

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Lee, Chair
Senator Soto, Vice Chair

MEETING DATE: Tuesday, March 18, 2014
TIME: 8:00 —9:30 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 586 Environmental Preservation and Conservation / Altman (Similar CS/CS/H 325)	Brownfields; Revising legislative intent with regard to community revitalization in certain areas; revising procedures for designation of brownfield areas by local governments; providing procedures for adoption of a resolution; providing requirements for notice and public hearings; authorizing local governments to use a term other than "brownfield area" when naming such areas; providing an exemption from liability for property damages for entities that execute and implement certain brownfield site rehabilitation agreements, etc. EP 02/05/2014 Fav/CS CA 03/05/2014 Favorable JU 03/18/2014 Not Considered	Not Considered
2	CS/SB 654 Commerce and Tourism / Clemens (Identical CS/H 685)	Business Organizations; Providing additional exceptions regarding the requirement that limited liability company names be distinguishable from the names of other entities or filings; providing additional exceptions regarding the requirement that corporate names be distinguishable; providing that the amendment of articles of incorporation or the merger, conversion, or share exchange of a social purpose or benefit corporation entitles the shareholders to appraisal rights; establishing requirements for the formation of a social purpose corporation and the formation of a benefit corporation, etc. CM 02/17/2014 Fav/CS JU 03/18/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 18, 2014, 8:00 —9:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/SB 670 Health Policy / Thrasher (Similar CS/H 569, Compare H 831, S 1042)	Nursing Home Litigation; Specifying that a cause of action for negligence or violation of residents' rights alleging direct or vicarious liability for the injury or death of nursing home resident may be brought against a licensee, its management or consulting company, its managing employees, and any direct caregiver employees; providing that a claim for punitive damages may not be brought unless there is a showing of evidence that provides a reasonable basis for recovery of such damages when certain criteria are applied; authorizing the Agency for Health Care Administration to suspend the license of a nursing home facility that fails to pay a judgment or settlement agreement; revising procedures for obtaining the records of a resident, etc. HP 02/11/2014 Temporarily Postponed HP 02/18/2014 Fav/CS JU 03/18/2014 Fav/CS	Fav/CS Yeas 8 Nays 1
4	SB 764 Detert	Hearsay; Providing that a statement that is inconsistent with the declarant's testimony is not hearsay regardless of whether it was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition, etc. JU 03/18/2014 Fav/CS CJ RC	Fav/CS Yeas 8 Nays 1
5	SB 1242 Simmons (Compare H 365)	No Contact Orders; Providing for the effect and enforceability of orders of no contact as a part of pretrial release; specifying acts prohibited in a no contact order, etc. JU 03/18/2014 Favorable CJ RC	Favorable Yeas 9 Nays 0
6	SB 926 Simpson (Similar CS/H 957)	Local Regulation of Wage Theft; Providing requirements for county ordinances regulating wage theft; authorizing county funding to assist in addressing claims of wage theft; preempting further regulation of wage theft to the state; providing an exception for an ordinance enacted by a specified date, etc. CA 03/05/2014 Favorable JU 03/18/2014 Temporarily Postponed RC	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, March 18, 2014, 8:00 —9:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 602 Ethics and Elections / Latvala (Similar H 495, Compare H 571)	Residency of Candidates and Public Officers; Requiring a candidate or public officer required to reside in a specific geographic area to have only one domicile at a time; providing factors that may be considered when determining residency; providing exceptions for active duty military members, etc. EE 03/03/2014 Fav/CS JU 03/18/2014 Not Considered RC	Not Considered

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 586

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Altman

SUBJECT: Brownfields

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	Fav/CS
2.	Stearns	Yeatman	CA	Favorable
3.	Davis	Cibula	JU	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 586 clarifies procedures for brownfield designation under the Brownfields Redevelopment Act. The bill provides additional liability protection for individuals responsible for rehabilitating brownfield sites.

II. Present Situation:

The Brownfields Redevelopment Act

The term “brownfield” came into existence in the 1970s and originally referred to any previously developed property, regardless of any contamination issues. The term, as it is currently used, originated in 1992 during a U.S. Congressional field hearing and is defined by the U.S. Environmental Protection Agency (EPA) as, “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”¹ In 1995, the EPA created the Brownfields Program in order to manage contaminated property through site remediation and redevelopment. The program was designed to provide local communities access to federal funds allocated for

¹ Robert A. Jones and William F. Welsh, *Michigan Brownfield Redevelopment Innovation: Two Decades of Success*, (September 2010), available at <http://www.miseagrant.umich.edu/downloads/focus/brownfields/10-201-EMU-Final-Report.pdf> (last visited March 14, 2014).

redevelopment, including environmental assessments and cleanups, environmental health studies, and environmental training programs.²

In 1997, the Florida Legislature enacted the Brownfields Redevelopment Act (Act).³ The Act provides financial and regulatory incentives to encourage voluntary remediation and redevelopment of brownfield sites in order to improve public health and reduce environmental hazards.⁴ The Act required the Department of Environmental Protection (DEP) to adopt rules to determine site-specific investigation methods, clean-up methods, and cleanup target levels by incorporating risk based corrective action (RBCA) principles,⁵ which it did in 1998.⁶ In 2013, in an effort to provide consistency and consolidate the cleanup criteria rules, the DEP repealed Rule 62-785, Florida Administrative Code, and is currently merging the rules with Rule 62-780, Florida Administrative Code.

The Act provides liability protection for program participants who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997. A person who successfully completes a brownfield site rehabilitation agreement (BSRA) is relieved from further liability for remediation of the contaminated site or sites to the state and to third parties.⁷ The Act also provides protection from liability for contribution to any other party who has or may incur liability for cleanup of the contaminated site.⁸ The Act does not limit the right of a third party, other than the state, to pursue an action for damages to property or person. An action may not require rehabilitation in excess of what is outlined in the approved BSRA, or required by the DEP or the local pollution control program.⁹

The Act provides lenders the same liability protections as program participants as long as the lender has not caused or contributed to the contamination of a brownfield site. The lender liability protections are provided to encourage financing of real-property transactions involving brownfield sites.¹⁰

The Act also created the brownfield redevelopment bonus refund to provide a refund to qualified businesses for new jobs that are created in a brownfield area.¹¹ The Act identifies specific

² The Florida Brownfields Association, *Brownfields 101*, available at <http://floridabrownfields.org/associations/11916/files/Brownfields101.pdf> (last visited March 14, 2014).

³ See ch. 97-277, Laws of Fla.

⁴ Department of Environmental Protection, *Florida Brownfields Redevelopment Act-1998 Annual Report*, available at http://www.dep.state.fl.us/waste/quick_topics/publications/wc/brownfields/leginfo/1998/98final.pdf (last visited March 14, 2014).

⁵ ASTM International defines “risk based corrective action principles” as consistent decision-making processes for assessment and response to chemical releases. See <http://www.astm.org/Standards/E2081.htm> (last visited March 14, 2014).

⁶ See Rule 62-785, F.A.C.

⁷ *Id.* “Brownfield site rehabilitation agreement (BSRA) means an agreement entered into between the person responsible for brownfield site rehabilitation and the DEP or a delegated local program. The BSRA shall at a minimum establish the time frames, schedules, and milestones for completion of site rehabilitation tasks and submission of technical reports, and other commitments or provisions pursuant to s. 376.80(5), F.S., and [Rule 62-780, F.A.C.]”

⁸ Todd S. Davis, *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*, 525 (2d ed. 2002).

⁹ Section 376.82, F.S.

¹⁰ *Id.*

¹¹ Section 288.107, F.S.

procedures and criteria for the designation of a brownfield area by local governments, counties, and municipalities.¹²

Economic Incentives

In 1998, the Legislature passed SBs 244, 1202, and 1204, providing economic and financial incentives to promote the redevelopment of brownfield areas.¹³ Senate Bill 1202 created the Brownfield Area Loan Guarantee Program, which authorizes up to 5 years of state loan guarantees for redevelopment and applies to 50 percent of the primary lender loan.¹⁴ The loan guarantee applies to 75 percent of the lender loan if the brownfield area redevelopment is for “affordable” housing.¹⁵ Senate Bill 244 authorized a voluntary cleanup tax credit of up to 35 percent of the costs of voluntary cleanup activity of brownfield areas with a maximum allowable amount of \$250,000 per site per year.¹⁶ Senate Bill 1204 authorized the Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund to facilitate the redevelopment of properties that may be more difficult to redevelop due to various liens on the property or complications from bankruptcy. The trust fund was created to help clear prior liens on the property through the negotiation process. The loans would then be repaid by the resale of the brownfield property and other activities that may have enhanced the property’s value.¹⁷ This trust fund was never capitalized or used for its intended purpose and was later repealed.¹⁸

In 2006, the Legislature passed HB 7131, which substantially increased the economic and financial incentives for redevelopment of brownfield areas and repealed the Brownfield Property Ownership Clearance Assistance and Revolving Loans Trust Fund.¹⁹ The voluntary cleanup tax credit increased from 35 percent to 50 percent, which may be applied against intangible property tax and corporate income tax for the remediation of the brownfield area with a maximum allowable amount of \$500,000 per year per site. The Brownfield Areas Loan Guarantee Program increased from 10 percent to 25 percent. The percentage of tax credit that may be received during the final year of cleanup was increased from 10 percent to 25 percent and the amount was increased from \$50,000 to \$500,000. The total amount of tax credits that may be granted for brownfield cleanup was increased from \$2 million annually to \$5 million annually. The law also provides incentives for cleaning unlicensed or historic solid waste dumpsites and requires Enterprise Florida, Inc., to market brownfields for redevelopment and job growth.²⁰

¹² See ss. 376.80, 125.66, and 166.041, F.S., respectively.

¹³ See chs. 98-198, 98-75, and 98-118, Laws of Fla., respectively.

¹⁴ Section 376.86, F.S.

¹⁵ “Affordable” housing, as defined in s. 420.0004, F.S., means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of median adjusted gross annual income for the households as indicated in ss. 420.0004(9), (11), (12), or (17), F.S.

¹⁶ Section 220.1845, F.S.

¹⁷ See ch. 98-118, Laws of Fla.

¹⁸ The Florida Senate, Comm. On Government Efficiency Appropriations, *Senate Bill CS/SB 1092 Staff Analysis*, (April 4, 2006), available at <http://archive.flsenate.gov/data/session/2006/Senate/bills/analysis/pdf/2006s1092.ge.pdf> (last visited February 4, 2014).

¹⁹ See ch. 2006-291, Laws of Fla.

²⁰ See ss. 196.012, 196.1995, 199.1055, 220.1845, 288.9015, 376.30781, 376.80, and 376.86, F.S. Sections 376.87 and 376.875, F.S., were repealed.

In 2008, the Legislature passed HB 527 providing additional tax credits for brownfield area developers.²¹ The law allows a tax credit for the costs incurred to remove solid waste from a brownfield site. The tax credit applicant may claim 50 percent of the cost of solid waste removal, not to exceed \$500,000. An additional 25 percent of the total site rehabilitation costs, up to \$500,000, may be claimed if a health care facility is constructed on the brownfield site.²² The DEP must submit an annual report to the President of the Senate and Speaker of the House by August 1 each year. The annual report must include the number, locations and sizes of the brownfield sites that have been remediated or are currently being rehabilitated under the provisions of the Act.²³

Brownfield Designation Procedures

Currently, a local government that has jurisdiction over a proposed brownfield area is required to notify the DEP of the decision to designate the brownfield area for rehabilitation according to the Act. The notification must include a resolution containing a map of the proposed area and the parcels to be included in the brownfield designation. Municipalities and counties that propose to designate a brownfield area must do so according to the resolution adoption procedures outlined in ss. 166.041 and 125.66, F.S., respectively, and notice the public hearing according to ss. 166.041(3)(c)2. and 125.66(4)(b)2., F.S., respectively.²⁴

The Act requires a local government that proposes to designate a brownfield area that is outside of a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project, to notify the DEP of the proposed designation. The notification must include a resolution that contains a map of the proposed area and the parcels to be included in the brownfield designation. The local government is also required to consider if the area warrants development, confirm the area is not too large, determine if the area has the potential for the private sector to participate in the rehabilitation, and determine whether the area has sites that can be used for recreation, cultural or historical preservation.²⁵

The Act allows a local government to designate a brownfield area if the person who owns or controls a potential brownfield area is requesting the designation and has agreed to rehabilitate and redevelop the area. The redevelopment must provide an economic benefit to the area and create at least five permanent new jobs. The redevelopment of the proposed area must be consistent with the local comprehensive plan and be able to be permitted. Notice of the proposed designation must be provided to the residents of the area and published in a newspaper of local circulation. The person requesting the designation must also provide reasonable assurance of sufficient financial resources to complete the rehabilitation and redevelopment of the brownfield area and enter into a site rehabilitation agreement with the department or local pollution control program.²⁶

²¹ See ch. 2008-238, Laws of Fla.

