012.²⁹ Since the above article was written in June 2017, multiple states have passed RON laws. In 2018, six states—Indiana, Michigan, Minnesota, Ohio, Tennessee, and Vermont—enacted RON laws. In 2019, more than 20 states introduced RON legislation,³⁰ including North Dakota, South Dakota, Idaho, and Kentucky, all of which have already passed and been signed into law. Nebraska and Arizona are expected to pass RON laws in 2019 as well.³¹

Commissioner of Deeds

Generally, a commissioner of deeds is similar to a notary public, except a commissioner may complete certain notarial acts outside the state of appointment (either in other states or foreign countries) that will be recognized by the state of appointment.³²

Under Florida law, commissioners of deeds serve a more limited function, notarizing timeshare-related documents executed in foreign countries. A commissioner of deeds appointed in Florida may take acknowledgments, proofs of execution, and oaths in connection with the execution of any deed, mortgage, deed of trust, contract, power of attorney, or any other writing to be used or recorded *specifically* in connection with a timeshare estate, personal property timeshare interest, timeshare license, any property subject to a timeshare plan, or the operation of a timeshare plan located in Florida. However, the commissioner of deeds can *only* do the foregoing notarial acts related *only* to timeshares when such instruments or writings are executed *outside* the United States.³³

A commissioner of deeds also takes acknowledgments, proofs of execution, and oaths in the same manner as notaries under ch. 117, F.S. A commissioner's certification must be endorsed

²⁸ Lauren Silverman, *Notaries are Starting to Put Down The Stamp and Pick Up a Webcam*, National Public Radio, All Tech Considered (June 12, 2017), <https://www.npr.org/sections/alltechconsidered/2017/06/12/532586426/notaries-are-starting-to-put-down-the-stamp-and-pick-up-a-webcam> (last visited Mar. 29, 2019).

²⁹ *Id.* See Office of the Secretary of the Commonwealth of Virginia, Notary Public Division, *A Handbook For Virginia Notary Publics*, <https://governor.virginia.gov/media/2089/NotaryHandbook.pdf> (last visited Jan. 29, 2018). See also <https://www.notarize.com/availability>, a Virginia-based online platform offering online notary services. The video on the homepage also explains how the process works. *Id.* (last visited March 29, 2019).

³⁰ Andrew Macdougall, *North Dakota Enacts Remote Online Notarization*, Notarize.com (March 13, 2019), available at <https://www.notarize.com/blog/north-dakota-enacts-remote-online-notarization> (last visited Mar. 29, 2019).

³¹ Andrew Macdougall, *South Dakota Adopts Remote Online Notarization*, Notarize.com (March 21, 2019), available at <https://www.notarize.com/blog/south-dakota-adopts-remote-online-notarization> (last visited Mar. 29, 2019).

³² BLACK'S LAW DICTIONARY (10th ed. 2014).

³³ Chapter 721, F.S., governs vacation and timeshare plans. See s. 721.96, F.S. (stating that one of the chapter's purposes is to appoint commissioners of deeds); s. 721.97(1), F.S. (Governor may appoint a commissioner of deeds to take acknowledgments, proofs of execution, or oaths in any foreign country, in international waters, or in any possession, territory, or commonwealth of the United States outside the 50 states).

on or annexed to an instrument or writing and has the same effect as if made by a Florida notary public.³⁴

Like notaries publics, a commissioner of deeds is appointed by the Governor to a term of 4 years. A person seeking to be appointed as a commissioner of deeds must take an oath before a notary public in Florida or any other state, or a person authorized to take oaths in another country, to well and faithfully execute and perform the duties of a commissioner of deeds.³⁵ The oath must be filed with the Department of State prior to the person being commissioned.³⁶

Civil-Law Notaries

A civil-law notary is an attorney who is also a notary public. Civil-law notaries are appointed by the Florida Department of State pursuant to chapter 118, F.S., to attest to and authenticate the validity of documents that may be used in foreign countries that adhere to civil law (such as Latin American countries) as opposed to common law (United States, Great Britain, etc.). As one article explains:

What distinguishes a Chapter 118 civil-law notary is that he or she is authorized to authenticate documents not merely by witnessing a signature or taking an oath, **but also by verifying and confirming the truth of the statements contained within the documents.** When appropriate, the Florida civil-law notary also may verify and confirm the applicable law and include that verification in the authentic act. When serving this function, the civil-law notary acts as an independent third party to the transaction (if there is more than one party to the transaction). This process of verifying and confirming representations of fact and authenticity of a document can arise in an infinite variety of contexts when an individual uses a document from the United States to prove a fact in a foreign civil-law jurisdiction. A few examples reviewed here include verification of facts and law determining heirship in a real-estate context, proper execution of a power of attorney in connection with a sale of real property in a civil-law jurisdiction, and establishment of identity, maternity, paternity, or other relations in connection with litigation.³⁷

To qualify for appointment as a civil-law notary, a person must (1) be a licensed Florida attorney (2) in good standing with The Florida Bar (3) who has been practicing law for at least 5 years. Those qualified may apply through the Florida Department of State.³⁸

³⁴ Section 721.97(1), F.S.

³⁵ Section 721.97(2), F.S. *Also see* International Society of Florida Commissioners of Deeds, *Reference Manual for Commissioners of Deeds For the State of Florida* (Aug. 2009)(on file with Senate Judiciary Committee).

³⁶ *Id.*

³⁷ J. Brock McClane & Michael A. Tessitore, *The Florida Civil-Law Notary: A Practical New Tool for Doing Business with Latin America*, 32 STETSON L. REV. 727, 735 (2003) (emphasis added)(footnotes omitted) (discussing history and purpose of law creating civil-law notaries, to encourage international business particularly with civil law nations of South America). *See also* ss. 118.10, 118.12, F.S.

³⁸ Florida Department of State, Notary Public Access System, *Civil Law Notary Names and Locations List*, available at <http://notaries.dos.state.fl.us/civil.html> (last visited Mar. 29, 2019). *See also* Admin. R. 1N-6.001.

Uniform Electronic Transaction Act

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act (act). The act applies to electronic records and signatures relating to a transaction.³⁹ The act does not apply to transactions to the extent they are governed by:⁴⁰

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
- The Uniform Commercial Code (UCC);⁴¹ or
- The Uniform Computer Information Transaction Act.

Part 2: Wills in Florida

A will is a legal document that a person (a “testator”) may use to determine who gets his or her property when he or she dies. As set forth in the Florida Probate Code, as chs. 731-735, F.S., the legal definition of a will is:

an instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or revokes or revises another will.⁴²

Wills do not dispose of all of a testator’s property, but only his or her “estate,” i.e., those assets that are subject to probate administration.⁴³ Probate is “a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent’s debts, and distributing the decedent’s assets to his or her beneficiaries.”⁴⁴ Other assets are disposed of outside of probate.⁴⁵

Without a will, a decedent’s estate will be distributed pursuant to the intestacy statutes, which devise a decedent’s estate according to what might be described as default rules. With a will, however, a testator may, as a general matter, devise his or her estate to whomever he or she likes. Also, with a will, a testator may designate a person known as a personal representative to carry out the terms of the will. Otherwise, a court will choose the personal representative.

Execution of a Will

A will must be “in writing” and signed at its end by either the testator or by someone else for the testator. If someone else signs for the testator, the person must do so in the testator’s presence and at the testator’s direction.⁴⁶ At least two persons must witness the testator sign the will or

³⁹ Section 668.50(3)(a), F.S.

⁴⁰ Section 668.50(3)(b), F.S.

⁴¹ Other than s. 671.107, F.S., and chapters 672 and 680, F.S. The UCC consists of chapters 670 - 680, F.S.

⁴² Section 731.201(40), F.S.

⁴³ *See*, s. 731.201(14), F.S.

⁴⁴ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited March 28, 2019).

⁴⁵ For example, the terms of a decedent’s bank account may include a beneficiary clause, giving the account to whomever the decedent names.

⁴⁶ Section 732.502(1)(a), F.S.

must witness the testator's acknowledgement that he or she previously signed the will or that another person subscribed the testator's name to the will.⁴⁷ These witnesses must sign the will in the presence of each other and the testator.⁴⁸ For wills executed in other states, the requirements may be different.⁴⁹ The consequence of failing to strictly comply with these requirements is that the will is not valid.⁵⁰ A codicil (amendment) to a will must be executed in the same manner as a will.⁵¹

Though s. 732.502(1), F.S., specifies that a will must be "in writing" and that certain persons must "sign" or attach their "signature," these terms are not defined in the statutes. Moreover, there is no explicit statement in the Florida Probate Code that an electronic will is invalid, that an electronic signature is invalid, or that a will must be executed on paper.

Some have asserted that an electronically-signed will is not valid in Florida, but s. 668.004, F.S., states that, "[u]nless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a written signature."⁵² An electronic signature, as defined in s. 668.003(4), F.S., is:

any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

Storing a Will

The Florida Probate Code does not specify how a will must be stored.

Probate and Proving a Will

To acquire a court order distributing the testator's estate assets in line with the terms of a will, the will must be probated.⁵³ The venue for a probate proceeding is set forth in s. 731.101(1), F.S., which states:

- (1) The venue for probate of wills and granting letters shall be:
 - (a) In the county in this state where the decedent was domiciled.

⁴⁷ Section 732.502(1)(b), F.S.

⁴⁸ Section 732.502(1)(c), F.S.

⁴⁹ *See*, s. 732.502(2), F.S. A will executed in another state is valid in Florida if the will is executed in accordance with the laws of this state, the laws of the state in which it was executed, or both. This does not apply to nuncupative wills (oral wills) or holographic wills (wills written in the hand of the testator, but not properly executed as set forth in s. 732.502(1), F.S.), which are not valid in Florida regardless of whether they were executed according to the laws of the state in which they were executed.

⁵⁰ *Allen v. Dalk*, 826 So.2d 245, 247 (Fla. 2002).

⁵¹ Section 732.502(5), F.S.

⁵² The Uniform Electronic Transaction Act is set forth in s. 668.50, F.S. It includes a statement that the "section" does not govern, among other things, a transaction that is governed by a law governing the creation and execution of wills. Section 668.004, F.S., which provides broad permission to electronically sign a document, is of course a different section. But even if it were not, or even if it did not exist, s. 668.50, F.S., would not appear to *prohibit* electronically signing a will.

⁵³ *See* s. 733.103(1), F.S.

- (b) If the decedent had no domicile in this state, then in any county where the decedent's property is located
- (c) If the decedent had no domicile in this state and possessed no property in this state, then in the county where any debtor of the decedent resides.

For a will to be admitted to probate in Florida, it must be "proved."⁵⁴ No statute describes what it means for a will to be proved or what it is about the will or purported will that is being proved. However, it is apparent that proving a will means proving that the will is what it purports to be, i.e., the last will and testament of the testator and that it was validly executed.

Proving a Will

A will may be proved by having one of the attesting witnesses swear or affirm an oath regarding the will before a circuit judge or any of the other persons set forth in s. 733.201(2), F.S. If it appears to the court that no attesting witness can be found, that no attesting witness still has capacity, or that the testimony of an attesting witness cannot be obtained within a reasonable time, the court must resort to another method of proving a will. The other method is through an oath of the personal representative nominated by the will or a different person who has no interest in the estate under the will. This oath must include a statement that "the person believes the writing exhibited to be the last will and testament of the decedent."⁵⁵

Making a Will Self-Proved

A will may be made self-proved. A self-proved will may be admitted to probate without further proof, such as the testimony mentioned above.⁵⁶ For a will to be self-proved in this state, the testator must acknowledge the will before an officer authorized to administer oaths (e.g., a notary public). The attesting witnesses must make affidavits before the officer. Lastly, the officer must evidence the acknowledgement and affidavits by a certificate attached to or following the will.⁵⁷

Even after a will is proved and admitted to probate, it may be contested.⁵⁸ There are several grounds, such as fraud and undue influence, on which a self-proved will might be contested.

Custodian's Duty to File with Court

The custodian of a will must deposit the will with the court within 10 days after receiving information of the testator's death.⁵⁹ If the custodian fails to do so without just or reasonable cause, he or she is be subject to liability:

Upon petition and notice, the custodian of any will may be compelled to produce and deposit the will. All costs, damages, and a reasonable attorney's fee shall be

⁵⁴ Section 733.201(1), F.S.

⁵⁵ Section 733.201(3), F.S.

⁵⁶ Section 733.201(1), F.S.

⁵⁷ The officer's certificate must be substantially in the form set forth at s. 732.503, F.S. The form requires that the witnesses state that they witnessed the testator *sign* the will. However, the statutory requirements for executing a will do not require witnesses to witness the testator sign the will. Section 732.502, F.S., provides that the witnesses may either witness the testator sign, or witness the testator acknowledge his or her prior signature.

⁵⁸ See, *Powell v. Eberhardt (in Re Estate of Hartman)*, 836 So.2d 1038, 1039 (Fla.2d DCA 2002).

⁵⁹ Section 732.901(1), F.S.

adjudged to the petitioner against the delinquent custodian if the court finds that the custodian had no just or reasonable cause for failing to deposit the will.⁶⁰

Other States' Treatment of Electronic Wills

It appears that Nevada is the only state that, by statute, expressly permits the use of electronic wills.⁶¹ This statute has been in effect since 2001.⁶²

Although the legislative bodies in Arizona, Indiana, New Hampshire, and Virginia each brought forward an electronic wills act bill in 2017,⁶³ none passed. As already noted, however, Virginia allows documents to be notarized through live video and audio technology.⁶⁴

Additionally, in Tennessee, a court held that a testator validly signed his will when he typed his name in cursive font.⁶⁵ In Ohio, a court admitted a will to probate that was written and signed with a stylus on an electronic tablet.⁶⁶

III. Effect of Proposed Changes:

The effect of the bill will be addressed in four parts:

- Part 1 will address bill sections 1-17 relating to Remote Online Notarization (RON).
- Part 2 will address bill section 30-39 relating to electronic wills.
- Part 3 will address bill sections 18-29 making collateral changes to other statutes to fully implement Parts 1 and 2.
- Part 4 will address bill section 40, the effective date.

Part 1 of the Bill: Online Notary Publics (Sections 1– 17)

Section 1 divides ch. 117, F.S. into two parts: Part I entitled “General Provisions” (ss. 117.01-.108, F.S.) and Part II entitled “Online Notarizations” (ss. 117.201-.305, F.S.).

Sections 2 through 5 amend current provisions of chapter 117, F.S., which will become part of Part I, “General Provisions.” The “General Provisions” generally govern how a person may become a notary public and set out the duties and responsibilities of a notary. *See Present Situation, supra.*

Safety of Electronic Signatures and Rule Promulgation—Of the substantive changes, section 3 provides that a notary must use a password- or code-protected electronic signature, and the notary cannot be required to use technology the notary has not selected (s. 117.021(2), (4), F.S.).

⁶⁰ Section 732.901(2), F.S.

⁶¹ *See* Nev. Rev. Stat. s. 133.085.

⁶² *See* Dan DeNicolò, *The Future of Electronic Wills*, American Bar Association, available at https://www.americanbar.org/groups/law_aging/publications/bifocal/vol_38/issue-5--june-2017/the-future-of-electronic-wills/ (last visited Mar. 29, 2019).

⁶³ *Id.* (noting that Florida passed a version of the electronic wills act in 2017 but it was vetoed by Governor Scott).

⁶⁴ Va. Code Ann. S. 47.1.

⁶⁵ *Taylor v. Holt*, 134 S.W.3d 830, 833 (Tenn. Ct. App. 2003). *See also*, n. 62, *supra*.

⁶⁶ *In re Estate of Javier Castro, Deceased*, 2013-ES-00140 (Ct. Comm. Pl. Lorain Cnty., Probate Div., Ohio, June 19, 2013) (James T. Walther, Judge). *See also*, n. 62, *supra*.

Additionally, the Department of State, in collaboration with the Agency for State Technology, is required to adopt rules establishing standards for “tamper-evident” technologies that will indicate if an electronically notarized document has been altered by January 1, 2020 (s. 117.021(7), F.S.).

Use of Notary Commission, Forms, and Accommodating Disabled Persons—Section 4 clarifies that online notarizations must be done in compliance with Part II (s. 117.05(5)). The bill also provides an additional form certificate a notary must use when notarizing an attested copy of an electronic document (s. 117.05(12)(c), F.S.).

Additionally, the bill amends the various notarial form certificates in s. 117.05, F.S., to add an option for the notary to select whether an oath or affirmation or a an instrument was acknowledged “by means of [] physical presence or [] online notarization[.]”

Finally, when a notary signs at the direction and on behalf of a person who is physically unable to sign or mark a document, the notary must now maintain proof this direction and authorization for at least 10 years (s. 117.05(14)(d), F.S.).

Prohibited Acts—Section 5 provides that the prohibition in s. 117.107(2), F.S., does not apply to electronic signatures and seals necessary to perform online notarizations. Additionally, s. 117.107(9), F.S., prohibits a notary from notarizing the signature of a person who does not “appear” either in person or, as provided in Part II, by means of audio-video technology.

Other Changes—Section 2 makes technical changes to s. 117.01(1), F.S. Sections 3, 4, and 5 also contain technical changes.

Sections 6 through 19 create Part II adding new provisions to chapter 117, F.S., to govern the provision of remote online notarization (RON).

Application of “General Provision” in Part I—Sections 6, 7, 9, and 10 (ss. 117.201, 117.209, 117.225, and 117.235, F.S., respectively) clarify the application of Part I’s “General Provisions” to online notary publics, which includes notary publics under chapter 117, Part 1, civil-law notaries appointed under chapter 118, and commissioners of deeds appointed under chapter 721 (s. 117.201(10), F.S.). Online notaries public:

- Must satisfy all the traditional requirements for becoming a notary public under Part I.
- Are subject to Part I in carrying out their duties.
- May perform any of the traditional notarial acts listed in Part I online, except online marriage rites.

In other words, the requirements of Part II are additional to the requirements of Part I for those wishing to become an online notary public.

Definitions and Key Concepts—Section 6 (s. 117.201, F.S.) provides definitions used throughout Part II concerning the use of audio-video technology by a notary public to verify a person’s identity remotely. Some of the key definitions include:

- “Appear before,” “before,” or “in the presence of,” mean either that the notary public and the “principal,” or person seeking the performance of a notarial act, are either in the same physical location (see also “physical presence”), or are not in each other’s physical presence

but are using real-time, two-way “audio-video communication technology” that permits the notary and the person to see, hear, and communicate with one another such that an “online notarization” can be performed. (s. 117.201(1), (2), (9), (11), (12), F.S.).

- “Credential analysis,” “identity proofing,” and “knowledge-based authentication” all relate to the third party verification of a “government issued identification,” using public or proprietary data sources, which may include a set of individual questions generated by these sources or biometric verification. (s. 117.201(3), (6), (7), (8), F.S.).
- “Remote presentation” refers to the presentation of a “government issued identification” to a notary public through “audio-video technology” that is sufficiently clear to permit the notary public to engage in “credential analysis” and verify the presenter’s identity. (s. 117.201(15), F.S.).
- “Remote online notarization service provider” or “RON service provider” refers to those providing “audio-video technology” and related services to directly facilitate “online notarizations,” such as software and data storage, in compliance with rules promulgated by the Department of State. (s. 117.201(9), (14), F.S.).
- “Electronic,” “electronic record,” and “electronic signature” has the same meaning as in s. 668.50, F.S.; and a “record” means information that is either in tangible or “electronic” form which is retrievable. (s. 117.201(4), (13), F.S.).

Authorization to Perform Online Notarizations and Validity of Online Notarizations—Sections 7, 8, and 13 generally authorize and give effect to online notarizations. In compliance with Florida law and the rules promulgated by the Department of State, the bill authorizes duly registered online notaries to perform any notarial services (except marital rites) online so long as the notary is physically present in Florida at the time. However, a commissioner of deeds may perform online notarizations outside of Florida so long as they are within their territorial jurisdiction. (ss. 117.209, 117.265(1), F.S.). The bill also provides that whenever a provision of law requires a notarial act, an online notarization satisfies the law’s requirement. (s. 117.215, F.S.).

Registration Requirements—Section 9 (s. 117.225, F.S.) sets out the registration requirements for online notaries. Online notaries must:

- Satisfy qualification requirements of Part I;
- Provide proof of professional liability insurance (the bill adds that it must be \$1 million under Part I);
- Submit a signed and sworn registration to the Department of State;
- Identify the RON provider to be used;
- Confirm that audio/video communication technology and credential analysis/identity proofing methods to be used online comply with the standards promulgated by Part II and any rules promulgated by the Department of State; and
- Provide satisfactory evidence of that a bond and errors and omissions insurance have been obtained.

Record-Keeping, Security, and Technology Requirements— Sections 11 and 12 (ss.117.245, 117.255, F.S.) require an online notary to keep extensive records of each online notarization in one or more electronic journals, which includes retaining an uninterrupted, unedited copy of the audio/video recording, the contents of which must include the following: appearances by the principle and any witnesses; whether their identities were confirmed; a description of the record

to be signed; and, importantly, a declaration by the principle that he or she is signing these records voluntarily and knowingly. Additionally, at the outset of the recording, the notary must specify the type of notarial act to be completed. Other information, such as whether a fee was charged or whether retention of records was delegate by the notary to a secure repository, must be noted in the journal. These records must be retained for 10 years, except electronic wills must be maintained by a qualified custodian in accordance with chapters 731 and 732, F.S.⁶⁷

While an incomplete entry into a journal does not impair the validity of a notarial act, it may be introduced as evidence in certain actions, such as evidence for fraud, forgery, duress, incapacity, and the like (s. 117.245, F.S.). However, if an electronic will executed through online notarization cannot be produced by either the online notary or the qualified custodian, the electronic will shall be treated as a lost or destroyed will under s. 733.207, F.S.

Section 12 also requires that an online notary take strict security measures to keep the electronic journal as well as a back-up of the journal, the notary's electronic signature, and the notary's electronic seal under his or her exclusive possession or control, except that a RON service provider may have access to facilitate online notarizations on behalf of the notary. Additionally, the notary may provide electronic copies of pertinent portions of the electronic journal, or provide access to the audio-visual recording, when requested by: the parties; the qualified custodian; the title agents or insurers in real estate transactions that retained the online notary; the Department of State; someone asked to accept a power of attorney that was notarized online; and to other persons pursuant to a subpoena, court order, law enforcement investigation, or other lawful inspection demand. (s. 117.255, F.S.).

Procedures to Verify Identity of Principles and Witnesses and Protect Vulnerable Adults—

Sections 13 and 15 (ss. 117.265, 117.285, F.S.) provide that an online notary may notarize documents or supervise the witnessing of electronic records for people in other states so long as the notary verifies the identities of the principle signer and witnesses (s. 117.285, F.S.) at the time of signing; and, if out-of-state, confirms that the principle signer consents, either verbally or in writing, to a Florida-based notary public and consents to comply with Florida law (ss. 117.265, 117.285, F.S.).

An online notary may verify the identity of a principle signer as follows:

- The notary's personal knowledge of the person; or
- The remote presentation of a government-issued identification card subjected to a credibility analysis and "identification proofing" using "knowledge-based authentication" (similar to personal questions a credit card company asks to verify identity (mother's maiden name, father's middle name, etc.).

For witnesses:

- If the witness or witnesses are with (in the physical presence of) the principle, the online notary must have the witness state his or her name and address on the record.
- If the witness or witnesses are appearing remotely (outside the physical presence of the principle), the online notary must verify the witness or witnesses identity using the same credential analysis used when verifying the identity of a principle.

⁶⁷ See Part II of the bill, section 35, "qualified custodians."

If the notary is not satisfied that a person's identity has been verified, the notary must decline to do the online notarization.

The bill provides that when one or more attesting witnesses are required under Florida law to witness the signing of a document, the appearance of a witness for an online notarization session, either in the physical presence of the principle or remotely, satisfies the requirements of the law.

Additionally, the bill requires a notary to ensure that the principle is knowingly and voluntarily signing any the following documents requiring witnesses:

- Wills.
- Trusts with testamentary aspects.
- Health care advance directives.
- Durable powers of attorney concurrent with a will.
- Waiver of spousal rights.

To ensure the principle is signing any of the foregoing documents of his or her own free will, a notary must ask the principle the following list of questions during the online notarization (similar to a court colloquy to determine if a decision is voluntary and knowing):

- (1) What is your date of birth?
- (2) Are you under the influence of any drugs or alcohol that impairs your ability to make decisions?
- (3) Do you have any physical or mental condition or long-term disability that impairs your ability to perform the normal activities of daily life?
- (4) Are you unable to provide for your own daily care?
- (5) Did anyone assist you in accessing this video conference? If so, who?
- (6) Where are you currently located?
- (7) Name everyone you know who is with you.

However, the bill provides that when the principle is a vulnerable adult under s. 415.102, F.S., and the witness is appearing remotely, any document signed by the principle may be voidable, i.e., unenforceable. The bill provides that the contestant has the burden of proving the adult was vulnerable at the time of executing the document. Additionally, the RON service provider must provide a disclaimer online stating the foregoing, and stating that the signer could choose to have a physically present witness instead.

For general challenges to the validity of one of the foregoing documents, the recording of the principle's answers to the colloquy may be offered as evidence. However, an incorrect answer to a question will not invalidate and entire document. Florida law governs questions of validity.

Finally, an online notary must provide the last known address of a witness pursuant to a subpoena, court order, or other lawful investigation or inquiry.

Online Notarization Fee—Section 14 (s. 117.275, F.S.) permits an online notary to charge a fee not exceeding \$25 for online notarizations.

Rulemaking Authority—Section 16 (s. 117.295, F.S.) provides that the Department of State Technology has rulemaking authority to further specify standards for online notarizations,

including technology and education requirements. This provision is effective upon becoming law.

Relation to Federal Electronic Signatures Act— Section 17 (s. 117.305, F.S.), provides that Part II supersedes 15 U.S.C. s. 7002, the federal Electronic Signatures in Global and National Commerce Act. This is expressly permitted by 15 U.S.C. s. 7002 when a state has adopted the Uniform Electronic Transactions Act,⁶⁸ which Florida did in 2000.⁶⁹ Section 117.305, F.S., also provides that the requirements in section 15 U.S.C. s. 7001(c) concerning consumer disclosures, and the requirement of 15 U.S.C. s. 7003(b) concerning the delivery of certain legal documents are not superseded or limited.

Part 2 – Electronic Wills (Sections 30-39)

Sections 30 through 39 create provisions regulating and expressly permitting the use of “electronic wills.” The bill also revises several aspects of current law relating to the execution of wills.

Key Definitions and Concepts—Sections 30, 31, and 32 amend or create definitions within the probate code. Section 32 creates s. 732.521, F.S., to provide definitions and cross-references part II of ch. 117, F.S., for the definitions pertaining to online notarization (s. 732.521(1), (4), (5), F.S.).

Most importantly, section 32 (s. 732.521(3)), F.S., defines an “electronic will” as:

an instrument, including a codicil, executed with an electronic signature by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument that merely appoints a personal representative or revokes or revises another will or electronic will.

Section 30 also amends the current definition of a “will” in s. 731.201(4), F.S., to clarify that term includes an “electronic will.”

Section 31 amends s. 732.506, F.S., to distinguish how an electronic will or codicil may be revoked since it cannot be destroyed in the same manner as a paper will. Nonetheless, revocation of an electronic will or codicil similarly requires an intent by the testator to revoke the electronic will or codicil accompanied an act by or at the testator’s direction obliterating, deleting, cancelling, or rendering unreadable an electronic will or codicil which is sufficient to prove the revocation by clear and convincing evidence.

Section 32 also defines a “qualified custodian” as a person meeting the qualifications under newly created s. 732.524(1), F.S.; and an “electronic signature” as “an electronic mark visibly

⁶⁸ See Uniform Law Commission, Acts, *Electronic Transactions Act*, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2c04b76c-2b7d-4399-977e-d5876ba7e034> (last visited Mar. 29, 2019) (“The **Uniform Electronic Transactions Act (UETA)** establishes the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.”).

⁶⁹ Section 668.50, F.S.

manifested in a record as a signature and executed or adopted by a person with the intent to sign the record” (s. 732.521(2), (6), F.S.).

Executing and Filing an Electronic Will— Section 33 (s. 732.522, F.S.) creates the procedures for electronically executing, witnessing, and filing any document under the Florida Probate Code, including electronic wills, as follows:

- When a signature is required, an electronic signature satisfies the requirement.
- When witnesses are required, witnessing an electronic signature through the audio-visual communication technology specified for online notarization provisions (ch. 117, F.S., part II) satisfies this requirement if:
 - The signing is supervised by a notary public under s. 117.285, F.S.;
 - The witnesses’ identities are authenticated while signing as part of an online notarization session in accord with s. 117.265, F.S.;
 - These witnesses hear the signer make a statement acknowledging signing; and
 - The signing and witnessing of the document complies with the colloquy and other requirements in s. 117.285, F.S.

The bill also clarifies that the validity and effect of an electronic will is to be determined in the same manner as in the case of a traditional will.

Probate, Self-Proved Wills, and Proof of Wills—Sections 34, 37, and 38 (ss. 732.523, 732.526, 733.201, F.S.) address self-proof of wills, probate, and proof of wills when they are not self-proved, respectively.

Section 34 creates s. 732.523, F.S. permitting an electronic will, like a traditional will, to be self-proved, i.e., admitted to probate without further proof that it is what it purports to be or that it was executed properly.

The bill provides that an attested electronic will is self-proved if each of the following are met:

- The acknowledgement of the electronic will by the testator and the affidavits of the witnesses are made in accordance with s. 732.503, F.S., and are part of or attached to the record containing the electronic will;
- The electronic will designates a qualified custodian (section 35, s. 352.524, F.S.);
- The electronic will is held in the custody of the qualified custodian at all times before being offered to the court for probate; and
- The qualified custodian at the time of the testator’s death certifies under oath that the electronic will (1) was at all times kept in the custody of the custodian and (2) has not been altered since the date of execution.

Section 37 creates s. 732.526, F.S., concerning the probate of an electronic will and addresses when an “original copy” of the will is offered for probate:

- An electronic copy is deemed filed with the court when electronically deposited through the Florida Courts E-filing Portal.
- A paper copy is deemed filed for probate if it is certified as a true and correct copy by a notary.

Section 38 amends s. 733.201, F.S., to create an exception to the admission of self-proved electronic wills into probate without further proof when there is a substantial failure to comply with the online notarization process in s. 117.265, F.S.

Qualified Custodians, Receiverships, and Relation to Wills—Sections 35, 36, and 39 create ss. 732.524, 732.525, and 740.10.

Section 35 (s. 732.524) sets out the requirements to serve as a qualified custodian. As noted above, one of the requirements of a *self-proved* will is that it be held at all times by a qualified custodian. A qualified custodian is a person who meets all of the following requirements:

- Is domiciled in and a resident of Florida or is incorporated or organized in Florida.
- Consistently employs a system for ensuring the safekeeping of electronic records and stores electronic records containing electronic wills under the system.
- Furnishes for any court hearing involving an electronic will that is currently or was previously stored by the qualified custodian any information requested by the court pertaining to the qualified custodian's policies and procedures.

The qualified custodian of an electronic will must provide access to or information concerning the electronic will, or the electronic will and the electronic record containing the electronic will, only to the testator and such other persons as directed by the written instructions of the testator, or anyone as directed by a court with jurisdiction over the matter.

The bill also provides the process by which a qualified custodian may step down and the timeframe for keeping the electronic will after a testator's death. Additionally, the bill sets out the duties owed by the qualified custodian to the testator, such as maintaining custody of an electronic will and other documents at all times and maintaining the testator's confidentiality.

Most importantly, when a qualified custodian receives information that a testator is dead, the qualified custodian must deposit the electronic will with the court pursuant to s. 732.901, F.S.

Section 36 (s. 732.525, F.S.) requires a qualified custodian to either (1) post a blanket surety bond of at least \$250,000 to cover any acts or omissions; or (2) maintain a liability insurance policy to cover any losses in the aggregate of \$250,000 resulting from errors or omissions.

Section 37 permits the Attorney General to petition for the appointment of a receiver if:

- A qualified custodian ceases operation;
- A qualified custodian intends to close without adequate arrangements for the delivery of electronic records;
- Conditions exist suggesting a present danger of records being lost or misappropriated; or
- The qualified custodian fails to post a bond or maintain insurance.

Section 39 creates s. 740.10, F.S. under the "Florida Fiduciary Access to Digital Assets Act." This provision provides that no action taken under the Act "is valid" to obligate someone to deposit a will as required in s. 732.901, F.S.

Part 3 – Other Significant Issues and Collateral Changes (Sections 18-29 and 40)

Sections 18-29 and 40 make conforming or necessary collateral changes to several provisions outside of chapters 117 (notaries) and 731-732 (wills and probate), F.S., most of which apply to

the recording of real estate conveyances under of chapter 695, F.S. and the power of attorney under chapter 709, F.S.

Powers Of Attorney

Sections 27-29 amend ss. 709.2119, 709.2120, and 709.2202, F.S, respectively. The bill amends ss. 709.2119 and 709.2120, F.S., to add conforming language concerning powers of attorney notarized online. Significantly, when a document purports to give a person “super” powers of attorney, meaning those powers which must be enumerated in s. 709.2202, F.S., (such as removing beneficiaries), an online notary must conduct the colloquy set out in s. 117.285, F.S.

Real Estate Transactions

Sections 21-26 amend ss. 689.01, 694.08, 695.03, 695.04, 695.25, and 695.28, F.S., respectively, to: make technical changes; make conforming changes with ch. 117’s online notarization provisions; provide additional statutory short forms; clarify the applicability and validity of online notarization in signing or witnessing documents conveying real estate; and clarify that challenges to documents notarized online are not precluded.

Form of Oaths

Section 19 amends s. 92.50, F.S., to make conforming language changes to the oath requirement.

Clerks of Court

Section 18 amends s. 28.222, F.S., to permit the clerk of a circuit court to record documents “originally created and executed using an electronic signature” citing to Florida’s Uniform Real Property Electronic Recording Act,⁷⁰ that are “certified to be true and correct paper printout[s] by a notary public[.]”

Statute of Limitations

Section 20 amends language in s. 95.231, F.S., concerning powers of attorney and wills conveying real property, clarifying that the 5-year limitation applies the instrument will be effective even if it suffers from a complete failure or absence of acknowledgment as opposed to just defective acknowledgement.

Part 4 – Effective Date (Section 40)

Section 40 provides that, unless otherwise specified in the bill, the bill takes effect January 1, 2020.

⁷⁰ Section 695.27, F.S.

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

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The availability of online notarial services may be more convenient for those who need the services.

The bill facilitates the creation and storage of wills using an Internet-based service. The associated costs are unknown. Further, if an electronic will can be easily created, many people who do not have a will may decide to execute one. However, some may use the services of an Internet-based service instead of, or in addition to, the services of an attorney.

C. Government Sector Impact:

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

The extent to which the bill will result in an increase in probate cases and associated costs to the judicial branch is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 117.01, 117.021, 117.05, 117.107, 28.222, 92.50, 95.231, 689.01, 694.08, 695.03, 695.04, 695.25, 695.28, 709.2119, 709.2120, 709.2202, 731.201, 732.506, and 733.201.

This bill creates the following sections of the Florida Statutes: 117.201, 117.209, 117.215, 117.225, 117.235, 117.245, 117.255, 117.265, 117.275, 117.285, 117.295, 117.305, 732.521, 732.522, 732.523, 732.524, 732.525, 732.526, and 740.10.

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 April 1, 2019:

The Committee Substitute:

- Revises definitions in s. 117.201, F.S., most significantly, replacing references to “physical location” with “physical presence.”
- Revises an online notary’s record-keeping requirement in s. 117.245, F.S., requiring the notary to retain an unedited, uninterrupted recording of an online notarization session and include certain statements on the recording, such as the notarial act to be completed.
- Expands the list of persons to whom a notary may provide access to the electronic journal and audio-visual recording in s. 117.255, F.S.
- Substantially amends s. 117.285, F.S., concerning a notary’s supervision of a witness’s signature, revising subsection (2) and adding subsections (4)-(7), to:
 - Clarify procedures applicable to remote witnesses, i.e., those appearing outside the physical presence of the principle and require that the identity of a remote witness be verified through credential analysis under s. 117.265(4), F.S.
 - Require that a notary conduct a colloquy with the principle to ensure the principle is knowingly and voluntarily signing certain documents, such as wills and other document authorizing testamentary or end-of-life decisions.
 - Provide rules concerning validity of the foregoing documents and use of the recorded online notarization session as evidence in validity challenges.
 - Provide that a document signed by a vulnerable adult and witnessed remotely is voidable, and that the RON service provider must post this as a disclaimer.
- Removes the colloquy requirement in ss. 709.2202, F.S., and 732.522, F.S., instead requiring compliance with the same colloquy and other requirements in s. 117.285, F.S. (above).