²² Section 376.30781, F.S.

²³ Section 376.85, F.S.

²⁴ Chapter 97-277, Laws of Fla.

²⁵ *Id.*

²⁶ *Id.*

The Act also requires that if property owners within the proposed designation area request in writing to the local government to have their properties removed from the designation, then the request must be granted.²⁷

As of November 22, 2013, local governments have adopted 352 resolutions to officially designate brownfield areas and 190 BSRAs have been executed. A total of 69 Site Rehabilitation Completion Orders or “No Further Action” orders have been issued since the inception of the program for sites that have been remediated to levels protective of human health and the environment. The remaining sites are in some phase of site assessment or cleanup.²⁸

III. Effect of Proposed Changes:

Section 1 amends s. 376.78, F.S., to clarify that the redevelopment of a brownfield area within a community redevelopment area, empowerment zone, closed military base, or designated brownfield pilot project area has a positive impact on these areas. By specifying these areas, the bill prioritizes them over non-specified areas.

Section 2 amends s. 376.80, F.S., to clarify, reorganize, and revise the procedures for the designation of a brownfield area for the purpose of rehabilitation under the Brownfields Redevelopment Act.

The bill specifies the following procedures for the designation of a brownfield area:

- A local government with jurisdiction over the brownfield area must adopt a resolution to designate the proposed area.
- The local government must notify the DEP, and, if applicable, the local pollution control program within 30 days of the adoption of the resolution.
- The resolution must continue to include a detailed map of the parcels to be designated or a legal description of the parcels along with a less detailed map.
- Municipalities must adopt the resolution according to s. 166.041, F.S., and the procedures for public hearings must comply with s. 166.041(3)(c)2, F.S.
- Counties must adopt the resolution according to s. 125.66, F.S., and the procedures for the public hearings must comply with s. 125.66(4)(b), F.S.
- Property owners within the proposed brownfield area who make written requests to have their properties removed from the designation before the adoption of the resolution must be granted the request.

The bill specifies that if a designation is proposed by a local government that has jurisdiction over the area and the area is located outside an existing community redevelopment area, or if designation is proposed by a non-governmental entity, then the following public hearing and notification procedures are required:

- At least one of the required public hearings must be conducted as close to the proposed area as possible to provide an opportunity for public input on the size of the area, the objectives

²⁷ *Id.*

²⁸ Department of Environmental Protection, *Senate Bill 586 Agency Analysis* (January 2014) (on file with the Senate Committee on Environmental Preservation and Conservation).

for rehabilitation, job opportunities and economic development, and residents' considerations.

- Notice of the public hearing must be published in a newspaper of general circulation, published in ethnic newspapers or community bulletins, posted in the affected area, and announced at a scheduled meeting of the local governing body held prior to the public hearing.
- At the public hearing, the local government must consider whether the proposed brownfield area:
 - Warrants development;
 - Covers an overly large area;
 - Has the potential for the private sector to participate in the rehabilitation; and
 - Contains sites that may be used for recreational open space, cultural, or historical preservation purposes.

The bill specifies that if the designation is proposed by a local government that has jurisdiction over the area and the area is located inside an existing community redevelopment area, an enterprise zone, an empowerment zone, a closed military base, or a designated brownfield pilot project, then the public hearing considerations outlined above are not required. However, the local government must comply with the notification and resolution adoption procedures outlined earlier.

The bill specifies that if the designation is proposed by individuals, corporations, partnerships, limited liability corporations, community-based organizations, not-for-profit corporations, or other non-governmental entities, then the following public hearing and notification procedures are required:

- A public hearing must be conducted as close to the proposed area as possible to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments, and local residents' considerations.
- Notice of the public hearing must be published in a newspaper of general circulation, published in an ethnic newspaper or community bulletin, posted in the affected area, and announced at a scheduled meeting of the local governing body held prior to the public hearing.
- The person proposing the designation must also meet the following criteria:
 - The person owns or controls the proposed area;
 - The rehabilitation and redevelopment of the proposed area will be economically beneficial and include the creation of at least five new, permanent jobs;
 - The redevelopment is consistent with the local comprehensive plan and is able to be permitted;
 - The person has provided reasonable assurance of sufficient financial resources to complete the rehabilitation and redevelopment of the brownfield area; and
 - The person must enter into a site rehabilitation agreement with the DEP or local pollution control program. The person is entitled to negotiate the terms of the agreement.

The bill specifies that a local government that designates a brownfield area according to these procedures is not required to use the term "brownfield area" within the name of the brownfield area designated by the local government.

Section 3 amends s. 376.82, F.S., to revise the liability protection for a person who executes and implements a successful BSRA to include liability protection for:

- Claims of any person for property damage;
- Diminished value of real property or improvements;
- Lost or delayed rent, sale, or use of real property or improvements; and
- The stigma to real property or improvements caused by the contamination that was addressed in the BSRA.

The liability protection applies to causes of action occurring on or after July 1, 2014. The bill specifies that the liability protection does not apply to a person who commits fraud in demonstrating site conditions, in completing a site rehabilitation agreement, or who exacerbates contamination of a property subject to a BSRA in violation of applicable laws, which causes property damage.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article I, section 21 of the State Constitution guarantees access to the courts and provides that “The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.”

Section 376.82(2), F.S., as discussed above, extends certain immunities from liability to a person who executes and successfully completes a brownfield site rehabilitation agreement. When immunity from liability is legislatively provided to a person, a potential constitutional challenge could be raised that the law violates the right of access to the courts for redress of an injury. The Florida Supreme Court held in *Kluger v. White*²⁹ that the Legislature cannot abolish a person’s right to file certain actions “without providing a reasonable alternative to protect the rights of the people . . . unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting the public necessity can be shown.”³⁰

²⁹ *Kluger v. White*, 281 So. 2d 1, (Fla. 1973).

³⁰ *Id.*, at 4.

In this instance, there is not sufficient information to determine whether the expanded liability protections in the bill violate the clause guaranteeing access to the courts. Historically, property owners responsible for pollution have been liable to adjoining property owners for the diminution in the value of the adjoining properties.³¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill eliminates the right of a third party to pursue an action for property damages, unless a person commits fraud in demonstrating site conditions, in completing a site rehabilitation agreement, or exacerbates contamination of a property subject to a BSRA in violation of applicable laws. The elimination of this legal remedy may harm third parties whose properties are damaged. However, individuals, corporations, community-based organizations, and not-for-profit corporations proposing to designate brownfield areas should benefit from this limitation of liability provision. The fiscal impacts are too remote to determine at this time.

C. Government Sector Impact:

Local governments may incur costs associated with damages to public property that has been impacted by contamination from a brownfield site due to the limitation of liability provisions in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 376.78, 376.80, and 376.82.

³¹ See *Courtney Enterprises, Inc., v. Publix Supermarkets, Inc.*, 788 So. 2d 1045 (Fla. 2d DCA 2001).

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 Environmental Preservation and Conservation on February 5, 2014:

The committee substitute:

- resolves the technical deficiency that was present in the bill by requiring the municipalities and counties to adhere to the public hearing procedures outlined in ss. 166.041(3)(c)2. and 125.66(4)(b), F.S., respectively;
- resolves the technical deficiency that was present in the bill by eliminating the conflicting newspaper publication size requirement; and
- allows the local government that designates a brownfield area to eliminate the term “brownfield area” within the name of the brownfield area once it has been designated by the local government.

- B. **Amendments:**

None.



512432

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment

Delete lines 75 - 79
and insert:
in s. 166.041, except that the notice for the public hearings on
the proposed resolution must be in the form established in s.
166.041(3)(c)2. For counties, the governing body shall adopt the
resolution in accordance with the procedures outlined in s.
125.66, except that the notice for



219016

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment

Delete lines 224 - 229

and insert:

does not apply to a person who:

a. Commits fraud in demonstrating site conditions or completing site rehabilitation of a property subject to a brownfield site rehabilitation agreement;

b. Exacerbates contamination of a property subject to a brownfield site rehabilitation agreement in violation of applicable laws, which causes property damages;



219016

- 12 c. Causes a new release at a property subject to a
13 brownfield site rehabilitation agreement;
- 14 d. If any of the reopeners in s. 376.82(3)(b)-(d) apply, is
15 responsible for brownfield site rehabilitation and who fails to
16 comply with the requirements or timeframes of the brownfield
17 site rehabilitation agreement or fails to comply with applicable
18 timeframes pursuant to department rules;
- 19 e. Caused the contamination that is the subject of the
20 brownfield site rehabilitation agreement; or
- 21 f. Is determined by a court of competent jurisdiction to be
22 the mere continuation or alter ego of the person identified in
23 sub-subparagraph e. under successor liability principles under
24 applicable law.

By the Committee on Environmental Preservation and Conservation;
and Senator Altman

592-01670-14

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1 A bill to be entitled
2 An act relating to brownfields; amending s. 376.78,
3 F.S.; revising legislative intent with regard to
4 community revitalization in certain areas; amending s.
5 376.80, F.S.; revising procedures for designation of
6 brownfield areas by local governments; providing
7 procedures for adoption of a resolution; providing
8 requirements for notice and public hearings;
9 authorizing local governments to use a term other than
10 "brownfield area" when naming such areas; amending s.
11 376.82, F.S.; providing an exemption from liability
12 for property damages for entities that execute and
13 implement certain brownfield site rehabilitation
14 agreements; providing for applicability; providing an
15 effective date.
16
17 Be It Enacted by the Legislature of the State of Florida:
18
19 Section 1. Subsection (8) of section 376.78, Florida
20 Statutes, is amended to read:
21 376.78 Legislative intent.—The Legislature finds and
22 declares the following:
23 (8) The existence of brownfields within a community may
24 contribute to, or may be a symptom of, overall community
25 decline, including issues of human disease and illness, crime,
26 educational and employment opportunities, and infrastructure
27 decay. The environment is an important element of quality of
28 life in any community, along with economic opportunity,
29 educational achievement, access to health care, housing quality

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30 and availability, provision of governmental services, and other
31 socioeconomic factors. Brownfields redevelopment, properly done,
32 can be a significant element in community revitalization,
33 especially within community redevelopment areas, enterprise
34 zones, empowerment zones, closed military bases, or designated
35 brownfield pilot project areas.
36 Section 2. Subsections (1) and (2) of section 376.80,
37 Florida Statutes, are amended, and subsection (12) is added to
38 that section, to read:
39 376.80 Brownfield program administration process.—
40 (1) The following general procedures apply to brownfield
41 designations:
42 (a) The local government with jurisdiction over a proposed
43 brownfield area shall designate such area pursuant to this
44 section.
45 (b) For a brownfield area designation proposed by:
46 1. The jurisdictional local government, the designation
47 criteria under paragraph (2) (a) apply unless the local
48 government proposes to designate a brownfield area within a
49 specified redevelopment area as provided in paragraph (2) (b).
50 2. Any person other than a governmental entity, including,
51 but not limited to, individuals, corporations, partnerships,
52 limited liability companies, community-based organizations, or
53 not-for-profit corporations, the designation criteria under
54 paragraph (2) (c) apply.
55 (c) Except as otherwise provided, the following provisions
56 apply to all proposed brownfield area designations:
57 1. Notification to the department following adoption.—A
58 local government with jurisdiction over the brownfield area must

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59 notify the department, and, if applicable, the local pollution
 60 control program under s. 403.182, of its decision to designate a
 61 brownfield area for rehabilitation for the purposes of ss.
 62 376.77-376.86. The notification must include a resolution
 63 adopted, by the local government body. The local government
 64 shall notify the department and, if applicable, the local
 65 pollution control program under s. 403.182, of the designation
 66 within 30 days after adoption of the resolution.