- Removes the amendment to s. 90.803, F.S., to provide an additional hearsay exception, section 19, and renumbers the bill sections.
- Makes technical corrections, clarifies definitions, and makes other clarifying or conforming language changes.

B. Amendments:

None.

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

By the Committee on Judiciary; and Senator Brandes

590-03703-19

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1 A bill to be entitled
 2 An act relating to electronic legal documents;
 3 providing directives to the Division of Law Revision;
 4 amending s. 117.01, F.S.; revising provisions relating
 5 to use of the office of notary public; amending s.
 6 117.021, F.S.; requiring electronic signatures to
 7 include access protection; prohibiting a person from
 8 requiring a notary public to perform a notarial act
 9 with certain technology; requiring the Department of
 10 State, in collaboration with the Agency for State
 11 Technology, to adopt rules for certain purposes;
 12 amending s. 117.05, F.S.; revising limitations on
 13 notary fees to conform to changes made by the act;
 14 providing for inclusion of certain information in a
 15 jurat or notarial certificate; providing for
 16 compliance with online notarization requirements;
 17 providing for notarial certification of a printed
 18 electronic record; revising statutory forms for jurats
 19 and notarial certificates; amending s. 117.107, F.S.;
 20 providing applicability; revising prohibited acts;
 21 creating s. 117.201, F.S.; providing definitions;
 22 creating s. 117.209, F.S.; authorizing online
 23 notarizations; providing an exception; creating s.
 24 117.215, F.S.; specifying the application of other
 25 laws in relation to online notarizations; creating s.
 26 117.225, F.S.; specifying registration and
 27 qualification requirements for online notaries public;
 28 creating s. 117.235, F.S.; authorizing the performance
 29 of certain notarial acts; creating s. 117.245, F.S.;

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30 requiring an online notary public to keep electronic
 31 journals of online notarizations and certain audio-
 32 video communication recordings; specifying the
 33 information that must be included for each online
 34 notarization; requiring that an online notary public
 35 retain a copy of the recording of an audio-video
 36 communication; specifying requirements for the
 37 recording; requiring an online notary public to take
 38 certain steps regarding the maintenance and security
 39 of the electronic journal; specifying that the
 40 Department of State maintains jurisdiction for a
 41 specified period of time for purposes of investigating
 42 notarial misconduct; authorizing the use of specified
 43 information for evidentiary purposes; creating s.
 44 117.255, F.S.; specifying requirements for the use of
 45 electronic journals, signatures, and seals; requiring
 46 an online notary public to provide notification of the
 47 theft, vandalism, or loss of an electronic journal,
 48 signature, or seal; authorizing an online notary
 49 public to make copies of electronic journal entries
 50 and to provide access to related recordings under
 51 certain circumstances; authorizing an online notary
 52 public to charge a fee for making and delivering such
 53 copies; providing an exception; creating s. 117.265,
 54 F.S.; prescribing online notarization procedures;
 55 specifying the manner by which an online notary public
 56 must verify the identity of a principal or a witness;
 57 requiring an online notary public to take certain
 58 measures as to the security of technology used;

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59 specifying that an electronic notarial certificate
 60 must identify the performance of an online
 61 notarization; specifying that noncompliance does not
 62 impair the validity of a notarial act or the notarized
 63 electronic record; authorizing the use of specified
 64 information for evidentiary purposes; providing for
 65 construction; creating s. 117.275, F.S.; providing
 66 fees for online notarizations; creating s. 117.285,
 67 F.S.; specifying the manner by which an online notary
 68 public may supervise the witnessing of electronic
 69 records of online notarizations; specifying
 70 circumstances under which an instrument is voidable;
 71 specifying duties of remote online notarization
 72 service providers and online notaries public;
 73 specifying applicable law and jurisdiction regarding
 74 witnessing; creating s. 117.295, F.S.; authorizing the
 75 department to adopt rules and standards for online
 76 notarizations; providing minimum standards for online
 77 notarizations until such rules are adopted; creating
 78 s. 117.305, F.S.; superseding certain provisions of
 79 federal law regulating electronic signatures; amending
 80 s. 28.222, F.S.; requiring the clerk of the circuit
 81 court to record certain instruments; amending s.
 82 92.50, F.S.; revising requirements for oaths,
 83 affidavits, and acknowledgments; amending s. 95.231,
 84 F.S.; providing a limitation period for certain
 85 recorded instruments; amending s. 689.01, F.S.;
 86 providing for witnessing of documents in connection
 87 with real estate conveyances; providing for validation

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88 of certain recorded documents; amending s. 694.08,
 89 F.S.; providing for validation of certain recorded
 90 documents; amending s. 695.03, F.S.; providing and
 91 revising requirements for making acknowledgments,
 92 proofs, and other documents; amending s. 695.04, F.S.;
 93 conforming provisions to changes made by the act;
 94 amending s. 695.25, F.S.; revising the statutory short
 95 form of acknowledgments to include acknowledgment by
 96 online notarization; amending s. 695.28, F.S.;
 97 providing for validity of recorded documents;
 98 conforming provisions to changes made by the act;
 99 amending s. 709.2119, F.S.; authorizing the acceptance
 100 of a power of attorney based upon an electronic
 101 journal or electronic record made by a notary public;
 102 amending s. 709.2120, F.S.; prohibiting acceptance of
 103 a power of attorney if witnessed or notarized
 104 remotely; amending s. 709.2202, F.S.; prohibiting
 105 certain authority granted through a power of attorney
 106 if witnessed or notarized remotely; amending s.
 107 731.201, F.S.; redefining the term "will" to conform
 108 to changes made by the act; amending s. 732.506, F.S.;
 109 exempting electronic wills from provisions governing
 110 the revocation of wills and codicils; prescribing the
 111 manner by which an electronic will or codicil may be
 112 revoked; creating s. 732.521, F.S.; providing
 113 definitions; creating s. 732.522, F.S.; prescribing
 114 the manner by which an electronic will must be
 115 executed; creating s. 732.523, F.S.; specifying
 116 requirements for the self-proof of an electronic will;

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117 creating s. 732.524, F.S.; specifying requirements
 118 necessary to serve as a qualified custodian of an
 119 electronic will; creating s. 732.525, F.S.; requiring
 120 a qualified custodian to post and maintain a blanket
 121 surety bond of a specified amount and maintain
 122 liability insurance; authorizing the Attorney General
 123 to petition a court to appoint a receiver to manage
 124 electronic records of a qualified custodian; creating
 125 s. 732.526, F.S.; specifying conditions by which an
 126 electronic will is deemed to be an original will;
 127 amending s. 733.201, F.S.; requiring that self-proved
 128 electronic wills meet certain requirements for
 129 admission to probate; creating s. 740.10, F.S.;
 130 specifying that any act taken pursuant to ch. 740,
 131 F.S., does not affect the requirement that a will be
 132 deposited within a certain timeframe; providing
 133 effective dates.

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

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

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

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

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

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146 117.01 Appointment, application, suspension, revocation,
 147 application fee, bond, and oath.—

148 (1) The Governor may appoint as many notaries public as he
 149 or she deems necessary, each of whom ~~must shall~~ be at least 18
 150 years of age and a legal resident of ~~this the~~ state. A permanent
 151 resident alien may apply and be appointed and shall file with
 152 his or her application a recorded Declaration of Domicile. The
 153 residence required for appointment must be maintained throughout
 154 the term of appointment. A notary public ~~Notaries public~~ shall
 155 be appointed for 4 years and ~~may only shall~~ use and exercise the
 156 office of notary public if he or she is within the boundaries of
 157 this state. An applicant must be able to read, write, and
 158 understand the English language.

159 Section 3. Present subsections (4) and (5) of section
 160 117.021, Florida Statutes, are renumbered as subsections (5) and
 161 (6), respectively, new subsections (4) and (7) are added to that
 162 section, and subsection (2) of that section is amended, to read:

163 117.021 Electronic notarization.—

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

- 166 (a) Unique to the notary public;
 167 (b) Capable of independent verification;
 168 (c) Retained under the notary public's sole control and
 169 includes access protection through the use of passwords or codes
 170 under control of the notary public; and
 171 (d) Attached to or logically associated with the electronic
 172 document in a manner that any subsequent alteration to the
 173 electronic document displays evidence of the alteration.

174 (4) A person may not require a notary public to perform a

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175 notarial act with respect to an electronic record with a form of
176 technology that the notary public has not selected to use.

177 (7) The Department of State, in collaboration with the
178 Agency for State Technology, shall adopt rules establishing
179 standards for tamper-evident technologies that will indicate any
180 alteration or change to an electronic record after completion of
181 an electronic notarial act. All electronic notarizations
182 performed on or after January 1, 2020, must comply with the
183 adopted standards.

184 Section 4. Subsection (1), paragraph (a) of subsection (2),
185 subsections (4) and (5), paragraph (a) of subsection (12), and
186 subsections (13) and (14) of section 117.05, Florida Statutes,
187 are amended, and paragraph (c) is added to subsection (12) of
188 that section, to read:

189 117.05 Use of notary commission; unlawful use; notary fee;
190 seal; duties; employer liability; name change; advertising;
191 photocopies; penalties.—

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

200 (2) (a) The fee of a notary public may not exceed \$10 for
201 any one notarial act, except as provided in s. 117.045 or s.
202 117.275.

203 (4) When notarizing a signature, a notary public shall

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204 complete a jurat or notarial certificate in substantially the
205 same form as those found in subsection (13). The jurat or
206 certificate of acknowledgment shall contain the following
207 elements:

208 (a) The venue stating the location of the notary public at
209 the time of the notarization in the format, "State of Florida,
210 County of"

211 (b) The type of notarial act performed, an oath or an
212 acknowledgment, evidenced by the words "sworn" or
213 "acknowledged."

214 (c) Whether That the signer personally appeared before the
215 notary public at the time of the notarization by physical
216 presence or by means of audio-video communication technology as
217 authorized under part II of this chapter.

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

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

222 (f) The specific type of identification the notary public
223 is relying upon in identifying the signer, either based on
224 personal knowledge or satisfactory evidence specified in
225 subsection (5).

226 (g) The notary public's notary's official signature.

227 (h) The notary public's notary's name, which must be typed,
228 printed, or stamped below the signature.

229 (i) The notary public's notary's official seal affixed
230 below or to either side of the notary public's notary's
231 signature.

232 (5) A notary public may not notarize a signature on a

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233 document unless he or she personally knows, or has satisfactory
 234 evidence, that the person whose signature is to be notarized is
 235 the individual who is described in and who is executing the
 236 instrument. A notary public shall certify in the certificate of
 237 acknowledgment or jurat the type of identification, either based
 238 on personal knowledge or other form of identification, upon
 239 which the notary public is relying. In the case of an online
 240 notarization, the online notary public shall comply with the
 241 requirements set forth in part II of this chapter.

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

246 (b) For the purposes of this subsection, the term
 247 "satisfactory evidence" means the absence of any information,
 248 evidence, or other circumstances which would lead a reasonable
 249 person to believe that the person whose signature is to be
 250 notarized is not the person he or she claims to be and any one
 251 of the following:

252 1. The sworn written statement of one credible witness
 253 personally known to the notary public or the sworn written
 254 statement of two credible witnesses whose identities are proven
 255 to the notary public upon the presentation of satisfactory
 256 evidence that each of the following is true:

257 a. That the person whose signature is to be notarized is
 258 the person named in the document;

259 b. That the person whose signature is to be notarized is
 260 personally known to the witnesses;

261 c. That it is the reasonable belief of the witnesses that

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262 the circumstances of the person whose signature is to be
 263 notarized are such that it would be very difficult or impossible
 264 for that person to obtain another acceptable form of
 265 identification;

266 d. That it is the reasonable belief of the witnesses that
 267 the person whose signature is to be notarized does not possess
 268 any of the identification documents specified in subparagraph
 269 2.; and

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

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

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

278 b. A passport issued by the Department of State of the
 279 United States;

280 c. A passport issued by a foreign government if the
 281 document is stamped by the United States Bureau of Citizenship
 282 and Immigration Services;

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

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

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

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291 g. An inmate identification card issued on or after January
 292 1, 1991, by the Florida Department of Corrections for an inmate
 293 who is in the custody of the department;

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

297 i. A sworn, written statement from a sworn law enforcement
 298 officer that the forms of identification for an inmate in an
 299 institution of confinement were confiscated upon confinement and
 300 that the person named in the document is the person whose
 301 signature is to be notarized; or

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

304 (12) (a) A notary public may supervise the making of a copy
 305 of a tangible or an electronic record or the printing of an
 306 electronic record ~~photocopy of an original document~~ and attest
 307 to the trueness of the copy or of the printout, provided the
 308 document is neither a vital record in this state, another state,
 309 a territory of the United States, or another country, nor a
 310 public record, if a copy can be made by the custodian of the
 311 public record.

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

315
 316 STATE OF FLORIDA
 317 COUNTY OF

318
 319 On this day of, ...(year)..., I attest that the

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320 preceding or attached document is a true, exact, complete, and
 321 unaltered ... (copy of a tangible or an electronic record
 322 presented to me by the document's custodian)... or a
 323 ... (printout made by me from such record)... If a printout, I
 324 further attest that, at the time of printing, no security
 325 features, if any, present on the electronic record, indicated
 326 that the record had been altered since execution.

327
 328 ... (Signature of Notary Public - State of Florida)...
 329 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

330
 331 (13) The following notarial certificates are sufficient for
 332 the purposes indicated, if completed with the information
 333 required by this chapter. The specification of forms under this
 334 subsection does not preclude the use of other forms.

335 (a) For an oath or affirmation:

336
 337 STATE OF FLORIDA
 338 COUNTY OF

339
 340 Sworn to (or affirmed) and subscribed before me by means of
 341 [] physical presence or [] online notarization, this day of
 342, ...(year)..., by ...(name of person making
 343 statement)....

344
 345 ... (Signature of Notary Public - State of Florida)...
 346 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...

347 Personally Known OR Produced Identification
 348

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349 Type of Identification Produced

350

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

352

353 STATE OF FLORIDA

354 COUNTY OF

355

356 The foregoing instrument was acknowledged before me by means of

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

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

359

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

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

362 Personally Known OR Produced Identification

363

364 Type of Identification Produced

365

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

367

368 STATE OF FLORIDA

369 COUNTY OF

370

371 The foregoing instrument was acknowledged before me by means of

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

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

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

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

376

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

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

379 Personally Known OR Produced Identification

380

381 Type of Identification Produced

382

383 (14) A notary public must make reasonable accommodations to
384 provide notarial services to persons with disabilities.

385 (a) A notary public may notarize the signature of a person
386 who is blind after the notary public has read the entire
387 instrument to that person.

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

390 1. The document signing is witnessed by two disinterested
391 persons;

392 2. The notary public prints the person's first name at the
393 beginning of the designated signature line and the person's last
394 name at the end of the designated signature line; and

395 3. The notary public prints the words "his (or her) mark"
396 below the person's signature mark.

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

399 1. For an oath or affirmation:

400

401 ...(First Name)... ...(Last Name)...

402 ...His (or Her) Mark...

403

404 STATE OF FLORIDA

405 COUNTY OF

406

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

411 ... (Signature of Notary Public - State of Florida) ...
412 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
413 Personally Known OR Produced Identification
414
415

416 Type of Identification Produced.....

417
418
419 2. For an acknowledgment in an individual capacity:
420
421 ... (First Name) ... (Last Name) ...
422 ... His (or Her) Mark ...
423

424 STATE OF FLORIDA
425 COUNTY OF

426
427 The foregoing instrument was acknowledged before me by means of
428 [] physical presence or [] online notarization, this day of
429, ... (year) ..., by ... (name of person acknowledging) ...,
430 who signed with a mark in the presence of these witnesses:

431 ... (Signature of Notary Public - State of Florida) ...
432 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
433 Personally Known OR Produced Identification
434
435

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436 Type of Identification Produced

437
438 (d) A notary public may sign the name of a person whose
439 signature is to be notarized when that person is physically
440 unable to sign or make a signature mark on a document if:

441 1. The person with a disability directs the notary public
442 to sign in his or her presence by verbal, written, or other
443 means;

444 2. The document signing is witnessed by two disinterested
445 persons; and

446 3. The notary public writes below the signature the
447 following statement: "Signature affixed by notary, pursuant to
448 s. 117.05(14), Florida Statutes," and states the circumstances
449 and the means by which the notary public was directed to sign ~~of~~
450 ~~the signing in~~ the notarial certificate.

451
452 The notary public must maintain the proof of direction and
453 authorization to sign on behalf of the person with a disability
454 for 10 years from the date of the notarial act.

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

458 1. For an oath or affirmation:

459
460 STATE OF FLORIDA
461 COUNTY OF

462
463 Sworn to (or affirmed) before me by means of [] physical
464 presence or [] online notarization, this day of,

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465 ... (year)..., by ... (name of person making statement)..., and
466 subscribed by ... (name of notary)... at the direction of ~~and in~~
467 ~~the presence of~~ ... (name of person making statement)... by
468 ... (written, verbal, or other means)..., and in the presence of
469 these witnesses:

470
471 ... (Signature of Notary Public - State of Florida)...
472 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...
473 Personally Known OR Produced Identification
474

475
476 Type of Identification Produced.....

477
478 2. For an acknowledgment in an individual capacity:

479
480 STATE OF FLORIDA
481 COUNTY OF

482
483 The foregoing instrument was acknowledged before me by means of
484 [] physical presence or [] online notarization, this day of
485, ... (year)..., by ... (name of person acknowledging)...
486 and subscribed by ... (name of notary)... at the direction of ~~and~~
487 ~~in the presence of~~ ... (name of person acknowledging)..., and in
488 the presence of these witnesses:

489
490 ... (Signature of Notary Public - State of Florida)...
491 ... (Print, Type, or Stamp Commissioned Name of Notary Public)...
492 Personally Known OR Produced Identification
493

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494 Type of Identification Produced

495
496 Section 5. Subsections (2) and (9) of section 117.107,
497 Florida Statutes, are amended to read:

498 117.107 Prohibited acts.-

499 (2) A notary public may not sign notarial certificates
500 using a facsimile signature stamp unless the notary public has a
501 physical disability that limits or prohibits his or her ability
502 to make a written signature and unless the notary public has
503 first submitted written notice to the Department of State with
504 an exemplar of the facsimile signature stamp. This subsection
505 does not apply to or prohibit the use of an electronic signature
506 and seal by a notary public who is registered as an online
507 notary public to perform an electronic or online notarization in
508 accordance with this chapter.

509 (9) A notary public may not notarize a signature on a
510 document if the person whose signature is being notarized does
511 not appear before the notary public either by means of physical
512 presence or by means of audio-video communication technology as
513 authorized under part II of this chapter ~~is not in the presence~~
514 ~~of the notary public~~ at the time the signature is notarized. Any
515 notary public who violates this subsection is guilty of a civil
516 infraction, punishable by penalty not exceeding \$5,000, and such
517 violation constitutes malfeasance and misfeasance in the conduct
518 of official duties. It is no defense to the civil infraction
519 specified in this subsection that the notary public acted
520 without intent to defraud. A notary public who violates this
521 subsection with the intent to defraud is guilty of violating s.
522 117.105.

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523 Section 6. Section 117.201, Florida Statutes, is created to
524 read:

525 117.201 Definitions.—As used in this part, the term:

526 (1) "Appear before," "before," or "in the presence of"
527 mean:

528 (a) In the physical presence of another person; or

529 (b) Outside of the physical presence of another person, but
530 able to see, hear, and communicate with the person by means of
531 audio-video communication technology.

532 (2) "Audio-video communication technology" means technology
533 in compliance with applicable law which enables real-time, two-
534 way communication using electronic means in which participants
535 are able to see, hear, and communicate with one another.

536 (3) "Credential analysis" means a process or service, in
537 compliance with applicable law, in which a third party aids a
538 public notary in affirming the validity of a government-issued
539 identification credential and data thereon through review of
540 public or proprietary data sources.

541 (4) "Electronic," "electronic record," or "electronic
542 signature" has the same meaning as provided in s. 668.50.

543 (5) "Errors and omissions insurance" means a type of
544 insurance that provides coverage for potential errors or
545 omissions in or relating to the notarial act and is maintained,
546 as applicable, by the online notary public or his or her
547 employer, or a Remote Online Notarization service provider.

548 (6) "Government-issued identification credential" means any
549 approved credential for verifying identity under s.
550 117.05(5)(b)2.

551 (7) "Identity proofing" means a process or service in

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552 compliance with applicable law in which a third party affirms
553 the identity of an individual through use of public or
554 proprietary data sources, which may include by means of
555 knowledge-based authentication or biometric verification.

556 (8) "Knowledge-based authentication" means a form of
557 identity proofing based on a set of questions which pertain to
558 an individual and are formulated from public or proprietary data
559 sources.

560 (9) "Online notarization" means the performance of a
561 notarial act using electronic means in which the principal
562 appears before the notary public by means of audio-video
563 communication technology.

564 (10) "Online notary public" means a notary public
565 commissioned under part I of this chapter, a civil-law notary
566 appointed under chapter 118, or a commissioner of deeds
567 appointed under part IV of chapter 721, who has registered with
568 the Department of State to perform online notarizations under
569 this part.

570 (11) "Physical presence" means being in the same physical
571 location as another person and close enough to see, hear,
572 communicate with, and exchange credentials with that person.

573 (12) "Principal" means an individual whose electronic
574 signature is acknowledged, witnessed, or attested to in an
575 online notarization or who takes an oath or affirmation
576 administered by the online notary public.

577 (13) "Record" means information that is inscribed on a
578 tangible medium or that is stored in an electronic or other
579 medium and is retrievable in perceivable form, including public
580 records as defined in s. 119.011.

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581 (14) "Remote Online Notarization service provider" or "RON
 582 service provider" means a person that provides audio-video
 583 communication technology and related processes, services,
 584 software, data storage, or other services to online notaries
 585 public for the purpose of directly facilitating their
 586 performance of online notarizations in compliance with this
 587 chapter and any rules adopted by the Department of State
 588 pursuant to s. 117.295.

589 (15) "Remote presentation" means transmission of an image
 590 of a government-issued identification credential that is of
 591 sufficient quality to enable the online notary public to
 592 identify the individual seeking the notary's services and to
 593 perform credential analysis through audio-video communication
 594 technology.

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

597 117.209 Authority to perform online notarizations.—

598 (1) An online notary public may perform any of the
 599 functions authorized under part I of this chapter as an online
 600 notarization by complying with the requirements of this part and
 601 any rules adopted by the Department of State pursuant to s.
 602 117.295, excluding solemnizing the rites of matrimony.

603 (2) If a notarial act requires a principal to appear before
 604 or in the presence of the online notary public, the principal
 605 may appear before the online notary public by means of audio-
 606 video communication technology that meets the requirements of
 607 this part and any rules adopted by the Department of State
 608 pursuant to s. 117.295.

609 (3) An online notary public physically located in this

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610 state may perform an online notarization as authorized under
 611 this part, regardless of whether the principal or any witnesses
 612 are physically located in this state at the time of the online
 613 notarization. A commissioner of deeds registered as an online
 614 notary public may perform an online notarization while
 615 physically located within or outside the state in accordance
 616 with the territorial limits of its jurisdiction and other
 617 limitations and requirements otherwise applicable to notarial
 618 acts by commissioners of deeds.

619 (4) The validity of an online notarization performed by an
 620 online notary public registered in this state shall be
 621 determined by applicable laws of this state regardless of the
 622 physical location of the principal or any witnesses at the time
 623 of the notarial act.

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

626 117.215 Relation to other laws.—

627 (1) If a provision of law requires a notary public or other
 628 authorized official of this state to notarize a signature or a
 629 statement, to take an acknowledgment of an instrument, or to
 630 administer an oath or affirmation so that a document may be
 631 sworn, affirmed, made under oath, or subject to penalty of
 632 perjury, an online notarization performed in accordance with the
 633 provisions of this part and any rules adopted hereunder
 634 satisfies such requirement.

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

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639 Section 9. Section 117.225, Florida Statutes, is created to
640 read:

641 117.225 Registration; qualifications.—A notary public, a
642 civil-law notary appointed under chapter 118, or a commissioner
643 of deeds appointed under part IV of chapter 721 may complete
644 registration as an online notary public with the Department of
645 State by:

646 (1) Holding a current commission as a notary public under
647 part I of this chapter, an appointment as a civil-law notary
648 under chapter 118, or an appointment as a commissioner of deeds
649 under part IV of chapter 721, and submitting a copy of such
650 commission or proof of such appointment with his or her
651 registration.

652 (2) Certifying that the notary public, civil-law notary, or
653 commissioner of deeds registering as an online notary public has
654 completed a classroom or online course covering the duties,
655 obligations, and technology requirements for serving as an
656 online notary public.

657 (3) Paying a notary public registration fee as required by
658 s. 113.01.

659 (4) Submitting a registration as an online notary public to
660 the Department of State, signed and sworn to by the registrant.

661 (5) Identifying the RON service provider whose audio-video
662 communication technology and processes for credential analysis
663 and identity proofing technologies the registrant intends to use
664 for online notarizations, and confirming that such technology
665 and processes satisfy the requirements of this chapter and any
666 rules adopted by the Department of State pursuant to s. 117.295.

667 (6) Providing evidence satisfactory to the Department of

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668 State that the registrant has obtained a bond in the amount of
669 \$25,000, payable to any individual harmed as a result of a
670 breach of duty by the registrant acting in his or her official
671 capacity as an online notary public, conditioned for the due
672 discharge of the office, and on such terms as are specified in
673 rule by the Department of State as reasonably necessary to
674 protect the public. The bond shall be approved and filed with
675 the Department of State and executed by a surety company duly
676 authorized to transact business in this state. Compliance by an
677 online notary public with this requirement shall satisfy the
678 requirement of obtaining a bond under s. 117.01(7).

679 (7) Providing evidence satisfactory to the Department of
680 State that the registrant acting in his or her capacity as an
681 online notary public is covered by an errors and omissions
682 insurance policy from an insurer authorized to transact business
683 in this state, in the minimum amount of \$25,000 and on such
684 terms as are specified by rule by the Department of State as
685 reasonably necessary to protect the public.

686 Section 10. Section 117.235, Florida Statutes, is created
687 to read:

688 117.235 Performance of notarial acts.—

689 (1) An online notary public is subject to part I of this
690 chapter to the same extent as a notary public appointed and
691 commissioned only under that part, including the provisions of
692 s. 117.021 relating to electronic notarizations.

693 (2) An online notary public may perform notarial acts as
694 provided by part I of this chapter in addition to performing
695 online notarizations as authorized and pursuant to the
696 provisions of this part.

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697 Section 11. Section 117.245, Florida Statutes, is created
 698 to read:
 699 117.245 Electronic journal of online notarizations.-
 700 (1) An online notary public shall keep one or more secure
 701 electronic journals of online notarizations performed by the
 702 online notary public. For each online notarization, the
 703 electronic journal entry must contain all of the following:
 704 (a) The date and time of the notarization.
 705 (b) The type of notarial act.
 706 (c) The type, the title, or a description of the electronic
 707 record or proceeding.
 708 (d) The name and address of each principal involved in the
 709 transaction or proceeding.
 710 (e) Evidence of identity of each principal involved in the
 711 transaction or proceeding in any of the following forms:
 712 1. A statement that the person is personally known to the
 713 online notary public.
 714 2. A notation of the type of government-issued
 715 identification credential provided to the online notary public.
 716 (f) An indication that the principal satisfactorily passed
 717 the identity proofing.
 718 (g) An indication that the government-issued identification
 719 credential satisfied the credential analysis.
 720 (h) The fee, if any, charged for the notarization.
 721 (2) The online notary public shall retain an uninterrupted
 722 and unedited copy of the recording of the audio-video
 723 communication in which an online notarization is performed. The
 724 recording must include all of the following:
 725 (a) Appearance by the principal and any witness before the

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726 online notary public.
 727 (b) Confirmation of the identity of the principal and any
 728 witness.
 729 (c) A general description or identification of the records
 730 to be signed.
 731 (d) At the commencement of the recording, recitation by the
 732 online notary public of information sufficient to identify the
 733 notarial act.
 734 (e) A declaration by the principal that his or her
 735 signature on the record is knowingly and voluntarily made.
 736 (f) All of the actions and spoken words of the principal,
 737 notary public, and any required witness during the entire online
 738 notarization, including the signing of any records before the
 739 online notary public.
 740 (3) The online notary public shall take reasonable steps
 741 to:
 742 (a) Ensure the integrity, security, and authenticity of
 743 online notarizations.
 744 (b) Maintain a backup record of the electronic journal
 745 required by subsection (1).
 746 (c) Protect the electronic journal, the backup record, and
 747 any other records received by the online notary public from
 748 unauthorized access or use.
 749 (4) The electronic journal required under subsection (1)
 750 and the recordings of audio-video communications required under
 751 subsection (2) shall be maintained for at least 10 years after
 752 the date of the notarial act. However, a full copy of the
 753 recording of the audio-video communication required under
 754 subsection (2) relating to an online notarization session that

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755 involves the signing of an electronic will must be maintained by
 756 a qualified custodian in accordance with chapters 731 and 732.
 757 The Department of State maintains jurisdiction over the
 758 electronic journal and audio-video communication recordings to
 759 investigate notarial misconduct for a period of 10 years after
 760 the date of the notarial act. The online notary public, a
 761 guardian of an incapacitated online notary public, or the
 762 personal representative of a deceased online notary public may,
 763 by contract with a secure repository in accordance with any
 764 rules established under this chapter, delegate to the repository
 765 the online notary public's duty to retain the electronic journal
 766 and the required recordings of audio-video communications,
 767 provided that the Department of State is notified of such
 768 delegation of retention duties to the repository within 30 days
 769 thereafter, including the address and contact information for
 770 the repository. If an online notary public delegates to a secure
 771 repository under this section, the online notary public shall
 772 make an entry in his or her electronic journal identifying such
 773 repository, and provide notice to the Department of State as
 774 required in this subsection.

775 (5) An omitted or incomplete entry in the electronic
 776 journal does not impair the validity of the notarial act or of
 777 the electronic record which was notarized, but may be introduced
 778 as evidence to establish violations of this chapter; as evidence
 779 of possible fraud, forgery, impersonation, duress, incapacity,
 780 undue influence, minority, illegality, unconscionability; or for
 781 other evidentiary purposes. However, if the recording of the
 782 audio-video communication required under subsection (2) relating
 783 to the online notarization of the execution of an electronic

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784 will cannot be produced by the online notary public or the
 785 qualified custodian, the electronic will shall be treated as a
 786 lost or destroyed will subject to s. 733.207.

787 Section 12. Section 117.255, Florida Statutes, is created
 788 to read:

789 117.255 Use of electronic journal, signature, and seal.—An
 790 online notary public shall:

791 (1) Take reasonable steps to ensure that any registered
 792 device used to create an electronic seal is current and has not
 793 been revoked or terminated by the issuing or registering
 794 authority of the device.

795 (2) Keep the electronic journal and electronic seal secure
 796 and under his or her sole control, which includes access
 797 protection using passwords or codes under control of the online
 798 notary public. The online notary public may not allow another
 799 person to use the online notary public's electronic journal,
 800 electronic signature, or electronic seal, other than a RON
 801 service provider or other authorized person providing services
 802 to an online notary public to facilitate performance of online
 803 notarizations.

804 (3) Attach or logically associate the electronic signature
 805 and seal to the electronic notarial certificate of an electronic
 806 record in a manner that is capable of independent verification
 807 using tamper-evident technology that renders any subsequent
 808 change or modification to the electronic record evident.

809 (4) Notify an appropriate law enforcement agency and the
 810 Department of State of any unauthorized use of or compromise to
 811 the security of the electronic journal, official electronic
 812 signature, or electronic seal within 7 days after discovery of

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813 such unauthorized use or compromise to security.
 814 (5) Make electronic copies, upon request, of the pertinent
 815 entries in the electronic journal and provide access to the
 816 related audio-video communication recordings to the following
 817 persons:
 818 (a) The parties to an electronic record notarized by the
 819 online notary public;
 820 (b) The qualified custodian of an electronic will notarized
 821 by the online notary public;
 822 (c) The title agent, settlement agent, or title insurer who
 823 insured the electronic record or engaged the online notary
 824 public with regard to a real estate transaction;
 825 (d) The online notary public's RON service provider whose
 826 services were used by the online notary public to notarize the
 827 electronic record;
 828 (e) Any person who is asked to accept a power of attorney
 829 that was notarized by the online notary public;
 830 (f) The Department of State pursuant to a notary misconduct
 831 investigation; and
 832 (g) To other persons pursuant to a subpoena, court order,
 833 law enforcement investigation, or other lawful inspection
 834 demand.
 835 (6) The online notary public may charge a fee not to exceed
 836 \$20 per transaction record for making and delivering electronic
 837 copies of a given series of related electronic records, except
 838 if requested by:
 839 (a) A party to the electronic record;
 840 (b) In a real estate transaction, the title agent,
 841 settlement agent, or title insurer who insured the electronic

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842 record or engaged the online notary public with regard to such
 843 transaction; or
 844 (c) The Department of State pursuant to an investigation
 845 relating to the official misconduct of an online notary public.
 846
 847 If the online notary public does charge a fee, the online notary
 848 public shall disclose the amount of such fee to the requester
 849 before making the electronic copies.
 850 Section 13. Section 117.265, Florida Statutes, is created
 851 to read:
 852 117.265 Online notarization procedures.-
 853 (1) An online notary public physically located in this
 854 state may perform an online notarization that meets the
 855 requirements of this part regardless of whether the principal or
 856 any witnesses are physically located in this state at the time
 857 of the online notarization. A commissioner of deeds registered
 858 as an online notary public may perform an online notarization
 859 while physically located within or outside of this state in
 860 accordance with the territorial limits of its jurisdiction and
 861 other limitations and requirements otherwise applicable to
 862 notarial acts by commissioners of deeds. An online notarization
 863 performed in accordance with this chapter is deemed to have been
 864 performed within this state and is governed by the applicable
 865 laws of this state.
 866 (2) In performing an online notarization, an online notary
 867 public shall confirm the identity of a principal and any witness
 868 appearing online, at the time that the signature is taken, by
 869 using audio-video communication technology and processes that
 870 meet the requirements of this part and of any rules adopted

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871 hereunder and record the two-way audio-video conference session
 872 between the notary public and the principal and any witnesses. A
 873 principal may not act in the capacity of a witness for his or
 874 her own signature in an online notarization.

875 (3) In performing an online notarization of a principal not
 876 located within this state, an online notary public must confirm,
 877 either verbally or through the principal's written consent, that
 878 the principal desires for the notarial act to be performed by a
 879 Florida notary public and under the general law of this state.

880 (4) An online notary public shall confirm the identity of
 881 the principal by:

882 (a) Personal knowledge of each principal; or

883 (b) All of the following, as such criteria may be modified
 884 or supplemented in rules adopted by the Department of State
 885 pursuant to s. 117.295:

886 1. Remote presentation of a government-issued
 887 identification credential by each principal.

888 2. Credential analysis of each government-issued
 889 identification credential.

890 3. Identity proofing of each principal in the form of
 891 knowledge-based authentication or another method of identity
 892 proofing that conforms to the standards of this chapter.

893
 894 If the online notary public is unable to satisfy subparagraphs
 895 (b)1.-3., or if the databases consulted for identity proofing do
 896 not contain sufficient information to permit authentication, the
 897 online notary public may not perform the online notarization.

898 (5) An online notary public may change his or her RON
 899 service provider or providers from time to time, but shall

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900 notify the Department of State of such change within 30 days
 901 thereafter.