67 2. Resolution adoption.—The brownfield area designation
 68 must be carried out by a resolution adopted by the
 69 jurisdictional local government, to which includes is attached a
 70 map adequate to clearly delineate exactly which parcels are to
 71 be included in the brownfield area or alternatively a less-
 72 detailed map accompanied by a detailed legal description of the
 73 brownfield area. For municipalities, the governing body shall
 74 adopt the resolution in accordance with the procedures outlined
 75 in s. 166.041, except that the procedures for the public
 76 hearings on the proposed resolution must be in the form
 77 established in s. 166.041(3)(c)2. For counties, the governing
 78 body shall adopt the resolution in accordance with the
 79 procedures outlined in s. 125.66, except that the procedures for
 80 the public hearings on the proposed resolution must be in the
 81 form established in s. 125.66(4)(b).

82 3. Right to be removed from proposed brownfield area.—If a
 83 property owner within the area proposed for designation by the
 84 local government requests in writing to have his or her property
 85 removed from the proposed designation, the local government
 86 shall grant the request. For municipalities, the governing body
 87 shall adopt the resolution in accordance with the procedures

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88 ~~outlined in s. 166.041, except that the notice for the public~~
 89 ~~hearings on the proposed resolution must be in the form~~
 90 ~~established in s. 166.041(3)(c)2. For counties, the governing~~
 91 ~~body shall adopt the resolution in accordance with the~~
 92 ~~procedures outlined in s. 125.66, except that the notice for the~~
 93 ~~public hearings on the proposed resolution shall be in the form~~
 94 ~~established in s. 125.66(4)(b)2.~~

95 4. Notice and public hearing requirements for designation
 96 of a proposed brownfield area outside a redevelopment area or by
 97 a nongovernmental entity.—Compliance with the following
 98 provisions is required before designation of a proposed
 99 brownfield area under paragraph (2)(a) or paragraph (2)(c):

100 a. At least one of the required public hearings shall be
 101 conducted as close as is reasonably practicable to the area to
 102 be designated to provide an opportunity for public input on the
 103 size of the area, the objectives for rehabilitation, job
 104 opportunities and economic developments anticipated,
 105 neighborhood residents' considerations, and other relevant local
 106 concerns.

107 b. Notice of a public hearing must be made in a newspaper
 108 of general circulation in the area, must be made in ethnic
 109 newspapers or local community bulletins, must be posted in the
 110 affected area, and must be announced at a scheduled meeting of
 111 the local governing body before the actual public hearing.

112 (2)(a) Local government-proposed brownfield area
 113 designation outside specified redevelopment areas.—If a local
 114 government proposes to designate a brownfield area that is
 115 outside a community redevelopment area areas, enterprise zone
 116 zones, empowerment zone zones, closed military base bases, or

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117 designated brownfield pilot project area areas, the local
 118 government shall provide notice, adopt the resolution, and
 119 conduct the public hearings pursuant to paragraph in accordance
 120 with the requirements of subsection (1)(c), ~~except at least one~~
 121 ~~of the required public hearings shall be conducted as close as~~
 122 ~~reasonably practicable to the area to be designated to provide~~
 123 ~~an opportunity for public input on the size of the area, the~~
 124 ~~objectives for rehabilitation, job opportunities and economic~~
 125 ~~developments anticipated, neighborhood residents'~~
 126 ~~considerations, and other relevant local concerns. Notice of the~~
 127 ~~public hearing must be made in a newspaper of general~~
 128 ~~circulation in the area and the notice must be at least 16~~
 129 ~~square inches in size, must be in ethnic newspapers or local~~
 130 ~~community bulletins, must be posted in the affected area, and~~
 131 ~~must be announced at a scheduled meeting of the local governing~~
 132 ~~body before the actual public hearing. At a public hearing to~~
 133 ~~designate the proposed brownfield area in determining the areas~~
 134 ~~to be designated~~, the local government must consider:

- 135 1. Whether the brownfield area warrants economic
- 136 development and has a reasonable potential for such activities;
- 137 2. Whether the proposed area to be designated represents a
- 138 reasonably focused approach and is not overly large in
- 139 geographic coverage;
- 140 3. Whether the area has potential to interest the private
- 141 sector in participating in rehabilitation; and
- 142 4. Whether the area contains sites or parts of sites
- 143 suitable for limited recreational open space, cultural, or
- 144 historical preservation purposes.
- 145 (b) Local government-proposed brownfield area designation

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

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146 within specified redevelopment areas.~~Paragraph (a) does not~~
 147 apply to a proposed brownfield area if the local government
 148 proposes to designate the brownfield area inside a community
 149 redevelopment area, enterprise zone, empowerment zone, closed
 150 military base, or designated brownfield pilot project area and
 151 the local government complies with paragraph (1)(c).
 152 (c)(b) Brownfield area designation proposed by persons
 153 other than a governmental entity.~~For designation of a~~
 154 brownfield area that is proposed by a person other than the
 155 local government, the local government with jurisdiction over
 156 the proposed brownfield area shall provide notice and adopt a
 157 resolution to designate the a brownfield area pursuant to
 158 paragraph (1)(c) if, at the public hearing to adopt the
 159 resolution, the person establishes all of the following under
 160 the provisions of this act provided that:

- 161 1. A person who owns or controls a potential brownfield
- 162 site is requesting the designation and has agreed to
- 163 rehabilitate and redevelop the brownfield site. ~~r~~
- 164 2. The rehabilitation and redevelopment of the proposed
- 165 brownfield site will result in economic productivity of the
- 166 area, along with the creation of at least 5 new permanent jobs
- 167 at the brownfield site that are full-time equivalent positions
- 168 not associated with the implementation of the brownfield site
- 169 rehabilitation agreement and that are not associated with
- 170 redevelopment project demolition or construction activities
- 171 pursuant to the redevelopment of the proposed brownfield site or
- 172 area. However, the job creation requirement does shall not apply
- 173 to the rehabilitation and redevelopment of a brownfield site
- 174 that will provide affordable housing as defined in s. 420.0004

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

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175 or the creation of recreational areas, conservation areas, or
176 parks_†

177 3. The redevelopment of the proposed brownfield site is
178 consistent with the local comprehensive plan and is a
179 permissible use under the applicable local land development
180 regulations_†

181 4. Notice of the proposed rehabilitation of the brownfield
182 area has been provided to neighbors and nearby residents of the
183 proposed area to be designated pursuant to paragraph (1)(c), and
184 the person proposing the area for designation has afforded to
185 those receiving notice the opportunity for comments and
186 suggestions about rehabilitation. Notice pursuant to this
187 subparagraph must be made in a newspaper of general circulation
188 in the area, at least 16 square inches in size, and the notice
189 must be posted in the affected area_† and

190 5. The person proposing the area for designation has
191 provided reasonable assurance that he or she has sufficient
192 financial resources to implement and complete the rehabilitation
193 agreement and redevelopment of the brownfield site.

194 (d)(e) Negotiation of brownfield site rehabilitation
195 agreement.—The designation of a brownfield area and the
196 identification of a person responsible for brownfield site
197 rehabilitation simply entitles the identified person to
198 negotiate a brownfield site rehabilitation agreement with the
199 department or approved local pollution control program.

200 (12) A local government that designates a brownfield area
201 pursuant to this section is not required to use the term
202 “brownfield area” within the name of the brownfield area
203 designated by the local government.

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204 Section 3. Paragraphs (a) and (b) of subsection (2) of
205 section 376.82, Florida Statutes, are amended to read:

206 376.82 Eligibility criteria and liability protection.—

207 (2) LIABILITY PROTECTION.—

208 (a) Any person, including his or her successors and
209 assigns, who executes and implements to successful completion a
210 brownfield site rehabilitation agreement, is shall be relieved
211 of:

212 1. Further liability for remediation of the contaminated
213 site or sites to the state and to third parties_ and of

214 2. Liability in contribution to any other party who has or
215 may incur cleanup liability for the contaminated site or sites.

216 3. Liability for claims of any person for property damage,
217 including, but not limited to, diminished value of real property
218 or improvements; lost or delayed rent, sale, or use of real
219 property or improvements; or stigma to real property or
220 improvements caused by contamination addressed by a brownfield
221 site rehabilitation agreement. Notwithstanding any other
222 provision of this chapter, this subparagraph applies to causes
223 of action accruing on or after July 1, 2014. This subparagraph
224 does not apply to a person who commits fraud in demonstrating
225 site conditions or completing site rehabilitation of a property
226 subject to a brownfield site rehabilitation agreement or who
227 exacerbates contamination of a property subject to a brownfield
228 site rehabilitation agreement in violation of applicable laws,
229 which causes property damages.

230 (b) This section does not limit shall not be construed as a
231 limitation on the right of a third party other than the state to
232 pursue an action for damages to persons for bodily harm property

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233 ~~or person~~; however, such an action may not compel site
234 rehabilitation in excess of that required in the approved
235 brownfield site rehabilitation agreement or otherwise required
236 by the department or approved local pollution control program.

237 Section 4. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic Brownfields Bill Number 586
Name Leticia Adams Amendment Barcode _____ (if applicable)
Job Title Senior Policy Director (if applicable)
Address 136 S. Brough St Phone 850-544-6866
Tall FL 32301 E-mail _____
City State Zip

Speaking: For Against Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic BROWNFIELD Bill Number 586 ^{ON THE} AMENDMENT

Name KEVIN SWEENEY Amendment Barcode 219016 (if applicable)

Job Title _____ (if applicable)

Address _____ Phone _____

Street _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing FLORIDA JUSTICE ASS -

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.18.14

Meeting Date

Topic Brown fields

Bill Number 586
(if applicable)

Name Sarah Busk

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe St.

Phone 222.8900

Street

TLH

FL

32301

E-mail sjb@cardenas
partners.com

City

State

Zip

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic BROWN FIELDS

Bill Number 586
(if applicable)

Name BO BOHANNON

Amendment Barcode _____
(if applicable)

Job Title LOBBYIST

Address 200 WEST COLLEGE AVE

Phone 850-222-1959

Street

JALANASSOC
City

FL
State

32301
Zip

E-mail BO@THEFICENTRO

Speaking: For Against Information

Representing FLORIDA BROWN FIELDS ASSOC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

3-18-14

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

Meeting Date

Topic Brownfields

Bill Number 586
(if applicable)

Name Michael Sznapstjler

Amendment Barcode _____
(if applicable)

Job Title Attorney (President Florida Brownfields Association)

Address 149 S. Ridgewood Ave, Suite 700

Phone 386-323-9222

Street Daytona Beach FL 32114
City *State* *Zip*

E-mail MSZNA@cobbcde.com

Speaking: For Against Information

Representing Florida Brownfields Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic BROWN FIELDS

Bill Number 586
(if applicable)

Name DAVID CULLEN

Amendment Barcode 229016
(if applicable)

Job Title _____

Address 1674 UNIVERSITY PARK
Street

Phone 941.323.2400

SARASOTA FL 34243
City State Zip

E-mail CULLEN@SENATE.FL
GOV.COM

Speaking: For Against Information

Representing SARASOTA FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 654

INTRODUCER: Judiciary Committee; Commerce and Tourism Committee; and Senators Clemens and Richter

SUBJECT: Business Organizations

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 654 amends the Florida Business Corporation Act to allow for the creation of two new forms of corporate enterprise: the social purpose corporation and the benefit corporation. These new entities will allow businesses to engage in societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization. Key elements of the social purpose corporation and the benefit corporation are:

- A social purpose corporation must pursue one or more narrowly identified public benefits.
- A benefit corporation must pursue a general public benefit, which is a broad purpose intended to encompass a broad range of social and environmental factors that are affected by the corporation.
- The corporation's directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation.
- Like directors and officers of all corporations, the new entities' directors and officers are immune from personal liability for failure to pursue or achieve the corporation's benefit goals, but they are subject to duty of care and fiduciary principles applicable to all corporate directors and officers.
- Benefit enforcement judicial proceedings may be brought by a shareholder or certain individuals for claims that the directors or officers have failed to satisfy their obligations in making corporate decisions. Such proceedings are analogous to a shareholder derivative action and allow shareholders to hold a social purpose corporation accountable to its stated public benefit.

- The corporation must provide an annual benefit report to all its shareholders describing and assessing the corporation's efforts made during the year to achieve the corporation's benefit goals.

Additionally, the bill specifies which differences in the name of certain business entities are not considered distinguishable and thus are not sufficiently distinguishable from the names of other business entities. The bill also provides that the business name distinguishability requirement does not require business entity names to be distinguishable from the name of any general partnership registration or limited liability partnership statement filed with the Florida Department of State.

II. Present Situation:

For-profit Corporations

For-profit corporations are established in Florida under ch. 607, F.S., the Florida Business Corporation Act. Generally, a corporation is a complex business structure and is considered a separate legal entity from its owners, who own shares of stock in the company.¹ A corporation may be taxed, sued, and can enter into contractual agreements.² Shareholders are not personally liable for corporate obligations. Similarly, directors are generally not personally liable for damages for their actions regarding corporate management or policy.³

As the name suggests, a for-profit corporation exists to pursue the goal of profit maximization for its shareholders.⁴ In pursuing this goal, a corporation's directors must act in good faith, with the care an ordinarily prudent person in a like position would exercise, and in a manner he or she reasonably believes to be in the best interests of the corporation.⁵ Additionally, Florida law specifically permits a director, in discharging his or her duties, to consider other factors he or she deems relevant, including:

the long-term prospects and interests of the corporation and its shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.⁶

¹ For basic information regarding corporations, see *Choose Your Business Structure: Corporation*, SBA.Gov, <http://www.sba.gov/content/corporation> (last visited February 10, 2014).

² See s. 607.0302, F.S.

³ Section 607.0831, F.S.

⁴ See, e.g., *Dodge v. Ford*, 170 N.W. 668, 684 (1919) ("A business corporation is organized and carried on primarily for the profit of the stockholders."); Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 Wash. & Lee L. Rev. 1423 (1993) ("Shareholder wealth maximization long has been the fundamental norm which guides U.S. corporate decisionmakers.").

⁵ Section 607.0830(1), F.S.

⁶ Section 607.0830(3), F.S.

Social Purpose Corporations and Benefit Corporations

Recent interest among consumers, investors, and entrepreneurs in socially responsible businesses that pursue public benefit goals in addition to, or even as a priority over, the business' profit motive has led to the creation of new forms of corporate entities.⁷

The Business Law Section of The Florida Bar has proposed the creation of two new alternative forms of corporate entity: social purpose corporations and benefit corporations.⁸ As explained by the Business Law Section, these entities “will allow entrepreneurs and investors to cause their corporation to engage in significant societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization.”⁹

The primary difference between a social purpose corporation and a benefit corporation is the public benefit purpose imposed upon each of the corporations. A social purpose corporation must pursue or create one or more public benefits, which may be quite specific. In contrast, a benefit corporation must pursue or create a “general public benefit,” which is a broad purpose intended to encompass many societal and environmental factors that are affected by the business and operations of the corporation.¹⁰ For both types of corporation, the directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation. Standard corporate law does not impose such a mandate.¹¹

The primary purpose of both a social purpose corporation and a benefit corporation is to allow directors and officers of the corporation to pursue the twin goals of public benefit and profit maximization. Because these corporations still retain profit-making goals, they are distinguishable from charities and not-for-profit corporations and could not be formed as such.¹²

Benefit corporation legislation has been adopted in 19 states plus the District of Columbia, and social purpose corporation legislation has been adopted in two states.¹³

Business Entity Name Distinguishability

Chapters 605, 607, 617, and 620, F.S., currently require the name of a limited liability company (LLC), for-profit corporation, nonprofit corporation, and limited partnership to be distinguishable from the names of all other entities or filings on file with the Department of State (DOS), with the exception of fictitious name registrations. However, the term “distinguishable”

⁷ See B Lab, *White Paper; The Need and Rationale for the Benefit Corporation: Why it is the Legal Form that Best Addresses the Needs of Social Entrepreneurs, Investors, and Ultimately the Public*, 2-6 January 18, 2013 available at http://benefitcorp.net/storage/documents/Beneicit_Corporation_White_Paper_1_18_2013.pdf (last visited February 11, 2014).

⁸ The Business Law Section of The Florida Bar, *Proposed Legislation to Amend Chapter 607, Florida Statutes, to Provide for the Creation of a Florida Social Purpose Corporation and a Florida Benefit Corporation*, 1 (January 15, 2014) (on file with the Senate Committee on Judiciary).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.* at 4.

¹³ *Id.* at 11-12.

is not defined by any of these statutes.¹⁴ According to DOS, some businesses try to adopt names that are similar to existing businesses in an effort to capitalize on the goodwill of existing businesses.¹⁵ Close name similarities can cause confusion in the business environment and in some instances existing businesses experience hardships when new businesses form and use names similar to that of an established business.¹⁶

III. Effect of Proposed Changes:

Social Purpose Corporations and Benefit Corporations

Restructure of Ch. 607, F.S.

Sections 2, 6, and 20 of the bill breaks ch. 607, F.S., the Florida Business Corporation Act, into 3 parts. Part I is entitled “General Provisions” and comprises ss. 607.0101-607.193, F.S., which are current law regulations for for-profit corporations. Part II is entitled “Social Purpose Corporations” and comprises ss. 607.501- 607.513, F.S., which are created in the bill. Part III is entitled “Benefit Corporations” and comprises ss. 607.601-607.613, F.S., which are created in the bill.

Sections 7 and 21 create ss. 607.501 and 607.601, F.S., respectively, to provide that part II of ch. 607, F.S., applies to a social purpose corporation and that part III of ch. 607, F.S., applies to a benefit corporation. The bill also provides that except for those provisions in ch. 607, F.S., that specifically apply to social purpose or benefit corporations, all otherwise non-conflicting provisions of ch. 607, F.S., apply as well. Additionally, unless authorized in the applicable part, a social purpose or benefit corporation’s articles of incorporation (articles) or bylaws, or a shareholders’ agreement, may not limit, be inconsistent with, or supersede the applicable part.

Sections 8 and 22 create ss. 607.502 and 607.602, F.S., respectively, to provide definitions for terms used in parts II and III of ch. 607, F.S., which are created by the bill.

Sections 9 and 23 create ss. 607.503 and 607.603, F.S., respectively, to require the corporation’s articles to state that it is either a social purpose corporation or a benefit corporation and to require the incorporator to satisfy the requirements of ch. 607, F.S.

Creation of Social Purpose Corporation and Benefit Corporation

Sections 10 and 24 create ss. 607.504 and 607.604, F.S., respectively, to permit an existing corporation to become a social purpose or benefit corporation by amending its articles to include a statement that the corporation is a social purpose corporation or benefit corporation or by a merger, conversion, or share exchange. Such action must be adopted by a minimum status vote. A “minimum status vote” is defined, in the case of a corporation, as a vote in which all shareholders are entitled to vote and the action is approved by a two-thirds vote of each class or series of shares entitled to vote; or, in the case of a domestic entity other than a corporation, as a vote in which the holders of each class or series of equity interest in the entity who are entitled to

¹⁴ Florida Department of State, *Bill Analysis for Senate Bill 654* (February 4, 2014) (on file with the Senate Committee on Judiciary).

¹⁵ Florida Department of State, *Business Entity Name Distinguishability* (on file with the Senate Committee on Judiciary).

¹⁶ *Id.*

receive a distribution are entitled to vote on or consent to the action and the action is approved by a two-thirds vote or consent of each class or series of equity interest who are entitled to vote or consent.¹⁷

If an entity elects to become a social purpose or benefit corporation by amendment of its articles or by a merger, conversion, or share exchange, shareholders are entitled to appraisal rights.

Termination of Social Purpose Corporation or Benefit Corporation Status

Sections 11 and 25 create ss. 607.505 and 607.605, F.S., respectively, to permit a social purpose or benefit corporation to terminate its status as such by amending its articles, or by merger, conversion, or share exchange. Termination of its status requires a minimum status vote unless the transaction terminating the status is in the usual and regular course of business, pursuant to a court order, or is a sale in which all or a substantial portion of the net proceeds of the sale will be distributed to the shareholders within 1 year of the sale.

If a corporation's status as a social purpose or benefit corporation is terminated pursuant to an amendment of its articles or by a merger, conversion, or share exchange, shareholders of the corporation are entitled to appraisal rights.

Section 5 amends s. 607.1302, F.S., to provide appraisal rights to shareholders of a domestic corporation that becomes a social purpose or a benefit corporation, or terminates its status as such, by amendment of its articles or by a merger, conversion, or share exchange.

Statutory Public Benefit Purposes

Sections 12 and 26 create ss. 607.506 and 607.606, F.S., respectively to describe the statutory corporate purposes of social purpose corporations and benefit corporations.

A social purpose corporation has the purpose of creating a "public benefit," which is defined as a positive effect, or the minimization of negative effects, on the environment or on *one or more* categories of persons or entities, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, due to the business and operations of the corporation. The term includes:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
- Protecting or restoring the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities that provide a benefit to society or the environment.¹⁸

¹⁷ The definitions of "minimum status vote" are created in ss. 607.502(5) and 607.602(7), F.S., in Sections 8 and 22 of the bill.

¹⁸ The definition of "public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(6), F.S.

A social purpose corporation's articles may identify one or more additional specific public benefits as its purpose in its articles in addition to its original public benefit purpose and any other lawful purpose it may have. The specific public benefit must be consistent with the corporation's public benefit.¹⁹ It may amend its articles to add, amend, or delete the identification of any additional public benefit; however, the amendment must be adopted by a minimum status vote. In sum, a social purpose corporation must pursue or create one or more narrowly identifiable public benefits.²⁰

A benefit corporation, however, has the purpose of creating a *general* public benefit, which is broadly defined as a material, positive effect on society and the environment, as assessed using a third-party standard, which is attributable to the business and operations of the corporation.²¹ In addition to its general public benefit purpose, a benefit corporation's articles may also identify one or more specific public benefits, which are defined similar to "public benefit" for a social purpose corporation as discussed above. Any specific public benefit adopted by a benefit corporation must be consistent with the general benefit purpose of the corporation.²² It may amend its articles to add, amend, or delete the identification of a specific public benefit; however, the amendment must be adopted by a minimum status vote. Additionally, the adoption of a specific public benefit, does not relieve the benefit corporation of its obligation to create a general public benefit.²³

Unlike a social purpose corporation, which must pursue or create one or more narrowly defined public benefits, a benefit corporation must pursue or create a *general* public benefit, which, as indicated by the Business Law Section, "is a broad purpose intended to encompass many societal and environmental factors that are impacted by the business and operations of the corporation."²⁴ However, both corporations may adopt additional specific public benefits.