902 (6) The online notary public or his or her RON service
 903 provider shall take reasonable steps to ensure that the audio-
 904 video communication technology used in an online notarization is
 905 secure from unauthorized interception.

906 (7) The electronic notarial certificate for an online
 907 notarization must include a notation that the notarization is an
 908 online notarization which may be satisfied by placing the term
 909 "online notary" in or adjacent to the online notary public's
 910 seal.

911 (8) Except where otherwise expressly provided in this part,
 912 the provisions of part I of this chapter apply to an online
 913 notarization and an online notary public.

914 (9) Any failure to comply with the online notarization
 915 procedures set forth in this section does not impair the
 916 validity of the notarial act or the electronic record that was
 917 notarized, but may be introduced as evidence to establish
 918 violations of this chapter or as an indication of possible
 919 fraud, forgery, impersonation, duress, incapacity, undue
 920 influence, minority, illegality, unconscionability, or for other
 921 evidentiary purposes. This subsection may not be construed to
 922 alter the duty of an online notary public to comply with this
 923 chapter and any rules adopted hereunder.

924 Section 14. Section 117.275, Florida Statutes, is created
 925 to read:

926 117.275 Fees for online notarization.—An online notary
 927 public or the employer of such online notary public may charge a
 928 fee, not to exceed \$25, for performing an online notarization

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929 under this part. Fees for services other than notarial acts are
930 not governed by this section.

931 Section 15. Section 117.285, Florida Statutes, is created
932 to read:

933 117.285 Supervising the witnessing of electronic records.-
934 An online notary public may supervise the witnessing of
935 electronic records by the same audio-video communication
936 technology used for online notarization, as follows:

937 (1) The witness may be in the physical presence of the
938 principal or remote from the principal provided the witness and
939 principal are using audio-video communication technology.

940 (2) If the witness is remote from the principal and viewing
941 and communicating with the principal by means of audio-video
942 communication technology, the witness's identity must be
943 verified in accordance with the procedures for identifying a
944 principal as set forth in s. 117.265(4). If the witness is in
945 the physical presence of the principal, the witness must confirm
946 his or her identity by stating his or her name and current
947 address on the audio-video recording as part of the act of
948 witnessing.

949 (3) The act of witnessing an electronic signature means the
950 witness is either in the physical presence of the principal or
951 present through audio-video communication technology at the time
952 the principal affixes the electronic signature and the witness
953 hears the principal make a statement to the effect that the
954 principal has signed the electronic record.

955 (4) A witness remote from the principal and appearing
956 through audio-video communication technology must verbally
957 confirm that he or she is a resident of and physically located

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958 within the United States or a territory of the United States at
959 the time of witnessing.

960 (5) Notwithstanding subsections (2) and (3), if an
961 electronic record to be signed is a will under chapter 732, a
962 trust with testamentary aspects under chapter 736, an advance
963 health care directive, a durable power of attorney defined in s.
964 709.2104 which is being executed concurrently with a will, or a
965 waiver of spousal rights under s. 732.701 or s. 732.702:

966 (a) The act of witnessing an electronic signature through
967 the witness's presence by audio-video communication is valid
968 only if, during the audio-video communication, the principal
969 provides verbal answers to all of the following questions, each
970 of which must be asked by the online notary public in
971 substantially the following form:

972 1. What is your date of birth?

973 2. Are you under the influence of any drug or alcohol that
974 impairs your ability to make decisions?

975 3. Do you have any physical or mental condition or long-
976 term disability that impairs your ability to perform the normal
977 activities of daily living?

978 4. Are you unable to provide for your own daily care?

979 5. Did anyone assist you in accessing this video conference
980 or in drafting the documents you're here to sign? If so, who?

981 6. Where are you currently located?

982 7. Name everyone you know who is with you.

983 (b) An online notary public shall consider the responses to
984 the questions specified in paragraph (a) in the carrying out of
985 the notary public's existing duties as set forth in s.
986 117.107(5).

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987 (c) A principal's responses to the questions in paragraph
 988 (a) may be offered as evidence regarding the validity of the
 989 instrument, but an incorrect answer may not serve as the sole
 990 basis to invalidate an instrument.

991 (d) An instrument governed by this subsection which is
 992 witnessed by a witness remote from the principal and present
 993 through audio-video communication technology is voidable if
 994 signed by a principal who is a vulnerable adult as defined in s.
 995 415.102. The contestant of an electronic record has the burden
 996 of proving that the principal was a vulnerable adult at the time
 997 of executing the electronic record.

998 (e) A RON service provider shall provide written notice to
 999 the signers, in substance, that an instrument governed by this
 1000 subsection which is signed by a vulnerable adult as defined in
 1001 s. 415.102, and is remotely witnessed in accordance with this
 1002 subsection, is voidable and that the signer can instead choose
 1003 to have such instruments signed in the physical presence of any
 1004 required witnesses.

1005 (6) Pursuant to subpoena, court order, an authorized law
 1006 enforcement inquiry, or other lawful request, an online notary
 1007 public shall provide the last known address of any witness who
 1008 witnessed the signing of an electronic record using audio-video
 1009 communication technology pursuant to this section.

1010 (7) An act of witnessing performed pursuant to this section
 1011 satisfies any requirement that the witness be a subscribing or
 1012 attesting witness or be in the presence of the principal at the
 1013 time of signing.

1014 The law of this state governs the validity of an act of
 1015

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1016 witnessing supervised by an online notary public pursuant to
 1017 this section, regardless of the physical location of the witness
 1018 at the time of witnessing. State courts and federal courts of
 1019 this state have subject matter jurisdiction over any dispute
 1020 arising out of an act of witnessing pursuant to this section,
 1021 and may issue subpoenas for records or appearance in relation
 1022 thereto in accordance with applicable law.

1023 Section 16. Effective upon becoming a law, section 117.295,
 1024 Florida Statutes, is created to read:

1025 117.295 Standards for electronic and online notarization;
 1026 rulemaking authority.-

1027 (1) For purposes of this part, the Department of State may
 1028 adopt rules necessary to implement the requirements of this
 1029 chapter and to set standards for online notarization which
 1030 include, but are not limited to:

1031 (a) Improvements in technology and methods of assuring the
 1032 identity of principals and the security of an electronic record,
 1033 including tamper-evident technologies in compliance with the
 1034 standards adopted pursuant to s. 117.021 which apply to online
 1035 notarizations.

1036 (b) Education requirements for online notaries public and
 1037 the required terms of bonds and errors and omissions insurance,
 1038 but not including the amounts of such bonds and insurance
 1039 policies.

1040 (c) Identity proofing, credential analysis, unauthorized
 1041 interception, remote presentation, audio-video communication
 1042 technology, and retention of electronic journals and copies of
 1043 audio-video communications recordings in a secure repository.

1044 (2) By January 1, 2020, the Department of State shall adopt

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1045 forms, processes, and interim or emergency rules necessary to
 1046 accept applications from and register online notaries public
 1047 pursuant to s. 117.225.

1048 (3) Until such time as the Department of State adopts rules
 1049 setting standards that are equally or more protective, the
 1050 following minimum standards shall apply to any online
 1051 notarization performed by an online notary public of this state
 1052 or his or her RON service provider:

1053 (a) Use of identity proofing by means of knowledge-based
 1054 authentication which must have, at a minimum, the following
 1055 security characteristics:

1056 1. The principal must be presented with five or more
 1057 questions with a minimum of five possible answer choices per
 1058 question.

1059 2. Each question must be drawn from a third-party provider
 1060 of public and proprietary data sources and be identifiable to
 1061 the principal's social security number or other identification
 1062 information, or the principal's identity and historical events
 1063 records.

1064 3. Responses to all questions must be made within a 2-
 1065 minute time constraint.

1066 4. The principal must answer a minimum of 80 percent of the
 1067 questions correctly.

1068 5. The principal may be offered one additional attempt in
 1069 the event of a failed attempt.

1070 6. During the second attempt, the principal may not be
 1071 presented with more than three questions from the prior attempt.

1072 (b) Use of credential analysis using one or more
 1073 commercially available automated software or hardware processes

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1074 that are consistent with sound commercial practices; that aid
 1075 the notary public in verifying the authenticity of the
 1076 credential by analyzing the integrity of visual, physical, or
 1077 cryptographic security features to indicate that the credential
 1078 is not fraudulent or inappropriately modified; and that use
 1079 information held or published by the issuing source or
 1080 authoritative source, as available, to confirm the validity of
 1081 credential details. The output of the credential analysis
 1082 process must be provided to the online notary public performing
 1083 the notarial act.

1084 (c) Use of audio-video communication technology in
 1085 completing online notarizations that must meet the following
 1086 requirements:

1087 1. The signal transmission must be reasonably secure from
 1088 interception, access, or viewing by anyone other than the
 1089 participants communicating.

1090 2. The technology must provide sufficient audio clarity and
 1091 video resolution to enable the notary to communicate with the
 1092 principal and any witness, and to confirm the identity of the
 1093 principal and any witness, as required, using the identification
 1094 methods described in s. 117.265.

1095 (4) A RON service provider is deemed to have satisfied
 1096 tamper-evident technology requirements by use of technology that
 1097 renders any subsequent change or modification to the electronic
 1098 record evident.

1099 (5) In addition to any coverage it elects to provide for
 1100 individual online notaries public, maintenance of errors and
 1101 omissions insurance coverage by a RON service provider in a
 1102 total amount of at least \$250,000 in the annual aggregate with

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1103 respect to potential errors or omissions in or relating to the
 1104 technology or processes provided by the RON service provider. An
 1105 online notary public is not responsible for the security of the
 1106 systems used by the principal or others to access the online
 1107 notarization session.

1108 (6) A 2-hour in-person or online course addressing the
 1109 duties, obligations, and technology requirements for serving as
 1110 an online notary public offered by the Florida Land Title
 1111 Association; the Real Property, Probate and Trust Law Section of
 1112 The Florida Bar; the Florida Legal Education Association; the
 1113 Department of State; or a vendor approved by the Department of
 1114 State shall satisfy the education requirements of s. 117.225(2).
 1115 Each such provider shall make the in-person or online course
 1116 generally available to all applicants, at the same cost,
 1117 regardless of membership in the provider's organization.

1118 (7) The rulemaking required under this section is exempt
 1119 from s. 120.541(3).

1120 Section 17. Section 117.305, Florida Statutes, is created
 1121 to read:

1122 117.305 Relation to federal law.—This part supersedes the
 1123 Electronic Signatures in Global and National Commerce Act as
 1124 authorized under 15 U.S.C. s. 7001 et seq., but does not modify,
 1125 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
 1126 or authorize the electronic delivery of the notices described in
 1127 15 U.S.C. s. 7003(b).

1128 Section 18. Present paragraph (h) of subsection (3) of
 1129 section 28.222, Florida Statutes, is redesignated as paragraph
 1130 (i), and a new paragraph (h) is added to that subsection, to
 1131 read:

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1132 28.222 Clerk to be county recorder.—

1133 (3) The clerk of the circuit court shall record the
 1134 following kinds of instruments presented to him or her for
 1135 recording, upon payment of the service charges prescribed by
 1136 law:

1137 (h) Copies of any instruments originally created and
 1138 executed using an electronic signature, as defined in s. 695.27,
 1139 and certified to be a true and correct paper printout by a
 1140 notary public in accordance with chapter 117, if the county
 1141 recorder is not prepared to accept electronic documents for
 1142 recording electronically.

1143 Section 19. Subsections (1) and (2) of section 92.50,
 1144 Florida Statutes, are amended to read:

1145 92.50 Oaths, affidavits, and acknowledgments; who may take
 1146 or administer; requirements.—

1147 (1) IN THIS STATE.—Oaths, affidavits, and acknowledgments
 1148 required or authorized under the laws of this state (except
 1149 oaths to jurors and witnesses in court and such other oaths,
 1150 affidavits and acknowledgments as are required by law to be
 1151 taken or administered by or before particular officers) may be
 1152 taken or administered by or before any judge, clerk, or deputy
 1153 clerk of any court of record within this state, including
 1154 federal courts, or by or before any United States commissioner
 1155 or any notary public within this state. The jurat, or
 1156 certificate of proof or acknowledgment, shall be authenticated
 1157 by the signature and official seal of such officer or person
 1158 taking or administering the same; however, when taken or
 1159 administered by or before any judge, clerk, or deputy clerk of a
 1160 court of record, the seal of such court may be affixed as the

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1161 seal of such officer or person.

1162 (2) IN OTHER STATES, TERRITORIES, AND DISTRICTS OF THE
 1163 UNITED STATES.—Oaths, affidavits, and acknowledgments required
 1164 or authorized under the laws of this state, may be taken or
 1165 administered in any other state, territory, or district of the
 1166 United States, by or before any judge, clerk or deputy clerk of
 1167 any court of record, within such state, territory, or district,
 1168 having a seal, or by or before any notary public or justice of
 1169 the peace, having a seal, in such state, territory, or district;
 1170 provided, however, such officer or person is authorized under
 1171 the laws of such state, territory, or district to take or
 1172 administer oaths, affidavits and acknowledgments. The jurat, or
 1173 certificate of proof or acknowledgment, shall be authenticated
 1174 by the signature and official seal of such officer or person
 1175 taking or administering the same; provided, however, when taken
 1176 or administered by or before any judge, clerk, or deputy clerk
 1177 of a court of record, the seal of such court may be affixed as
 1178 the seal of such officer or person.

1179 Section 20. Subsection (1) of section 95.231, Florida
 1180 Statutes, is amended to read:

1181 95.231 Limitations where deed or will on record.—

1182 (1) Five years after the recording of an instrument
 1183 required to be executed in accordance with s. 689.01; 5 years
 1184 after the recording of a power of attorney accompanying and used
 1185 for an instrument required to be executed in accordance with s.
 1186 689.01; or 5 years after the probate of a will purporting to
 1187 convey real property, from which it appears that the person
 1188 owning the property attempted to convey, affect, or devise it,
 1189 the instrument, power of attorney, or will shall be held to have

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1190 its purported effect to convey, affect, or devise, the title to
 1191 the real property of the person signing the instrument, as if
 1192 there had been no lack of seal or seals, witness or witnesses,
 1193 defect in, failure of, or absence of acknowledgment or
 1194 relinquishment of dower, in the absence of fraud, adverse
 1195 possession, or pending litigation. The instrument is admissible
 1196 in evidence. A power of attorney validated under this subsection
 1197 shall be valid only for the purpose of effectuating the
 1198 instrument with which it was recorded.

1199 Section 21. Section 689.01, Florida Statutes, is amended to
 1200 read:

1201 689.01 How real estate conveyed.—

1202 (1) No estate or interest of freehold, or for a term of
 1203 more than 1 year, or any uncertain interest of, in or out of any
 1204 messuages, lands, tenements or hereditaments shall be created,
 1205 made, granted, transferred or released in any other manner than
 1206 by instrument in writing, signed in the presence of two
 1207 subscribing witnesses by the party creating, making, granting,
 1208 conveying, transferring or releasing such estate, interest, or
 1209 term of more than 1 year, or by the party's lawfully authorized
 1210 agent, unless by will and testament, or other testamentary
 1211 appointment, duly made according to law; and no estate or
 1212 interest, either of freehold, or of term of more than 1 year, or
 1213 any uncertain interest of, in, to, or out of any messuages,
 1214 lands, tenements or hereditaments, shall be assigned or
 1215 surrendered unless it be by instrument signed in the presence of
 1216 two subscribing witnesses by the party so assigning or
 1217 surrendering, or by the party's lawfully authorized agent, or by
 1218 the act and operation of law. No seal shall be necessary to give

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1219 validity to any instrument executed in conformity with this
 1220 section. Corporations may execute any and all conveyances in
 1221 accordance with the provisions of this section or ss. 692.01 and
 1222 692.02.

1223 (2) For purposes of this chapter:

1224 (a) Any requirement that an instrument be signed in the
 1225 presence of two subscribing witnesses may be satisfied by
 1226 witnesses being present and electronically signing by means of
 1227 audio-video communication technology, as defined in s. 117.201.

1228 (b) The act of witnessing an electronic signature is
 1229 satisfied if a witness is in the physical presence of the
 1230 principal or present through audio-video communication
 1231 technology at the time the principal affixes his or her
 1232 electronic signature and the witness hears the principal make a
 1233 statement acknowledging that the principal has signed the
 1234 electronic record.

1235 (c) The terms used in this subsection have the same
 1236 meanings as the terms defined in s. 117.201.

1237 (3) All acts of witnessing made or taken in the manner
 1238 described in subsection (2) are validated and, upon recording,
 1239 may not be denied to have provided constructive notice based on
 1240 any alleged failure to have strictly complied with this section
 1241 or the laws governing notarization of instruments, including
 1242 online notarization. This subsection does not preclude a
 1243 challenge to the validity or enforceability of an instrument or
 1244 electronic record based upon fraud, forgery, impersonation,
 1245 duress, incapacity, undue influence, minority, illegality,
 1246 unconscionability, or any other basis not related to the act of
 1247 witnessing.

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1248 Section 22. Section 694.08, Florida Statutes, is amended to
 1249 read:

1250 694.08 Certain instruments validated, notwithstanding lack
 1251 of seals or witnesses, or defect in acknowledgment,~~—ete.—~~

1252 (1) Whenever any power of attorney has been executed and
 1253 delivered, or any conveyance has been executed and delivered to
 1254 any grantee by the person owning the land therein described, or
 1255 conveying the same in an official or representative capacity,
 1256 and has, for a period of 7 years or more been spread upon the
 1257 records of the county wherein the land therein described has
 1258 been or was at the time situated, and one or more subsequent
 1259 conveyances of said land or parts thereof have been made,
 1260 executed, delivered and recorded by parties claiming under such
 1261 instrument or instruments, and such power of attorney or
 1262 conveyance, or the public record thereof, shows upon its face a
 1263 clear purpose and intent of the person executing the same to
 1264 authorize the conveyance of said land or to convey the said
 1265 land, the same shall be taken and held by all the courts of this
 1266 state, in the absence of any showing of fraud, adverse
 1267 possession, or pending litigation, to have authorized the
 1268 conveyance of, or to have conveyed, the fee simple title, or any
 1269 interest therein, of the person signing such instruments, or the
 1270 person in behalf of whom the same was conveyed by a person in an
 1271 official or representative capacity, to the land therein
 1272 described as effectively as if there had been no defect in,
 1273 failure of, or absence of the acknowledgment or the certificate
 1274 of acknowledgment, if acknowledged, or the relinquishment of
 1275 dower, and as if there had been no lack of the word "as"
 1276 preceding the title of the person conveying in an official or

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1277 representative capacity, of any seal or seals, or of any witness
 1278 or witnesses, and shall likewise be taken and held by all the
 1279 courts of this state to have been duly recorded so as to be
 1280 admissible in evidence;

1281 (2) Provided, however, that this section shall not apply to
 1282 any conveyance the validity of which shall be contested or have
 1283 been contested by suit commenced heretofore or within 1 year of
 1284 the effective date of this law.

1285 Section 23. Section 695.03, Florida Statutes, is amended to
 1286 read:

1287 695.03 Acknowledgment and proof; validation of certain
 1288 acknowledgments; legalization or authentication before foreign
 1289 officials.—To entitle any instrument concerning real property to
 1290 be recorded, the execution must be acknowledged by the party
 1291 executing it, proved by a subscribing witness to it, or
 1292 legalized or authenticated in one of the following forms ~~by a~~
 1293 ~~civil-law notary or notary public who affixes her or his~~
 1294 ~~official seal, before the officers and in the form and manner~~
 1295 ~~following:~~

1296 (1) WITHIN THIS STATE.—An acknowledgment or a proof may be
 1297 taken, administered, or made within this state by or ~~may be made~~
 1298 before a judge, clerk, or deputy clerk of any court; a United
 1299 States commissioner or magistrate; or any ~~a~~ notary public or
 1300 civil-law notary of this state, and the certificate of
 1301 acknowledgment or proof must be under the seal of the court or
 1302 officer, as the case may be. ~~All affidavits and acknowledgments~~
 1303 ~~heretofore made or taken in this manner are hereby validated.~~

1304 (2) OUTSIDE WITHOUT THIS STATE BUT WITHIN THE UNITED
 1305 STATES.—An acknowledgment or a proof taken, administered, or

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1306 made outside ~~out~~ of this state but within the United States may
 1307 be taken, administered, or made by or before a civil-law notary
 1308 of this state or a commissioner of deeds appointed by the
 1309 Governor of this state; a judge or clerk of any court of the
 1310 United States or of any state, territory, or district; by or
 1311 before a United States commissioner or magistrate; or by or
 1312 before any ~~a~~ notary public, justice of the peace, master in
 1313 chancery, or registrar or recorder of deeds of any state,
 1314 territory, or district having a seal, and the certificate of
 1315 acknowledgment or proof must be under the seal of the court or
 1316 officer, as the case may be. If the acknowledgment or proof is
 1317 taken, administered, or made by or before a notary public who
 1318 does not affix a seal, it is sufficient for the notary public to
 1319 type, print, or write by hand on the instrument, "I am a Notary
 1320 Public of the State of ...(state)..., and my commission expires
 1321 on ...(date)..."

1322 (3) OUTSIDE OF THE UNITED STATES OR WITHIN FOREIGN
 1323 COUNTRIES.—~~An~~ If the acknowledgment, an affidavit, an oath, a
 1324 legalization, an authentication, or a proof taken, administered,
 1325 or made outside the United States or is made in a foreign
 1326 country, ~~it~~ may be taken, administered, or made by or before a
 1327 commissioner of deeds appointed by the Governor of this state to
 1328 act in such country; before a notary public of such foreign
 1329 country or a civil-law notary of this state or of such foreign
 1330 country who has an official seal; before an ambassador, envoy
 1331 extraordinary, minister plenipotentiary, minister, commissioner,
 1332 charge d'affaires, consul general, consul, vice consul, consular
 1333 agent, or other diplomatic or consular officer of the United
 1334 States appointed to reside in such country; or before a military

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1335 or naval officer authorized by 10 U.S.C. s. 1044a ~~the Laws or~~
 1336 ~~Articles of War of the United States~~ to perform the duties of
 1337 notary public, and the certificate of acknowledgment,
 1338 legalization, authentication, or proof must be under the seal of
 1339 the officer. A certificate legalizing or authenticating the
 1340 signature of a person executing an instrument concerning real
 1341 property and to which a civil-law notary or notary public of
 1342 that country has affixed her or his official seal is sufficient
 1343 as an acknowledgment. For the purposes of this section, the term
 1344 "civil-law notary" means a civil-law notary as defined in
 1345 chapter 118 or an official of a foreign country who has an
 1346 official seal and who is authorized to make legal or lawful the
 1347 execution of any document in that jurisdiction, in which
 1348 jurisdiction the affixing of her or his official seal is deemed
 1349 proof of the execution of the document or deed in full
 1350 compliance with the laws of that jurisdiction.

1351 (4) COMPLIANCE AND VALIDATION.—The affixing of the official
 1352 seal or the electronic equivalent thereof under s. 117.021 or
 1353 other applicable law, including part II of chapter 117,
 1354 conclusively establishes that the acknowledgment or proof was
 1355 taken, administered, or made in full compliance with the laws of
 1356 this state or, as applicable, the laws of the other state, or of
 1357 the foreign country governing notarial acts. All affidavits,
 1358 oaths, acknowledgments, legalizations, authentications, or
 1359 proofs taken, administered, or made in any manner as set forth
 1360 in subsections (1), (2), and (3) are validated and upon
 1361 recording may not be denied to have provided constructive notice
 1362 based on any alleged failure to have strictly complied with this
 1363 section, as currently or previously in effect, or the laws

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1364 governing notarization of instruments. This subsection does not
 1365 preclude a challenge to the validity or enforceability of an
 1366 instrument or electronic record based upon fraud, forgery,
 1367 impersonation, duress, incapacity, undue influence, minority,
 1368 illegality, unconscionability, or any other basis not related to
 1369 the notarial act or constructive notice provided by recording.

1370
 1371 ~~All affidavits, legalizations, authentications, and~~
 1372 ~~acknowledgments heretofore made or taken in the manner set forth~~
 1373 ~~above are hereby validated.~~

1374 Section 24. Section 695.04, Florida Statutes, is amended to
 1375 read:

1376 695.04 Requirements of certificate.—The certificate of the
 1377 officer before whom the acknowledgment or proof is taken, except
 1378 for a certificate legalizing or authenticating the signature of
 1379 a person executing an instrument concerning real property
 1380 pursuant to s. 695.03(3), shall contain and set forth
 1381 substantially the matter required to be done or proved to make
 1382 such acknowledgment or proof effectual as set forth in s.
 1383 117.05.

1384 Section 25. Section 695.25, Florida Statutes, is amended to
 1385 read:

1386 695.25 Short form of acknowledgment.—The forms of
 1387 acknowledgment set forth in this section may be used, and are
 1388 sufficient for their respective purposes, under any law of this
 1389 state. The forms shall be known as "Statutory Short Forms of
 1390 Acknowledgment" and may be referred to by that name. The
 1391 authorization of the forms in this section does not preclude the
 1392 use of other forms.

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1393 (1) For an individual acting in his or her own right:
 1394 STATE OF
 1395 COUNTY OF
 1396 The foregoing instrument was acknowledged before me by
 1397 means of [] physical presence or [] online notarization, this
 1398 ... (date) ... by ... (name of person acknowledging) ... , who is
 1399 personally known to me or who has produced ... (type of
 1400 identification) ... as identification.
 1401 ... (Signature of person taking acknowledgment) ...
 1402 ... (Name typed, printed or stamped) ...
 1403 ... (Title or rank) ...
 1404 ... (Serial number, if any) ...

1405 (2) For a corporation:
 1406 STATE OF
 1407 COUNTY OF
 1408 The foregoing instrument was acknowledged before me by
 1409 means of [] physical presence or [] online notarization, this
 1410 ... (date) ... by ... (name of officer or agent, title of officer
 1411 or agent) ... of ... (name of corporation acknowledging) ... , a
 1412 ... (state or place of incorporation) ... corporation, on behalf
 1413 of the corporation. He/she is personally known to me or has
 1414 produced ... (type of identification) ... as identification.
 1415 ... (Signature of person taking acknowledgment) ...
 1416 ... (Name typed, printed or stamped) ...
 1417 ... (Title or rank) ...
 1418 ... (Serial number, if any) ...

1419 (3) For a limited liability company:
 1420 STATE OF
 1421 COUNTY OF

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1422 The foregoing instrument was acknowledged before me by
 1423 means of [] physical presence or [] online notarization, this
 1424 ... (date) ... by ... (name of member, manager, officer or agent,
 1425 title of member, manager, officer or agent) ... , of ... (name of
 1426 company acknowledging) ... , a ... (state or place of formation) ...
 1427 limited liability company, on behalf of the company, who is
 1428 personally known to me or has produced ... (type of
 1429 identification) ... as identification.
 1430 ... (Signature of person taking acknowledgment) ...
 1431 ... (Name typed, printed or stamped) ...
 1432 ... (Title or rank) ...
 1433 ... (Serial number, if any) ...

1434 (4) (3) For a partnership:
 1435 STATE OF
 1436 COUNTY OF
 1437 The foregoing instrument was acknowledged before me by
 1438 means of [] physical presence or [] online notarization, this
 1439 ... (date) ... by ... (name of acknowledging partner or agent) ... ,
 1440 partner (or agent) on behalf of ... (name of partnership) ... , a
 1441 partnership. He/she is personally known to me or has produced
 1442 ... (type of identification) ... as identification.
 1443 ... (Signature of person taking acknowledgment) ...
 1444 ... (Name typed, printed or stamped) ...
 1445 ... (Title or rank) ...
 1446 ... (Serial number, if any) ...

1447 (5) (4) For an individual acting as principal by an attorney
 1448 in fact:
 1449 STATE OF
 1450

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1451 COUNTY OF

1452 The foregoing instrument was acknowledged before me by

1453 means of [] physical presence or [] online notarization, this

1454 ... (date)... by ... (name of attorney in fact)... as attorney in

1455 fact, who is personally known to me or who has produced ... (type

1456 of identification)... as identification on behalf of ... (name of

1457 principal)....

1458 ... (Signature of person taking acknowledgment)...

1459 ... (Name typed, printed or stamped)...

1460 ... (Title or rank)...

1461 ... (Serial number, if any)...

1462 (6)(5) By any public officer, trustee, or personal

1463 representative:

1464 STATE OF

1465 COUNTY OF

1466 The foregoing instrument was acknowledged before me by

1467 means of [] physical presence or [] online notarization, this

1468 ... (date)... by ... (name and title of position)..., who is

1469 personally known to me or who has produced ... (type of

1470 identification)... as identification.

1471 ... (Signature of person taking acknowledgment)...

1472 ... (Name typed, printed or stamped)...

1473 ... (Title or rank)...

1474 ... (Serial number, if any)....

1475

1476 Section 26. Section 695.28, Florida Statutes, is amended to

1477 read:

1478 695.28 Validity of recorded electronic documents.—

1479 (1) A document that is otherwise entitled to be recorded

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1480 and that was or is submitted to the clerk of the court or county

1481 recorder by electronic or other means and accepted for

1482 recordation is deemed validly recorded and provides notice to

1483 all persons notwithstanding:

1484 (a) That the document was received and accepted for

1485 recordation before the Department of State adopted standards

1486 implementing s. 695.27; ~~or~~

1487 (b) Any defects in, deviations from, or the inability to

1488 demonstrate strict compliance with any statute, rule, or

1489 procedure relating to electronic signatures, electronic

1490 witnesses, electronic notarization, or online notarization, or

1491 for submitting or recording to submit or record an electronic

1492 document in effect at the time the electronic document was

1493 executed or was submitted for recording;

1494 (c) That the document was signed, witnessed, or notarized

1495 electronically, and that the document was notarized by an online

1496 notary public outside the physical presence of the signer

1497 through audio-video communication technology, as defined in s.

1498 117.201, or that witnessing may have been done outside the

1499 physical presence of the notary public or principal through such

1500 audio-visual communication; or

1501 (d) That the document recorded was a certified printout of

1502 a document to which one or more electronic signatures have been

1503 affixed.

1504 (2) This section does not alter the duty of the clerk or

1505 recorder to comply with s. 28.222, s. 695.27, or any rules

1506 adopted pursuant to those sections that section.

1507 (3) This section does not preclude a challenge to the

1508 validity or enforceability of an instrument or electronic record

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1509 based upon fraud, forgery, impersonation, duress, incapacity,
 1510 undue influence, minority, illegality, unconscionability, or any
 1511 other basis not in the nature of those matters described in
 1512 subsection (1).

1513 Section 27. Subsections (3) and (4) of section 709.2119,
 1514 Florida Statutes, are amended to read:

1515 709.2119 Acceptance of and reliance upon power of
 1516 attorney.—

1517 (3) A third person who is asked to accept a power of
 1518 attorney that appears to be executed in accordance with s.
 1519 709.2105 may in good faith request, and rely upon, without
 1520 further investigation:

1521 (a) A certified English translation of the power of
 1522 attorney if the power of attorney contains, in whole or in part,
 1523 language other than English;

1524 (b) An opinion of counsel as to any matter of law
 1525 concerning the power of attorney if the third person making the
 1526 request provides in a writing or other record the reason for the
 1527 request; ~~or~~

1528 (c) The affidavit described in subsection (2); or

1529 (d) The electronic journal or record made by the notary
 1530 public pursuant to the laws of the state in which the notary
 1531 public is appointed if the power of attorney is witnessed or
 1532 notarized remotely through the use of online witnesses or
 1533 notarization.

1534 (4) An English translation, ~~or~~ an opinion of counsel, or an
 1535 electronic journal or record requested under this section must
 1536 be provided at the principal's expense unless the request is
 1537 made after the time specified in s. 709.2120(1) for acceptance

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1538 or rejection of the power of attorney.

1539 Section 28. Subsection (4) of section 709.2120, Florida
 1540 Statutes, is amended to read:

1541 709.2120 Rejecting power of attorney.—

1542 (4) A third person is not required to accept a power of
 1543 attorney if:

1544 (a) The third person is not otherwise required to engage in
 1545 a transaction with the principal in the same circumstances;

1546 (b) The third person has knowledge of the termination or
 1547 suspension of the agent's authority or of the power of attorney
 1548 before exercising the power;

1549 (c) A timely request by the third person for an affidavit,
 1550 English translation, ~~or~~ opinion of counsel, or electronic
 1551 journal or record under s. 709.2119 ~~s. 709.2119(4)~~ is refused by
 1552 the agent;

1553 (d) The power of attorney is witnessed or notarized
 1554 remotely through the use of online witnesses or notarization,
 1555 and either the agent is unable to produce the electronic journal
 1556 or record, or the notary public did not maintain an electronic
 1557 journal or record of the notarization;

1558 (e)-(d) Except as provided in paragraph (b), the third
 1559 person believes in good faith that the power is not valid or
 1560 that the agent does not have authority to perform the act
 1561 requested; or

1562 (f)-(e) The third person makes, or has knowledge that
 1563 another person has made, a report to the local adult protective
 1564 services office stating a good faith belief that the principal
 1565 may be subject to physical or financial abuse, neglect,
 1566 exploitation, or abandonment by the agent or a person acting for

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1567 or with the agent.

1568 Section 29. Present subsection (6) of section 709.2202,
1569 Florida Statutes, is renumbered as subsection (7), and a new
1570 subsection (6) is added to that section, to read:

1571 709.2202 Authority that requires separate signed
1572 enumeration.—

1573 (6) Notwithstanding subsection (1) and s. 709.2106(3), a
1574 power of attorney, executed by a principal domiciled in this
1575 state at the time of execution, that is witnessed remotely
1576 pursuant to s. 117.285 or other applicable law by a witness who
1577 is not in the physical presence of the principal is not
1578 effective to grant authority to an agent to take any of the
1579 actions enumerated in subsection (1).

1580 Section 30. Subsection (40) of section 731.201, Florida
1581 Statutes, is amended to read:

1582 731.201 General definitions.—Subject to additional
1583 definitions in subsequent chapters that are applicable to
1584 specific chapters or parts, and unless the context otherwise
1585 requires, in this code, in s. 409.9101, and in chapters 736,
1586 738, 739, and 744, the term:

1587 (40) "Will" means an instrument, including a codicil,
1588 executed by a person in the manner prescribed by this code,
1589 which disposes of the person's property on or after his or her
1590 death and includes an instrument which merely appoints a
1591 personal representative or revokes or revises another will. The
1592 term includes an electronic will as defined in s. 732.521.

1593 Section 31. Section 732.506, Florida Statutes, is amended
1594 to read:

1595 732.506 Revocation by act.—A will or codicil, other than an

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1596 electronic will, is revoked by the testator, or some other
1597 person in the testator's presence and at the testator's
1598 direction, by burning, tearing, canceling, defacing,
1599 obliterating, or destroying it with the intent, and for the
1600 purpose, of revocation. An electronic will or codicil is revoked
1601 by the testator, or some other person in the testator's presence
1602 and at the testator's direction, by deleting, canceling,
1603 rendering unreadable, or obliterating the electronic will or
1604 codicil, with the intent, and for the purpose, of revocation, as
1605 proved by clear and convincing evidence.

1606 Section 32. Section 732.521, Florida Statutes, is created
1607 to read:

1608 732.521 Definitions.—As used in ss. 732.521-732.525, the
1609 term:

1610 (1) "Audio-video communication technology" has the same
1611 meaning as provided in s. 117.201.

1612 (2) "Electronic record" has the same meaning as provided in
1613 s. 668.50.

1614 (3) "Electronic signature" means an electronic mark visibly
1615 manifested in a record as a signature and executed or adopted by
1616 a person with the intent to sign the record.

1617 (4) "Electronic will" means an instrument, including a
1618 codicil, executed with an electronic signature by a person in
1619 the manner prescribed by this code, which disposes of the
1620 person's property on or after his or her death and includes an
1621 instrument which merely appoints a personal representative or
1622 revokes or revises another will.

1623 (5) "Online notarization" has the same meaning as provided
1624 in s. 117.201.

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1625 (6) "Online notary public" has the same meaning as provided
 1626 in s. 117.201.

1627 (7) "Qualified custodian" means a person who meets the
 1628 requirements of s. 732.525(1).