The bill also provides that the creation of any specific public benefit by a social purpose corporation or the creation of a general public benefit and specific public benefit by a benefit corporation are in the best interest of the corporation. Additionally, a professional corporation that is a social purpose corporation or a benefit corporation and complies with the applicable statutory purpose does not violate s. 621.08, F.S., which limits a professional service corporation or limited liability company to engage only in providing professional services for which the entity was specifically organized.

¹⁹ The definition of "specific public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(8), F.S.

²⁰ The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 1.

²¹ The definition of "general public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(5), F.S.

²² The definition of "specific public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(8), F.S.

²³ See The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

²⁴ *Id.* at 1.

Standard of Conduct for Directors and Officers

Sections 13, 15, 27, and 29 create ss. 607.507, 607.509, 607.607 and 607.609, F.S., respectively to regulate the standard of conduct for directors and officers of social purpose corporations and benefit corporations.

Directors and officers of social purpose corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders and on the corporation's ability to accomplish any public benefits identified in its articles. The directors and officers *may* also consider the effect of a corporate action on the corporation's work force, its customers and suppliers, community and societal factors, the environment, the interests of the corporation, and any other pertinent factors or the interests of any group that they deem appropriate. Directors and officers are not required to give priority or equal weight to the interests of a particular person or group unless the corporation states in its articles its intention to give such priority or equal weight.

Directors and officers of benefit corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders, work force, and customers and suppliers; community and societal factors; the environment; the interests of the corporation; and on the corporation's ability to accomplish its general public benefit purpose and any applicable specific public benefit. The directors and officers *may* consider any other pertinent factors or the interests of any group that they deem appropriate. However, directors and officers are not required to give priority or equal weight to the interests of a particular person or group, unless the corporation states in its articles its intention to give such priority or equal weight.

The bill provides that a director or officer of a social purpose or benefit corporation is not personally liable for monetary damages to the corporation, shareholders, or potential beneficiaries of the corporation's benefit goals for failure to pursue or create a benefit, unless the corporation's articles expressly provide otherwise. Directors are still subject to the traditional duties of good faith and care and to fiduciary principles applicable to all corporate directors under s. 607.0830, F.S.,²⁵ and officers are still subject to any additional duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S. However, an officer's consideration of those interests and factors described above is not a violation of any duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S.

Benefit Directors

Sections 14 and 28 create ss. 607.508 and 607.608, F.S., respectively, to allow a social purpose corporation and a benefit corporation to include, in its articles, an elected, independent²⁶ benefit director. "Independent" is defined as not having a material relationship with the corporation or a subsidiary. A material relationship is presumed to exist:

- If the individual has been an employee, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;

²⁵ The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

²⁶ Benefit directors of professional service corporations and limited liability companies organized under ch. 621, F.S., are not required to be independent.

- If an immediate family member of the individual has been an executive officer, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;
- If the individual or an entity of which the individual is a director, officer, or manager owns 5 percent or more of the shares of the corporation; or
- If an entity in which the individual owns 5 percent or more of the outstanding equity interests owns 5 percent or more of the shares of the corporation.²⁷

A benefit director has the powers, duties, rights and immunities as other corporate directors, and his or her actions or inactions are inseparable from his or her status as a director.

Unless the corporation's articles or bylaws provide otherwise, the benefit director must prepare a report to be included in the corporation's annual benefit report²⁸ that provides his or her opinion on:

- Whether the corporation acted in accordance with its benefit purpose;
- Whether the corporation's directors and officers complied with the statutory standards of conduct; and
- Whether the corporation or its directors or officers failed, in the case of the corporation, to act in accordance with its statutory purpose, or, in the case of directors and officers, to comply with the requirements to consider the interests and factors provided in ss. 607.507(1) or 607.607(1), F.S., in deciding on a corporate action.

Benefit Officers

Sections 16 and 30 create ss. 607.510 and 607.610, F.S., respectively, to allow a social purpose corporation and a benefit corporation to designate an officer as a benefit officer with powers and duties set forth in the bylaws or determined by the board of directors. Such powers and duties may include preparing the corporation's annual benefit report and any other powers and duties relating to the public benefit, general public benefit, or specific public benefit purpose of the corporation.

Rights of Action and Benefit Enforcement Proceedings

Sections 17 and 31 create ss. 607.511 and 607.611, F.S., respectively, to identify the circumstances under which a person may bring a cause of action against a social purpose corporation or a benefit corporation. Generally, a person may not assert a claim against a social purpose or benefit corporation, or any of its respective directors or officers, for failing to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles. Additionally, a person is generally barred from asserting a claim against a social purpose or a benefit corporation, or any of its respective directors or officers, for violating any obligation, duty, or standard of conduct under ch. 607, F.S.

However, the bill provides that a benefit enforcement proceeding may be brought against the corporation, its directors, and officers directly by the corporation or derivatively by a shareholder, director, person or group that owns 5 percent or more of the outstanding equity

²⁷ The definitions of "independent" are created in ss. 607.502(4) and 607.602(6), F.S., in Sections 8 and 22 of the bill.

²⁸ See "Annual Benefit Report" section below.

interest in an entity of which the corporation is a subsidiary, or any other person specified in the corporation's articles or bylaws. A "benefit enforcement proceeding" is defined as a claim or action for a social purpose or benefit corporation's failure to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.²⁹ A benefit enforcement proceeding may also be brought for a violation of any obligation, duty, or standard of conduct under the applicable provisions of part II or part III of ch. 607, F.S.

The bill also provides that a social purpose corporation or a benefit corporation is not liable for monetary damages for failure of the corporation to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.

Annual Benefit Report

Sections 18 and 32 create ss. 607.512 and 607.612, F.S., to require a social purpose corporation and a benefit corporation to prepare and distribute an annual benefit report to shareholders.

For a benefit corporation, the annual report must be based on a third-party standard that is either applied consistently with previous annual reports or contains an explanation of any changes from prior reports. The bill defines a "third-party standard" as a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business. The third-party standard must be:

- Comprehensive in its assessment of the effect of the business on the interests and factors the corporation and its officers and directors must consider when deciding on a course of action;
- Developed by an entity that is not controlled by the corporation;
- Developed by an entity with the expertise to assess the overall effect of the business and that uses a comprehensive approach to develop the standard, including a period for public comment; and
- Transparent by making information regarding the criteria used under the third-party standard and information regarding any possible conflict of interest between the entity that developed the standard and the corporation publicly available.³⁰

Unlike a benefit corporation, a social purpose corporation's annual benefit report is not required to be based on a third-party standard³¹ unless required by the articles or the board of directors. If a third-party standard is required, it must either be applied consistently with previous annual reports or contain an explanation of any changes from prior reports.

For both a social purpose corporation and a benefit corporation, the annual benefit report must also include a description of:

- The ways in which the corporation pursued a public benefit, or general public benefit, as the case may be, during the year and the extent to which such a benefit was created.
- Any circumstance that has hindered the pursuit or creation of a public benefit or general public benefit, as the case may be, by the corporation.

²⁹ "Benefit enforcement proceeding" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(2) and 607.602(3), F.S.

³⁰ "Third-party standard" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(10) and 607.602(10), F.S.

³¹ *Id.*

- The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.
- The name and addresses of the benefit director and the benefit officer, if those positions exist.
- If the corporation has a benefit director, he or she must include in the benefit report the required opinion statement regarding the corporation's fulfillment of its statutory benefit purpose.³²
- If a third-party standard is used, the report must contain a statement of any connection between the entity that established the standard, its directors, officers, or any person with significant control over the entity, and the corporation, its directors, officers, or any significant shareholder of the corporation, including any information that might affect the credibility of the use of the third-party standard.³³

If a benefit director resigned, refused to stand for reelection, or was removed from his or her position, and furnished written correspondence to the corporation concerning the circumstances surrounding his or her departure, that correspondence must be included in the annual benefit report.

Lastly, the annual benefit report and the third-party standard, if used, are not required to be audited or certified by a third-party standards provider.

Annual Benefit Report Availability

Sections 19 and 33 create ss. 607.513 and 607.613, F.S., to regulate the availability of annual benefit reports created by social purpose corporations and benefit corporations. The bill requires a social purpose corporation and a benefit corporation to send its annual benefit report to each shareholder either within 120 days after the end of the corporation's fiscal year or at the same time that the corporation delivers any other annual report to its shareholders. Additionally, the corporation must post each annual benefit report on the public portion of its website for at least 3 years. If the corporation does not have a website, it must provide a free copy of the most recent annual benefit report to any person who requests a copy.

If a social purpose corporation or benefit corporation does not comply with the benefit report delivery requirements, the circuit court in the county in which the principal office of the corporation is located or, if no office is located in this state, the county in which its registered office is located, may, after a shareholder requests a copy, summarily order the corporation to provide the annual benefit report. If the court orders the annual benefit report to be provided, the court may order the corporation to pay the shareholder's costs, including attorney fees.

Business Entity Name Distinguishability

Sections 1, 4, 34, 35 amend ss. 605.0112, 607.0401, 617.0401, and 620.1108, F.S., to specify which differences in the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership are not considered distinguishable, and thus do not satisfy the requirement

³² See "*Benefit Directors*" section above.

³³ Because a third-party standard is always required in an annual benefit report for a benefit corporation, this statement must always be included in its annual benefit report.

that the name of such entities be distinguishable from the names of other entities, except fictitious name registrations.

The bill also provides that the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement. General partnership registration and limited partnership statements, like fictitious name registrations, are merely registered with DOS for public notice purposes.³⁴

Clarifying the distinguishability of entity names will help businesses and their customers, and it will help DOS in enforcement actions.

Sections 3, 34, 36-74 amend ss. 607.0101, 617.0401, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09, F.S., to conform to changes made by the act and conform cross-references.

Section 75 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may give businesses and entrepreneurs in Florida that desire to pursue public benefit goals along with traditional profit-making goals additional options for the type of corporate entity they create. It may also attract out-of-state businesses and entrepreneurs who want to form a social purpose corporation or a benefit corporation in Florida.

³⁴ Department of State Bill Analysis at 2.

C. **Government Sector Impact:**

According to DOS, the bill will have an indeterminate impact on revenue, and any impact the bill has on DOS's information technology system can be covered by the current resources of the department.³⁵

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 605.0112, 607.0101, 607.0401, 607.1302, 617.0401, 620.1108, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09.

This bill creates the following sections of the Florida Statutes: 607.501, 607.502, 607.503, 607.504, 607.505, 607.506, 607.507, 607.508, 607.509, 607.510, 607.511, 607.512, 607.513, 607.601, 607.602, 607.603, 607.604, 607.605, 607.606, 607.607, 607.608, 607.609, 607.610, 607.611, 607.612, and 607.613.

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 Judiciary Committee on March 18, 2014:

The committee substitute makes technical changes to the bill without changing any substantive provisions. It changes a reference to "CORPORATIONS" to "GENERAL PROVISIONS," and adds a comma.

CS by Commerce and Tourism Committee on February 17, 2014:

The committee substitute clarifies what information must be included in a corporation's annual benefit report and it corrects technical and drafting errors.

B. **Amendments:**

None.

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

³⁵ *Id.* at 4.



609448

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 142 - 145

and insert:

Statutes, and entitled "GENERAL PROVISIONS."