1629 (8) "Secure system" means a system that satisfies the
 1630 requirements of a secure repository qualified to retain
 1631 electronic journals of online notaries public in accordance with
 1632 s. 117.245 and any rules established under part II of chapter
 1633 117.

1634 Section 33. Effective July 1, 2020, section 732.522,
 1635 Florida Statutes, is created to read:

1636 732.522 Method and place of execution.—For purposes of the
 1637 execution or filing of an electronic will, the acknowledgment of
 1638 an electronic will by the testator and the affidavits of
 1639 witnesses under s. 732.503, or any other instrument under the
 1640 Florida Probate Code:

1641 (1) Any requirement that an instrument be signed may be
 1642 satisfied by an electronic signature.

1643 (2) Any requirement that individuals sign an instrument in
 1644 the presence of one another may be satisfied by witnesses being
 1645 present and electronically signing by means of audio-video
 1646 communication technology that meets the requirements of part II
 1647 of chapter 117 and any rules adopted thereunder, if:

1648 (a) The individuals are supervised by a notary public in
 1649 accordance with s. 117.285;

1650 (b) The individuals are authenticated and signing as part
 1651 of an online notarization session in accordance with s. 117.265;

1652 (c) The witness hears the signer make a statement
 1653 acknowledging that the signer has signed the electronic record;

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1654 and

1655 (d) The signing and witnessing of the instrument complies
 1656 with the requirements of s. 117.285.

1657 (3) Except as otherwise provided in this part, all
 1658 questions as to the force, effect, validity, and interpretation
 1659 of an electronic will which comply with this section must be
 1660 determined in the same manner as in the case of a will executed
 1661 in accordance with s. 732.502.

1662 (4) An instrument that is signed electronically is deemed
 1663 to be executed in this state if the instrument states that the
 1664 person creating the instrument intends to execute and
 1665 understands that he or she is executing the instrument in, and
 1666 pursuant to the laws of, this state.

1667 Section 34. Section 732.523, Florida Statutes, is created
 1668 to read:

1669 732.523 Self-proof of electronic will.—An electronic will
 1670 is self-proved if:

1671 (1) The acknowledgment of the electronic will by the
 1672 testator and the affidavits of the witnesses are made in
 1673 accordance with s. 732.503 and are part of the electronic record
 1674 containing the electronic will, or are attached to, or are
 1675 logically associated with, the electronic will;

1676 (2) The electronic will designates a qualified custodian;

1677 (3) The electronic record that contains the electronic will
 1678 is held in the custody of a qualified custodian at all times
 1679 before being offered to the court for probate; and

1680 (4) The qualified custodian who has custody of the
 1681 electronic will at the time of the testator's death certifies
 1682 under oath that, to the best knowledge of the qualified

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1683 custodian, the electronic record that contains the electronic
 1684 will was at all times before being offered to the court in the
 1685 custody of a qualified custodian in compliance with s. 732.524
 1686 and that the electronic will has not been altered in any way
 1687 since the date of its execution.

1688 Section 35. Section 732.524, Florida Statutes, is created
 1689 to read:

1690 732.524 Qualified custodians.—

1691 (1) To serve as a qualified custodian of an electronic
 1692 will, a person must be:

1693 (a) Domiciled in and a resident of this state; or

1694 (b) Incorporated, organized, or have its principal place of
 1695 business in this state.

1696 (2) A qualified custodian shall:

1697 (a) In the course of maintaining custody of electronic
 1698 wills, regularly employ a secure system and store in such secure
 1699 system electronic records containing:

1700 1. Electronic wills;

1701 2. Records attached to or logically associated with
 1702 electronic wills; and

1703 3. Acknowledgments of the electronic wills by testators,
 1704 affidavits of the witnesses, and the records described in s.
 1705 117.245(1) and (2) which pertain to the online notarization; and

1706 (b) Furnish for any court hearing involving an electronic
 1707 will that is currently or was previously stored by the qualified
 1708 custodian any information requested by the court pertaining to
 1709 the qualified custodian's qualifications, policies, and
 1710 practices related to the creation, sending, communication,
 1711 receipt, maintenance, storage, and production of electronic

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1712 wills.

1713 (c) Provide access to or information concerning the
 1714 electronic will, or the electronic record containing the
 1715 electronic will, only:

1716 1. To the testator;

1717 2. To persons authorized by the testator in the electronic
 1718 will or in written instructions signed by the testator with the
 1719 formalities required for the execution of a will in this state;

1720 3. After the death of the testator, to the testator's
 1721 nominated personal representative; or

1722 4. At any time, as directed by a court of competent
 1723 jurisdiction.

1724 (3) The qualified custodian of the electronic record of an
 1725 electronic will may elect to destroy such record, including any
 1726 of the documentation required to be created and stored under
 1727 paragraph (2) (a), at any time after the earlier of the fifth
 1728 anniversary of the conclusion of the administration of the
 1729 estate of the testator or 20 years after the death of the
 1730 testator.

1731 (4) A qualified custodian who at any time maintains custody
 1732 of the electronic record of an electronic will may elect to
 1733 cease serving in such capacity by:

1734 (a) Delivering the electronic will or the electronic record
 1735 containing the electronic will to the testator, if then living,
 1736 or, after the death of the testator, by filing the will with the
 1737 court in accordance with s. 732.901; and

1738 (b) If the outgoing qualified custodian intends to
 1739 designate a successor qualified custodian, by doing the
 1740 following:

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1741 1. Providing written notice to the testator of the name,
 1742 address, and qualifications of the proposed successor qualified
 1743 custodian. The testator must provide written consent before the
 1744 electronic record, including the electronic will, is delivered
 1745 to a successor qualified custodian;

1746 2. Delivering the electronic record containing the
 1747 electronic will to the successor qualified custodian; and

1748 3. Delivering to the successor qualified custodian an
 1749 affidavit of the outgoing qualified custodian stating that:

1750 a. The outgoing qualified custodian is eligible to act as a
 1751 qualified custodian in this state;

1752 b. The outgoing qualified custodian is the qualified
 1753 custodian designated by the testator in the electronic will or
 1754 appointed to act in such capacity under this paragraph;

1755 c. The electronic will has at all times been in the custody
 1756 of one or more qualified custodians in compliance with this
 1757 section since the time the electronic record was created, and
 1758 identifying such qualified custodians; and

1759 d. To the best of the outgoing qualified custodian's
 1760 knowledge, the electronic will has not been altered since the
 1761 time it was created.

1762 For purposes of making this affidavit, the outgoing qualified
 1763 custodian may rely conclusively on any affidavits delivered by a
 1764 predecessor qualified custodian in connection with its
 1765 designation or appointment as qualified custodian; however, all
 1766 such affidavits must be delivered to the successor qualified
 1767 custodian.

1768 (5) Upon the request of the testator which is made in a
 1769

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1770 writing signed with the formalities required for the execution
 1771 of a will in this state, a qualified custodian who at any time
 1772 maintains custody of the electronic record of the testator's
 1773 electronic will must cease serving in such capacity and must
 1774 deliver to a successor qualified custodian designated in writing
 1775 by the testator the electronic record containing the electronic
 1776 will and the affidavit required in subparagraph (4) (b)3.

1777 (6) A qualified custodian may not succeed to office as a
 1778 qualified custodian of an electronic will unless he or she
 1779 agrees in writing to serve in such capacity.

1780 (7) If a qualified custodian is an entity, an affidavit, or
 1781 an appearance by the testator in the presence of a duly
 1782 authorized officer or agent of such entity, acting in his or her
 1783 own capacity as such, shall constitute an affidavit, or an
 1784 appearance by the testator in the presence of the qualified
 1785 custodian.

1786 (8) A qualified custodian must provide a paper copy of an
 1787 electronic will and the electronic record containing the
 1788 electronic will to the testator immediately upon request. For
 1789 the first request, the testator may not be charged a fee for
 1790 being provided with these documents.

1791 (9) The qualified custodian shall be liable for any damages
 1792 caused by the negligent loss or destruction of the electronic
 1793 record, including the electronic will, while it is in the
 1794 possession of the qualified custodian. A qualified custodian may
 1795 not limit liability for such damages.

1796 (10) A qualified custodian may not terminate or suspend
 1797 access to, or downloads of, the electronic will by the testator,
 1798 provided that a qualified custodian may charge a fee for

Page 62 of 65

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

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1799 providing such access and downloads.

1800 (11) Upon receiving information that the testator is dead,
 1801 a qualified custodian must deposit the electronic will with the
 1802 court in accordance with s. 732.901. A qualified custodian may
 1803 not charge a fee for depositing the electronic will with the
 1804 clerk, provided the affidavit is made in accordance with s.
 1805 732.503, or furnishing in writing any information requested by a
 1806 court under paragraph (2) (b).

1807 (12) Except as provided in this act, a qualified custodian
 1808 must at all times keep information provided by the testator
 1809 confidential and may not disclose such information to any third
 1810 party.

1811 (13) A contractual venue provision between a qualified
 1812 custodian and a testator is not valid or enforceable to the
 1813 extent that it requires a specific jurisdiction or venue for any
 1814 proceeding relating to the probate of an estate or the contest
 1815 of a will.

1816 Section 36. Section 732.525, Florida Statutes, is created
 1817 to read:

1818 732.525 Liability coverage; receivership of qualified
 1819 custodians.—

1820 (1) A qualified custodian shall:

1821 (a) Post and maintain a blanket surety bond of at least
 1822 \$250,000 to secure the faithful performance of all duties and
 1823 obligations required under this part. The bond must be made
 1824 payable to the Governor and his or her successors in office for
 1825 the benefit of all persons who store electronic records with a
 1826 qualified custodian and their estates, beneficiaries,
 1827 successors, and heirs, and be conditioned on the faithful

Page 63 of 65

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

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1828 performance of all duties and obligations under this chapter.
 1829 The terms of the bond must cover the acts or omissions of the
 1830 qualified custodian and each agent or employee of the qualified
 1831 custodian; or

1832 (b) Maintain a liability insurance policy that covers any
 1833 losses sustained by any person who stores electronic records
 1834 with a qualified custodian and their estates, beneficiaries,
 1835 successors, and heirs which are caused by errors or omissions by
 1836 the qualified custodian and each agent or employee of the
 1837 qualified custodian. The policy must cover losses of at least
 1838 \$250,000 in the aggregate.

1839 (2) The Attorney General may petition a court of competent
 1840 jurisdiction for the appointment of a receiver to manage the
 1841 electronic records of a qualified custodian for proper delivery
 1842 and safekeeping if any of the following conditions exist:

1843 (a) The qualified custodian is ceasing operation;

1844 (b) The qualified custodian intends to close the facility
 1845 and adequate arrangements have not been made for proper delivery
 1846 of the electronic records in accordance with this part;

1847 (c) The Attorney General determines that conditions exist
 1848 which present a danger that electronic records will be lost or
 1849 misappropriated; or

1850 (d) The qualified custodian fails to maintain and post a
 1851 surety bond or maintain insurance as required in this section.

1852 Section 37. Section 732.526, Florida Statutes, is created
 1853 to read:

1854 732.526 Probate.—

1855 (1) An electronic will that is filed electronically with
 1856 the clerk of the court through the Florida Courts E-Filing

Page 64 of 65

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

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1857 Portal is deemed to have been deposited with the clerk as an
1858 original of the electronic will.

1859 (2) A paper copy of an electronic will which is certified
1860 by a notary public to be a true and correct copy of the
1861 electronic will may be offered for and admitted to probate and
1862 shall constitute an original of the electronic will.

1863 Section 38. Subsection (1) of section 733.201, Florida
1864 Statutes, is amended to read:

1865 733.201 Proof of wills.—

1866 (1) Self-proved wills executed in accordance with this code
1867 may be admitted to probate without further proof. However, a
1868 purportedly self-proved electronic will may be admitted to
1869 probate only in the manners prescribed in subsections (2) and
1870 (3) if the execution of such electronic will, or the
1871 acknowledgment by the testator and the affidavits of the
1872 witnesses, involves an online notarization in which there was a
1873 substantial failure to comply with the procedures set forth in
1874 s. 117.265.

1875 Section 39. Section 740.10, Florida Statutes, is created to
1876 read:

1877 740.10 Relation to wills.—No act taken pursuant to this
1878 chapter is valid to affect the obligation of a person to deposit
1879 a will of a decedent as required under s. 732.901.

1880 Section 40. Except as otherwise expressly provided in this
1881 act, and except for this section, which shall take effect upon
1882 becoming a law, this act shall take effect January 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper
Committee on Governmental Oversight and
Accountability

Subject: Committee Agenda Request

Date: April 02, 2019

I respectfully request that **Senate Bill #548**, relating to **Electronic Legal Documents**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.10.19

Meeting Date

549

Bill Number (if applicable)

Topic Remote Notaries

Amendment Barcode (if applicable)

Name Trey Goldman

Job Title Legislative Counsel

Address 200 S. MONROE ST.

Phone 850/224-1400

Street

TLH

FL

32301

Email treygo@floridarealtors.org

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing FLORIDA REALTORS

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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

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)

4/10/19

Meeting Date

SB 545 C1

Bill Number (if applicable)

Topic ELECTRONIC LEGAL DOCUMENTS

Amendment Barcode (if applicable)

Name JEFF STARKEN

Job Title CEO CAG

Address 150 E COLLEGE AVE

Phone 850 224 1060

Street

Tallahassee FL 32301

City

State

Zip

Email jstarken@gmail.com

Speaking: [] For [] Against [] Information

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

Representing QUICKEN LOANS

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4/10/19

Meeting Date

548

Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Mat Ferrer

Job Title Lobbyist

Address 201 E. Park Ave.

Phone 850-577-0444

Street

Tallahassee

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Bequest, Inc. (Willing.com)

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)

April 10, 2019
Meeting Date

SB 548
Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Scott Merritt

Job Title Executive Director

Address 249 E. Virginia St
Street

Phone 850-681-6422

Tallahassee FL 32301
City State Zip

Email Scott@FLTA.org

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.

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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)

4/10/2019

Meeting Date

548

Bill Number (if applicable)

Topic Notary Public

Amendment Barcode (if applicable)

Name Woody Simmons

Job Title Contract Lobbyist

Address 109 N. Monroe

Phone 80-294-0700

Tallahassee - FL 32301

City State Zip

Email Woodrow.Simmons2010@gmail.com

Speaking: For Against Information

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

Representing American Resort Developer Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19
Meeting Date

SB 548
Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave, Ste 304 A
Street

Phone 850-228-6387

Tallahassee FL 32301
City State Zip

Email dobarker@aarp.org

Speaking: For Against Information

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

Representing AARP 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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THE FLORIDA SENATE

APPEARANCE RECORD

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4/10/19

Meeting Date

548

Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Jared Ross

Job Title SVP Governmental Affairs

Address 3692 Coolidge Ct

Phone (850) 322-6956

Tallahassee FL 32311

Email jared.ross@lsc4.coop

Speaking: For Against Information

Waive Speaking: In Support Against

Representing FLORIDA Credit Union 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

April 10,, 2019

Meeting Date

SB 548

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Jogerst

Job Title _____

Address PO Box 11094

Phone 850.222.0191

Street

Tallahassee

FL

32302

Email brian@bhandassociates.com

City

State

Zip

Speaking: For Against Information

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

Representing Academy of Florida Elder Law Attorneys and Elder 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
APPEARANCE RECORD

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

April 10, 2019
Meeting Date

548
Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe
Street

Phone 205 9000

TLH
City State Zip

Email doug.bell@wldfirm.com

Speaking: For Against Information

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

Representing Westcor Land Title Ins Company

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)

4/10

Meeting Date

548

Bill Number (if applicable)

Topic Electronic legal Documents

Amendment Barcode (if applicable)

Name Greg Black

Job Title Lobbyist

Address 215 S. Monroe Street, Ste 601

Phone 850 509 8622

Street

THN

City

FL

State

32301

Zip

Email gblack@gunster.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against

(The Chair will read this information into the record.)

Representing Notarize, Inc.

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

548

Bill Number (if applicable)

Topic Electronic Legal Documents

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title VP of government Affairs

Address 1001 Promenade Rd

Phone _____

Street

Ball Breeze

FL

32301

City

State

Zip

Email admarco@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 602

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Perry

SUBJECT: Public Records

DATE: April 11, 2019 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Fav/CS
2.			JU	
3.			RC	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 602 amends s. 119.07, F.S., regarding public records. The bill provides that the costs of litigation will be assessed against a government agency if the agency files for declaratory judgment for a declaration that certain public records are exempt or confidential and exempt, and the court finds that the records are neither.

The bill takes effect July 1, 2019.

II. Present Situation:

Public Records Law

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁵ 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.”⁶

Section 119.011(2), F.S., broadly 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.

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Making a Public Records Request

Section 119.07, F.S., sets out an orderly process for a citizen to request a public record:

1. The requestor contacts the agency in writing or orally to request to inspect or copy certain records.
2. The custodian or designee must acknowledge the request and respond to it in good faith.
3. The agency may then provide the records subject to exemptions and confidentiality, or deny the request and state the basis for their denial.

In cases where the agency is uncertain whether the requested documents are subject to a public records exemption, the agency may:

⁴ Section 119.01(1), F.S.

⁵ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

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

- Seek voluntary mediation of the dispute using the Attorney General’s public records mediation program pursuant to s. 16.60, F.S.,⁹
- Seek an Attorney General Opinion, or
- Bring suit in their local court seeking a declaratory judgment on the uncertainty.

When a request is denied, the requestor has the option to work with the agency in an effort to refine or alter its request so that the agency might disclose the information if the request is clarified, presented differently, or modified. The requestor may also:

- File a civil lawsuit alleging that the agency’s action is a violation of public records law;
- File a complaint with their local state attorney; or
- Seek voluntary mediation of the dispute using the Attorney General’s public records mediation program pursuant to s. 16.60, F.S.¹⁰

Criminal and Noncriminal Penalties

Any public officer who *knowingly* violates the provisions governing the inspection and copying of records in his or her custody is subject to suspension and removal or impeachment and also commits a first degree misdemeanor.¹¹ Whoever violates any provision of chapter 119, F.S., commits a noncriminal infraction, punishable by a fine that does not exceed \$500.¹²

Florida Attorney General Advisory Legal Opinions

The Attorney General must respond to requests for opinions from the Governor, members of the Cabinet, the head of an executive branch department, or certain members of the Florida Legislature. They are authorized, but not required, to respond to requests for opinions from members of the Legislature, other state officers, and officers of a county, municipality, other unit of local government, or political subdivision.¹³ Private companies contracting with local governments may be subject to public records laws but may not request Attorney General Opinions.

In order to request an Attorney General Opinion, attorneys for the public entity requesting an opinion must produce a legal memorandum to supply with their request. In 2018 the Attorney General produced six formal opinions.¹⁴

Florida Attorney General Open Government Mediation

Section 16.60, F.S., creates the public records mediation program within the Office of the Attorney General. It tasks that office with employing mediators to mediate disputes involving access to public records.

⁹ The Attorney General’s Office mediates approximately 100 such cases each year, which is a free and non-binding process.

¹⁰ The Attorney General’s Office mediates approximately 100 such cases each year, which is a free and non-binding process.

¹¹ Section 119.10(1)(b), F.S. A first degree misdemeanor is punishable by a sentence of up to one year in prison, a \$1,000 fine, or both.

¹² Section 119.10(a), F.S.

¹³ Section 16.01(3), F.S.

¹⁴ The Attorney General’s Office filed 6 formal opinions in 2018, 8 in 2017, 18 in 2016, 14 in 2015, and 13 in 2014.

<http://myfloridalegal.com/ago.nsf/Opinions>

The open government mediation program is voluntary. Both sides to a dispute must agree to consider mediation if the program is to be utilized. The process is nonbinding, and decision making authority remains with the parties.¹⁵

Declaratory Judgments

When an agency is uncertain whether a document is a record that must be disclosed to the public or is otherwise protected from disclosure, the agency may seek guidance from a court by filing a complaint against the requestor for declaratory judgment.¹⁶ A declaratory judgment is a binding decision by which a court establishes the rights of the parties without enforcement. Declaratory judgments are used to resolve legal uncertainties for the parties.

Section 86.081, F.S. provides that the court may award costs as are equitable. Generally, each party bears its own costs and attorney fees. A court is required, however, to award attorney fees to the requestor if they determine that an agency unlawfully refused access to a public record.¹⁷ If a court determines that the requestor made their request or filed suit for an improper purpose (e.g. harassment), the court awards attorney fees to the agency.¹⁸

Because attorney fees are granted to a prevailing requestor, it is sometimes prudent for an agency or local government to bring suit immediately for clarification of the public records dispute in order to reduce fees at stake. Additionally, an agency facing harassing or otherwise improper requests has the option to bring suit to seek a determination that they do not need to respond to such requests.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07, F.S. to provide that the costs of litigation will be assessed against a government agency where the agency files for declaratory judgment for a declaration that certain public records are exempt or confidential and exempt, and the court finds that the records are neither.

Section 2 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shares with counties and municipalities.

¹⁵ Section 16.60, F.S.

¹⁶ See *Butler v. City of Hallandale Beach*, 68 So. 3d 278, 279 (Fla. 4th DCA 2011).

¹⁷ Section 119.12, F.S.

¹⁸ Section 119.12(3), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

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

None.

B. Private Sector Impact:

The bill may have a positive impact on the private sector because individuals and entities that request public records would not be required to pay the legal costs and fees associated with being sued by an agency if they prevail.

C. Government Sector Impact:

No agency bill analysis has been reported at this time projecting how this bill may affect an agency. However, the bill will have a negative fiscal impact on any agency who has legal fees assessed against them in law suits regarding public records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If an employee of an agency knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a second degree misdemeanor, which carries a sentence of imprisonment up to 60 days and a fine of up to \$500.¹⁹

If an employee of an agency violates public records laws, regardless of knowledge or intent, the employee has committed a noncriminal infraction, punishable by a fine not exceeding \$500.²⁰

¹⁹ Section 286.011(3)(b), F.S.

²⁰ Section 286.011(3)(a), F.S.

Reasonable attorney's fees will be assessed against an agency found to have violated public records law.²¹

VIII. Statutes Affected:

This bill substantially amends section 119.07 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on April 10, 2019:

The CS allows agencies to bring suit against public records requestors for declaratory judgment, as opposed to forbidding the practice, and further provides that the costs of litigation will be assessed against the agency if the court finds the requested records are neither exempt nor confidential.

- B. **Amendments:**

None.

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

²¹ Section 286.011(4), F.S.



227536

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (9) is added to section 119.07,
Florida Statutes, to read:

119.07 Inspection and copying of records; photographing
public records; fees; exemptions.—

(9) If an agency files an action for declaratory judgment
for a declaration that certain public records are exempt, or



227536

11 confidential and exempt, from subsection (1) and s. 24(a), Art.
12 I of the State Constitution, and the court determines that the
13 records are either not exempt or not confidential and exempt,
14 the court must assess the reasonable costs of enforcement,
15 including reasonable attorney fees, against the responsible
16 agency for the benefit of the named respondent.

17 Section 2. This act shall take effect July 1, 2019.

18

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

20 And the title is amended as follows:

21 Delete everything before the enacting clause

22 and insert:

23

A bill to be entitled

24 An act relating to public records; amending s. 119.07,
25 F.S.; requiring a court to assess the reasonable costs
26 of enforcement against an agency upon the court's
27 determination in an action for a declaratory judgment
28 that certain records are not subject to a public
29 records exemption; providing an effective date.

By Senator Perry

8-01234-19

2019602__

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A bill to be entitled

An act relating to public records; amending s. 119.07, F.S.; prohibiting an agency that receives a request to inspect or copy a record from responding to such request by filing a civil action against the individual or entity making the request; providing an effective date.

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

Section 1. Paragraph (j) is added to subsection (1) of section 119.07, Florida Statutes, to read:

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(1)

(j) An agency that receives a request to inspect or copy a record may not respond to such request by filing a civil action against the individual or entity making the request.

Section 2. This act shall take effect July 1, 2019.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: February 18, 2019

I respectfully request that **Senate Bill #602**, relating to Public Records, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping tail on the letter "y".

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

SB 602

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Demetrius Minor

Job Title Dir of Coalitions

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 Americans For Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 784

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Gruters and Broxson

SUBJECT: Retirement

DATE: April 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.	_____	_____	AEG	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 784 amends s. 121.101(4), F.S., to provide a minimum annual 2 percent cost-of-living adjustment (COLA) for a Florida Retirement System (FRS) Pension Plan retiree who was a member of the Special Risk Class on June 30, 2011, and on the date of retirement. This minimum COLA for eligible retirees will be applied prospectively for retirement payments beginning on or after July 1, 2019.

An actuarial study has been completed to determine the amount of additional funding necessary to meet the requirements under Article X, Section 14 of the State Constitution and Part VII, chapter 112, F.S., that retirement benefit enhancements are funded on a concurrent and actuarially sound basis. Based on an actuarial study¹ of the impact of similar changes with a 2 percent minimum COLA, the annual retirement contributions system-wide will need to be increased by \$113.7 million² to meet the concurrent funding requirement.

The bill provides a determination that the bill fulfills an important state interest.

The bill takes effect upon becoming a law.

¹ Letter to Ms. Shirley Beauford, Re: Special Actuarial Study of Prospective Minimum COLA Rate for Tier 1 Special Risk Class Members and Beneficiaries, dated April 2, 2019 (on file with the Senate Committee on Governmental Oversight and Accountability).

² *Id.* at Table 2-1.

II. Present Situation:

The Florida Retirement System

The FRS was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.³ The FRS is a contributory system, with active members contributing three percent of their salaries.⁴

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2018, the FRS had 643,333 active members, 415,800 annuitants, 16,032 disabled retirees, and 33,432 active participants of the Deferred Retirement Option Program (DROP).⁵ As of June 30, 2018, the FRS consisted of 1,002 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 173 cities and 267 special districts that have elected to join the system.⁶

The membership of the FRS is divided into five membership classes:

- The Regular Class⁷ consists of 551,997 active members and 7,349 in renewed membership;
- The Special Risk Class⁸ includes 72,642 active members and 976 in renewed membership;
- The Special Risk Administrative Support Class⁹ has 87 active members;
- The Elected Officers' Class¹⁰ has 2,050 active members and 120 in renewed membership; and
- The Senior Management Service Class¹¹ has 7,881 active members and 207 in renewed membership.¹²

³ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 35. Available online at: https://www.rol.frs.state.fl.us/forms/2017-18_CAFR.pdf. (Last visited January 28, 2019.)

⁴ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

⁵ Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 160.

⁶ *Id.*, at 196.

⁷ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁸ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁹ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

¹⁰ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

¹¹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹² All figures are from Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 163.

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹³ Investment management is handled by the State Board of Administration.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁴ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.¹⁵ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.¹⁶ For most current members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.¹⁷ For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.¹⁸ Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.¹⁹

The Special Risk Class of the FRS consists of state and local government employees who meet the criteria for special risk membership. The class covers persons employed in law enforcement, firefighting, criminal detention, and emergency, correctional and forensic medical care who meet statutory criteria for membership as set forth in section 121.0515, F.S.

Under current law, the COLA is 3 percent for retirees and beneficiaries with an effective retirement date prior to July 1, 2011. Retirements effective on and after July 1, 2011, receive an individually determined COLA calculated as 3 percent multiplied by the quotient of the sum of the member's service credit earned prior to July 1, 2011, divided by the sum of the member's total service credit earned. Pension Plan members initially enrolled on or after July 1, 2011, have a post-retirement COLA equal to zero.

When the FRS was created COLA was a variable tied to the consumer price index with a 3 percent cap each year. There have been a period of special adjustments without impacting the increase in general for all FRS retirees and surviving beneficiaries, until the 1987 Florida Legislature changed the COLA to a fixed 3 percent of the June benefit unless the retiree was not

¹³ Section 121.025, F.S.

¹⁴ Section 121.021(45)(a), F.S.

¹⁵ Section 121.021(45)(b), F.S.

¹⁶ Section 121.091, F.S.

¹⁷ Section 121.021(29)(a)1., F.S.

¹⁸ Section 121.021(29)(b)1., F.S.

¹⁹ Sections 121.021(29)(a)2. and (b)2., F.S.

retired for at least 12 calendar months in which case the first COLA was a prorated portion of 3 percent based on the number of months retired prior to the first July after retirement.

Funding for Benefit Enhancements

Article X, Section 14, of the State Constitution

Since 1976, the State Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes. – A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Part VII of Chapter 112, F.S.

Article X, Section 14, of the State Constitution is implemented by statute under part VII of chapter 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” which establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The key provision of this act states the legislative intent to “... prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”

III. Effect of Proposed Changes:

Section 1 amends s. 121.101, F.S., to provide a minimum annual 2 percent COLA for a FRS Pension Plan retiree who was a member of the Special Risk Class on June 30, 2011, and on the date of retirement. This minimum COLA for eligible retirees and their beneficiaries is applied prospectively for retirement payments beginning on or after July 1, 2019.

Section 2 amends s. 121.73, F.S., to increase the amount of the investment plan contribution allocated to fund the disability benefit by 2 basis points. This section takes effect July 1, 2019.

Section 3 amends s. 121.735, F.S., to increase the amount of the investment plan contribution allocated to fund the line-of-duty death benefit by 2 basis points. This section takes effect July 1, 2019.

Section 4 increases the employer paid rates for the FRS by 2.33 percentage points for the Special Risk Class and 0.01 percentage point for DROP. These amounts are addition to any other rates effective July 1, 2019.

Section 5 provides a determination that the bill fulfills an important state interest.

Section 6 provides that, except as otherwise provided, the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the expenditure is required to comply with a law that applies to all persons similarly situated....”

This bill includes legislative findings that the bill fulfills important state interests, and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, community colleges, counties, and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Since 1976, Article X, Section 14, of the State Constitution has required that benefit improvements under public pension plans in the State of Florida must be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes. – A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study has been completed to comply with Article X, section 14 of the State Constitution, and the bill provides the adjustments to contribution rates necessary to fund the cost of the retirement benefit enhancements.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Based on an actuarial study²⁰ of the impact of similar changes with a 2 percent minimum COLA, the annual retirement contributions system-wide will be increased by \$113.7 million²¹ to meet the concurrent funding requirement beginning July 1, 2019.

The Department of Management Services will incur some costs to modify the benefits calculation programs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.101 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on April 10, 2019:

The committee substitute limits the application of the 2 percent minimum COLA to those retirees who were members of the Special Risk Class on June 30, 2011, and on the date of retirement. The committee substitute increases the employer-paid contributions to the FRS to fund this enhanced benefit. A portion of these employer-paid contributions will be allocated to fund disability and line-of-duty death benefits provided under the investment plan.

²⁰ Letter to Ms. Shirley Beauford, *supra* note 1.

²¹ *Id.* at Table 2-1 (page (2 of 2)).

B. Amendments:

None.

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



783474

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) of section 121.101, Florida
Statutes, is amended to read:

121.101 Cost-of-living adjustment of benefits.—

(4) For members whose effective retirement date is on or
after July 1, 2011, the benefit of each retiree and annuitant
shall be adjusted annually on July 1 as follows:



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11 (a) For those retirees and annuitants who have never
12 received a cost-of-living adjustment under this subsection, the
13 amount of the monthly benefit payable for the 12-month period
14 commencing on the adjustment date shall be the amount of the
15 member's initial benefit plus an amount equal to a percentage of
16 the member's initial benefit. This percentage is derived by
17 dividing the number of months the member has received an initial
18 benefit by 12, and multiplying the result by the factor
19 calculated pursuant to paragraph (c).

20 (b) For those retirees and annuitants who have received a
21 cost-of-living adjustment under this subsection, the adjusted
22 monthly benefit shall be the amount of the monthly benefit being
23 received on June 30 immediately preceding the adjustment date
24 plus an amount determined by multiplying the benefit by the
25 factor calculated pursuant to paragraph (c).

26 (c) The department shall calculate a cost-of-living factor
27 for each retiree and beneficiary retiring on or after July 1,
28 2011. This factor shall equal the product of 3 percent
29 multiplied by the quotient of the sum of the member's service
30 credit earned for service before July 1, 2011, divided by the
31 sum of the member's total service credit earned. However,
32 beginning with cost-of-living-adjustments effective July 1,
33 2019, for a retiree who was a member of the Special Risk Class
34 on June 30, 2011, and is a member of the Special Risk Class on
35 the effective date of retirement, and his or her beneficiary,
36 retiring on or after July 1, 2011, with service credit earned
37 before July 1, 2011, the factor calculated pursuant to this
38 paragraph may not be a product of less than 2.

39 Section 2. Effective July 1, 2019, subsection (3) of



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40 section 121.73, Florida Statutes, is amended to read:

41 121.73 Allocations for member disability coverage;
42 percentage amounts.—

43 (3) Effective July 1, 2002, allocations from the Florida
44 Retirement System Contributions Clearing Trust Fund to provide
45 disability coverage for members in the investment plan, and to
46 offset the costs of administering said coverage, are as follows:

47
48

Membership Class	Percentage of Gross Compensation
------------------	-------------------------------------

49

Regular Class	0.25%
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50

51

Special Risk Class	<u>1.35%</u> 1.33%
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52

Special Risk

Administrative Support Class	0.45%
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53

Elected Officers' Class—

Legislators, Governor,

Lt. Governor, Cabinet

Officers,

State Attorneys, Public

Defenders	0.41%
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54

Elected Officers' Class—	0.73%
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783474

Justices, Judges

55

Elected Officers' Class-

County Elected Officers 0.41%

56

Senior Management Service

Class 0.26%

57

58

59

Section 3. Effective July 1, 2019, subsection (3) of section 121.735, Florida Statutes, is amended to read:

60

61

121.735 Allocations for member line-of-duty death benefits; percentage amounts.-

62

63

(3) Effective July 1, 2017, allocations from the Florida Retirement System Contributions Clearing Trust Fund to provide line-of-duty death benefits for members in the investment plan and to offset the costs of administering said coverage, are as follows:

64

65

66

67

68

Membership Class	Percentage of Gross Compensation
------------------	----------------------------------

69

70

Regular Class	0.05%
---------------	-------

71

Special Risk Class	<u>1.17%</u> 1.15%
--------------------	-------------------------------

72

Special Risk Administrative	0.03%
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783474

73	Support Class	
	Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	0.15%
74		
	Elected Officers' Class— Justices, Judges	0.09%
75		
	Elected Officers' Class— County Elected Officers	0.20%
76		
	Senior Management Service Class	0.05%

77
78
79 Section 4. (1) In order to fund the benefit changes
80 provided in this act, the required employer contribution rates
81 for members of the Florida Retirement System are increased as
82 follows:

83 (a) By 0.01 percentage point for the rate established in s.
84 121.71(4), Florida Statutes, for the Special Risk Class.

85 (b) By 2.32 percentage points for the rate established in
86 s. 121.71(5), Florida Statutes, for the Special Risk Class.

87 (c) By 0.01 percentage point for the rate established in s.
88 121.71(5), Florida Statutes, for DROP.



89 (2) The adjustments provided in subsection (1) are in
90 addition to any other changes to such contribution rates which
91 may be enacted into law to take effect on July 1, 2019. The
92 Division of Law Revision is directed to adjust accordingly the
93 contribution rates provided in s. 121.71, Florida Statutes.

94 Section 5. The Legislature finds that a proper and
95 legitimate state purpose is served when employees and retirees
96 of the state and its political subdivisions, and the dependents,
97 survivors, and beneficiaries of such employees and retirees, are
98 extended the basis protections afforded by governmental
99 retirement systems. These persons must be provided benefits that
100 are fair and adequate and that are managed, administered, and
101 funded in an actuarially sound manner, as required by s. 14,
102 Article X of the State Constitution and part VII of chapter 112,
103 Florida Statutes. Therefore, the Legislature determines and
104 declares that this act fulfills an important state interest.

105 Section 6. Except as otherwise provided, this act shall
106 take effect upon becoming a law.

107
108 ===== T I T L E A M E N D M E N T =====

109 And the title is amended as follows:

110 Delete everything before the enacting clause
111 and insert:

112 A bill to be entitled
113 An act relating to retirement; amending s. 121.101,
114 F.S.; specifying the minimum amount of the factor used
115 to calculate the cost-of-living adjustment for
116 benefits for certain retirees and beneficiaries of the
117 Florida Retirement System; amending s. 121.73, F.S.;



783474

118 adjusting the allocation of funds to provide
119 disability coverage to members of the investment plan
120 of the Florida Retirement System; amending s. 121.735,
121 F.S.; adjusting the allocation of funds to provide
122 line-of-duty death benefits for members in the
123 investment plan of the Florida Retirement System;
124 directing the Division of Law Revision to adjust the
125 employer contribution rates for the Special Risk Class
126 and DROP in the Florida Retirement System; providing a
127 declaration of important state interest; providing
128 effective dates.

By Senator Gruters

23-00497A-19

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A bill to be entitled

An act relating to retirement; amending s. 121.101, F.S.; specifying the minimum amount of the factor used to calculate the cost-of-living adjustment of benefits for certain retirees and beneficiaries of the Florida Retirement System; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (4) of section 121.101, Florida Statutes, is amended to read:

121.101 Cost-of-living adjustment of benefits.—

(4) For members whose effective retirement date is on or after July 1, 2011, the benefit of each retiree and annuitant shall be adjusted annually on July 1 as follows:

(a) For those retirees and annuitants who have never received a cost-of-living adjustment under this subsection, the amount of the monthly benefit payable for the 12-month period commencing on the adjustment date shall be the amount of the member's initial benefit plus an amount equal to a percentage of the member's initial benefit. This percentage is derived by dividing the number of months the member has received an initial benefit by 12, and multiplying the result by the factor calculated pursuant to paragraph (c).

(b) For those retirees and annuitants who have received a cost-of-living adjustment under this subsection, the adjusted monthly benefit shall be the amount of the monthly benefit being received on June 30 immediately preceding the adjustment date

Page 1 of 2

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23-00497A-19

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plus an amount determined by multiplying the benefit by the factor calculated pursuant to paragraph (c).

(c) The department shall calculate a cost-of-living factor for each retiree and beneficiary retiring on or after July 1, 2011. This factor shall equal the product of 3 percent multiplied by the quotient of the sum of the member's service credit earned for service before July 1, 2011, divided by the sum of the member's total service credit earned. However, beginning July 1, 2019, for a retiree who was a member of the Special Risk Class, and his or her beneficiary, retiring on or after July 1, 2011, with service credit earned before July 1, 2011, the factor calculated pursuant to this paragraph may not be a product of less than 2.

Section 2. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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



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April 2, 2019

Via E-Mail

Ms. Shirley Beauford
 Acting State Retirement Director
 Florida Department of Management Services, Division of Retirement

Re: Special Actuarial Study of Prospective Minimum COLA Rate for Tier 1 Special Risk Class Members and Beneficiaries

Dear Director Beauford:

In response to a Senate request dated March 7 and as outlined in our project scope letter dated March 13, this letter provides actuarial analysis on two variations of a concept that would prospectively set a minimum COLA rate for qualifying Special Risk Class retirees and their beneficiaries, effective with the July 2019 Cost-of-Living Adjustments. One variation of the concept would provide a minimum COLA rate of 2.0%, and the second variation would provide a minimum COLA rate of 1.5%.

Executive Summary

The estimated impact of the prospective minimum COLA rates on the blended proposed 2019-2020 statutory contribution rates is shown in the table below. Due to the cost allocation method adopted by the 2018 FRS Actuarial Assumption Conference, the concept would not impact the FRS Pension Plan Normal Cost rate. However, it would increase the allocations for member in-line-of-duty death benefits and disability coverage for FRS Investment Plan members in the Special Risk Class, which would result in a change to the blended proposed statutory 2019-2020 employer normal cost rate. The concept would also affect some DROP participants. The DROP rate impact is below the 0.005% of payroll rounding threshold for the 1.5% variation.

Blended Proposed 2019-2020 Statutory Contribution Rate Change Due to Increase in:				
	2.0% Minimum COLA		1.5% Minimum COLA	
	Special Risk Class	Members in DROP	Special Risk Class	Members in DROP
Employer Normal Cost Contribution Rate	0.01%	0.00%	0.01%	0.00%
Employer UAL Contribution Rate	<u>2.32%</u>	<u>0.01%</u>	<u>1.20%</u>	<u>0.00%</u>
Total Employer Contribution Rate	2.33%	0.01%	1.21%	0.00%

This work product was prepared solely for the Florida Department of Management Services for the purposes stated herein, and may not be appropriate to use for other purposes. Milliman does not intend to benefit and assumes no duty or liability to other parties who receive this work. Milliman recommends that third parties be aided by their own actuary or other qualified professional when reviewing the Milliman work product.

The table above shows the increase in blended proposed 2019-2020 statutory contribution rates, which would be assessed on both FRS Pension Plan and FRS Investment Plan payroll. The increase in the blended Employer Normal Cost Contribution Rate is driven by an increase to the cost allocations for member in-line-of-duty death benefits and disability coverage for FRS Investment Plan members in the Special Risk Class. Those allocations on FRS Investment Plan payroll are shown in the table below.

<u>Increase in 2019-2020 Allocation on FRS Investment Special Risk Payroll:</u>		
	2.0% Minimum COLA	1.5% Minimum COLA
ILOD Death Coverage	0.02%	0.01%
ILOD Disability Coverage	<u>0.02%</u>	<u>0.01%</u>
Total	0.04% ¹	0.02% ¹

¹For both versions, the blended rate impact is 0.01% of Special Risk payroll, as shown on page 1

Background

Under current statute, annual Cost-of-Living Adjustments (COLAs) to FRS pension plan benefits are defined by a formula equal to 3% multiplied by a fraction, the numerator of which is service through June 30, 2011 and the denominator of which is total service at retirement. Under the formula currently in effect, Tier 2 members (those initially enrolled on or after July 1, 2011) receive 0% COLA; Tier 1 members with service subsequent to June 30, 2011 receive a COLA rate less than 3%. For Tier 1 members, the effective COLA rate decreases as service subsequent to June 30, 2011 increases.

Concept for Analysis

Current and future retirees who were members of the Special Risk Class on June 30, 2011, and retire on or after July 1, 2011 as members of the Special Risk Class with service credit earned before July 1, 2011 (Tier 1 members), and their surviving beneficiaries, would qualify for the concept's minimum COLA rate, first effective July 2019. The study analyzes the estimated cost of two distinct versions of the concept:

- Version 1: a 2.0% minimum COLA
- Version 2: a 1.5% minimum COLA

The analyzed concept would affect Tier 1 Special Risk Class members noted above, and their beneficiaries. (Please note our understanding is that at the time of the request for this study, the current draft bill language for eligibility differs from the eligibility criteria requested for study by the Florida Senate. This study is based on the concept as articulated by the Senate's request letter.) Affected members would benefit from the concept if their COLA rate as calculated under

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the current formula is less than 2.0% (Version 1), or 1.5% (Version 2). The minimum COLA concept would also apply to disability and in-line-of-duty death benefits provided on behalf of former FRS Investment Plan members who have elected to receive FRS Pension Plan benefits in lieu of their IP account balances. (121.591(2) F.S. and 121.591(4) F.S.) The concept will not affect Tier 2 members, nor will it affect Tier 1 Special Risk Class members who retired prior to July 1, 2011. As modeled per the Florida Senate request, the concept will also not affect members who were not members of the Special Risk Class on June 30, 2011.

Benefits under the concept would be prospective starting on July 2019 for eligible members and beneficiaries. Our understanding is that the concept does not include an increase to or retroactive payment for pre-2019 COLAs that have actually been received by retirees or annuitants in accordance with 121.101(4), F.S. Future COLAs beginning July 2019 will be compared to 2.0% (Version 1) or 1.5% (Version 2) for people retired on or after July 1, 2011.

Summary of Results

The projected impact of each version of the concept was assessed on a member-by-member basis for each eligible member. The likelihood that an individual member is affected by the concept varies from member to member and depends not only on the version of the concept, but also on the member's date of separation from service or timing of entry into DROP. The projected timing for service separation or timing of DROP entry for current active members was modeled by using the actuarial valuation assumptions for the Special Risk Membership Class.

Applying the actuarial cost allocation method that is currently used for determining actuarially calculated contribution rates, the Actuarial Liability would be increased by this concept. In addition, due to its impact on the cost allocations for member in-line-of-duty death benefits and disability coverage for FRS Investment Plan members in the Special Risk Class, the blended proposed statutory 2019-2020 employer normal cost rate is also affected by this concept.

Our analysis quantifies the estimated impact of the concept when compared to the current benefit structure for the Special Risk Class FRS Pension Plan participants:

- Under Version 1 of the concept, both FRS Pension Plan Actuarial Liability and Unfunded Actuarial Liability (UAL) for Special Risk Membership Class would increase by \$1.83 billion. In addition, based on Version 1's impact on members currently participating in DROP, the Unfunded Actuarial Liability for DROP would increase by \$1.8 million. The impact on the proposed blended statutory 2019-2020 Contribution Rates is as shown on the middle two columns in the table on page one of this analysis, and in Table 2-1 attached.
- Under Version 2 of the concept, both FRS Pension Plan Actuarial Liability and Unfunded Actuarial Liability (UAL) for Special Risk Membership Class would increase by \$946

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million. In addition, based on Version 2's impact on members currently participating in DROP, the Unfunded Actuarial Liability for DROP would increase by \$0.2 million. The impact on the proposed blended statutory 2019-2020 UAL Contribution Rates is as shown on the final two columns in the table on page one of this analysis, and in Table 2-2 attached.

Tables 1-1 PP, 1-2 PP, 1-1 IP, 1-2 IP, 2-1, and 2-2 summarize the financial impact of this concept. The tables with "-1" are for Version 1 and the tables with "-2" are for Version 2.

Tables 1-1 PP and 1-2 PP show the impact of the change on the FRS Pension Plan's actuarial valuation results for Special Risk Class members prior to blending with FRS Investment Plan cost levels to create 2019-2020 proposed blended statutory employer contribution rates. Section A of the table shows the estimated increase to the actuarially calculated UAL Cost rate, and the absence of impact from the concept on the 2019-2020 actuarially calculated Employer Normal Cost Rate. Section B of the table shows the estimated increase to the FRS Pension Plan's Actuarial Liability due to the effects of the concept's increase in the projected value of projected benefits, calculated based on the methodology used to calculate Actuarial Liability for FRS Pension Plan funding calculations as approved by the 2018 FRS Actuarial Assumption Conference.

Tables 1-1 IP and 1-2 IP show the actuarially calculated FRS Investment Plan employer contribution rates due to the concept. The FRS Investment Plan rates shown in this table are prior to blending with FRS Pension Plan contribution rates to create 2019-2020 proposed blended statutory employer contribution rates.

Tables 2-1 and 2-2 show the estimated impact of the change in projected COLA for eligible members under the concept on the proposed blended statutory rates for Special Risk Class and DROP members for the 2019-2020 plan year. Section A of the table develops the 2019-2020 proposed blended statutory employer normal cost contribution rate reflecting the expected impact of the concept, based on the concept's increased cost allocations for member in-line-of-duty death benefits and disability coverage for FRS Investment Plan members in the Special Risk Class. The FRS Pension Plan and FRS Investment Plan rates shown are based on the results of this study's analysis.

Section B of Tables 2-1 and 2-2 develop the proposed blended statutory employer UAL rate as the total employer UAL Cost derived from the FRS Pension Plan divided by the total projected payroll of the FRS Pension Plan and FRS Investment Plan for Special Risk Class members. Section C of each table compares the proposed blended statutory rates reflecting the impact of the concept to those developed in the 2019-2020 Blended Rate Study, which was developed as part of the July 1, 2018 Actuarial Valuation. Section D of each table translates the estimated change in 2019-2020 proposed blended statutory rates to an estimated increase in employer contributions during the 2019-2020 plan year.

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The payroll for some employee groups is subject to only the Blended UAL Contribution Rate component of the overall employer contribution rate (e.g., participants in the SUSORP, SMSOAP, and SCCORP, and reemployed members not eligible for renewed membership). The payroll for those employee groups is included in the calculation of the proposed blended statutory UAL Contribution Rate, but is excluded from the calculation of the proposed blended statutory Normal Cost Contribution Rate.

The contribution rates shown in Tables 2-1 and 2-2 exclude the 0.06% contribution rate for FRS Investment Plan administration and education (applied to all membership classes except DROP) and the 1.66% contribution rate for the Health Insurance Subsidy (HIS) program, which is charged to all FRS Pension Plan and FRS Investment Plan payroll.

Analysis-Specific Assumptions and Methodology

To allow us to conduct this study, the Division of Retirement provided us a data file identifying Tier 1 Special Risk Class members who would be eligible via status as Special Risk Class members on June 30, 2011.

The assessment of the Section 121.73 and 121.735 allocations for FRS Investment Plan member disability coverage and in-line-of-duty-death benefits was based on FRS Investment Plan (IP) member census and payroll data as of July 1, 2018 and IP account balance information as of June 30, 2018. Individual member account balances were projected forward to the assumed date of death or disability assuming 5.75% annual return plus annual contributions to member accounts equal to 14.00% of gross compensation for Special Risk Class members, as specified in Section 121.72. FRS Investment Plan members were assumed to receive salary increases and leave active employment (due to death, disability, termination or retirement) consistent with the assumptions applied to a similarly situated FRS Pension Plan member.

Other Assumptions and Methods

The calculations are based on census and payroll data as of July 1, 2018 provided to us by the Division of Retirement for development of the FRS Actuarial Valuation as of July 1, 2018 and the FRS 2019-2020 Blended Rate Study. We have not audited or verified this data and other information. If the underlying data or information is inaccurate or incomplete, the results of our analysis may likewise be inaccurate or incomplete. The Division of Retirement provided an additional census file used to identify which members would be eligible for the minimum COLA concept via status as Special Risk Class members on June 30, 2011.

We performed a limited review of the data used directly in our analysis for reasonableness and consistency and have not found material defects in the data. If there are material defects in the data, it is possible that they would be uncovered by a detailed, systematic review and comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent. Such a review was beyond the scope of our assignment.

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Except where otherwise noted in this letter, this analysis is based on the methods and assumptions as stated in the FRS Actuarial Valuation as of July 1, 2018 report. The data was based on the July 1, 2018 FRS actuarial valuation database. The results of our study depend on future experience conforming to those actuarial assumptions discussed earlier in this letter. Future actuarial measurements may differ significantly from the current measurements presented in this analysis due to many factors, including: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period) and changes in plan provisions or applicable law. Due to the limited scope of our assignment, we did not perform an analysis of the potential range of future measurements. In addition, the cost of the proposed change will depend on the actual legislation.

Milliman's work product was prepared exclusively for the internal business use of Florida Department of Management Services, Division of Retirement. It is a complex technical analysis that assumes a high level of knowledge concerning the Florida Retirement System's operations, and uses Division data, which Milliman has not audited. To the extent that Milliman's work is not subject to disclosure under applicable public record laws, Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit or create a legal duty to any third party recipient of its work product. Milliman's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exceptions:

- a. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to the System's professional service advisors who are subject to a duty of confidentiality and who agree to not use Milliman's work for any purpose other than to benefit the System.
- b. The Division of Retirement may provide a copy of Milliman's work, in its entirety, to other governmental entities, as required by law.

No third party recipient of Milliman's work product should rely upon Milliman's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

The consultants who worked on this assignment are pension actuaries. Milliman's advice is not intended to be a substitute for qualified legal or accounting counsel.

Milliman consultants are independent of the plan sponsor. We are not aware of any relationship that would impair the objectivity of our work.

The undersigned is a consulting actuary for Milliman, Inc., a member of the American Academy of Actuaries, and meets their Qualification Standards to render the actuarial opinion contained herein.

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Ms. Shirley Beauford
April 2, 2019
Page 7

Please let us know of any questions or comments regarding this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Larrabee', with a long horizontal flourish extending to the right.

Matt Larrabee, FSA, EA, MAAA
Principal & Consulting Actuary

cc: Garry Green (Division of Retirement), Daniel Wade (Milliman), Kathryn Hunter (Milliman)

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FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Effect on July 1, 2018 Defined Benefit FRS Pension Plan Actuarial Valuation Results
Impact to FRS Pension Plan of Proposal for Prospective 2.00% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab Local		Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Actuarially Calculated Pension Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)										
1. Actuarially Calculated Pension Plan Employer Contribution Rates Developed in July 1, 2018 Valuation ¹										
a. Employer Normal Cost	3.09%	12.36%	3.26%	12.46%	6.61%	8.63%	4.47%	4.68%	4.68%	4.68%
b. UAL Cost	<u>4.30%</u>	<u>13.17%</u>	<u>40.04%</u>	<u>31.59%</u>	<u>58.20%</u>	<u>53.62%</u>	<u>25.75%</u>	<u>6.21%</u>	<u>8.24%</u>	<u>6.36%</u>
c. Total Employer Cost	7.39%	25.53%	43.30%	44.05%	64.81%	62.25%	30.22%	10.89%	12.92%	11.04%
2. Actuarially Calculated Pension Plan Employer Contribution Rates Reflecting Proposed Change										
a. Employer Normal Cost	3.09%	12.36%	3.26%	12.46%	6.61%	8.63%	4.47%	4.68%	4.68%	4.68%
b. UAL Cost	<u>4.30%</u>	<u>15.92%</u>	<u>40.04%</u>	<u>31.59%</u>	<u>58.20%</u>	<u>53.62%</u>	<u>25.75%</u>	<u>6.61%</u>	<u>8.25%</u>	<u>6.73%</u>
c. Total Employer Cost	7.39%	28.28%	43.30%	44.05%	64.81%	62.25%	30.22%	11.29%	12.93%	11.41%
3. Change in Actuarially Calculated Pension Plan Employer Contribution Rates due to Proposed Change										
a. Normal Cost	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
b. UAL Cost	<u>0.00%</u>	<u>2.75%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.40%</u>	<u>0.01%</u>	<u>0.37%</u>
c. Total Cost	0.00%	2.75%	0.00%	0.00%	0.00%	0.00%	0.00%	0.40%	0.01%	0.37%
B. FRS Pension Plan Unfunded Actuarial Liability (UAL) and Present Value of Projected Benefits (Dollars in Thousands)										
1. July 1, 2018 Actuarial Valuation UAL ²	\$15,987,344	\$8,076,264	\$18,652	\$521,161	\$66,212	\$390,166	\$2,109,948	\$27,169,747	\$2,675,982	\$29,845,729
2. July 1, 2018 UAL Reflecting Proposed Change	<u>15,987,344</u>	<u>9,906,069</u>	<u>18,652</u>	<u>521,161</u>	<u>66,212</u>	<u>390,166</u>	<u>2,109,948</u>	<u>28,999,552</u>	<u>2,677,830</u>	<u>31,677,382</u>
3. Increase in UAL due to Proposed Change	\$0	\$1,829,805	\$0	\$0	\$0	\$0	\$0	\$1,829,805	\$1,848	\$1,831,653
4. Increase in Present Value of Future Normal Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Increase in Present Value of Projected Benefits (3. + 4.)	\$0	\$1,829,805	\$0	\$0	\$0	\$0	\$0	\$1,829,805	\$1,848	\$1,831,653

¹ As reported in the July 1, 2018 valuation - Table 4-11

² As reported in the July 1, 2018 valuation - Table 3-2

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Impact to FRS Investment Plan of Proposal for Prospective 2.00% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite
A. Actuarially Calculated Investment Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)								
1. Employer Rates effective since July 1, 2012 (Sec 121.72-73; 121.735) ¹								
a. Employer Cost (excludes member contributions)	3.60%	13.48%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%
b. UAL Cost	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
c. Total Employer Cost	3.60%	13.48%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%
2. Actuarially Calculated Investment Plan Employer Contribution Rates Reflecting Proposed Change								
a. Employer Cost (excludes member contributions)	3.60%	13.52%	5.43%	11.05%	6.94%	8.95%	4.98%	4.94%
b. UAL Cost	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
c. Total Employer Cost	3.60%	13.52%	5.43%	11.05%	6.94%	8.95%	4.98%	4.94%
3. Change in Actuarially Calculated Investment Plan Employer Contribution Rates due to Proposed Change ²								
a. Employer Cost	0.00%	0.04%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%
c. UAL Cost	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
d. Total Employer Cost	0.00%	0.04%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%

¹ As reported in the 2019-2020 Blended Rates Study dated December 4, 2018.

² The 0.04% contribution rate increase can be split in to a 0.02% increase due to death and a 0.02% increase due to disability.

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Effect on July 1, 2018 Defined Benefit FRS Pension Plan Actuarial Valuation Results
Impact to FRS Pension Plan of Proposal for Prospective 1.50% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----		Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
					Leg-Atty-Cab	Local				
A. Actuarially Calculated Pension Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)										
1. Actuarially Calculated Pension Plan Employer Contribution Rates Developed in July 1, 2018 Valuation ¹										
a. Employer Normal Cost	3.09%	12.36%	3.26%	12.46%	6.61%	8.63%	4.47%	4.68%	4.68%	4.68%
b. UAL Cost	<u>4.30%</u>	<u>13.17%</u>	<u>40.04%</u>	<u>31.59%</u>	<u>58.20%</u>	<u>53.62%</u>	<u>25.75%</u>	<u>6.21%</u>	<u>8.24%</u>	<u>6.36%</u>
c. Total Employer Cost	7.39%	25.53%	43.30%	44.05%	64.81%	62.25%	30.22%	10.89%	12.92%	11.04%
2. Actuarially Calculated Pension Plan Employer Contribution Rates Reflecting Proposed Change										
a. Employer Normal Cost	3.09%	12.36%	3.26%	12.46%	6.61%	8.63%	4.47%	4.68%	4.68%	4.68%
b. UAL Cost	<u>4.30%</u>	<u>14.59%</u>	<u>40.04%</u>	<u>31.59%</u>	<u>58.20%</u>	<u>53.62%</u>	<u>25.75%</u>	<u>6.41%</u>	<u>8.24%</u>	<u>6.55%</u>
c. Total Employer Cost	7.39%	26.95%	43.30%	44.05%	64.81%	62.25%	30.22%	11.09%	12.92%	11.23%
3. Change in Actuarially Calculated Pension Plan Employer Contribution Rates due to Proposed Change										
a. Normal Cost	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
b. UAL Cost	<u>0.00%</u>	<u>1.42%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.20%</u>	<u>0.00%</u>	<u>0.19%</u>
c. Total Cost	0.00%	1.42%	0.00%	0.00%	0.00%	0.00%	0.00%	0.20%	0.00%	0.19%
B. FRS Pension Plan Unfunded Actuarial Liability (UAL) and Present Value of Projected Benefits (Dollars in Thousands)										
1. July 1, 2018 Actuarial Valuation UAL ²	\$15,987,344	\$8,076,264	\$18,652	\$521,161	\$66,212	\$390,166	\$2,109,948	\$27,169,747	\$2,675,982	\$29,845,729
2. July 1, 2018 UAL Reflecting Proposed Change	<u>15,987,344</u>	<u>9,022,157</u>	<u>18,652</u>	<u>521,161</u>	<u>66,212</u>	<u>390,166</u>	<u>2,109,948</u>	<u>28,115,640</u>	<u>2,676,141</u>	<u>30,791,781</u>
3. Increase in UAL due to Proposed Change	\$0	\$945,893	\$0	\$0	\$0	\$0	\$0	\$945,893	\$159	\$946,052
4. Increase in Present Value of Future Normal Costs	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
5. Increase in Present Value of Projected Benefits (3. + 4.)	\$0	\$945,893	\$0	\$0	\$0	\$0	\$0	\$945,893	\$159	\$946,052

¹ As reported in the July 1, 2018 valuation - Table 4-11

² As reported in the July 1, 2018 valuation - Table 3-2

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Impact to FRS Investment Plan of Proposal for Prospective 1.50% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used
(Dollars in Thousands)

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite
A. Actuarially Calculated Investment Plan Employer Contribution Rates (prior to blending to create proposed blended statutory contribution rates)								
1. Employer Rates effective since July 1, 2012 (Sec 121.72-73; 121.735) ¹								
a. Employer Cost (excludes member contributions)	3.60%	13.48%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%
b. UAL Cost	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
c. Total Employer Cost	3.60%	13.48%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%
2. Actuarially Calculated Investment Plan Employer Contribution Rates Reflecting Proposed Change								
a. Employer Cost (excludes member contributions)	3.60%	13.50%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%
b. UAL Cost	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
c. Total Employer Cost	3.60%	13.50%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%
3. Change in Actuarially Calculated Investment Plan Employer Contribution Rates due to Proposed Change ²								
a. Employer Cost	0.00%	0.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
c. UAL Cost	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>
d. Total Employer Cost	0.00%	0.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

¹ As reported in the 2019-2020 Blended Rates Study dated December 4, 2018.

² The 0.02% contribution rate increase can be split in to a 0.01% increase due to death and a 0.01% increase due to disability.

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Effect on Proposed Blended Statutory Employer Contribution Rates for 2019-2020 Plan Year
Impact to FRS Pension Plan and FRS Investment Plan of Proposal for Prospective 2.00% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Assumes 3.25% Annual Growth in Total Payroll

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Proposed Blended Statutory Normal Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan Normal Cost										
a. Employer Pension Plan Normal Cost Rate	3.09%	12.36%	3.26%	12.46%	6.61%	8.63%	4.47%	4.68%	4.68%	4.68%
b. Projected Pension Plan Normal Cost Payroll	\$20,408,366	\$4,108,361	\$3,480	\$112,211	\$7,150	\$45,814	\$551,964	\$25,237,346	\$2,295,800	\$27,533,146
c. Total Employer Pension Plan Normal Cost [(1a) x (1b)]	\$630,619	\$507,793	\$113	\$13,981	\$473	\$3,954	\$24,673	\$1,181,606	\$107,443	\$1,289,049
2. Investment Plan Employer Cost										
a. Employer Rates effective July 1, 2018 (Sec 121.72-73; 121.735)	3.60%	13.48%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%	0.00%	4.93%
b. Additional Contribution Due to Concept	0.00%	0.04%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%	0.00%	0.01%
c. Total Employer Contribution Rate effective July 1, 2019	3.60%	13.52%	5.43%	11.05%	6.94%	8.95%	4.98%	4.94%	0.00%	4.94%
d. Projected Investment Plan Payroll	\$4,960,465	\$753,373	\$708	\$14,552	\$1,707	\$19,950	\$197,449	\$5,948,204	\$0	\$5,948,204
e. Total Employer Investment Plan Cost [(2c) x (2d)]	\$178,577	\$101,856	\$38	\$1,608	\$118	\$1,786	\$9,833	\$293,816	\$0	\$293,816
3. Proposed Blended Statutory Employer Normal Cost Rate (Pension Plan + Investment Plan)										
a. Total Employer Normal Cost Contribution [(1c) + (2e)]	\$809,196	\$609,649	\$151	\$15,589	\$591	\$5,740	\$34,506	\$1,475,422	\$107,443	\$1,582,865
b. Total System Projected Payroll [(1b) + (2d)]	\$25,368,831	\$4,861,734	\$4,188	\$126,763	\$8,857	\$65,764	\$749,413	\$31,185,550	\$2,295,800	\$33,481,350
c. Proposed Blended Statutory Employer Normal Cost Contribution Rate ¹ As a Percentage of Total Payroll [(3a) / (3b)]	3.19%	12.54%	3.61%	12.30%	6.67%	8.73%	4.60%	4.73%	4.68%	4.73%
B. Proposed Blended Statutory Unfunded Actuarial Liability (UAL) Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan UAL Cost										
a. Pension Plan UAL Cost Rate	4.30%	15.92%	40.04%	31.59%	58.20%	53.62%	25.75%	6.61%	8.25%	6.73%
b. Projected Pension Plan UAL Cost Payroll	\$23,850,651	\$4,128,510	\$3,480	\$112,680	\$7,707	\$50,181	\$566,224	\$28,719,433	\$2,295,800	\$31,015,233
c. Total Employer UAL Cost [(1a) x (1b)]	\$1,025,578	\$657,259	\$1,393	\$35,596	\$4,485	\$26,907	\$145,803	\$1,897,021	\$189,404	\$2,086,425
2. Investment Plan Projected Payroll										
	\$4,960,465	\$753,373	\$708	\$14,552	\$1,707	\$19,950	\$197,449	\$5,948,204	\$0	\$5,948,204
3. Proposed Blended Statutory Employer UAL Contribution Rate (Pension Plan + Investment Plan)										
a. Total Employer UAL Cost [(1c)]	\$1,025,578	\$657,259	\$1,393	\$35,596	\$4,485	\$26,907	\$145,803	\$1,897,021	\$189,404	\$2,086,425
b. Total System Projected Payroll [(1b) + (2)]	\$28,811,116	\$4,881,883	\$4,188	\$127,232	\$9,414	\$70,131	\$763,673	\$34,667,637	\$2,295,800	\$36,963,437
c. Proposed Blended Statutory Employer UAL Contribution Rate ¹ As a Percentage of Total Payroll [(3a) / (3b)]	3.56%	13.46%	33.26%	27.98%	47.64%	38.37%	19.09%	5.46%	8.25%	5.64%

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

*Effect on Proposed Blended Statutory Employer Contribution Rates for 2019-2020 Plan Year
Impact to FRS Pension Plan and FRS Investment Plan of Proposal for Prospective 2.00% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Assumes 3.25% Annual Growth in Total Payroll*

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
C. Proposed Blended Statutory Employer Contribution Rates Reflecting the Concept										
1. Proposed Blended Statutory Employer Contribution Rates Based on July 1, 2018 Valuation ²										
a. Employer Normal Cost Contribution Rate	3.19%	12.53%	3.61%	12.30%	6.67%	8.73%	4.60%	4.73%	4.68%	4.73%
b. Employer UAL Contribution Rate	<u>3.56%</u>	<u>11.14%</u>	<u>33.26%</u>	<u>27.98%</u>	<u>47.64%</u>	<u>38.37%</u>	<u>19.09%</u>	<u>5.14%</u>	<u>8.24%</u>	<u>5.34%</u>
c. Total Employer Contribution Rate [(C1a) + (C1b)]	6.75%	23.67%	36.87%	40.28%	54.31%	47.10%	23.69%	9.87%	12.92%	10.07%
2. Proposed Blended Statutory Employer Contribution Rates Reflecting Proposed Change ¹										
a. Employer Normal Cost Contribution Rate [(A3c)]	3.19%	12.54%	3.61%	12.30%	6.67%	8.73%	4.60%	4.73%	4.68%	4.73%
b. Employer UAL Contribution Rate [(B3c)] ³	<u>3.56%</u>	<u>13.46%</u>	<u>33.26%</u>	<u>27.98%</u>	<u>47.64%</u>	<u>38.37%</u>	<u>19.09%</u>	<u>5.46%</u>	<u>8.25%</u>	<u>5.64%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	6.75%	26.00%	36.87%	40.28%	54.31%	47.10%	23.69%	10.19%	12.93%	10.37%
3. Change in Proposed Blended Statutory Employer Contribution Rates due to Proposed Change										
a. Employer Normal Cost Contribution Rate [(C2a) - (C1a)]	0.00%	0.01%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
b. Employer UAL Contribution Rate [(C2b) - (C1b)]	<u>0.00%</u>	<u>2.32%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.32%</u>	<u>0.01%</u>	<u>0.30%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	0.00%	2.33%	0.00%	0.00%	0.00%	0.00%	0.00%	0.32%	0.01%	0.30%
D. Additional/(Reduced) Proposed Statutory Employer Contributions for the 2019-2020 Plan Year Due to Proposed Change										
1. State	\$0	\$23,966,353	\$0	\$0	\$0	\$0	\$0	\$23,966,353	\$34,135	\$24,000,488
2. School Boards	\$0	\$785,865	\$0	\$0	\$0	\$0	\$0	\$785,865	\$99,662	\$885,527
3. State Universities	\$0	\$730,850	\$0	\$0	\$0	\$0	\$0	\$730,850	\$8,708	\$739,558
4. Community Colleges	\$0	\$67,430	\$0	\$0	\$0	\$0	\$0	\$67,430	\$6,918	\$74,348
5. Counties	\$0	\$81,652,318	\$0	\$0	\$0	\$0	\$0	\$81,652,318	\$68,490	\$81,720,808
6. Other	<u>\$0</u>	<u>\$6,543,067</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$6,543,067</u>	<u>\$11,667</u>	<u>\$6,554,734</u>
7. Total	\$0	\$113,745,883	\$0	\$0	\$0	\$0	\$0	\$113,745,883	\$229,580	\$113,975,463

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

² As reported in the 2019-2020 Blended Rates Study dated December 4, 2018.

³ Employers of employee groups subject to only the UAL contribution rate would pay the rates shown in line (C.2.b.) and line (C.3.b.).