Section 3. Section 607.0101, Florida Statutes, is amended to read:

607.0101 Short title.—This chapter ~~act shall be known and~~ may

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



609448

12 And the title is amended as follows:
13 Delete line 9
14 and insert:
15 "General Provisions"; amending s. 607.0101, F.S.;
16 revising a



394950

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment

Delete line 366
and insert:
minimization of negative effects, taken as a whole, on the

By the Committee on Commerce and Tourism; and Senators Clemens
and Richter

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1 A bill to be entitled
2 An act relating to business organizations; amending s.
3 605.0112, F.S.; providing additional exceptions
4 regarding the requirement that limited liability
5 company names be distinguishable from the names of
6 other entities or filings; specifying differences in
7 names which are not considered distinguishable;
8 designating part I of ch. 607, F.S., entitled
9 "Corporations"; amending s. 607.0101, F.S.; revising a
10 provision to conform to changes made by the act;
11 amending s. 607.0401, F.S.; providing additional
12 exceptions regarding the requirement that corporate
13 names be distinguishable; specifying differences in
14 corporate names which are not considered
15 distinguishable; amending s. 607.1302, F.S.; providing
16 that the amendment of articles of incorporation or the
17 merger, conversion, or share exchange of a social
18 purpose or benefit corporation entitles the
19 shareholders to appraisal rights; creating part II of
20 ch. 607, F.S., entitled "Social Purpose Corporations";
21 creating s. 607.501, F.S.; providing application and
22 effect; creating s. 607.502, F.S.; providing
23 definitions; creating s. 607.503, F.S.; establishing
24 requirements for the formation of a social purpose
25 corporation; creating s. 607.504, F.S.; providing
26 procedures for an existing corporation to become a
27 social purpose corporation; creating s. 607.505, F.S.;
28 providing procedures for the termination of a social
29 purpose corporation status; creating s. 607.506, F.S.;

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30 requiring that the corporate purpose must be to create
31 a public benefit; providing criteria; creating s.
32 607.507, F.S.; requiring that the directors of a
33 social purpose corporation meet a standard of conduct;
34 providing criteria for the standards; creating s.
35 607.508, F.S.; authorizing the articles of
36 incorporation of a social purpose corporation to
37 provide for a benefit director; providing powers and
38 duties of a benefit director; creating s. 607.509,
39 F.S.; requiring that the officers of a social purpose
40 corporation meet a standard of conduct; providing
41 criteria for the standards of conduct; creating s.
42 607.510, F.S.; authorizing a social purpose
43 corporation to designate an officer as a benefit
44 officer; providing for the powers and duties of a
45 benefit officer; creating s. 607.511, F.S.;
46 authorizing certain legal actions to be brought
47 against a social purpose corporation, its officers, or
48 its directors; creating s. 607.512, F.S.; requiring
49 the board of directors to prepare an annual benefit
50 report; providing criteria for the preparation of the
51 report; creating s. 607.513, F.S.; establishing
52 requirements for the availability and dissemination of
53 the annual report; authorizing a court to order
54 dissemination of the report; providing criteria;
55 creating part III of ch. 607, F.S., entitled "Benefit
56 Corporations"; creating s. 607.601, F.S.; providing
57 for application and effect; creating s. 607.602, F.S.;
58 providing definitions; creating s. 607.603, F.S.;

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59 establishing requirements for the formation of a
 60 benefit corporation; creating s. 607.604, F.S.;
 61 providing procedures for an existing corporation to
 62 become a benefit corporation; creating s. 607.605,
 63 F.S.; providing procedures for the termination of a
 64 benefit corporation status; creating s. 607.606, F.S.;
 65 requiring that the corporate purpose be to create a
 66 public benefit; providing criteria; creating s.
 67 607.607, F.S.; requiring the directors of a benefit
 68 corporation to meet a standard of conduct; providing
 69 criteria for the standards; creating s. 607.608, F.S.;
 70 authorizing the articles of incorporation of a benefit
 71 corporation to provide for a benefit director;
 72 providing powers and duties of the benefit director;
 73 creating s. 607.609, F.S.; requiring the officers of a
 74 benefit corporation to meet a standard of conduct;
 75 providing criteria for the standards of conduct;
 76 creating s. 607.610, F.S.; authorizing a benefit
 77 corporation to designate an officer as a benefit
 78 officer; providing for the powers and duties of the
 79 benefit officer; creating s. 607.611, F.S.;
 80 authorizing certain legal actions to be brought
 81 against a benefit corporation, its officers, or its
 82 directors; creating s. 607.612, F.S.; requiring the
 83 board of directors to prepare an annual benefit
 84 report; providing criteria for the preparation of the
 85 report; creating s. 607.613, F.S.; establishing
 86 requirements for the availability and dissemination of
 87 the annual report; authorizing a court to order

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88 dissemination of the report; amending ss. 617.0401 and
 89 620.1108, F.S; providing additional exceptions
 90 regarding the requirement that the names of entities
 91 be distinguishable; specifying differences in names
 92 which are not considered distinguishable; amending ss.
 93 48.091, 215.555, 243.54, 310.171, 310.181, 329.10,
 94 339.412, 420.101, 420.111, 420.161, 440.02, 440.386,
 95 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462,
 96 624.489, 628.041, 631.262, 636.204, 641.2015,
 97 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03,
 98 663.04, 663.301, 663.306, 663.313, 718.111, 719.104,
 99 720.302, 720.306, 766.101, and 865.09, F.S.;
 100 conforming cross-references to changes made by the
 101 act; providing an effective date.

102
 103 Be It Enacted by the Legislature of the State of Florida:

104
 105 Section 1. Subsection (1) of section 605.0112, Florida
 106 Statutes, is amended to read:

107 605.0112 Name.—

108 (1) The name of a limited liability company:

109 (a) Must contain the words "limited liability company" or
 110 the abbreviation "L.L.C." or "LLC."

111 (b) Must be distinguishable in the records of the Division
 112 of Corporations of the department from the names of all other
 113 entities or filings that are on file with the division, except
 114 fictitious name registrations pursuant to s. 865.09, general
 115 partnership registrations pursuant to s. 620.8105, and limited
 116 liability partnership statements pursuant to s. 620.9001 which

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117 are organized, registered, or reserved under the laws of this
 118 state, ~~which names are on file with the division~~; however, a
 119 limited liability company may register under a name that is not
 120 otherwise distinguishable on the records of the division with
 121 the written consent of the owner entity ~~if, provided~~ the consent
 122 is filed with the division at the time of registration of such
 123 name. A name that is different from the name of another entity
 124 or filing due to any of the following is not considered
 125 distinguishable:

- 126 1. A suffix.
 - 127 2. A definite or indefinite article.
 - 128 3. The word "and" and the symbol "&."
 - 129 4. The singular, plural, or possessive form of a word.
 - 130 5. A recognized abbreviation of a root word.
 - 131 6. A punctuation mark or a symbol.
- 132 (c) May not contain language stating or implying that the
 133 limited liability company is organized for a purpose other than
 134 a purpose authorized in this chapter and its articles of
 135 organization. ~~and~~

136 (d) May not contain language stating or implying that the
 137 limited liability company is connected with a state or federal
 138 government agency or a corporation or other entity chartered
 139 under the laws of the United States.

140 Section 2. Sections 607.0101 through 607.193, Florida
 141 Statutes, are designated as part I of chapter 607, Florida
 142 Statutes, and entitled "CORPORATIONS."

143 Section 3. Section 607.0101, Florida Statutes, is amended
 144 to read:

145 607.0101 Short title.—This part ~~aet shall be known and~~ may

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146 be cited as the "Florida Business Corporation Act."

147 Section 4. Section 607.0401, Florida Statutes, is amended
 148 to read:

149 607.0401 Corporate name.—A corporate name:

150 (1) Must contain the word "corporation," "company," or
 151 "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or
 152 the designation "Corp.," "Inc.," or "Co.," as will clearly indicate
 153 that it is a corporation instead of a natural person,
 154 partnership, or other business entity. ~~and~~

155 (2) May not contain language stating or implying that the
 156 corporation is organized for a purpose other than that permitted
 157 in this act and its articles of incorporation. ~~and~~

158 (3) May not contain language stating or implying that the
 159 corporation is connected with a state or federal government
 160 agency or a corporation chartered under the laws of the United
 161 States. ~~and~~

162 (4) Must be distinguishable from the names of all other
 163 entities or filings that are on file with the Division of
 164 Corporations, except fictitious name registrations pursuant to
 165 s. 865.09, general partnership registrations pursuant to s.
 166 620.8105, and limited liability partnership statements pursuant
 167 to s. 620.9001 which are organized, registered, or reserved
 168 under the laws of this state, ~~which names are on file with the~~
 169 ~~Division of Corporations~~. A name that is different from the name
 170 of another entity or filing due to any of the following is not
 171 considered distinguishable:

- 172 (a) A suffix.
- 173 (b) A definite or indefinite article.
- 174 (c) The word "and" and the symbol "&."

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175 (d) The singular, plural, or possessive form of a word.

176 (e) A recognized abbreviation of a root word.

177 (f) A punctuation mark or a symbol.

178 (5) ~~The name of the corporation~~ As filed with the
179 Department of State, ~~is shall be~~ for public notice only and does
180 ~~shall~~ not alone create any presumption of ownership beyond that
181 which is created under the common law.

182 Section 5. Subsection (1) of section 607.1302, Florida
183 Statutes, is amended to read:

184 607.1302 Right of shareholders to appraisal.-

185 (1) A shareholder of a domestic corporation is entitled to
186 appraisal rights, and to obtain payment of the fair value of
187 that shareholder's shares, in the event of any of the following
188 corporate actions:

189 (a) Consummation of a conversion of such corporation
190 pursuant to s. 607.1112 if shareholder approval is required for
191 the conversion and the shareholder is entitled to vote on the
192 conversion under ss. 607.1103 and 607.1112(6), or the
193 consummation of a merger to which such corporation is a party if
194 shareholder approval is required for the merger under s.
195 607.1103 and the shareholder is entitled to vote on the merger
196 or if such corporation is a subsidiary and the merger is
197 governed by s. 607.1104;

198 (b) Consummation of a share exchange to which the
199 corporation is a party as the corporation whose shares will be
200 acquired if the shareholder is entitled to vote on the exchange,
201 except that appraisal rights are shall not ~~be~~ available to any
202 shareholder of the corporation with respect to any class or
203 series of shares of the corporation that is not exchanged;

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204 (c) Consummation of a disposition of assets pursuant to s.
205 607.1202 if the shareholder is entitled to vote on the
206 disposition, including a sale in dissolution but not including a
207 sale pursuant to court order or a sale for cash pursuant to a
208 plan by which all or substantially all of the net proceeds of
209 the sale will be distributed to the shareholders within 1 year
210 after the date of sale;

211 (d) An amendment of the articles of incorporation with
212 respect to the class or series of shares which reduces the
213 number of shares of a class or series owned by the shareholder
214 to a fraction of a share if the corporation has the obligation
215 or right to repurchase the fractional share so created;

216 (e) Any other amendment to the articles of incorporation,
217 merger, share exchange, or disposition of assets to the extent
218 provided by the articles of incorporation, bylaws, or a
219 resolution of the board of directors, except that no bylaw or
220 board resolution providing for appraisal rights may be amended
221 or otherwise altered except by shareholder approval; ~~or~~

222 (f) With regard to a class of shares prescribed in the
223 articles of incorporation prior to October 1, 2003, including
224 any shares within that class subsequently authorized by
225 amendment, any amendment of the articles of incorporation if the
226 shareholder is entitled to vote on the amendment and if such
227 amendment would adversely affect such shareholder by:

228 1. Altering or abolishing any preemptive rights attached to
229 any of his or her shares;

230 2. Altering or abolishing the voting rights pertaining to
231 any of his or her shares, except as such rights may be affected
232 by the voting rights of new shares then being authorized of any

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233 existing or new class or series of shares;

234 3. Effecting an exchange, cancellation, or reclassification

235 of any of his or her shares, when such exchange, cancellation,

236 or reclassification would alter or abolish the shareholder's

237 voting rights or alter his or her percentage of equity in the

238 corporation, or effecting a reduction or cancellation of accrued

239 dividends or other arrearages in respect to such shares;

240 4. Reducing the stated redemption price of any of the

241 shareholder's redeemable shares, altering or abolishing any

242 provision relating to any sinking fund for the redemption or

243 purchase of any of his or her shares, or making any of his or

244 her shares subject to redemption when they are not otherwise

245 redeemable;

246 5. Making noncumulative, in whole or in part, dividends of

247 any of the shareholder's preferred shares which had theretofore

248 been cumulative;

249 6. Reducing the stated dividend preference of any of the

250 shareholder's preferred shares; or

251 7. Reducing any stated preferential amount payable on any

252 of the shareholder's preferred shares upon voluntary or

253 involuntary liquidation;-

254 (g) An amendment of the articles of incorporation of a

255 social purpose corporation to which s. 607.504 or s. 607.505

256 applies;

257 (h) An amendment of the articles of incorporation of a

258 benefit corporation to which s. 607.604 or s. 607.605 applies;

259 (i) A merger, conversion, or share exchange of a social

260 purpose corporation to which s. 607.504 applies; or

261 (j) A merger, conversion, or share exchange of a benefit

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262 corporation to which s. 607.604 applies.