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Effect on Proposed Blended Statutory Employer Contribution Rates for 2019-2020 Plan Year
Impact to FRS Pension Plan and FRS Investment Plan of Proposal for Prospective 1.50% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Assumes 3.25% Annual Growth in Total Payroll

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
A. Proposed Blended Statutory Normal Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan Normal Cost										
a. Employer Pension Plan Normal Cost Rate	3.09%	12.36%	3.26%	12.46%	6.61%	8.63%	4.47%	4.68%	4.68%	4.68%
b. Projected Pension Plan Normal Cost Payroll	\$20,408,366	\$4,108,361	\$3,480	\$112,211	\$7,150	\$45,814	\$551,964	\$25,237,346	\$2,295,800	\$27,533,146
c. Total Employer Pension Plan Normal Cost [(1a) x (1b)]	\$630,619	\$507,793	\$113	\$13,981	\$473	\$3,954	\$24,673	\$1,181,606	\$107,443	\$1,289,049
2. Investment Plan Employer Cost										
a. Employer Rates effective July 1, 2018 (Sec 121.72-73; 121.735)	3.60%	13.48%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%	0.00%	4.93%
b. Additional Contribution Due to Concept	0.00%	0.02%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
c. Total Employer Contribution Rate effective July 1, 2019	3.60%	13.50%	5.43%	11.05%	6.94%	8.95%	4.98%	4.93%	0.00%	4.93%
d. Projected Investment Plan Payroll	\$4,960,465	\$753,373	\$708	\$14,552	\$1,707	\$19,950	\$197,449	\$5,948,204	\$0	\$5,948,204
e. Total Employer Investment Plan Cost [(2c) x (2d)]	\$178,577	\$101,705	\$38	\$1,608	\$118	\$1,786	\$9,833	\$293,665	\$0	\$293,665
3. Proposed Blended Statutory Employer Normal Cost Rate (Pension Plan + Investment Plan)										
a. Total Employer Normal Cost Contribution [(1c) + (2e)]	\$809,196	\$609,498	\$151	\$15,589	\$591	\$5,740	\$34,506	\$1,475,271	\$107,443	\$1,582,714
b. Total System Projected Payroll [(1b) + (2d)]	\$25,368,831	\$4,861,734	\$4,188	\$126,763	\$8,857	\$65,764	\$749,413	\$31,185,550	\$2,295,800	\$33,481,350
c. Proposed Blended Statutory Employer Normal Cost Contribution Rate ¹ As a Percentage of Total Payroll [(3a) / (3b)]	3.19%	12.54%	3.61%	12.30%	6.67%	8.73%	4.60%	4.73%	4.68%	4.73%
B. Proposed Blended Statutory Unfunded Actuarial Liability (UAL) Cost Contribution Rates Reflecting the Concept (Dollars in Thousands)										
1. Actuarially Calculated Defined Benefit Pension Plan UAL Cost										
a. Pension Plan UAL Cost Rate	4.30%	14.59%	40.04%	31.59%	58.20%	53.62%	25.75%	6.41%	8.24%	6.55%
b. Projected Pension Plan UAL Cost Payroll	\$23,850,651	\$4,128,510	\$3,480	\$112,680	\$7,707	\$50,181	\$566,224	\$28,719,433	\$2,295,800	\$31,015,233
c. Total Employer UAL Cost [(1a) x (1b)]	\$1,025,578	\$602,350	\$1,393	\$35,596	\$4,485	\$26,907	\$145,803	\$1,842,112	\$189,174	\$2,031,286
2. Investment Plan Projected Payroll										
	\$4,960,465	\$753,373	\$708	\$14,552	\$1,707	\$19,950	\$197,449	\$5,948,204	\$0	\$5,948,204
3. Proposed Blended Statutory Employer UAL Contribution Rate (Pension Plan + Investment Plan)										
a. Total Employer UAL Cost [(1c)]	\$1,025,578	\$602,350	\$1,393	\$35,596	\$4,485	\$26,907	\$145,803	\$1,842,112	\$189,174	\$2,031,286
b. Total System Projected Payroll [(1b) + (2)]	\$28,811,116	\$4,881,883	\$4,188	\$127,232	\$9,414	\$70,131	\$763,673	\$34,667,637	\$2,295,800	\$36,963,437
c. Proposed Blended Statutory Employer UAL Contribution Rate ¹ As a Percentage of Total Payroll [(3a) / (3b)]	3.56%	12.34%	33.26%	27.98%	47.64%	38.37%	19.09%	5.30%	8.24%	5.50%

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

FLORIDA RETIREMENT SYSTEM
FISCAL IMPACT ANALYSIS

Effect on Proposed Blended Statutory Employer Contribution Rates for 2019-2020 Plan Year
Impact to FRS Pension Plan and FRS Investment Plan of Proposal for Prospective 1.50% Minimum COLA Rate for Qualifying Special Risk Class Members Effective July 1, 2019
Assumes 3.25% Annual Growth in Total Payroll

Please see the attached letter for details regarding data, assumptions, methodology, and plan provisions used

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	Regular	Special Risk	Special Risk Administrative	Judicial	-----Elected Officers' Class----- Leg-Atty-Cab	Local	Senior Management	Composite (excluding DROP)	DROP	Composite (including DROP)
C. Proposed Blended Statutory Employer Contribution Rates Reflecting the Concept										
1. Proposed Blended Statutory Employer Contribution Rates Based on July 1, 2018 Valuation ²										
a. Employer Normal Cost Contribution Rate	3.19%	12.53%	3.61%	12.30%	6.67%	8.73%	4.60%	4.73%	4.68%	4.73%
b. Employer UAL Contribution Rate	<u>3.56%</u>	<u>11.14%</u>	<u>33.26%</u>	<u>27.98%</u>	<u>47.64%</u>	<u>38.37%</u>	<u>19.09%</u>	<u>5.14%</u>	<u>8.24%</u>	<u>5.34%</u>
c. Total Employer Contribution Rate [(C1a) + (C1b)]	6.75%	23.67%	36.87%	40.28%	54.31%	47.10%	23.69%	9.87%	12.92%	10.07%
2. Proposed Blended Statutory Employer Contribution Rates Reflecting Proposed Change ¹										
a. Employer Normal Cost Contribution Rate [(A3c)]	3.19%	12.54%	3.61%	12.30%	6.67%	8.73%	4.60%	4.73%	4.68%	4.73%
b. Employer UAL Contribution Rate [(B3c)] ³	<u>3.56%</u>	<u>12.34%</u>	<u>33.26%</u>	<u>27.98%</u>	<u>47.64%</u>	<u>38.37%</u>	<u>19.09%</u>	<u>5.30%</u>	<u>8.24%</u>	<u>5.50%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	6.75%	24.88%	36.87%	40.28%	54.31%	47.10%	23.69%	10.03%	12.92%	10.23%
3. Change in Proposed Blended Statutory Employer Contribution Rates due to Proposed Change										
a. Employer Normal Cost Contribution Rate [(C2a) - (C1a)]	0.00%	0.01%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
b. Employer UAL Contribution Rate [(C2b) - (C1b)]	<u>0.00%</u>	<u>1.20%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.00%</u>	<u>0.16%</u>	<u>0.00%</u>	<u>0.16%</u>
c. Total Employer Contribution Rate [(C3a) + (C3b)]	0.00%	1.21%	0.00%	0.00%	0.00%	0.00%	0.00%	0.16%	0.00%	0.16%
D. Additional/(Reduced) Proposed Statutory Employer Contributions for the 2019-2020 Plan Year Due to Proposed Change										
1. State	\$0	\$12,445,719	\$0	\$0	\$0	\$0	\$0	\$12,445,719	\$0	\$12,445,719
2. School Boards	\$0	\$408,089	\$0	\$0	\$0	\$0	\$0	\$408,089	\$0	\$408,089
3. State Universities	\$0	\$379,517	\$0	\$0	\$0	\$0	\$0	\$379,517	\$0	\$379,517
4. Community Colleges	\$0	\$35,017	\$0	\$0	\$0	\$0	\$0	\$35,017	\$0	\$35,017
5. Counties	\$0	\$42,402,590	\$0	\$0	\$0	\$0	\$0	\$42,402,590	\$0	\$42,402,590
6. Other	<u>\$0</u>	<u>\$3,397,849</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$3,397,849</u>	<u>\$0</u>	<u>\$3,397,849</u>
7. Total	\$0	\$59,068,781	\$0	\$0	\$0	\$0	\$0	\$59,068,781	\$0	\$59,068,781

¹ Rates shown do not include the HIS contribution rate or IP administrative fees.

² As reported in the 2019-2020 Blended Rates Study dated December 4, 2018.

³ Employers of employee groups subject to only the UAL contribution rate would pay the rates shown in line (C.2.b.) and line (C.3.b.).

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 20th, 2019

The Honorable Ed Hooper, Chair
Governmental Oversight and Accountability Committee
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Hooper:

I am writing to request that Senate Bill 784, Retirement, be placed on the agenda of the next Governmental Oversight and Accountability Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,



Joe Gruters

cc: Joe McVaney, Staff Director
Tamra Redig, Committee Administrative Assistant

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/10/19 Meeting Date

784 Bill Number (if applicable)

Topic Retirement

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Vice President

Address 343 W Madison St

Phone 850-224-7333

Street

Tallahassee

FL

32301

Email RoccoSalvatori@icloud.com

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Florida Professional Firefighters

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

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)

April 10, 2019
Meeting Date

SB 784
Bill Number (if applicable)

Topic FRS COLA (Special Risk)

Amendment Barcode (if applicable)

Name Matt Rockett

Job Title Lobbyist

Address 300 East Brevard St.

Phone

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 1224

INTRODUCER: Governmental Oversight and Accountability Committee; Education Committee and Senator Farmer

SUBJECT: Charter Schools

DATE: April 11, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Sikes</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1224 creates s. 1001.241, F.S., to require each charter school principal, charter school governing board member, and charter school chief financial officer to hold a credential, which must certify the individual's core competence in the administration of a charter school. The bill requires the Department of Education (DOE) to approve one or more third-party credentialing entities to establish and administer the credentialing process.

The bill also:

- Eliminates the requirement that an applicant submit an application by February 1 to open a charter school eighteen months later at the beginning of the school year. The bill allows an applicant submitting an application by February 1 to open a charter school at the beginning of the next school year.
- Prohibits specified charter school entities and employees and their relatives from submitting an application to open a charter school for 5 years if specified acts of misconduct caused the termination or nonrenewal of the charter, or 10 years in case of the individual's criminal conviction for certain crimes.
- Clarifies that charter school instructional and non-instructional personnel must file fingerprints and pass a background check in any school district in which one of the charter governing board's charter schools is located, and that the background check is valid in all school districts in perpetuity.

- Authorizes a virtual charter school to provide part-time instruction and be a virtual instruction program provider if approved by the DOE.

The bill takes effect January 1, 2020.

II. Present Situation:

Charter School Formation

Charter schools are public schools that operate under a performance contract with a sponsor.¹ A district school board or a state university may sponsor a charter school.² An entity seeking to open a charter school must apply to the sponsor, who must review or deny the application.³ To ensure financial accountability, the standard charter school application requires:⁴

- A list of each proposed member of the charter school's governing board and his or her background and qualifications;
- A financial plan containing anticipated fund balances based on revenue projections, a spending plan based on projected revenues and expenses, and a description of controls that will safeguard finances and projected enrollment trends; and
- A full accounting of expected assets, a projection of expected sources and amounts of income, including income derived from projected student enrollments and from community support, and an expense projection that includes full accounting of the costs of operation, including start-up costs.

A sponsor must receive and consider charter school applications received on or before February 1 of each year for charter schools to be opened 18 months later at the beginning of the school district's school year, or to be opened at a time determined by the applicant.⁵

Approved charter schools and sponsors execute a written contract called a "charter." The charter governs the operating terms of the charter school. The charter must ensure financial accountability by including:⁶

- A reasonable demonstration of the professional experience or competence of the individuals hired to perform the financial and administrative management of the school;
- A description of internal audit procedures and controls; and
- Asset and liability projections.

In the 2017-2018 school year, 655 charter schools served 295,814 students across 47 school districts in Florida.⁷

¹ Section 1002.33(7), F.S.

² Section 1002.33(5), F.S.

³ Section 1002.33(6)(b), F.S.

⁴ Section 1002.33 (6)(a), F.S.

⁵ Section 1002.33(6)(b), F.S. A sponsor may receive and consider applications after February 1, if it chooses. *Id.*

⁶ Section 1002.33(7)(a), F.S.

⁷ Florida Department of Education, Office of Independent Education and Parental Choice, *Fact Sheet: Florida's Charter Schools* (2018), available at <http://www.fldoe.org/core/fileparse.php/7696/urlt/Charter-Sept-2018.pdf>.

Charter School Financial Accountability Requirements

After a charter has been approved, a charter school must continue to comply with financial accountability requirements. The requirements include:⁸

- Maintaining all financial records in a manner comparable to other Florida public schools;⁹
- Providing an annual financial report performed by a certified public accountant or auditor;¹⁰
- Providing a monthly financial statement summary sheet with a balance sheet;¹¹
- Adopting and maintaining an annual operating budget;¹² and
- Publishing the school's annual budget and its annual independent fiscal audit on its website.¹³

Qualifications of Charter School Employees

Background Screening

All charter school instructional and non-instructional personnel, including members of a charter school governing board, must undergo the same background screening required of public school personnel by filing their fingerprints with the district school board.¹⁴ For any employee who has direct contact with students, a charter school must conduct an employment history check of each of the individual's previous employers and conduct the required screening through the use of the educator screening tools.¹⁵ Failure to comply with these requirements results in the termination of a charter.¹⁶

A charter school is required to employ certified teachers.¹⁷ A person is ineligible for an educator certification or employment in any position that requires direct contact with students in a district school system, charter school, or private school that accepts students who participate in a state scholarship program if the person has been convicted of certain qualified offenses.¹⁸

Additionally, a charter school is required to disqualify any instructional personnel and school administrators from employment in any position that requires direct contact with students if the personnel are ineligible for such employment based on conviction of certain qualified offenses.¹⁹

Training Qualifications

Each governing board member must complete training approved by the Department of Education (DOE), including instruction focusing on government in the sunshine, conflicts of interest, ethics, and financial responsibility.²⁰ Every public school supervisor, principal, and administrator

⁸ Section 1002.33(9), F.S.

⁹ *Id.* at (g)1.a.

¹⁰ *Id.* at (g)2.

¹¹ *Id.* at (g)3.

¹² *Id.* at (h).

¹³ Section 1002.33(9)(p)1., F.S.

¹⁴ Section 1012.32(2)(b), F.S.

¹⁵ Section 1002.33(12)(g)4., F.S.

¹⁶ Sections 1002.33(8), (12)(f) and (12)(g)1, F.S.

¹⁷ Section 1002.33(12)(f), F.S.

¹⁸ Section 1012.315, F.S.

¹⁹ Sections 1002.33 and 1012.315, F.S.

²⁰ Section 1002.33(9)(j)4., F.S.

must hold the required certificate through state-approved training.²¹ Charter school principals and equivalent personnel are not required to possess the state-approved certifications required of their public school counterparts.

The governing board of a charter school must adopt policies establishing standards of ethical conduct for instructional personnel and school administrators.²² The policies must require all instructional personnel and school administrators to complete training on the standards and report alleged misconduct by other instructional personnel and school administrators which affects the health, safety, or welfare of a student.²³

Florida Virtual Charter Schools

A “virtual instruction program” is a program of instruction provided in an interactive learning environment created through technology in which students are separated from their teachers by time or space, or both.²⁴ DOE annually publishes online a list of providers approved to offer virtual instruction programs.²⁵ The DOE-published list includes five approved virtual instruction providers for the 2018-2019 school year.²⁶

A school district may enter into an agreement with a virtual charter school to provide full-time virtual instruction for students in kindergarten through grade 12.²⁷ A virtual charter school may provide instruction by:²⁸

- Contracting with the Florida Virtual School.
- Contracting with a DOE-approved provider.
- Entering into an agreement with a school district to allow the participation of the virtual charter school’s students in the school district’s virtual instruction program. The school district providing virtual instruction shall report full-time equivalent students for a virtual instruction program or a virtual charter school to DOE, and funding shall be provided through the Florida Education Finance Program.²⁹

In the 2017-2018 school year, 1,937 students received instruction from virtual charter schools in Florida.³⁰ Seven virtual charter schools currently operate in Florida.³¹

²¹ Section 1012.55(1)(b), F.S.

²² Section 1002.33(12)(g)3., F.S.

²³ *Id.*

²⁴ Section 1002.45(1)(a)2., F.S.

²⁵ Section 1002.45(2), F.S. (Requiring DOE to publish online a list of approved virtual instruction providers and setting forth qualifications for approval as a virtual instruction provider.)

²⁶ Florida Department of Education, School Choice, *List of Approved Program and Course Providers*, available at <http://www.fldoe.org/schools/school-choice/virtual-edu/approved-provider-resources/approved-providers/> (last visited Mar. 27, 2019).

²⁷ Section 1002.45(1)(c), F.S.

²⁸ Section 1002.45(1)(d), F.S.

²⁹ Section 1002.45(7)(e)

³⁰ Florida Department of Education, Office of Independent Education and Parental Choice, *Fact Sheet*, (2018) available at <http://cdn.fldoe.org/core/fileparse.php/5606/urlt/Virtual-Sept.pdf>.

³¹ Email, Florida Department of Education (Mar. 27, 2019).

III. Effect of Proposed Changes:

Third-party Credentialing Entities

Section 1 creates s. 1001.241, F.S., to require each charter school principal, charter school governing board member, and charter school chief financial officer to hold a credential, which must certify the individual's core competence in the administration of a charter school. The section requires the DOE to approve one or more third-party credentialing entities for the purposes of developing and administering a credentialing program for charter school principals, charter school governing board members, and charter school chief financial officers.

The section requires an approved credentialing entity to establish:

- A process to administer the certification application, award, and maintenance;
- Position-specific core competencies, certification requirements, testing instruments, and recertification requirements;
- A certification program directly related to the core competencies, with minimum requirements in each of the following categories:
 - Training;
 - On-the-job work experience;
 - Supervision;
 - Testing;
 - Biennial continuing education requirements; and
 - Annual certification renewal requirements.

Qualified training entities are approved to provide precertification training to applicants and continuing education opportunities to certified persons. To avoid a conflict of interest, a credentialing entity or its affiliate may not deliver training to an applicant or continuing education to a certificate holder.

Core Competencies

The bill requires each charter school principal, governing board member, chief financial officer, or equivalent position to be certified at least 30 days before the school opens or within 30 days of the first date of employment, whichever comes first. The bill does not specify the timeline in which existing charter school personnel must earn the required certification. The credential must certify the individual's core competence in the administration of a charter school, including, but not limited to:

- Developing and adjusting business plans;
- Accurate financial planning and good business practices;
- State and federal grant and student performance accountability;
- State and federal funding sources; and
- Government in the sunshine, conflicts of interest, ethics, and financial responsibility.

Code of Ethics

Section 1 further provides that the credentialing entity must institute a code of ethics and disciplinary process. The entity may suspend or revoke a certificate of compliance if the

credential holder fails to adhere to the continuing education requirements. The credentialing entity shall revoke a certificate of compliance if the credential holder provides false or misleading information to the credentialing entity at any time. Moreover, the bill requires a charter school to remove a credential holder from the individual's current position and notify the credentialing entity within three business days of the individual's conviction of an offense enumerated in s. 435.04(2). The bill authorizes the DOE to review any decision by a credentialing program to deny certification or impose sanctions on an individual's certification and provides an aggrieved person thirty days to seek administrative review after completing any appeals process offered by the credentialing program.

Background Screening

Section 1 subjects all applicants for a credential to level 2 background screening as provided under chapter 435.³² An applicant is ineligible for a credential if the applicant has been convicted of any of 52 offenses enumerated in s. 435.04(2), F.S., and has not been issued an exemption by DOE pursuant to s. 397.4872, F.S.³³ The bill specifies that approved applicants receive a certificate of compliance, which terminates after one year if not renewed. Once an applicant has been fingerprinted and passed the appropriate background screening in any school district, that background screening will be valid throughout the state in perpetuity.

Waiting Time for School Opening

Section 2 amends 1002.33, F.S., to eliminate the requirement that an applicant submit an application by February 1 to open a charter school eighteen months later at the beginning of the school year. This change allows an applicant submitting an application by February 1 to open a charter school at the beginning of the next school year.

Nonrenewal or Termination of a Charter or Credential

Section 2 also provides penalties if a charter is terminated or a charter school closes before the end of a school year or within 3 years after beginning operations and after a specific finding by the school district of material fraud, disregard of generally accepted accounting principles, or of intentional malfeasance by an applicant for the charter. In such a case, the charter school owner, president, governing board members, and all of their relatives, may not submit an application to open a charter school in this state for a period of 5 years after the termination of the charter or closure of the charter school. An affected party may appeal to the charter appeals commission the school district's finding of material fraud, intentional malfeasance, or disregard of generally accepted accounting principles.

The section further provides penalties if a charter school owner, president, member of the governing board, charter management organization, or education management organization is convicted of a crime including, but not limited to, fraud or financial offenses related to the

³² The provisions of ch. 435 apply to facilitate uniform employment background screening. Section 435.01(1)(b), F.S.

³³ The Department of Education lacks statutory authority to issue exemptions pursuant to s. 397.4872, F.S. The Department of Children and Families is authorized to issue exemptions pursuant to s. 397.4872, F.S. See s. 397.311(11), F.S.

operation of a charter school. The organization or party convicted, and all of their relatives³⁴, may not submit an application to open a charter school in this state for a period of 10 years after such conviction.

Section 3 amends s. 1002.45, F.S., to authorize a virtual charter school to provide part-time instruction and be a virtual instruction program provider if approved by the DOE.

Section 4 provides that the bill takes effect January 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Lines 466-498, the section imposing penalties in cases of school closure and criminal conviction, may encroach on certain parties' constitutional right to due process. The right to due process imparts a legal obligation on the government to treat citizens fairly and not impose itself in an arbitrary manner.³⁵ In order to determine whether a statute violates due process, the courts will determine whether the statute is reasonably related to a legitimate legislative interest, and whether the statute is arbitrary, discriminatory, or oppressive.³⁶ The portions of the bill which prohibit the relatives, to include children, siblings, cousins, and in-laws, of those who have engaged in fraud or committed a crime from applying to open a new school may impinge on those relatives' right to due process. Courts have found that rigid procedures are incompatible with due process where they

³⁴ The term "relative" father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. Section 1002.33(24)(a)2., F.S.

³⁵ The right to due process is found in both the 5th amendment of the U.S. Constitution and Article 1, Section 9 of the Florida Constitution.

³⁶ *Nationwide Mut. Fire Ins. Co. v. Pinnacle Medical, Inc.*, 753 So.2d 55 (Fla. 2000).

may not apply fairly to different situations.³⁷ Such a rigid rule that may affect a large number of people far removed from the misconduct is potentially unconstitutional.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may result in increased costs for charter schools associated with credentialing for principals, governing board members, and chief financial officers.

VI. Technical Deficiencies:

Lines 466-498 contain grammatical and scriveners' errors and should be amended for precision and clarity.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates s. 1001.241, F.S.

The bill substantially amends sections 1002.33 and 1002.45 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS/CS by Governmental Oversight and Accountability on April 10, 2019:

- The CS removes fees for charter school administrators' credentials, which were subject to Article VII, s. 19 of the State Constitution and therefore require separate legislation.
- The CS removes the section providing that charter school administrators' fingerprints will remain valid for 3 years, and adds language providing that the background check and fingerprinting applicants to open charter schools are required to obtain will be valid across the state and in perpetuity.

³⁷ *Caple v. Tuttle's Design-Build, Inc.*, 753 So.2d 49 (Fla. 2000).

CS by Education on March 26, 2019:

The committee substitute maintains provisions in the bill that require charter school principals, charter school governing board members, and charter school chief financial officers to hold a credential, which must certify the individual's core competence in the administration of a charter school. The committee substitute also:

- Requires the Department of Education (DOE) to approve one or more third-party credentialing entities to establish and administer the credentialing process.
- Eliminates the requirement that an applicant submit an application by February 1 to open a charter school eighteen months later at the beginning of the school year. The bill allows an applicant submitting an application by February 1 to open a charter school at the beginning of the next school year.
- Prohibits specified charter school entities and employees and their relatives from submitting an application to open a charter school for 5 years if specified acts of misconduct caused the termination or nonrenewal of the charter, or 10 years if specified acts of misconduct in the operation of the charter school resulted in the individual's criminal conviction.
- Clarifies that charter school instructional and non-instructional personnel must file fingerprints and pass a background check in any school district in which one of the charter governing board's charter schools is located, and that the background check is valid in all school districts for three years.
- Authorizes a virtual charter school to provide part-time instruction and be a virtual instruction program provider if approved by the DOE.
- Changes the effective date of the bill to January 1, 2020.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/10/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 105 - 578
and insert:

(3) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the



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11 department has issued an exemption under s. 397.4872. In
12 accordance with s. 435.04, the Department of Law Enforcement
13 shall notify the credentialing entity of the applicant's
14 eligibility based on the results of his or her background
15 screening. Once applicants are fingerprinted and pass the
16 appropriate background screening in any single school district,
17 the results of such fingerprinting and background screening
18 shall be valid and such applicants may not subsequently be
19 required to be fingerprinted or pass an appropriate background
20 screening. The credentialing entity shall confirm whether an
21 applicant has previously been fingerprinted and passed the
22 appropriate background screening within the school district.

23 (4) The credentialing entity shall issue a certificate of
24 compliance upon approval of a person's application. The
25 certification shall automatically terminate 1 year after
26 issuance if not renewed.

27 (a) A credentialing entity may suspend or revoke the
28 certificate of compliance of a charter school principal, a
29 charter school governing board member, or a charter school chief
30 financial officer if the charter school principal, the charter
31 school governing board member, or the charter school chief
32 financial officer fails to adhere to the continuing education
33 requirements.

34 (b) A credentialing entity shall revoke a certificate of
35 compliance of a charter school principal, charter school
36 governing board member, or charter school chief financial
37 officer if the charter school principal, charter school
38 governing board member, or charter school chief financial
39 officer provides false or misleading information to the



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40 credentialing entity at any time.

41 (c) If a charter school principal, charter school governing
42 board member, or charter school chief financial officer is
43 arrested for or found guilty of, or enters a plea of guilty or
44 nolo contendere to, regardless of adjudication, any offense
45 listed in s. 435.04(2) while acting in that capacity, the
46 charter school shall immediately remove the person from that
47 position and shall notify the credentialing entity within 3
48 business days after such removal.

49 (5) Any decision by a department-recognized credentialing
50 program to deny certification or otherwise impose sanctions on
51 an individual who is certified is reviewable by the department.
52 The individual aggrieved may request an administrative hearing
53 conducted pursuant to ss. 120.569 and 120.57(1) within 30 days
54 after receiving an adverse determination after completing any
55 appeals process offered by the credentialing program.

56 Section 3. Present paragraphs (g), (h), and (i) of
57 subsection (12) of section 1002.33, Florida Statutes, are
58 redesignated as paragraphs (h), (i), and (j), respectively, and
59 a new paragraph (g) is added to that subsection, paragraph (g)
60 is added to subsection (8), and paragraph (b) of subsection (6)
61 and paragraph (a) of subsection (7) of that section are amended,
62 to read:

63 1002.33 Charter schools.—

64 (6) APPLICATION PROCESS AND REVIEW.—Charter school
65 applications are subject to the following requirements:

66 (b) A sponsor shall receive and review all applications for
67 a charter school using the evaluation instrument developed by
68 the Department of Education. A sponsor shall receive and



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69 consider charter school applications received on or before
70 August 1 of each calendar year for charter schools to be opened
71 at the beginning of the school district's next school year, or
72 to be opened at a time determined ~~agreed to~~ by the applicant and
73 the sponsor. A sponsor may not refuse to receive a charter
74 school application submitted before August 1 and may receive an
75 application submitted later than August 1 if it chooses.
76 ~~Beginning in 2018 and thereafter,~~ A sponsor shall also receive
77 and consider charter school applications received on or before
78 February 1 of each calendar year for charter schools to be
79 opened ~~18 months later~~ at the beginning of the school district's
80 school year, or to be opened at a time determined by the
81 applicant. A sponsor may not refuse to receive a charter school
82 application submitted before February 1 and may receive an
83 application submitted later than February 1 if it chooses. A
84 sponsor may not charge an applicant for a charter any fee for
85 the processing or consideration of an application, and a sponsor
86 may not base its consideration or approval of a final
87 application upon the promise of future payment of any kind. If
88 an applicant is ready to do so, it may open a charter school
89 before the school district's next school year after approval of
90 the charter school application submitted by either application
91 deadline. Before approving or denying any application, the
92 sponsor shall allow the applicant, upon receipt of written
93 notification, at least 7 calendar days to make technical or
94 nonsubstantive corrections and clarifications, including, but
95 not limited to, corrections of grammatical, typographical, and
96 like errors or missing signatures, if such errors are identified
97 by the sponsor as cause to deny the final application.



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98 1. In order to facilitate an accurate budget projection
99 process, a sponsor shall be held harmless for FTE students who
100 are not included in the FTE projection due to approval of
101 charter school applications after the FTE projection deadline.
102 In a further effort to facilitate an accurate budget projection,
103 within 15 calendar days after receipt of a charter school
104 application, a sponsor shall report to the Department of
105 Education the name of the applicant entity, the proposed charter
106 school location, and its projected FTE.

107 2. In order to ensure fiscal responsibility, an application
108 for a charter school shall include a full accounting of expected
109 assets, a projection of expected sources and amounts of income,
110 including income derived from projected student enrollments and
111 from community support, and an expense projection that includes
112 full accounting of the costs of operation, including start-up
113 costs.

114 3.a. A sponsor shall by a majority vote approve or deny an
115 application no later than 90 calendar days after the application
116 is received, unless the sponsor and the applicant mutually agree
117 in writing to temporarily postpone the vote to a specific date,
118 at which time the sponsor shall by a majority vote approve or
119 deny the application. If the sponsor fails to act on the
120 application, an applicant may appeal to the State Board of
121 Education as provided in paragraph (c). If an application is
122 denied, the sponsor shall, within 10 calendar days after such
123 denial, articulate in writing the specific reasons, based upon
124 good cause, supporting its denial of the application and shall
125 provide the letter of denial and supporting documentation to the
126 applicant and to the Department of Education.



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127 b. An application submitted by a high-performing charter
128 school identified pursuant to s. 1002.331 or a high-performing
129 charter school system identified pursuant to s. 1002.332 may be
130 denied by the sponsor only if the sponsor demonstrates by clear
131 and convincing evidence that:

132 (I) The application of a high-performing charter school
133 does not materially comply with the requirements in paragraph
134 (a) or, for a high-performing charter school system, the
135 application does not materially comply with s. 1002.332(2)(b);

136 (II) The charter school proposed in the application does
137 not materially comply with the requirements in paragraphs
138 (9)(a)-(f);

139 (III) The proposed charter school's educational program
140 does not substantially replicate that of the applicant or one of
141 the applicant's high-performing charter schools;

142 (IV) The applicant has made a material misrepresentation or
143 false statement or concealed an essential or material fact
144 during the application process; or

145 (V) The proposed charter school's educational program and
146 financial management practices do not materially comply with the
147 requirements of this section.

148
149 Material noncompliance is a failure to follow requirements or a
150 violation of prohibitions applicable to charter school
151 applications, which failure is quantitatively or qualitatively
152 significant either individually or when aggregated with other
153 noncompliance. An applicant is considered to be replicating a
154 high-performing charter school if the proposed school is
155 substantially similar to at least one of the applicant's high-



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156 performing charter schools and the organization or individuals
157 involved in the establishment and operation of the proposed
158 school are significantly involved in the operation of replicated
159 schools.

160 c. If the sponsor denies an application submitted by a
161 high-performing charter school or a high-performing charter
162 school system, the sponsor must, within 10 calendar days after
163 such denial, state in writing the specific reasons, based upon
164 the criteria in sub-subparagraph b., supporting its denial of
165 the application and must provide the letter of denial and
166 supporting documentation to the applicant and to the Department
167 of Education. The applicant may appeal the sponsor's denial of
168 the application in accordance with paragraph (c).

169 4. For budget projection purposes, the sponsor shall report
170 to the Department of Education the approval or denial of an
171 application within 10 calendar days after such approval or
172 denial. In the event of approval, the report to the Department
173 of Education shall include the final projected FTE for the
174 approved charter school.

175 5. Upon approval of an application, the initial startup
176 shall commence with the beginning of the public school calendar
177 for the district in which the charter is granted. A charter
178 school may defer the opening of the school's operations for up
179 to 3 years to provide time for adequate facility planning. The
180 charter school must provide written notice of such intent to the
181 sponsor and the parents of enrolled students at least 30
182 calendar days before the first day of school.

183 (7) CHARTER.—The terms and conditions for the operation of
184 a charter school shall be set forth by the sponsor and the



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185 applicant in a written contractual agreement, called a charter.
186 The sponsor and the governing board of the charter school shall
187 use the standard charter contract pursuant to subsection (21),
188 which shall incorporate the approved application and any addenda
189 approved with the application. Any term or condition of a
190 proposed charter contract that differs from the standard charter
191 contract adopted by rule of the State Board of Education shall
192 be presumed a limitation on charter school flexibility. The
193 sponsor may not impose unreasonable rules or regulations that
194 violate the intent of giving charter schools greater flexibility
195 to meet educational goals. The charter shall be signed by the
196 governing board of the charter school and the sponsor, following
197 a public hearing to ensure community input.

198 (a) The charter shall address and criteria for approval of
199 the charter shall be based on:

200 1. The school's mission, the students to be served, and the
201 ages and grades to be included.

202 2. The focus of the curriculum, the instructional methods
203 to be used, any distinctive instructional techniques to be
204 employed, and identification and acquisition of appropriate
205 technologies needed to improve educational and administrative
206 performance which include a means for promoting safe, ethical,
207 and appropriate uses of technology which comply with legal and
208 professional standards.

209 a. The charter shall ensure that reading is a primary focus
210 of the curriculum and that resources are provided to identify
211 and provide specialized instruction for students who are reading
212 below grade level. The curriculum and instructional strategies
213 for reading must be consistent with the Next Generation Sunshine



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214 State Standards and grounded in scientifically based reading
215 research.

216 b. In order to provide students with access to diverse
217 instructional delivery models, to facilitate the integration of
218 technology within traditional classroom instruction, and to
219 provide students with the skills they need to compete in the
220 21st century economy, the Legislature encourages instructional
221 methods for blended learning courses consisting of both
222 traditional classroom and online instructional techniques.
223 Charter schools may implement blended learning courses which
224 combine traditional classroom instruction and virtual
225 instruction. Students in a blended learning course must be full-
226 time students of the charter school pursuant to s.
227 1011.61(1)(a)1. Instructional personnel certified pursuant to s.
228 1012.55 who provide virtual instruction for blended learning
229 courses may be employees of the charter school or may be under
230 contract to provide instructional services to charter school
231 students. At a minimum, such instructional personnel must hold
232 an active state or school district adjunct certification under
233 s. 1012.57 for the subject area of the blended learning course.
234 The funding and performance accountability requirements for
235 blended learning courses are the same as those for traditional
236 courses.

237 3. The current incoming baseline standard of student
238 academic achievement, the outcomes to be achieved, and the
239 method of measurement that will be used. The criteria listed in
240 this subparagraph shall include a detailed description of:

241 a. How the baseline student academic achievement levels and
242 prior rates of academic progress will be established.



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243 b. How these baseline rates will be compared to rates of
244 academic progress achieved by these same students while
245 attending the charter school.

246 c. To the extent possible, how these rates of progress will
247 be evaluated and compared with rates of progress of other
248 closely comparable student populations.

249
250 The district school board is required to provide academic
251 student performance data to charter schools for each of their
252 students coming from the district school system, as well as
253 rates of academic progress of comparable student populations in
254 the district school system.

255 4. The methods used to identify the educational strengths
256 and needs of students and how well educational goals and
257 performance standards are met by students attending the charter
258 school. The methods shall provide a means for the charter school
259 to ensure accountability to its constituents by analyzing
260 student performance data and by evaluating the effectiveness and
261 efficiency of its major educational programs. Students in
262 charter schools shall, at a minimum, participate in the
263 statewide assessment program created under s. 1008.22.

264 5. In secondary charter schools, a method for determining
265 that a student has satisfied the requirements for graduation in
266 s. 1002.3105(5), s. 1003.4281, or s. 1003.4282.

267 6. A method for resolving conflicts between the governing
268 board of the charter school and the sponsor.

269 7. The admissions procedures and dismissal procedures,
270 including the school's code of student conduct. Admission or
271 dismissal must not be based on a student's academic performance.



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272 8. The ways by which the school will achieve a
273 racial/ethnic balance reflective of the community it serves or
274 within the racial/ethnic range of other public schools in the
275 same school district.

276 9. The financial and administrative management of the
277 school, including a reasonable demonstration of the professional
278 experience or competence of those individuals or organizations
279 applying to operate the charter school or those hired or
280 retained to perform such professional services and the
281 description of clearly delineated responsibilities and the
282 policies and practices needed to effectively manage the charter
283 school. A description of internal audit procedures and
284 establishment of controls to ensure that financial resources are
285 properly managed must be included. Both public sector and
286 private sector professional experience shall be equally valid in
287 such a consideration.

288 10. The asset and liability projections required in the
289 application which are incorporated into the charter and shall be
290 compared with information provided in the annual report of the
291 charter school.

292 11. A description of procedures that identify various risks
293 and provide for a comprehensive approach to reduce the impact of
294 losses; plans to ensure the safety and security of students and
295 staff; plans to identify, minimize, and protect others from
296 violent or disruptive student behavior; and the manner in which
297 the school will be insured, including whether or not the school
298 will be required to have liability insurance, and, if so, the
299 terms and conditions thereof and the amounts of coverage.

300 12. The term of the charter which shall provide for



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301 cancellation of the charter if insufficient progress has been
302 made in attaining the student achievement objectives of the
303 charter and if it is not likely that such objectives can be
304 achieved before expiration of the charter. The initial term of a
305 charter shall be for 5 years, excluding 2 planning years. In
306 order to facilitate access to long-term financial resources for
307 charter school construction, charter schools that are operated
308 by a municipality or other public entity as provided by law are
309 eligible for up to a 15-year charter, subject to approval by the
310 district school board. A charter lab school is eligible for a
311 charter for a term of up to 15 years. In addition, to facilitate
312 access to long-term financial resources for charter school
313 construction, charter schools that are operated by a private,
314 not-for-profit, s. 501(c)(3) status corporation are eligible for
315 up to a 15-year charter, subject to approval by the district
316 school board. Such long-term charters remain subject to annual
317 review and may be terminated during the term of the charter, but
318 only according to the provisions set forth in subsection (8).

319 13. The facilities to be used and their location. The
320 sponsor may not require a charter school to have a certificate
321 of occupancy or a temporary certificate of occupancy for such a
322 facility earlier than 15 calendar days before the first day of
323 school.

324 14. The qualifications to be required of the teachers and
325 the potential strategies used to recruit, hire, train, and
326 retain qualified staff to achieve best value.

327 15. The governance structure of the school, including the
328 status of the charter school as a public or private employer as
329 required in paragraph (12)(j) ~~(12)(i)~~.



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330 16. A timetable for implementing the charter which
331 addresses the implementation of each element thereof and the
332 date by which the charter shall be awarded in order to meet this
333 timetable.

334 17. In the case of an existing public school that is being
335 converted to charter status, alternative arrangements for
336 current students who choose not to attend the charter school and
337 for current teachers who choose not to teach in the charter
338 school after conversion in accordance with the existing
339 collective bargaining agreement or district school board rule in
340 the absence of a collective bargaining agreement. However,
341 alternative arrangements shall not be required for current
342 teachers who choose not to teach in a charter lab school, except
343 as authorized by the employment policies of the state university
344 which grants the charter to the lab school.

345 18. Full disclosure of the identity of all relatives
346 employed by the charter school who are related to the charter
347 school owner, president, chairperson of the governing board of
348 directors, superintendent, governing board member, principal,
349 assistant principal, or any other person employed by the charter
350 school who has equivalent decisionmaking authority. For the
351 purpose of this subparagraph, the term "relative" means father,
352 mother, son, daughter, brother, sister, uncle, aunt, first
353 cousin, nephew, niece, husband, wife, father-in-law, mother-in-
354 law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,
355 stepfather, stepmother, stepson, stepdaughter, stepbrother,
356 stepsister, half brother, or half sister.

357 19. Implementation of the activities authorized under s.
358 1002.331 by the charter school when it satisfies the eligibility



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359 requirements for a high-performing charter school. A high-
360 performing charter school shall notify its sponsor in writing by
361 March 1 if it intends to increase enrollment or expand grade
362 levels the following school year. The written notice shall
363 specify the amount of the enrollment increase and the grade
364 levels that will be added, as applicable.

365 (8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—

366 (g)1. If a charter is terminated or a charter school closes
367 before the end of a school year or within 3 years after
368 beginning operations and, after a specific finding by the school
369 district of material fraud, disregard of generally accepted
370 accounting principles, or of intentional malfeasance by an
371 applicant for the charter, the charter school owner, the charter
372 school president, charter school governing board members, and
373 the relatives of such owner, upon findings made by the school
374 district, the applicant for the charter, the charter school
375 owner, the charter school president, the charter school
376 governing board members, and the relatives of such owner,
377 president, or governing board member may not submit an
378 application to open a charter school in this state pursuant to
379 subsection (6) for a period of 5 years after the termination of
380 the charter or closure of the charter school. The applicant for
381 the charter, the charter school owner, the charter school
382 president, the charter school governing board members, and the
383 relatives of such owner, president, or governing board member,
384 may appeal to the charter appeals commission the school
385 district's finding of material fraud, intentional malfeasance,
386 or disregard of generally accepted accounting principles.

387 2. If a charter school owner, a charter school president, a



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388 member of a charter school governing board, a charter management
389 organization, or an education management organization is
390 convicted of a crime, including, but not limited to, material
391 fraud or serious financial theft offenses, misrepresentation,
392 fraud, or misappropriation related to the operation of a charter
393 school, that owner, president, or governing board member,
394 including any relatives of such individuals, or the charter
395 management organization or the education management
396 organization, may not submit an application to open a charter
397 school in this state pursuant to subsection (6) for a period of
398 10 years after such conviction.

399
400 For the purpose of this paragraph, the term "relative" has the
401 same meaning as specified in subparagraph (24) (a)2.

402 (12) EMPLOYEES OF CHARTER SCHOOLS.—

403 (g) Each charter school principal, governing board member,
404 chief financial officer, or equivalent position must hold a
405 valid certification issued by a third-party credentialing entity
406 that is recognized under s. 1001.241, at least 30 days before
407 the school opens or within 30 days of the first date of
408 employment, whichever comes first. The credentialing entity must
409 certify the individual's core competence in the administration
410 of a charter school, including, but not limited to, developing
411 and adjusting business plans; accurate financial planning and
412 good business practices, including accounting for costs and
413 income; state and federal grant and student performance
414 accountability requirements; identification of, and application
415 for, state and federal funding sources; and governance,
416 including government in the sunshine, conflicts of interest,



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417 ethics, and financial responsibility. An individual certified
418 under this paragraph meets the training requirements under
419 subparagraph (h)3., paragraph (6)(f), and subparagraph (9)(j)4.

420 Section 4. Paragraph (d) of subsection (1) of section
421 1002.45, Florida Statutes, is amended to read:

422 1002.45 Virtual instruction programs.—

423 (1) PROGRAM.—

424 (d) A virtual charter school may provide part-time and
425 full-time virtual instruction for students in kindergarten
426 through grade 12 if the virtual charter school has a charter
427 approved pursuant to s. 1002.33 ~~authorizing full-time virtual~~
428 ~~instruction~~. A virtual charter school may:

429 1. Contract with the Florida Virtual School.

430 2. Contract with or be an approved provider under
431 subsection (2).

432 3. Enter into an agreement with a school district to allow
433 the participation of the virtual charter school's students in
434 the school district's virtual instruction program. The agreement
435 must indicate a process for reporting of student enrollment and
436 the transfer of funds required by paragraph (7)(e).

437
438 ===== T I T L E A M E N D M E N T =====

439 And the title is amended as follows:

440 Delete lines 10 - 58

441 and insert:

442 providing that applicants who submit applications to a
443 credentialing entity are subject to a certain
444 background screening; providing for the ineligibility
445 of certain applicants; requiring the Department of Law



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446 Enforcement to notify the credentialing entity of an
447 applicant's background screening results; providing
448 that the results of fingerprinting and background
449 screening of applicants who meet certain requirements
450 are valid and such applicants are not required to be
451 subsequently fingerprinted or pass another background
452 screening; requiring credentialing entities to confirm
453 whether an applicant has previously been fingerprinted
454 and passed a background screening within a school
455 district; requiring credentialing entities to issue
456 certificates of compliance upon approval of a person's
457 application; providing for termination of the
458 certification after a specified time period if the
459 certification is not renewed; authorizing
460 credentialing entities to suspend or revoke a
461 certificate of compliance under specified conditions;
462 requiring charter schools to remove a charter school
463 principal, charter school governing board member, or
464 charter school chief financial officer from his or her
465 position, as applicable, under specified conditions;
466 requiring charter schools to notify the credentialing
467 entity of such removal; providing that certain
468 decisions by a department-recognized credentialing
469 program are reviewable by the Department of Education;
470 providing that an aggrieved person may request an
471 administrative hearing within a specified timeframe
472 after receiving an adverse determination after
473 completion of an appeals process offered by the
474 credentialing program; amending s. 1002.33, F.S.;



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475 deleting obsolete language; revising charter school
476 application deadline requirements; authorizing certain
477 charter school applicants to open charter schools
478 before a specified timeframe and after approval;
479 prohibiting specified individuals and entities from
480 submitting an application to open a charter school for
481 specified periods of time; defining the term
482 "relative" for the purpose of applying the
483 prohibition; requiring each charter school principal,
484 governing board member, chief financial officer, or
485 their equivalent, to meet certain certification
486 requirements; amending s. 1002.45, F.S.; authorizing
487 virtual charter schools to provide part-time virtual
488 instruction for certain students; providing that a
489 charter school may be an approved provider; providing
490 an effective date.

By the Committee on Education; and Senator Farmer

581-03533-19

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1 A bill to be entitled
 2 An act relating to charter schools; creating s.
 3 1001.241, F.S.; requiring the Department of Education
 4 to approve credentialing entities for a specified
 5 purpose; requiring credentialing entities to
 6 establish, develop, and administer specified
 7 requirements and processes; requiring credentialing
 8 entities to establish a certification program;
 9 providing requirements for the certification program;
 10 requiring credentialing entities to establish certain
 11 fees; providing requirements for such fees; providing
 12 that applicants who submit applications to a
 13 credentialing entity are subject to a certain
 14 background screening; providing for the ineligibility
 15 of certain applicants; requiring the Department of Law
 16 Enforcement to notify the credentialing entity of an
 17 applicant's background screening results; requiring
 18 credentialing entities to issue certificates of
 19 compliance upon approval of a person's application;
 20 providing for termination of the certification after a
 21 specified time period if the certification is not
 22 renewed; authorizing credentialing entities to suspend
 23 or revoke a certificate of compliance under specified
 24 conditions; requiring charter schools to remove a
 25 charter school principal, charter school governing
 26 board member, or charter school chief financial
 27 officer from his or her position, as applicable, under
 28 specified conditions; requiring charter schools to
 29 notify the credentialing entity of such removal;

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30 providing that certain decisions by a department-
 31 recognized credentialing program are reviewable by the
 32 Department of Education; providing that an aggrieved
 33 person may request an administrative hearing within a
 34 specified timeframe after receiving an adverse
 35 determination after completion of an appeals process
 36 offered by the credentialing program; amending s.
 37 1002.33, F.S.; deleting obsolete language; revising
 38 charter school application deadline requirements;
 39 authorizing certain charter school applicants to open
 40 charter schools before a specified timeframe and after
 41 approval; prohibiting specified individuals and
 42 entities from submitting an application to open a
 43 charter school for specified periods of time; defining
 44 the term "relative" for the purpose of applying the
 45 prohibition; requiring each charter school principal,
 46 governing board member, chief financial officer, or
 47 their equivalent, to meet certain certification
 48 requirements; amending s. 1002.45, F.S.; authorizing
 49 virtual charter schools to provide part-time virtual
 50 instruction for certain students; providing that a
 51 charter school may be an approved provider; amending
 52 s. 1012.32, F.S.; conforming a cross-reference;
 53 revising fingerprint filing requirements for charter
 54 school instructional and noninstructional personnel;
 55 providing that fingerprints and background checks of
 56 such personnel who meet certain requirements are valid
 57 for a specified period of time in all school
 58 districts; providing an effective date.

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

62 Section 1. Section 1001.241, Florida Statutes, is created
63 to read:

64 1001.241 Third-party credentialing entities.-

65 (1) The department shall approve one or more third-party
66 credentialing entities for the purposes of developing and
67 administering a credentialing program for charter school
68 principals, charter school governing board members, and charter
69 school chief financial officers. The approved credentialing
70 entity shall:

71 (a) Establish position core competencies, certification
72 requirements, testing instruments, and recertification
73 requirements for charter school principals, charter school
74 governing board members, and charter school chief financial
75 officers.

76 (b) Establish a process to administer the certification
77 application, award, and maintenance processes.

78 (c) Develop and administer:

79 1. A code of ethics and disciplinary process.

80 2. Biennial continuing education requirements and annual
81 certification renewal requirements.

82 3. An education provider program to approve training
83 entities that are qualified to provide precertification training
84 to applicants and continuing education opportunities to
85 certified persons.

86 (2) A credentialing entity shall establish a certification
87 program that:

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88 (a) Is directly related to the core competencies.

89 (b) Establishes minimum requirements in each of the

90 following categories:

91 1. Training.

92 2. On-the-job work experience.

93 3. Supervision.

94 4. Testing.

95 5. Biennial continuing education.

96 (c) Requires adherence to a code of ethics and provides for
97 a disciplinary process that applies to certified persons.

98 (d) Approves qualified training entities that provide
99 precertification training to applicants and continuing education
100 to charter school principals, charter school governing board
101 members, and charter school chief financial officers. To avoid a
102 conflict of interest, a credentialing entity or its affiliate
103 may not deliver training to an applicant or continuing education
104 to a certificateholder.

105 (3) A credentialing entity shall establish application,
106 examination, and certification fees and an annual certification
107 renewal fee. The application, examination, and certification fee
108 may not exceed \$225. The annual certification renewal fee may
109 not exceed \$100.

110 (4) All applicants are subject to level 2 background
111 screening as provided under chapter 435. An applicant is
112 ineligible, and a credentialing entity shall deny the
113 application, if the applicant has been found guilty of, or has
114 entered a plea of guilty or nolo contendere to, regardless of
115 adjudication, any offense listed in s. 435.04(2) unless the
116 department has issued an exemption under s. 397.4872. In

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117 accordance with s. 435.04, the Department of Law Enforcement
 118 shall notify the credentialing entity of the applicant's
 119 eligibility based on the results of his or her background
 120 screening.

121 (5) The credentialing entity shall issue a certificate of
 122 compliance upon approval of a person's application. The
 123 certification shall automatically terminate 1 year after
 124 issuance if not renewed.

125 (a) A credentialing entity may suspend or revoke the
 126 certificate of compliance of a charter school principal, a
 127 charter school governing board member, or a charter school chief
 128 financial officer if the charter school principal, the charter
 129 school governing board member, or the charter school chief
 130 financial officer fails to adhere to the continuing education
 131 requirements.

132 (b) A credentialing entity shall revoke a certificate of
 133 compliance of a charter school principal, charter school
 134 governing board member, or charter school chief financial
 135 officer if the charter school principal, charter school
 136 governing board member, or charter school chief financial
 137 officer provides false or misleading information to the
 138 credentialing entity at any time.

139 (c) If a charter school principal, charter school governing
 140 board member, or charter school chief financial officer is
 141 arrested for or found guilty of, or enters a plea of guilty or
 142 nolo contendere to, regardless of adjudication, any offense
 143 listed in s. 435.04(2) while acting in that capacity, the
 144 charter school shall immediately remove the person from that
 145 position and shall notify the credentialing entity within 3

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146 business days after such removal.

147 (6) Any decision by a department-recognized credentialing
 148 program to deny certification or otherwise impose sanctions on
 149 an individual who is certified is reviewable by the department.
 150 The individual aggrieved may request an administrative hearing
 151 conducted pursuant to ss. 120.569 and 120.57(1) within 30 days
 152 after receiving an adverse determination after completing any
 153 appeals process offered by the credentialing program.

154 Section 2. Present paragraphs (g), (h), and (i) of
 155 subsection (12) of section 1002.33, Florida Statutes, are
 156 redesignated as paragraphs (h), (i), and (j), respectively, and
 157 a new paragraph (g) is added to that subsection, paragraph (g)
 158 is added to subsection (8), and paragraph (b) of subsection (6)
 159 and paragraph (a) of subsection (7) of that section are amended,
 160 to read:

161 1002.33 Charter schools.—

162 (6) APPLICATION PROCESS AND REVIEW.—Charter school
 163 applications are subject to the following requirements:

164 (b) A sponsor shall receive and review all applications for
 165 a charter school using the evaluation instrument developed by
 166 the Department of Education. A sponsor shall receive and
 167 consider charter school applications received on or before
 168 August 1 of each calendar year for charter schools to be opened
 169 at the beginning of the school district's next school year, or
 170 to be opened at a time ~~determined~~ agreed to by the applicant and
 171 the sponsor. A sponsor may not refuse to receive a charter
 172 school application submitted before August 1 and may receive an
 173 application submitted later than August 1 if it chooses.
 174 ~~Beginning in 2018 and thereafter,~~ A sponsor shall also receive

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175 and consider charter school applications received on or before
 176 February 1 of each calendar year for charter schools to be
 177 opened ~~18 months later~~ at the beginning of the school district's
 178 school year, or to be opened at a time determined by the
 179 applicant. A sponsor may not refuse to receive a charter school
 180 application submitted before February 1 and may receive an
 181 application submitted later than February 1 if it chooses. A
 182 sponsor may not charge an applicant for a charter any fee for
 183 the processing or consideration of an application, and a sponsor
 184 may not base its consideration or approval of a final
 185 application upon the promise of future payment of any kind. If
 186 an applicant is ready to do so, it may open a charter school
 187 before the school district's next school year after approval of
 188 the charter school application submitted by either application
 189 deadline. Before approving or denying any application, the
 190 sponsor shall allow the applicant, upon receipt of written
 191 notification, at least 7 calendar days to make technical or
 192 nonsubstantive corrections and clarifications, including, but
 193 not limited to, corrections of grammatical, typographical, and
 194 like errors or missing signatures, if such errors are identified
 195 by the sponsor as cause to deny the final application.

196 1. In order to facilitate an accurate budget projection
 197 process, a sponsor shall be held harmless for FTE students who
 198 are not included in the FTE projection due to approval of
 199 charter school applications after the FTE projection deadline.
 200 In a further effort to facilitate an accurate budget projection,
 201 within 15 calendar days after receipt of a charter school
 202 application, a sponsor shall report to the Department of
 203 Education the name of the applicant entity, the proposed charter

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204 school location, and its projected FTE.

205 2. In order to ensure fiscal responsibility, an application
 206 for a charter school shall include a full accounting of expected
 207 assets, a projection of expected sources and amounts of income,
 208 including income derived from projected student enrollments and
 209 from community support, and an expense projection that includes
 210 full accounting of the costs of operation, including start-up
 211 costs.

212 3.a. A sponsor shall by a majority vote approve or deny an
 213 application no later than 90 calendar days after the application
 214 is received, unless the sponsor and the applicant mutually agree
 215 in writing to temporarily postpone the vote to a specific date,
 216 at which time the sponsor shall by a majority vote approve or
 217 deny the application. If the sponsor fails to act on the
 218 application, an applicant may appeal to the State Board of
 219 Education as provided in paragraph (c). If an application is
 220 denied, the sponsor shall, within 10 calendar days after such
 221 denial, articulate in writing the specific reasons, based upon
 222 good cause, supporting its denial of the application and shall
 223 provide the letter of denial and supporting documentation to the
 224 applicant and to the Department of Education.

225 b. An application submitted by a high-performing charter
 226 school identified pursuant to s. 1002.331 or a high-performing
 227 charter school system identified pursuant to s. 1002.332 may be
 228 denied by the sponsor only if the sponsor demonstrates by clear
 229 and convincing evidence that:

230 (I) The application of a high-performing charter school
 231 does not materially comply with the requirements in paragraph
 232 (a) or, for a high-performing charter school system, the

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233 application does not materially comply with s. 1002.332(2)(b);
 234 (II) The charter school proposed in the application does
 235 not materially comply with the requirements in paragraphs
 236 (9)(a)-(f);
 237 (III) The proposed charter school's educational program
 238 does not substantially replicate that of the applicant or one of
 239 the applicant's high-performing charter schools;
 240 (IV) The applicant has made a material misrepresentation or
 241 false statement or concealed an essential or material fact
 242 during the application process; or
 243 (V) The proposed charter school's educational program and
 244 financial management practices do not materially comply with the
 245 requirements of this section.
 246
 247 Material noncompliance is a failure to follow requirements or a
 248 violation of prohibitions applicable to charter school
 249 applications, which failure is quantitatively or qualitatively
 250 significant either individually or when aggregated with other
 251 noncompliance. An applicant is considered to be replicating a
 252 high-performing charter school if the proposed school is
 253 substantially similar to at least one of the applicant's high-
 254 performing charter schools and the organization or individuals
 255 involved in the establishment and operation of the proposed
 256 school are significantly involved in the operation of replicated
 257 schools.
 258 c. If the sponsor denies an application submitted by a
 259 high-performing charter school or a high-performing charter
 260 school system, the sponsor must, within 10 calendar days after
 261 such denial, state in writing the specific reasons, based upon

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262 the criteria in sub-subparagraph b., supporting its denial of
 263 the application and must provide the letter of denial and
 264 supporting documentation to the applicant and to the Department
 265 of Education. The applicant may appeal the sponsor's denial of
 266 the application in accordance with paragraph (c).
 267 4. For budget projection purposes, the sponsor shall report
 268 to the Department of Education the approval or denial of an
 269 application within 10 calendar days after such approval or
 270 denial. In the event of approval, the report to the Department
 271 of Education shall include the final projected FTE for the
 272 approved charter school.
 273 5. Upon approval of an application, the initial startup
 274 shall commence with the beginning of the public school calendar
 275 for the district in which the charter is granted. A charter
 276 school may defer the opening of the school's operations for up
 277 to 3 years to provide time for adequate facility planning. The
 278 charter school must provide written notice of such intent to the
 279 sponsor and the parents of enrolled students at least 30
 280 calendar days before the first day of school.
 281 (7) CHARTER.—The terms and conditions for the operation of
 282 a charter school shall be set forth by the sponsor and the
 283 applicant in a written contractual agreement, called a charter.
 284 The sponsor and the governing board of the charter school shall
 285 use the standard charter contract pursuant to subsection (21),
 286 which shall incorporate the approved application and any addenda
 287 approved with the application. Any term or condition of a
 288 proposed charter contract that differs from the standard charter
 289 contract adopted by rule of the State Board of Education shall
 290 be presumed a limitation on charter school flexibility. The

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291 sponsor may not impose unreasonable rules or regulations that
 292 violate the intent of giving charter schools greater flexibility
 293 to meet educational goals. The charter shall be signed by the
 294 governing board of the charter school and the sponsor, following
 295 a public hearing to ensure community input.

296 (a) The charter shall address and criteria for approval of
 297 the charter shall be based on:

298 1. The school's mission, the students to be served, and the
 299 ages and grades to be included.

300 2. The focus of the curriculum, the instructional methods
 301 to be used, any distinctive instructional techniques to be
 302 employed, and identification and acquisition of appropriate
 303 technologies needed to improve educational and administrative
 304 performance which include a means for promoting safe, ethical,
 305 and appropriate uses of technology which comply with legal and
 306 professional standards.

307 a. The charter shall ensure that reading is a primary focus
 308 of the curriculum and that resources are provided to identify
 309 and provide specialized instruction for students who are reading
 310 below grade level. The curriculum and instructional strategies
 311 for reading must be consistent with the Next Generation Sunshine
 312 State Standards and grounded in scientifically based reading
 313 research.

314 b. In order to provide students with access to diverse
 315 instructional delivery models, to facilitate the integration of
 316 technology within traditional classroom instruction, and to
 317 provide students with the skills they need to compete in the
 318 21st century economy, the Legislature encourages instructional
 319 methods for blended learning courses consisting of both

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320 traditional classroom and online instructional techniques.
 321 Charter schools may implement blended learning courses which
 322 combine traditional classroom instruction and virtual
 323 instruction. Students in a blended learning course must be full-
 324 time students of the charter school pursuant to s.
 325 1011.61(1)(a)1. Instructional personnel certified pursuant to s.
 326 1012.55 who provide virtual instruction for blended learning
 327 courses may be employees of the charter school or may be under
 328 contract to provide instructional services to charter school
 329 students. At a minimum, such instructional personnel must hold
 330 an active state or school district adjunct certification under
 331 s. 1012.57 for the subject area of the blended learning course.
 332 The funding and performance accountability requirements for
 333 blended learning courses are the same as those for traditional
 334 courses.

335 3. The current incoming baseline standard of student
 336 academic achievement, the outcomes to be achieved, and the
 337 method of measurement that will be used. The criteria listed in
 338 this subparagraph shall include a detailed description of:

339 a. How the baseline student academic achievement levels and
 340 prior rates of academic progress will be established.

341 b. How these baseline rates will be compared to rates of
 342 academic progress achieved by these same students while
 343 attending the charter school.

344 c. To the extent possible, how these rates of progress will
 345 be evaluated and compared with rates of progress of other
 346 closely comparable student populations.

347
 348 The district school board is required to provide academic

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349 student performance data to charter schools for each of their
350 students coming from the district school system, as well as
351 rates of academic progress of comparable student populations in
352 the district school system.

353 4. The methods used to identify the educational strengths
354 and needs of students and how well educational goals and
355 performance standards are met by students attending the charter
356 school. The methods shall provide a means for the charter school
357 to ensure accountability to its constituents by analyzing
358 student performance data and by evaluating the effectiveness and
359 efficiency of its major educational programs. Students in
360 charter schools shall, at a minimum, participate in the
361 statewide assessment program created under s. 1008.22.

362 5. In secondary charter schools, a method for determining
363 that a student has satisfied the requirements for graduation in
364 s. 1002.3105(5), s. 1003.4281, or s. 1003.4282.

365 6. A method for resolving conflicts between the governing
366 board of the charter school and the sponsor.

367 7. The admissions procedures and dismissal procedures,
368 including the school's code of student conduct. Admission or
369 dismissal must not be based on a student's academic performance.

370 8. The ways by which the school will achieve a
371 racial/ethnic balance reflective of the community it serves or
372 within the racial/ethnic range of other public schools in the
373 same school district.

374 9. The financial and administrative management of the
375 school, including a reasonable demonstration of the professional
376 experience or competence of those individuals or organizations
377 applying to operate the charter school or those hired or

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378 retained to perform such professional services and the
379 description of clearly delineated responsibilities and the
380 policies and practices needed to effectively manage the charter
381 school. A description of internal audit procedures and
382 establishment of controls to ensure that financial resources are
383 properly managed must be included. Both public sector and
384 private sector professional experience shall be equally valid in
385 such a consideration.

386 10. The asset and liability projections required in the
387 application which are incorporated into the charter and shall be
388 compared with information provided in the annual report of the
389 charter school.

390 11. A description of procedures that identify various risks
391 and provide for a comprehensive approach to reduce the impact of
392 losses; plans to ensure the safety and security of students and
393 staff; plans to identify, minimize, and protect others from
394 violent or disruptive student behavior; and the manner in which
395 the school will be insured, including whether or not the school
396 will be required to have liability insurance, and, if so, the
397 terms and conditions thereof and the amounts of coverage.

398 12. The term of the charter which shall provide for
399 cancellation of the charter if insufficient progress has been
400 made in attaining the student achievement objectives of the
401 charter and if it is not likely that such objectives can be
402 achieved before expiration of the charter. The initial term of a
403 charter shall be for 5 years, excluding 2 planning years. In
404 order to facilitate access to long-term financial resources for
405 charter school construction, charter schools that are operated
406 by a municipality or other public entity as provided by law are

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407 eligible for up to a 15-year charter, subject to approval by the
 408 district school board. A charter lab school is eligible for a
 409 charter for a term of up to 15 years. In addition, to facilitate
 410 access to long-term financial resources for charter school
 411 construction, charter schools that are operated by a private,
 412 not-for-profit, s. 501(c)(3) status corporation are eligible for
 413 up to a 15-year charter, subject to approval by the district
 414 school board. Such long-term charters remain subject to annual
 415 review and may be terminated during the term of the charter, but
 416 only according to the provisions set forth in subsection (8).
 417 13. The facilities to be used and their location. The
 418 sponsor may not require a charter school to have a certificate
 419 of occupancy or a temporary certificate of occupancy for such a
 420 facility earlier than 15 calendar days before the first day of
 421 school.
 422 14. The qualifications to be required of the teachers and
 423 the potential strategies used to recruit, hire, train, and
 424 retain qualified staff to achieve best value.
 425 15. The governance structure of the school, including the
 426 status of the charter school as a public or private employer as
 427 required in paragraph (12)(j) ~~(12)(i)~~.
 428 16. A timetable for implementing the charter which
 429 addresses the implementation of each element thereof and the
 430 date by which the charter shall be awarded in order to meet this
 431 timetable.
 432 17. In the case of an existing public school that is being
 433 converted to charter status, alternative arrangements for
 434 current students who choose not to attend the charter school and
 435 for current teachers who choose not to teach in the charter

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436 school after conversion in accordance with the existing
 437 collective bargaining agreement or district school board rule in
 438 the absence of a collective bargaining agreement. However,
 439 alternative arrangements shall not be required for current
 440 teachers who choose not to teach in a charter lab school, except
 441 as authorized by the employment policies of the state university
 442 which grants the charter to the lab school.
 443 18. Full disclosure of the identity of all relatives
 444 employed by the charter school who are related to the charter
 445 school owner, president, chairperson of the governing board of
 446 directors, superintendent, governing board member, principal,
 447 assistant principal, or any other person employed by the charter
 448 school who has equivalent decisionmaking authority. For the
 449 purpose of this subparagraph, the term "relative" means father,
 450 mother, son, daughter, brother, sister, uncle, aunt, first
 451 cousin, nephew, niece, husband, wife, father-in-law, mother-in-
 452 law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,
 453 stepfather, stepmother, stepson, stepdaughter, stepbrother,
 454 stepsister, half brother, or half sister.
 455 19. Implementation of the activities authorized under s.
 456 1002.331 by the charter school when it satisfies the eligibility
 457 requirements for a high-performing charter school. A high-
 458 performing charter school shall notify its sponsor in writing by
 459 March 1 if it intends to increase enrollment or expand grade
 460 levels the following school year. The written notice shall
 461 specify the amount of the enrollment increase and the grade
 462 levels that will be added, as applicable.
 463 (8) CAUSES FOR NONRENEWAL OR TERMINATION OF CHARTER.—
 464 (g)1. If a charter is terminated or a charter school closes

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465 before the end of a school year or within 3 years after
 466 beginning operations and, after a specific finding by the school
 467 district of material fraud, disregard of generally accepted
 468 accounting principles, or of intentional malfeasance by an
 469 applicant for the charter, the charter school owner, the charter
 470 school president, charter school governing board members, and
 471 the relatives of such owner, upon findings made by the school
 472 district, the applicant for the charter, the charter school
 473 owner, the charter school president, the charter school
 474 governing board members, and the relatives of such owner,
 475 president, or governing board member may not submit an
 476 application to open a charter school in this state pursuant to
 477 subsection (6) for a period of 5 years after the termination of
 478 the charter or closure of the charter school. The applicant for
 479 the charter, the charter school owner, the charter school
 480 president, the charter school governing board members, and the
 481 relatives of such owner, president, or governing board member,
 482 may appeal to the charter appeals commission the school
 483 district's finding of material fraud, intentional malfeasance,
 484 or disregard of generally accepted accounting principles.

485 2. If a charter school owner, a charter school president, a
 486 member of a charter school governing board, a charter management
 487 organization, or an education management organization is
 488 convicted of a crime, including, but not limited to, material
 489 fraud or serious financial theft offenses, misrepresentation,
 490 fraud, or misappropriation related to the operation of a charter
 491 school, that owner, president, or governing board member,
 492 including any relatives of such individuals, or the charter
 493 management organization or the education management

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494 organization, may not submit an application to open a charter
 495 school in this state pursuant to subsection (6) for a period of
 496 10 years after such conviction.

497
 498 For the purpose of this paragraph, the term "relative" has the
 499 same meaning as specified in subparagraph (24)(a)2.

500 (12) EMPLOYEES OF CHARTER SCHOOLS.—

501 (g) Each charter school principal, governing board member,
 502 chief financial officer, or equivalent position must hold a
 503 valid certification issued by a third-party credentialing entity
 504 that is recognized under s. 1001.241, at least 30 days before
 505 the school opens or within 30 days of the first date of
 506 employment, whichever comes first. The credentialing entity must
 507 certify the individual's core competence in the administration
 508 of a charter school, including, but not limited to, developing
 509 and adjusting business plans; accurate financial planning and
 510 good business practices, including accounting for costs and
 511 income; state and federal grant and student performance
 512 accountability requirements; identification of, and application
 513 for, state and federal funding sources; and governance,
 514 including government in the sunshine, conflicts of interest,
 515 ethics, and financial responsibility. An individual certified
 516 under this paragraph meets the training requirements under
 517 subparagraph (h)3., paragraph (6)(f), and subparagraph (9)(j)4.

518 Section 3. Paragraph (d) of subsection (1) of section
 519 1002.45, Florida Statutes, is amended to read:

520 1002.45 Virtual instruction programs.—

521 (1) PROGRAM.—

522 (d) A virtual charter school may provide part-time and

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523 full-time virtual instruction for students in kindergarten
 524 through grade 12 if the virtual charter school has a charter
 525 approved pursuant to s. 1002.33 ~~authorizing full-time virtual~~
 526 ~~instruction~~. A virtual charter school may:

- 527 1. Contract with the Florida Virtual School.
- 528 2. Contract with or be an approved provider under
 529 subsection (2).
- 530 3. Enter into an agreement with a school district to allow
 531 the participation of the virtual charter school's students in
 532 the school district's virtual instruction program. The agreement
 533 must indicate a process for reporting of student enrollment and
 534 the transfer of funds required by paragraph (7) (e).

535 Section 4. Paragraph (b) of subsection (2) of section
 536 1012.32, Florida Statutes, is amended to read:

537 1012.32 Qualifications of personnel.—
 538 (2)
 539 (b) Instructional and noninstructional personnel who are
 540 hired or contracted to fill positions in any charter school and
 541 members of the governing board of any charter school, in
 542 compliance with s. 1002.33(12)(h) ~~s. 1002.33(12)(g)~~, must, upon
 543 employment, engagement of services, or appointment, undergo
 544 background screening as required under s. 1012.465 or s.
 545 1012.56, whichever is applicable, by filing with any single the
 546 ~~district school board for the school district~~ in which one of
 547 the charter governing board's charter schools ~~the charter school~~
 548 is located a complete set of fingerprints taken by an authorized
 549 law enforcement agency or an employee of the school or school
 550 district who is trained to take fingerprints. Once such
 551 instructional and noninstructional personnel are fingerprinted

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552 and pass the appropriate background check in any single school
 553 district, such fingerprints and background check shall be valid
 554 for a period of 3 years and valid in all school districts
 555 throughout the state.

556

557 Fingerprints shall be submitted to the Department of Law
 558 Enforcement for statewide criminal and juvenile records checks
 559 and to the Federal Bureau of Investigation for federal criminal
 560 records checks. A person subject to this subsection who is found
 561 ineligible for employment under s. 1012.315, or otherwise found
 562 through background screening to have been convicted of any crime
 563 involving moral turpitude as defined by rule of the State Board
 564 of Education, shall not be employed, engaged to provide
 565 services, or serve in any position that requires direct contact
 566 with students. Probationary persons subject to this subsection
 567 terminated because of their criminal record have the right to
 568 appeal such decisions. The cost of the background screening may
 569 be borne by the district school board, the charter school, the
 570 employee, the contractor, or a person subject to this
 571 subsection. A district school board shall reimburse a charter
 572 school the cost of background screening if it does not notify
 573 the charter school of the eligibility of a governing board
 574 member or instructional or noninstructional personnel within the
 575 earlier of 14 days after receipt of the background screening
 576 results from the Florida Department of Law Enforcement or 30
 577 days of submission of fingerprints by the governing board member
 578 or instructional or noninstructional personnel.

579 Section 5. This act shall take effect January 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 27, 2019

I respectfully request that **Senate Bill #1224**, relating to Charter School Employees, be placed on the:

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

A handwritten signature in black ink, appearing to read "Gary M. Farmer, Jr.", written in a cursive style.

Senator Gary M. Farmer, Jr.
Florida Senate, District 34

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

1224

Bill Number (if applicable)

Topic Certification

Amendment Barcode (if applicable)

Name Neal McGarry

Job Title CEO

Address 1715 S. Gadsden St

Phone 850-222-6314

Street

Tallahassee

FL

32301

City

State

Zip

Email namcgarry@certification

Speaking: [] For [] Against [] Information

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

Representing Florida Certification Board

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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

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)

4/10/19

Meeting Date

1224

Bill Number (if applicable)

Topic Charter Schools

Amendment Barcode (if applicable)

Name Trish Neely

Job Title Board Member

Address 2024 Shangri-la Lane

Phone 850 322 3317

Tally FL 32303

Email

Speaking: For Against Information

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

Representing League 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.

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)

4/10/19
Meeting Date

SB1224
Bill Number (if applicable)

Topic Charter Schools

Amendment Barcode (if applicable)

Name Khanh-Lien ("Con Lynn") Banko

Job Title 1747 Orlando Central Parkway

Address Resolution's Chair

Phone 407.855-7604

Street Orlando FL 32809

Email resolutionise@floridapta.org

City State Zip

Speaking: For Against Information

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

Representing Florida PTA

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)

4.10.19

Meeting Date

1224

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andreina Figueroa

Job Title _____

Address 8460 SW 184 ST
Street

Phone 786.586.7001

FI
City State Zip

Email ADF@ADFCONSULTING.COM

Speaking: For Against Information

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

Representing Academic

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1616

INTRODUCER: Senator Baxley

SUBJECT: Local Government Financial Reporting

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1616 specifies periods for which budget documents must appear on county and municipal websites and requires annual reporting of final budget and economic status information to the Office Economic and Demographic Research. Information to report includes government spending and debt per resident, median income, average local government employee salaries, percentage of budget spent on employee salaries and benefits, and the number of taxing districts within the local government’s jurisdiction. Annual reporting of information must begin on October 15, 2019.

The bill takes effect upon becoming a law.

II. Present Situation:

County Budget Systems and Information

Chapter 129, F.S., establishes a budget system that controls the finances of the boards of county commissioners of Florida counties. Pursuant to s. 129.01, F.S., each county is required to prepare, approve, adopt, and execute an annual budget each fiscal year. The budget must show for each fund, as required by law and sound financial practices, budgeted revenues and expenditures by organizational unit.¹ The budget is approved by the board of county commissioners and must be balanced so that the total of the estimated receipts, including balances brought forward, equals the total of the appropriations and reserves.² Notwithstanding other provisions of law, the budgets of all county officers must be in sufficient detail and contain

¹ Section 129.01(1), F.S. The level of detail for the budget must meet level of detail requirements for annual financial reports under s. 218.32, F.S.