263 Section 6. Sections 607.501 through 607.513, Florida

264 Statutes, are designated as part II of chapter 607, Florida

265 Statutes, and entitled "SOCIAL PURPOSE CORPORATIONS."

266 Section 7. Section 607.501, Florida Statutes, is created to

267 read:

268 607.501 Application and effect of part.-

269 (1) This part applies to a social purpose corporation and

270 does not affect a corporation that is not a social purpose

271 corporation.

272 (2) Except as otherwise provided in this part, this chapter

273 applies generally to all social purpose corporations.

274 (3) A social purpose corporation may be simultaneously

275 subject to this part and to one or more chapters, including

276 chapter 621. In such event, this part takes precedence with

277 respect to a social purpose corporation.

278 (4) Except as authorized by this part, a provision of the

279 articles of incorporation or bylaws of a social purpose

280 corporation, or a shareholders agreement among shareholders of a

281 social purpose corporation, may not limit, be inconsistent with,

282 or supersede a provision of this part.

283 Section 8. Section 607.502, Florida Statutes, is created to

284 read:

285 607.502 Definitions.-As used in this part, unless the

286 context otherwise requires, the term:

287 (1) "Benefit director" means:

288 (a) The director designated as the benefit director of a

289 social purpose corporation under s. 607.508; or

290 (b) A person with one or more of the powers, duties, or

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291 rights of a benefit director to the extent provided in the
 292 articles of incorporation or bylaws under s. 607.508.

293 (2) "Benefit enforcement proceeding" means a claim or
 294 action for:

295 (a) The failure of a social purpose corporation to pursue
 296 or create a public benefit or a specific public benefit
 297 established in its articles of incorporation; or

298 (b) A violation of any obligation, duty, or standard of
 299 conduct under this part.

300 (3) "Benefit officer" means the individual designated as
 301 the benefit officer of a social purpose corporation under s.
 302 607.510.

303 (4) "Independent" means not having a material relationship
 304 with the social purpose corporation or a subsidiary of the
 305 social purpose corporation. A person does not have a material
 306 relationship solely by virtue of serving as the benefit director
 307 or benefit officer of the social purpose corporation or a
 308 subsidiary of the social purpose corporation. In determining
 309 whether a director or officer is independent, a material
 310 relationship between an individual and a social purpose
 311 corporation or any of its subsidiaries will be conclusively
 312 presumed to exist, at the time independence is to be determined,
 313 if any of the following apply:

314 (a) The individual is or was within the prior 3 years an
 315 employee, other than a benefit officer, of the social purpose
 316 corporation or a subsidiary.

317 (b) An immediate family member of the individual is or was
 318 within the prior 3 years an executive officer, other than a
 319 benefit officer, of the social purpose corporation or a

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320 subsidiary.

321 (c) When ownership is calculated as if all outstanding
 322 rights to acquire equity interests in the social purpose
 323 corporation had been exercised, there is beneficial or record
 324 ownership of 5 percent or more of the outstanding shares of the
 325 social purpose corporation by:

326 1. The individual; or

327 2. An entity:

328 a. Of which the individual is a director, an officer, or a
 329 manager; or

330 b. In which, when ownership is calculated as if all
 331 outstanding rights to acquire equity interests in the entity had
 332 been exercised, the individual owns beneficially or of record 5
 333 percent or more of the outstanding equity interests.

334 (5) "Minimum status vote" means:

335 (a) In the case of a corporation that is to become a social
 336 purpose corporation, whether by amendment of the articles of
 337 incorporation or by way of or pursuant to a merger, conversion,
 338 or share exchange; a social purpose corporation whose articles
 339 of incorporation are to be amended pursuant to s. 607.506(2); or
 340 a social purpose corporation that is to cease being a social
 341 purpose corporation, in addition to any other required approval
 342 or vote, the satisfaction of the following conditions:

343 1. The holders of each class or series of shares shall be
 344 entitled to vote as a separate voting group on the corporate
 345 action regardless of any limitation on the voting rights of any
 346 class or series stated in the articles of incorporation or
 347 bylaws.

348 2. The corporate action is approved by vote of each class

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349 or series of shares entitled to vote by at least two-thirds of
 350 the total votes of the class or series.

351 (b) In the case of a domestic entity, other than a
 352 corporation, which is to be simultaneously converted to a social
 353 purpose corporation or merged into a social purpose corporation,
 354 in addition to any other required approval, vote, or consent,
 355 the satisfaction of the following conditions:

356 1. The holders of each class or series of equity interest
 357 in the entity who are entitled to receive a distribution of any
 358 kind are entitled, as a separate voting group, to vote on or
 359 consent to the action regardless of any applicable limitation on
 360 the voting or consent rights of any class or series.

361 2. The action is approved by vote or consent of each class
 362 or series of equity interest described in subparagraph 1. who
 363 are entitled to vote by at least two-thirds of the votes or
 364 consent of the class or series.

365 (6) "Public benefit" means a positive effect, or the
 366 minimization of negative effects taken as a whole, on the
 367 environment or on one or more categories of persons or entities,
 368 other than shareholders in their capacity as shareholders, of an
 369 artistic, charitable, economic, educational, cultural, literary,
 370 religious, social, ecological, or scientific nature, from the
 371 business and operations of a social purpose corporation. The
 372 term includes, but is not limited to, the following:

373 (a) Providing low-income or underserved individuals or
 374 communities with beneficial products or services.

375 (b) Promoting economic opportunity for individuals or
 376 communities beyond the creation of jobs in the normal course of
 377 business.

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378 (c) Protecting or restoring the environment.

379 (d) Improving human health.

380 (e) Promoting the arts, sciences, or advancement of
 381 knowledge.

382 (f) Increasing the flow of capital to entities that have as
 383 their stated purpose the provision of a benefit to society or
 384 the environment.

385 (7) "Social purpose corporation" means a corporation that
 386 is formed, or has elected to become, subject to this part, the
 387 status of which as a social purpose corporation has not been
 388 terminated.

389 (8) "Specific public benefit" means a benefit identified as
 390 a purpose of the social purpose corporation which is set forth
 391 in the articles of incorporation and is consistent with a public
 392 benefit.

393 (9) "Subsidiary" means, in relation to a person other than
 394 an individual, an entity in which the person owns beneficially
 395 or of record 50 percent or more of the outstanding equity
 396 interests.

397 (10) "Third-party standard" means a recognized standard for
 398 defining, reporting, and assessing the societal and
 399 environmental performance of a business which is:

400 (a) Comprehensive, because it assesses the effect of the
 401 business and its operations upon the interests listed in s.
 402 607.507(1) (a).

403 (b) Developed by an entity that is not controlled by the
 404 social purpose corporation.

405 (c) Credible, because it is developed by an entity that has
 406 access to necessary expertise to assess the overall effect of

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407 the business and uses a balanced, collaborative approach to
 408 develop the standard, including a period for public comment.

409 (d) Transparent, because the following information is
 410 publicly available:

411 1. The criteria considered under the standard when
 412 measuring the overall effect of the business and its operations
 413 upon the interests provided in s. 607.507(1)(a) and the relative
 414 weights, if any, of those criteria; and

415 2. The process used in the development and revision of the
 416 third-party standard regarding the identity of the directors,
 417 officers, material owners, and governing body of the entity that
 418 developed and controls revisions to the standard; the process by
 419 which revisions to the standard and changes to the membership of
 420 the governing body are made; and an accounting of the revenue
 421 and sources of financial support for the entity with sufficient
 422 detail to disclose any relationships that could reasonably be
 423 considered to present a potential conflict of interest.

424 Section 9. Section 607.503, Florida Statutes, is created to
 425 read:

426 607.503 Incorporation.—To incorporate as a social purpose
 427 corporation, an incorporator must satisfy the requirements of
 428 this chapter, and the articles of incorporation must state that
 429 the corporation is a social purpose corporation under this part.

430 Section 10. Section 607.504, Florida Statutes, is created
 431 to read:

432 607.504 Election of social purpose corporation status.—

433 (1) An existing corporation may become a social purpose
 434 corporation under this part by amending its articles of
 435 incorporation to include a statement that the corporation is a

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436 social purpose corporation under this part. The amendment must
 437 be adopted by the minimum status vote.

438 (2) A plan of merger, conversion, or share exchange must be
 439 adopted by the minimum status vote if an entity that is not a
 440 social purpose corporation is a party to the merger or
 441 conversion or if the exchanging entity in a share exchange and
 442 the surviving, new, or resulting entity is, or will be, a social
 443 purpose corporation.

444 (3) If an entity elects to become a social purpose
 445 corporation by amendment of the articles of incorporation or by
 446 a merger, conversion, or share exchange, the shareholders of the
 447 entity are entitled to appraisal rights under and pursuant to
 448 ss. 607.1301-607.1333.

449 Section 11. Section 607.505, Florida Statutes, is created
 450 to read:

451 607.505 Termination of social purpose corporation status.—

452 (1) A social purpose corporation may terminate its status
 453 as such and cease to be subject to this part by amending its
 454 articles of incorporation to delete the provision required under
 455 s. 607.503 or s. 607.504. The amendment must be adopted by the
 456 minimum status vote.

457 (2) A plan of merger, conversion, or share exchange which
 458 has the effect of terminating the status of a corporation as a
 459 social purpose corporation must be adopted by the minimum status
 460 vote. A sale, lease, exchange, or other disposition of all or
 461 substantially all of the assets of a social purpose corporation
 462 is not effective unless the transaction is approved by the
 463 minimum status vote. However, a minimum status vote is not
 464 required if the transaction is in the usual and regular course

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465 of business, is pursuant to court order, or is a sale pursuant
 466 to which all or a substantial portion of the net proceeds of the
 467 sale will be distributed to the shareholders within 1 year after
 468 the date of the sale.

469 (3) If a corporation's status as a social purpose
 470 corporation is terminated pursuant to subsection (1) or
 471 subsection (2), shareholders of the corporation are entitled to
 472 appraisal rights under and pursuant to ss. 607.1301-607.1333.

473 Section 12. Section 607.506, Florida Statutes, is created
 474 to read:

475 607.506 Corporate purpose.-

476 (1) A social purpose corporation has the purpose of
 477 creating a public benefit. This purpose is in addition to its
 478 purpose under s. 607.0301.

479 (2) The articles of incorporation of a social purpose
 480 corporation may identify one or more specific public benefits as
 481 its purpose in addition to its purposes under s. 607.0301 and
 482 subsection (1). A social purpose corporation may amend its
 483 articles of incorporation to add, amend, or delete the
 484 identification of a specific public benefit purpose; however,
 485 the amendment must be adopted by the minimum status vote.

486 (3) The creation of a public benefit and a specific public
 487 benefit under subsections (1) and (2) is deemed to be in the
 488 best interest of the social purpose corporation.

489 (4) A professional corporation that is a social purpose
 490 corporation does not violate s. 621.08 by having as its purpose
 491 the creation of a public benefit or a specific public benefit.