² Section 129.01(2), F.S.

such information as the board of county commissioners may require in furtherance of their powers and responsibilities.³

Preparation and Adoption of County Budgets

On or before June 1 of each year, the sheriff, the clerk of the circuit court and county comptroller, the tax collector, and the supervisor of elections each submit to the board of county commissioners a tentative budget for their respective offices for the ensuing fiscal year.⁴ Upon receipt of the tentative budgets and any revisions, the board prepares a summary of the adopted tentative budgets.⁵ Public hearings are held to explain tentative and final budgets and to entertain community requests and complaints prior to budget adoption.⁶ The tentative budget must be posted on the county's official website at least two days before a public hearing. The final budget must be posted on the website within 30 days after adoption. The tentative budgets, adopted tentative budgets, and final budgets are filed in the office of the county auditor as a public record.

Municipal Budget Requirements

The preparation, adoption, and website posting of municipal budgets follows a similar process to that of counties. Section 166.241(2), F.S., provides that each municipality must annually adopt a budget by ordinance or resolution unless the municipality has a charter that specifies another method for adoption. The funds available from taxation and other sources must equal the total appropriations for expenditures and reserves.⁷ Officers of a municipal government may not expend funds except according to the budgeted appropriations. The tentative budget must be posted on the municipality's official website at least two days before a public hearing.⁸ The final budget must be posted on the website within 30 days after adoption.⁹

Local Government Financial Reporting

Florida Statutes provide a number of local government financial reporting requirements including:

- Section 29.0085, F.S., requires each county to annually submit to the State Chief Financial Officer (CFO) a statement of revenues and expenditures in the form and manner prescribed by the CFO. By January 31 of each year, each county must submit to the CFO a statement of compliance from its independent certified public accountant engaged to conduct its annual financial audit indicating that the certified statement of expenditures was in accordance with state law.

³ Section 129.021, F.S. *See* ss. 125.01(1)(q), (r), and (v), and (6) and 129.01(2)(b), F.S., for more on these county powers and responsibilities.

⁴ Section 129.03(2), F.S. Section 195.087(1) F.S., outlines the budget process for property appraisers in the state.

⁵ Section 129.03(3)(b), F.S.

⁶ Section 129.03(3)(c), F.S., also outlines public hearing practices and subsequent budget website posting and public record requirements.

⁷ Section 166.241(2), F.S.

⁸ Section 166.241 (3), F.S.

⁹ *Id.* If the municipality does not operate an official website, the municipality must, within a reasonable period of time as established by the county or counties in which the municipality is located, transmit the tentative budget and final budget to the manager or administrator of such county or counties who shall post the budgets on the county's website.

- Section 218.32(1), F.S., requires local governmental entities to submit to the Department of Financial Services (DFS) an annual financial report (AFR) and, if the local governmental entities meet the audit threshold specified in state law, a copy of their audit report. Each local governmental entity's website must provide a link to the DFS website to view the entity's submitted AFRs.¹⁰
- Section 218.32(2), F.S., requires the DFS to annually file, by December 1, a verified report with certain statutorily specified entities¹¹ showing the total revenues, expenditures, and outstanding long-term debt of each local governmental entity, regional planning council, local government finance commission, and municipal power corporation entity that is required to submit an AFR.
- Section 218.39, F.S., requires an annual financial audit of accounts and records be completed within nine months after the end of the fiscal year¹² for counties, district school boards, charter schools and charter technical career centers, and certain municipalities and special districts.

III. Effect of Proposed Changes:

Section 1 amends s. 129.03, F.S., to require that a county's tentative budget must remain posted on the county's website for 45 days and the final budget must remain posted on the website for two years.

In addition, by October 15, 2019, and annually thereafter, the county budget officer must electronically submit the following final budget and economic status information to the Office of Economic and Demographic Research (EDR):

- Government spending per resident for at least the previous five years;
- Government debt per resident for at least the previous five years;
- Median income within the county;
- Average county employee salary;
- Percent of budget spent on salaries and benefits for county employees; and
- Number of special taxing districts within the county.

Section 2 amends s. 166.241, F.S., to require that a municipality's tentative budget must remain posted on the municipality's website for 45 days and the final budget must remain posted on the website for two years.

In addition, by October 15, 2019, and annually thereafter, the municipal budget officer must electronically submit the following final budget and economic status information to the EDR:

- Government spending per resident for at least the previous five years;
- Government debt per resident for at least the previous five years;
- Median income within the municipality;

¹⁰ Section 218.32(g), F.S. If the local governmental entity does not have an official website, the county government's website must provide the required link for the local governmental entity.

¹¹ These entities are the Governor, the Legislature, the Auditor General, and the Special District Accountability Program of the Department of Economic Opportunity.

¹² Section 218.33, F.S., provides that each local governmental entity shall begin its fiscal year on October 1 of each year and end it on September 30.

- Average municipal employee salary;
- Percent of budget spent on salaries and benefits for municipal employees; and
- Number of special taxing districts within the municipality.

If the municipality amends the budget, the bill requires that the adopted amendment remain posted on the municipality's website for at least 2 years.

Section 3 creates an undesignated section of law requiring the EDR, by July 15, 2019, to establish the format and forms for use by counties and municipalities to submit information required by the bill.

Section 4 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Subsection (a) of section 18 of the Florida Constitution, provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

The bill requires cities and counties to incur costs related to the collection, reporting and submission of information to EDR. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2018-2019 is forecast at slightly over \$2 million.^{13,14,15}

If such costs were determined to exceed \$2 million, paragraph (a) of section 18 would require the bill to contain a finding of important state interest and meet one of the exceptions specified in that paragraph (e.g., provision of funding or a funding mechanism, or enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ FLA. CONST. art. VII, s. 18(d).

¹⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 9, 2019).

¹⁵ Based on the Florida Demographic Estimating Conference's November 5, 2018 population forecast for 2019 of 21,170,399. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 18, 2019).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Counties, municipalities, and the EDR may incur costs related to the collection, reporting, and formatting of the bill's required information gathering.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 129.03 and 166.241.

This bill creates an undesignated section of law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Baxley

12-01393-19

20191616__

1 A bill to be entitled
 2 An act relating to local government financial
 3 reporting; amending ss. 129.03 and 166.241, F.S.;
 4 requiring county and municipal budget officers,
 5 respectively, to submit certain information to the
 6 Office of Economic and Demographic Research within a
 7 specified timeframe; requiring adopted budget
 8 amendments and final budgets to remain posted on each
 9 entity's official website for a specified period of
 10 time; requiring the Office of Economic and Demographic
 11 Research to create a form for certain purposes by a
 12 specified date; providing an effective date.
 13
 14 Be It Enacted by the Legislature of the State of Florida:
 15
 16 Section 1. Paragraph (c) of subsection (3) of section
 17 129.03, Florida Statutes, is amended, and paragraph (d) is added
 18 to that subsection, to read:
 19 129.03 Preparation and adoption of budget.—
 20 (3) The county budget officer, after tentatively
 21 ascertaining the proposed fiscal policies of the board for the
 22 next fiscal year, shall prepare and present to the board a
 23 tentative budget for the next fiscal year for each of the funds
 24 provided in this chapter, including all estimated receipts,
 25 taxes to be levied, and balances expected to be brought forward
 26 and all estimated expenditures, reserves, and balances to be
 27 carried over at the end of the year.
 28 (c) The board shall hold public hearings to adopt tentative
 29 and final budgets pursuant to s. 200.065. The hearings shall be

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20191616__

30 primarily for the purpose of hearing requests and complaints
 31 from the public regarding the budgets and the proposed tax
 32 levies and for explaining the budget and any proposed or adopted
 33 amendments. The tentative budget must be posted on the county's
 34 official website at least 2 days before the public hearing to
 35 consider such budget and must remain on the website for at least
 36 45 days. The final budget must be posted on the website within
 37 30 days after adoption and must remain on the website for at
 38 least 2 years. The tentative budgets, adopted tentative budgets,
 39 and final budgets shall be filed in the office of the county
 40 auditor as a public record. Sufficient reference in words and
 41 figures to identify the particular transactions must ~~shall~~ be
 42 made in the minutes of the board to record its actions with
 43 reference to the budgets.
 44 (d) By October 15, 2019, and each October 15 annually
 45 thereafter, the county budget officer shall electronically
 46 submit the following information regarding the final budget and
 47 the county's economic status to the Office of Economic and
 48 Demographic Research in the format specified by the office:
 49 1. Government spending per resident, including, at a
 50 minimum, the spending per resident for the previous 5 fiscal
 51 years.
 52 2. Government debt per resident, including, at a minimum,
 53 the debt per resident for the previous 5 fiscal years.
 54 3. Median income within the county.
 55 4. The average county employee salary.
 56 5. Percent of budget spent on salaries and benefits for
 57 county employees.
 58 6. Number of special taxing districts, wholly or partially,

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59 within the county.

60 Section 2. Present subsections (4) and (5) of section
61 166.241, Florida Statutes, are redesignated as subsections (5)
62 and (6), respectively, subsection (3) and present subsection (5)
63 are amended, and a new subsection (4) is added to that section,
64 to read:

65 166.241 Fiscal years, budgets, and budget amendments.—

66 (3) The tentative budget must be posted on the
67 municipality's official website at least 2 days before the
68 budget hearing, held pursuant to s. 200.065 or other law, to
69 consider such budget and must remain on the website for at least
70 45 days. The final adopted budget must be posted on the
71 municipality's official website within 30 days after adoption
72 and must remain on the website for at least 2 years. If the
73 municipality does not operate an official website, the
74 municipality must, within a reasonable period of time as
75 established by the county or counties in which the municipality
76 is located, transmit the tentative budget and final budget to
77 the manager or administrator of such county or counties who
78 shall post the budgets on the county's website.

79 (4) Beginning October 15, 2019, and each October 15
80 thereafter, the municipal budget officer shall electronically
81 submit the following information regarding the final budget and
82 the municipality's economic status to the Office of Economic and
83 Demographic Research in the format specified by the office:

84 (a) Government spending per resident, including, at a
85 minimum, the spending per resident for the previous 5 fiscal
86 years.

87 (b) Government debt per resident, including, at a minimum,

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88 the debt per resident for the previous 5 fiscal years.

89 (c) Average municipal employee salary.

90 (d) Median income within the municipality.

91 (e) Number of special taxing districts, wholly or
92 partially, within the municipality.

93 (f) Percent of budget spent on salaries and benefits for
94 municipal employees.

95 ~~(6)-(5)~~ If the governing body of a municipality amends the
96 budget pursuant to paragraph ~~(5)(c)~~ ~~(4)-(e)~~, the adopted
97 amendment must be posted on the official website of the
98 municipality within 5 days after adoption and must remain on the
99 website for at least 2 years. If the municipality does not
100 operate an official website, the municipality must, within a
101 reasonable period of time as established by the county or
102 counties in which the municipality is located, transmit the
103 adopted amendment to the manager or administrator of such county
104 or counties who shall post the adopted amendment on the county's
105 website.

106 Section 3. By July 15, 2019, the Office of Economic and
107 Demographic Research shall establish the format and forms for
108 use by counties and municipalities for purposes of submitting
109 the information required by this act.

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

THE FLORIDA SENATE

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations Subcommittee on Education
Education
Finance and Tax
Health Policy
Judiciary

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR DENNIS BAXLEY

12th District

March 27, 2019

The Honorable Senator Ed Hooper
326 Senate Office Building
Tallahassee, FL 32399

Dear Chairman Hooper,

I would like to request SB 1616 Local Government Financial Reporting be heard in the next Governmental Oversight and Accountability Committee meeting.

This bill requires counties and municipalities to post their annual budgets to their respective websites for at least two years and tentative budgets to their websites for at least 45 days.

The bill also requires each county and municipal budget officer beginning October 15, 2019, to file an annual report to the Office of Economic and Demographic Research (EDR), in a format and on forms prescribed by EDR, including information concerning:

- Government spending per resident, including the rate for the five preceding fiscal years;
- Government debt per resident, including the rate for the five preceding fiscal years;
- Median income within the county or municipality;
- Average county or municipal employee salary;
- Percent of the entity's budget spent on salaries and benefits for the entity's employees; and
- Number of special taxing districts that are located wholly or partially within the county or municipality.

The bill requires EDR to develop the format and forms for reporting the information by July 15, 2019.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley
Senate District 12

cc: Joe McVaney, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

Bill Galvano
President of the Senate

David Simmons
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/10/19

Meeting Date

SB 1616

Bill Number (if applicable)

Topic Local Government Financial Reporting

Amendment Barcode (if applicable)

Name Demetrius Minor

Job Title Dir of Coalitions

Address Street

Phone

City

State

Zip

Email

Speaking: [] For [] Against [] Information

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

Representing Americans For Prosperity

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1622

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Montford

SUBJECT: Public Records/Foster Parent and Foster Parent Applicant Names

DATE: April 9, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1622 amends s. 409.175, F.S., which contains a public records exemption for foster parents, applicants, their families, and their adult household members. The bill expands the exemptions to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the State Constitution. Currently, the following information held by the Department of Children and Families (DCF or department) regarding a foster parent applicant and such applicant's spouse, minor child, and other adult household member is exempt:

- The home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- The floor plan of the home; and
- Photographs of those individuals.

The bill also provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

The bill subjects the exemption to review and repeal on October 2, 2024, unless it is reenacted, pursuant to s. 119.15, F.S., the Open Government Sunset Review Act. The bill also includes a public necessity statement as required by the State Constitution.

Because the bill expands a public records exemption, it requires a two-thirds vote of all members present and voting from each chamber for final passage.

The bill is not expected to have a fiscal impact on the state and takes effect July 1, 2019.

II. Present Situation:

Family Foster Homes and Foster Parents

The Florida Statutes do not define the term “foster parent,” but foster parents are included in the definition of the term “other person responsible for a child’s welfare.” Included under this definition are specified individuals who are legally responsible for the child’s welfare in a residential setting, as well as an adult sitter or relative entrusted with a child’s care.¹ A family foster home means a licensed private residence in which children who are unattended by a parent or legal guardian receive 24-hour care.² Foster homes are classified by levels of licensure and inspected regularly.³

To qualify as a potential foster parent, applicants must complete a 20 to 30 hour training program, undergo a criminal and child abuse background check, participate in a home inspection and participate in a home study.⁴ Foster parents are expected to:

- Provide parenting that consists of a loving commitment to the child and the child’s safety and wellbeing;
- Provide opportunities to develop the child’s interests and skills;
- Care for the child in light of the child’s culture, religion, ethnicity, special physical or psychological needs and unique situations;
- Assist the biological parents in improving their ability to care for and protect their children and to provide continuity for the child;
- Assist the child in visitation and other forms of communication with his or her biological family;
- Obtain and maintain records that are important to the child’s wellbeing, such as medical records and records of achievements;
- Advocate for children in their care with the child welfare system, the court, and community agencies, such as schools, child care, and health providers;

¹ Section 39.01(54), F.S.

² Section 409.175, F.S.

³ *Id.*

⁴ Florida Department of Children and Families, *How Do I Become a Foster Parent?*, Available at: <http://www.dcf.state.fl.us/service-programs/foster-care/how-do-i.shtml> (Last visited March 27, 2019).

- Participate fully in the child’s medical, psychological, and dental care as they would for their biological child; and
- Support the child’s school success by participating in school activities and meetings.⁵

Foster parents receive a monthly stipend to help cover costs associated with fostering a child, however, this funding will typically not cover everything a foster child needs. As of January 1, 2019, foster parents receive the following monthly room and board rates per child:⁶

- \$466.65 for children ages zero to five;
- \$478.60 for children ages six to twelve; and
- \$560.19 for children ages thirteen to twenty-one.

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁷ 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.⁸

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.⁹ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁰ 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.¹¹

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.¹² The Florida Supreme

⁵ Section 409.145, F.S. Also see Florida Department of Children and Families, *Partnership Plan for Children in Out-of-Home Care*, Available at: <http://centerforchildwelfare.fmhi.usf.edu/kb/OOHPublications/PartnershipPlan.pdf> (Last visited March 27, 2019).

⁶ Florida Department of Children and Families, 2019 Foster Parent Cost of Living Allowance Increase, (January 14, 2019), available at http://www.centerforchildwelfare.org/kb/policymemos/2019-FP_CostOfLivingAllowance.pdf (Last visited March 28, 2019).

⁷ FLA. CONST., art. I, s. 24(a).

⁸ *Id.*

⁹ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

¹⁰ Public records laws are found throughout the Florida Statutes.

¹¹ Section 119.01(1), F.S.

¹² 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 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,

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.”¹³ A violation of the Public Records Act may result in civil or criminal liability.¹⁴

The Legislature may create an exemption to public records requirements.¹⁵ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁶ 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.¹⁷ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹⁸

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹⁹ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.²⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²³ An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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.”

¹³ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁴ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹⁹ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

²⁰ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

²¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²² Section 119.15(3), F.S.

²³ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁵ or
- It protects trade or business secrets.²⁶

The OGSR also requires specified questions to be considered during the review process.²⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²⁹

Foster Parent Public Record Exemption

Legislation creating the original public records exemption for foster parents was enacted in 1998 and applied only to certain information contained in the licensing file for licensed foster parents.³⁰ The public necessity statement expressed concern that foster parents and their families may be threatened, harassed, or harmed if personal information were released.³¹ The bill analysis stated that according to the department, foster families report that they are occasionally contacted inappropriately by persons who pose a threat to their safety as a result of the release of information in the licensure file. The department also reported that public access to personal identifying information about foster parents discourages potential foster parents from applying for licensure.³²

During the Open Government Sunset Review in 2003, the legislature expanded the exemption to include families who were pending licensure or had been denied, thus protecting their

²⁴ Section 119.15(6)(b)1., F.S.

²⁵ Section 119.15(6)(b)2., F.S.

²⁶ Section 119.15(6)(b)3., F.S.

²⁷ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁸ FLA. CONST. art. I, s. 24(c).

²⁹ Section 119.15(7), F.S.

³⁰ Ch. 98-29, Laws of Fla. Available at: <http://laws.flrules.org/1998/29> (Last visited March 29, 2019).

³¹ *Id.*

³² Florida House of Representatives, Final Bill Analysis and Economic Impact Statement, CS/CS/HB 1849, May 11, 1998. Available at: <http://archive.flsenate.gov/data/session/1998/House/bills/analysis/pdf/HB1849S2Z.CFE.pdf> (Last visited March 28, 2019).

information as well, and also expanded the exemption to include medical records.³³ The Legislature also removed the requirement that the information be in the licensing file to be protected and instead protected the information as long as it was held by the department.³⁴ The public necessity statement cited the private and confidential nature of personal health matters and the potential negative effect on recruitment.³⁵ The expansion of the public records exemption was reviewed in 2008 and resulted in the legislature saving the exemption from repeal with only minor amendments.³⁶

Current law addresses multiple issues related to the licensure of family foster homes, including requirements and protections for foster parents and applicants. The following information held by the department relating to a foster parent applicant and the applicant's spouse, minor child, and other adult household members is exempt from public records:³⁷

- Home, business, work, child care, or school addresses and telephone numbers;
- Birth dates;
- Medical records;
- Floor plans of the home; and
- Photographs of such persons.

If a foster parent applicant does not receive a license, this information becomes public five years after the date of application. However, medical records remain exempt regardless of licensure.³⁸

For a licensed foster parent and the foster parent's spouse, minor child, and other adult household member, the same information is exempt.³⁹ If a foster parent's license is no longer active, this information becomes public five years after the license's expiration date, subject to two exceptions: medical records remain exempt regardless of the license's status and all of this information remains exempt if a licensed foster parent becomes an adoptive parent.⁴⁰

III. Effect of Proposed Changes:

Section 1 amends s. 409.175, F.S., relating to licensure of family foster homes, residential child-caring agencies, and child-placing agencies and public records exemption, to expand the current public record exemption for a foster parent applicant, licensed foster parent, and the spouse, minor children, and other adult household members of the applicant or licensee to also protect the name of such applicant, licensee, spouse, minor child, and other adult household member. This information would be exempt from disclosure under s. 119.07(1), F.S., and Article 1, s. 24(a) of the Florida Constitution.

Section 1 also provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care

³³ Ch. 03-83, Laws of Fla.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Ch. 08-169, Laws of Fla.

³⁷ Section 409.175(16)(a), F.S.

³⁸ *Id.*

³⁹ Section. 409.175(16)(b), F.S.

⁴⁰ *Id.*

which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

Section 1 also provides the exemptions added are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of public necessity, as required by the State Constitution.

Because the bill expands a public records exemption, it requires a two-thirds vote of all members present and voting from each chamber for final passage.

Section 3 provides that the bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. The bill expands an existing exemption. Therefore, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The public necessity statement identifies that protecting the identity of foster parents will encourage more applicants to the foster parent program, and thus better serve children in the foster system. The bill prevents the disclosure of the names of foster parents, foster parent applicants, and their families held by the department to protect their safety. Thus, the bill does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 409.175, F.S. 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 Children, Families, and Elder Affairs on April 1, 2019:

- Provides that if a licensed foster partner or their spouse, minor child, or other adult household member is charged with committing a crime against a foster child who is in their care which results in the suspension or revocation of that foster parent's license, then the public records exemption that protects the names of such individuals does not apply, unless otherwise expressly made confidential or exempt by a different statute.

- Clarifies exactly which individuals will have their names held confidential and exempt.
- Expands the public necessity statement to provide information that foster parents are concerned that their names being released and may not continue to foster as a result.
- Expands the public necessity statement by acknowledging that there is a need to maintain government accountability by balancing the public's right to know with protecting and recruiting foster parents.

B. Amendments:

None.

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

586-03712-19

20191622c1

1 A bill to be entitled
2 An act relating to public records; amending s.
3 409.175, F.S.; providing an exemption from public
4 records requirements for the names of foster parent
5 applicants and licensed foster parents, and the names
6 of the spouses, minor children, and adult household
7 members of such applicants and foster parents, which
8 are held by the Department of Children and Families;
9 providing an exception, under specified circumstances,
10 for certain individuals charged with certain crimes;
11 providing for future legislative review and repeal of
12 the exemption; providing a statement of public
13 necessity; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Subsection (16) of section 409.175, Florida
18 Statutes, is amended to read:
19 409.175 Licensure of family foster homes, residential
20 child-caring agencies, and child-placing agencies; public
21 records exemption.—
22 (16) (a)1. The following information held by the Department
23 of Children and Families regarding a foster parent applicant and
24 such applicant's spouse, minor child, and other adult household
25 member is exempt from s. 119.07(1) and s. 24(a), Art. I of the
26 State Constitution:
27 a. Names;
28 b. The home, business, work, child care, or school
29 addresses and telephone numbers;

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

586-03712-19

20191622c1

30 ~~c.b.~~ Birth dates;
31 ~~d.e.~~ Medical records;
32 ~~e.d.~~ The floor plan of the home; and
33 ~~f.e.~~ Photographs of such persons.
34 2. If a foster parent applicant does not receive a foster
35 parent license, the information made exempt pursuant to this
36 paragraph shall become public 5 years after the date of
37 application, except that medical records shall remain exempt
38 from s. 119.07(1) and s. 24(a), Art. I of the State
39 Constitution.
40 3. This exemption applies to information made exempt by
41 this paragraph before, on, or after the effective date of the
42 exemption.
43 (b)1. The following information held by the Department of
44 Children and Families regarding a licensed foster parent and the
45 foster parent's spouse, minor child, and other adult household
46 member is exempt from s. 119.07(1) and s. 24(a), Art. I of the
47 State Constitution:
48 a. Names;
49 b. The home, business, work, child care, or school
50 addresses and telephone numbers;
51 ~~c.b.~~ Birth dates;
52 ~~d.e.~~ Medical records;
53 ~~e.d.~~ The floor plan of the home; and
54 ~~f.e.~~ Photographs of such persons.
55 2. If a foster parent's license is no longer active, the
56 information made exempt pursuant to this paragraph shall become
57 public 5 years after the expiration date of such foster parent's
58 foster care license except that:

Page 2 of 5

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

586-03712-19

20191622c1

59 a. Medical records shall remain exempt from s. 119.07(1)
60 and s. 24(a), Art. I of the State Constitution.

61 b. Exempt information regarding a licensed foster parent
62 who has become an adoptive parent and exempt information
63 regarding such foster parent's spouse, minor child, or other
64 adult household member shall remain exempt from s. 119.07(1) and
65 s. 24(a), Art. I of the State Constitution.

66 3. If a licensed foster parent or the foster parent's
67 spouse, minor child, or other adult household member is charged
68 with committing a crime against a foster child who is in the
69 care of the licensed foster parent and the Department of
70 Children and Families suspends or revokes the foster parent's
71 license as a result, the information in sub-subparagraph 1.a.
72 regarding the charged individual is not exempt from s. 119.07(1)
73 and s. 24(a), Art. I of the State Constitution, except as
74 otherwise expressly made confidential or exempt by law.

75 4. This exemption applies to information made exempt by
76 this paragraph before, on, or after the effective date of the
77 exemption.

78 (c) The name, address, and telephone number of persons
79 providing character or neighbor references regarding foster
80 parent applicants or licensed foster parents held by the
81 Department of Children and Families are exempt from s. 119.07(1)
82 and s. 24(a), Art. I of the State Constitution.

83 (d) Sub-subparagraphs (a)1.a. and (b)1.a. and subparagraph
84 (b)3. are subject to the Open Government Sunset Review Act in
85 accordance with s. 119.15 and shall stand repealed on October 2,
86 2024, unless reviewed and saved from repeal through reenactment
87 by the Legislature.

586-03712-19

20191622c1

88 Section 2. (1) The Legislature finds it is a public
89 necessity that the following identifying information be exempt
90 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
91 the State Constitution:

92 (a) The name of a foster parent applicant;

93 (b) The names of spouses, minor children, and other adult
94 household members of such foster parent applicant;

95 (c) The name of a licensed foster parent; and

96 (d) The names of spouses, minor children, and other adult
97 household members of such licensed foster parent.

98 (2) The Legislature is committed to ensuring the safety of
99 all children. Among the state's most valued partners are foster
100 parents who make the choice to bring a child into their home.
101 There are instances where foster parents, by the nature of the
102 service they provide, find themselves and their families in
103 life-threatening situations, as was the case when a foster
104 mother was harmed by the foster children's biological parents in
105 August 2018. Consequently, the Legislature finds that the
106 release of the names of a foster parent applicant, a foster
107 parent, their minor children, or adult household members could
108 lead to unwanted contact and harassment from disgruntled parents
109 who react inappropriately due to their children being taken from
110 them and placed in out-of-home care. Additionally, exempting
111 these names helps to maintain the confidentiality of the foster
112 children placed in the home. For example, if a foster parent has
113 an unusual name, any person acquiring a list of the names of the
114 foster parents and other members of the household could uncover
115 information about the foster children living in the home.

116 (3) Foster parents provide a valuable service to the child

586-03712-19

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117 welfare system by providing a safe and nurturing environment for
118 children who have been removed from their homes due to a
119 parent's abandonment, abuse, or neglect. Following a public
120 records request in 2018 for a list of names for all licensed
121 foster parents and corresponding counties, the Department of
122 Children and Families received numerous letters from current
123 foster parents. In these letters, the foster parents expressed
124 their concerns with having their names released to the public.
125 Several expressed that if their names be released, they would no
126 longer wish to serve as foster parents. Therefore, the
127 Legislature finds that by exempting the names of foster parent
128 applicants, foster parents, their minor children, or adult
129 household members, the Department of Children and Families is
130 assisted in its priority to recruit and retain foster parents.
131 This in turn helps ensure that there are enough out-of-home
132 placements for children within the child welfare system.

133 (4) The Legislature further finds that it is necessary to
134 maintain government accountability by balancing the public's
135 right to know with the Legislature's interest in protecting and
136 recruiting foster parents. Therefore, an exception is created
137 stating that if a licensed foster parent or his or her spouse,
138 minor child, or adult household member is charged with
139 committing a crime against a foster child who is in the care of
140 the licensed foster parent which results in the suspension or
141 revocation of that foster parent's license, the name of the
142 charged individual is not exempt unless it is otherwise
143 expressly made confidential or exempt by law.

144 Section 3. This act shall take effect July 1, 2019.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/10/19

Meeting Date

1622

Bill Number (if applicable)

Topic Public Records/Foster Parent and Foster Parent Applicant Names

Amendment Barcode (if applicable)

Name Lindsey Zander

Job Title Deputy Director of Legislative Affairs

Address 1317 Winewood Blvd.

Phone (850) 488-9410

Street

Tallahassee

FL

32399

Email lindsey.zander@myflfamilies.com

City

State

Zip

Speaking: For Against Information

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

Representing Department of Children and Families

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)

APPEARANCE RECORD

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

4.10.19

Meeting Date

1622 C7

Bill Number (if applicable)

Topic PUBLIC RECS/ FOSTER PARENTS

Amendment Barcode (if applicable)

Name VICTORIA ZIPP

Job Title CHIEF POLICY + RESEARCH

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Speaking: For Against Information

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

Representing FL COALITION FOR CHILDREN

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.

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 4/10/2019 1:30:21 PM

Ends: 4/10/2019 2:18:20 PM

Length: 00:48:00

1:30:20 PM Meeting called to order
1:30:32 PM Roll Call - Quorum is present
1:30:42 PM Comments from Chair
1:31:00 PM Tab 8 - SB 1616 by Senator Baxley, Local Government Financial Reporting
1:33:29 PM Questions?
1:33:33 PM Appearance Cards?
1:33:37 PM Demetrius Minor, Director of Coalitions, Americans for Prosperity, waives in support
1:33:43 PM Debate?
1:33:47 PM Senator Baxley waives close
1:33:54 PM Roll Call - SB 1616 favorable
1:34:07 PM Tab 6 - SB 784 by Senator Gruters
1:34:29 PM Delate All amendment 783474 by Senator Gruters
1:35:05 PM Questions?
1:35:09 PM Senator Torres
1:35:26 PM Senator Gruters
1:35:32 PM Senator Torres
1:35:35 PM Senator Gruters
1:36:07 PM Appearance Forms?
1:36:14 PM Debate?
1:36:20 PM Senator Torres
1:36:44 PM Is there any objection to the amendment? None
1:36:59 PM Seeing no objection show adopted
1:37:05 PM Back on bill as amended
1:37:11 PM Appearance Cards?
1:37:37 PM Rocco Salvatori, Vice President, Florida Professional Firefighters, speaking in support
1:37:54 PM Questions?
1:38:03 PM Matt Puckett, PBA, speaking in support
1:38:47 PM Debate?
1:38:53 PM Senator Gruters to close
1:39:22 PM Roll Call on CS for SB 784 - Favorable
1:39:31 PM Tab 9 - CS/SB 1622 by Senator Montford, Public Records/Foster Parent and Foster Parent Applicant
Names
1:40:21 PM Questions?
1:41:13 PM Apperarnce Cards?
1:41:16 PM Lindsey Zander, Deputy Director, Legislative Affairs, Department of Children and Families, waives in support
1:41:21 PM Victoria Zepp, Chief Policy & Research, Fla. Coalition for Children, waives in support
1:41:36 PM Debate?
1:41:43 PM Senator Montford waives close
1:41:49 PM Roll Call on CS/SB 1622 favorable
1:42:11 PM Chair
1:42:25 PM Tab 2 - CS/SB 200 by Senator Cruz, Relief of the Estate of Herminio Padilla, Jr., by the City of West Palm Beach
1:43:29 PM Amendment 151056 by Senator Cruz
1:43:42 PM Questions?
1:43:45 PM Appearance Cards?
1:43:48 PM Debate?
1:43:51 PM Objections? None.
1:43:57 PM Seeing no objections amendment is adopted
1:44:07 PM Debate?
1:44:10 PM Senator Rader
1:44:52 PM Senator Cruz waives close

1:45:26 PM Roll call on CS for CS/SB 200 - favorable
1:45:35 PM Tab 5 - SB 602 by Senator Perry, Public Records
1:47:14 PM Delete-all amendment 227536 by Senator Perry
1:48:20 PM Questions?
1:48:23 PM Debate?
1:48:26 PM Objection to adoption? None.
1:48:34 PM Seeing no objections, the amendment is adopted.
1:48:37 PM Back on the bill as amended
1:48:45 PM Questions?
1:48:48 PM Senator Torres
1:48:51 PM Senator Perry
1:49:37 PM Senator Rader
1:50:09 PM Senator Perry
1:50:16 PM Senator Rader
1:50:58 PM Senator Perry
1:51:17 PM Chair
1:51:32 PM Questions?
1:51:35 PM Appearance Cards?
1:51:38 PM Demetrius Minor, Director of Coalitions, Americans for Prosperity, waives in support
1:51:43 PM Debate?
1:51:49 PM Senator Perry to close
1:52:11 PM Roll Call on CS for SB 602 - favorable
1:52:22 PM Tab 1 -CS/SB 38 by Senator Thurston, Relief of Jane Doe by the School Board of Miami-Dade County
1:53:49 PM Questions?
1:53:53 PM Appearance Cards?
1:53:56 PM Debate?
1:53:59 PM Senator Rader
1:55:10 PM Senator Thurston waives close
1:55:26 PM Roll Call CS/SB 38 - favorable
1:55:37 PM Tab 4 - CS/SB 548 by Senator Brandes, Electronic Legal Documents
1:56:45 PM Questions?
1:56:48 PM Appearance
1:56:50 PM Tray Goldman, Florida Realtors, waives in support
1:57:01 PM Jeff Sharkey, CEO CAG, Quicken Loans, waives in support
1:57:11 PM Mat Forrest, Bequest, Inc., waives in support
1:57:20 PM Scott Merritt, Florida Land Title Association, waives in support
1:57:28 PM Woody Simmons, American Resort Developer Association, waives in support
1:57:36 PM Doreen Barker, AARP, waives in support
1:57:43 PM Jared Ross, Florida Credit Union Association, waives in support
1:57:50 PM Brian Jogarst, Academy of Florida Elder Law Attorneys and Elder Law Section/Florida Bar, waives in support
1:58:08 PM Doug Bell, Westcor Land Title Ins. Company, waives in support
1:58:15 PM Greg Black, Notorize, Inc., waives in support
1:58:25 PM Anthony DiMarco, Florida Bankers Association, waives in support
1:58:36 PM Debate?
1:58:38 PM Senator Rader
1:59:14 PM Chair
2:00:16 PM Senator Torres
2:00:43 PM Senator Brandes to close
2:02:33 PM Roll Call CS/SB 548 - favorable
2:03:41 PM Tab 3 - SB 404 by Senator Farmer, Strategic Fuel Reserve
2:05:09 PM Chair recognizes Jared Moskowitz, Director, DEM
2:06:10 PM Questions?
2:06:13 PM Appearance Cards?
2:06:15 PM David Mica, Director, Florida Petroleum Council, speaking against
2:08:55 PM Jared Moskowitz, Director, Department of Emergency Management
2:09:54 PM Martha DeCastro, Florida Hospital Association, waives in support
2:10:05 PM Debate?
2:10:09 PM Senator Farmer to close
2:11:06 PM Roll Call CS/SB 404 - favorable
2:11:14 PM Tab 7 - CS/SB 1224 by Senator Farmer
2:11:36 PM Late-filed amendment 944160. Any objections to taking up the late-filed amendment? None

2:11:46 PM Seeing no objections, show introduction of late filed amendment.
2:12:01 PM Senator Farmer to explain
2:13:35 PM Questions?
2:13:49 PM Appearance Cards?
2:13:56 PM Debate?
2:13:59 PM With no objections to the amendment, show amendment adopted.
2:14:09 PM Back on bill as amended
2:14:15 PM Neil McGarry, CEO, Florida Certification Board, waives in support
2:14:21 PM Trish Nealy, League of Women Voters, waives in support
2:14:40 PM Khanh-Lien Banko, Florida PTA, waives in support
2:14:50 PM Andreina Figuero, Academica, waives in support
2:15:00 PM Debate?
2:15:03 PM Senator Farmer to close
2:15:13 PM Roll Call on CS for CS/SB 1224 - Favorable
2:15:41 PM Motion by Senator Bean to be shown as voting "yea" for CS/SB 1616. Motion adopted.
2:16:25 PM Chair makes comments about the Governmental Oversight and Accountability staff
2:17:59 PM Is there any other business before the committee?
2:18:10 PM Senator Albritton moves to adjourn. Seeing no objections, show the motion adopted. Meeting adjourned.