492 Section 13. Section 607.507, Florida Statutes, is created
 493 to read:

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494 607.507 Standard of conduct for directors.-

495 (1) In discharging their duties and in considering the best
 496 interests of the social purpose corporation, the directors:

497 (a) Shall consider the effects of any action or inaction
 498 upon:

499 1. The shareholders of the social purpose corporation; and

500 2. The ability of the social purpose corporation to
 501 accomplish its public benefit or any specific public benefit
 502 purpose.

503 (b) May consider the effects of any action or inaction upon
 504 any of the following:

505 1. The employees and work force of the social purpose
 506 corporation, its subsidiaries, and its suppliers.

507 2. The interests of customers and suppliers as
 508 beneficiaries of the public benefit or specific public benefits
 509 of the social purpose corporation.

510 3. Community and societal factors, including those of each
 511 community in which offices or facilities of the social purpose
 512 corporation, its subsidiaries, or its suppliers are located.

513 4. The local and global environment.

514 5. The short-term and long-term interests of the social
 515 purpose corporation, including benefits that may accrue to the
 516 social purpose corporation from its long-term plans and the
 517 possibility that these interests may be best served by the
 518 continued independence of the social purpose corporation.

519 (c) May consider other pertinent factors or the interests
 520 of any other group that they deem appropriate.

521 (d) Are not required to give priority to the interests of a
 522 particular person or group referred to in paragraph (a),

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523 paragraph (b), or paragraph (c) unless the social purpose
 524 corporation states in its articles of incorporation its
 525 intention to give such priority.

526 (e) Are not required to give equal weight to the interests
 527 of any particular person or group referred to in paragraph (a),
 528 paragraph (b), or paragraph (c) unless the social purpose
 529 corporation has stated in its articles of incorporation its
 530 intention to give such equal weight.

531 (2) Except as provided in the articles of incorporation, a
 532 director is not personally liable for monetary damages to the
 533 corporation, or to any other person, for the failure of the
 534 social purpose corporation to pursue or create a public benefit
 535 or a specific public benefit. A director is subject to the
 536 duties specified in s. 607.0830.

537 (3) Except as provided in the articles of incorporation, a
 538 director does not have a duty to a person who is a beneficiary
 539 of the public benefit purpose or any one or more specific public
 540 benefit purposes of a social purpose corporation.

541 Section 14. Section 607.508, Florida Statutes, is created
 542 to read:

543 607.508 Benefit director.—

544 (1) If the articles of incorporation so provide, the board
 545 of directors of a social purpose corporation may include a
 546 director who is designated as the benefit director and, in
 547 addition to the powers, duties, rights, and immunities of the
 548 other directors of the social purpose corporation, has the
 549 powers, duties, rights, and immunities provided in this part.

550 (2) The benefit director shall be elected, and may be
 551 removed, in the manner provided by this chapter. Except as

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552 provided under subsection (5), the benefit director shall be
 553 independent and may serve as a benefit officer. The articles of
 554 incorporation or bylaws may prescribe additional qualifications
 555 of the benefit director.

556 (3) Unless the articles of incorporation or bylaws provide
 557 otherwise, the benefit director shall prepare, and the social
 558 purpose corporation shall include in the annual benefit report
 559 to shareholders required under s. 607.512, the opinion of the
 560 benefit director on the following:

561 (a) Whether the social purpose corporation in all material
 562 respects acted in accordance with its public benefit purpose and
 563 any specific public benefit purpose during the period covered by
 564 the report.

565 (b) Whether the directors and officers complied with ss.
 566 607.507(1) and 607.509(1).

567 (c) Whether the social purpose corporation or its directors
 568 or officers failed to comply with paragraph (a) or s. 607.507(1)
 569 or s. 607.509(1), including a description of the ways in which
 570 the social purpose corporation or its directors or officers
 571 failed to comply.

572 (4) The action or inaction of an individual in his or her
 573 capacity as a benefit director shall constitute for all purposes
 574 an action or inaction of that individual in his or her capacity
 575 as a director of the social purpose corporation.

576 (5) The benefit director of a corporation formed under
 577 chapter 621 is not required to be independent.

578 Section 15. Section 607.509, Florida Statutes, is created
 579 to read:

580 607.509 Standard of conduct for officers.—

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581 (1) If an officer of a social purpose corporation
 582 reasonably believes that a matter may have a material effect on
 583 the ability of the corporation to create a public benefit or a
 584 specific public benefit identified in the articles of
 585 incorporation and the officer has discretion to act on the
 586 matter, the officer shall consider the interests and factors
 587 provided in s. 607.507(1).

588 (2) The officer's consideration of interests and factors
 589 under subsection (1) does not constitute a violation of s.
 590 607.0841.

591 (3) Except as provided in the articles of incorporation, an
 592 officer is not personally liable for monetary damages to the
 593 corporation or any other person for the failure of the social
 594 purpose corporation to pursue or create a public benefit or a
 595 specific public benefit; however, he or she is subject to s.
 596 607.0841.

597 (4) Except as provided in the articles of incorporation, an
 598 officer does not have any duty to a person who is a beneficiary
 599 of the public benefit purpose or any specific public benefit
 600 purpose of a social purpose corporation arising from the status
 601 of the person as a beneficiary.

602 Section 16. Section 607.510, Florida Statutes, is created
 603 to read:
 604 607.510 Benefit officer.-
 605 (1) A social purpose corporation may designate an officer
 606 as the benefit officer.
 607 (2) The benefit officer has the powers and duties set forth
 608 in the bylaws or determined by the board of directors, which may
 609 include, but are not limited to:

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610 (a) Powers and duties relating to the public benefit or a
 611 specific public benefit purpose of the corporation; and
 612 (b) The duty to prepare the annual benefit report required
 613 under s. 607.512.

614 Section 17. Section 607.511, Florida Statutes, is created
 615 to read:
 616 607.511 Right of action.-
 617 (1)(a) Except in a benefit enforcement proceeding, a person
 618 may not bring an action or assert a claim against a social
 619 purpose corporation or its directors or officers with respect
 620 to:

621 1. A failure to pursue or create a public benefit or a
 622 specific public benefit set forth in its articles of
 623 incorporation; or
 624 2. A violation of an obligation, duty, or standard of
 625 conduct under this part.

626 (b) A social purpose corporation is not liable for monetary
 627 damages under this part for the failure of the social purpose
 628 corporation to pursue or create a public benefit or a specific
 629 public benefit.

630 (2) A benefit enforcement proceeding may be commenced or
 631 maintained only:

632 (a) Directly by the social purpose corporation; or
 633 (b) Derivatively by:

634 1. A shareholder of record on the date of the action or
 635 inaction complained of in the benefit enforcement proceeding;
 636 2. A director;
 637 3. A person or group of persons that owns beneficially or
 638 of record 5 percent or more of the outstanding equity interests

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639 in an entity of which the social purpose corporation is a
 640 subsidiary on the date of the action or inaction complained of
 641 in the benefit enforcement proceeding; or

642 4. Any other person who is specified in the articles of
 643 incorporation or bylaws of the social purpose corporation.

644 Section 18. Section 607.512, Florida Statutes, is created
 645 to read:

646 607.512 Preparation of annual benefit report.—

647 (1) Unless it is prepared by a benefit director or benefit
 648 officer, the board of directors shall prepare an annual benefit
 649 report. The annual benefit report must include all of the
 650 following:

651 (a) A narrative description of:

652 1. The ways in which the social purpose corporation pursued
 653 a public benefit during the year and the extent to which a
 654 public benefit was created.

655 2. Any circumstance that has hindered the pursuit or
 656 creation of a public benefit by the social purpose corporation.

657 3. The process and rationale for selecting or changing the
 658 third-party standard used to prepare the benefit report, if the
 659 articles of incorporation of the social purpose corporation
 660 require, or the board of directors determines, that the annual
 661 benefit report must be prepared in accordance with a third-party
 662 standard.

663 (b) If the articles of incorporation of the social purpose
 664 corporation require, or the board of directors determines, that
 665 the annual benefit report must be prepared in accordance with a
 666 third-party standard, the third-party standard must be:

667 1. Applied consistently with any previous application in

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668 prior annual benefit reports; or

669 2. Accompanied by an explanation of the reasons for
 670 inconsistent application or any change in the standard from the
 671 immediate prior report.

672 (c) The name of the benefit director and the benefit
 673 officer, if those positions exist, and the respective addresses
 674 to which correspondence may be directed.

675 (d) If the corporation has a benefit director, his or her
 676 statement as provided in s. 607.508(3).

677 (e) If the articles of incorporation of the social purpose
 678 corporation require, or the board of directors determines, that
 679 the annual benefit report must be prepared in accordance with a
 680 third-party standard, a statement of any connection between the
 681 organization that established the third-party standard, or its
 682 directors, officers, or any holder of 5 percent or more of the
 683 governance interests in the organization, and the social purpose
 684 corporation or its directors, officers, or any holder of 5
 685 percent or more of the outstanding shares of the social purpose
 686 corporation, including any financial or governance relationship
 687 that might materially affect the credibility of the use of the
 688 third-party standard.

689 (2) If, during the year covered by an annual benefit
 690 report, a benefit director resigned from, or refused to stand
 691 for reelection to, his or her position, or was removed from his
 692 or her position, and he or she furnished written correspondence
 693 to the social purpose corporation concerning the circumstances
 694 surrounding his or her departure, that correspondence must be
 695 included as an exhibit in the annual benefit report.

696 (3) The annual benefit report and the assessment of the

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697 performance of the social purpose corporation in the annual
 698 benefit report required under paragraph (1)(b) are not required
 699 to be audited or certified by a third-party standards provider.

700 Section 19. Section 607.513, Florida Statutes, is created
 701 to read:

702 607.513 Availability of annual benefit report.-

703 (1) Each social purpose corporation shall send its annual
 704 benefit report to each shareholder:

705 (a) Within 120 days after the end of the fiscal year of the
 706 social purpose corporation; or

707 (b) At the same time that the social purpose corporation
 708 delivers any other annual report to its shareholders.

709 (2) A social purpose corporation shall post each annual
 710 benefit report on the public portion of its website, if any, and
 711 it shall remain posted for at least 3 years.

712 (3) If a social purpose corporation does not have a
 713 website, the corporation shall provide a copy of its most recent
 714 annual benefit report, without charge, to any person who
 715 requests a copy.

716 (4) If a social purpose corporation does not comply with
 717 the annual benefit report delivery requirement, the circuit
 718 court in the county in which the principal office of the social
 719 purpose corporation is located or, if no office is located in
 720 this state, the county in which its registered office is
 721 located, may, after a shareholder of the social purpose
 722 corporation requests a copy, summarily order the corporation to
 723 furnish the annual benefit report. If the court orders the
 724 annual benefit report to be furnished, the court may also order
 725 the social purpose corporation to pay the shareholder's costs,

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726 including reasonable attorney fees, which were incurred in
 727 obtaining the order and otherwise enforce his or her rights
 728 under this section.

729 Section 20. Sections 607.601 through 607.613, Florida
 730 Statutes, are designated as part III of chapter 607, Florida
 731 Statutes, entitled "BENEFIT CORPORATIONS."

732 Section 21. Section 607.601, Florida Statutes, is created
 733 to read:

734 607.601 Application and effect of part.-

735 (1) This part applies to a benefit corporation and does not
 736 affect a corporation that is not a benefit corporation.

737 (2) Except as provided in this part, this chapter applies
 738 generally to all benefit corporations.

739 (3) A benefit corporation may be simultaneously subject to
 740 this part and to one or more chapters, including chapter 621. In
 741 such event, this part takes precedence with respect to a benefit
 742 corporation.

743 (4) Except as authorized by this part, a provision of the
 744 articles of incorporation or bylaws of a benefit corporation, or
 745 a shareholders agreement among shareholders of a benefit
 746 corporation, may not limit, be inconsistent with, or supersede a
 747 provision of this part.

748 Section 22. Section 607.602, Florida Statutes, is created
 749 to read:

750 607.602 Definitions.-As used in this part, unless the
 751 context otherwise requires, the term:

752 (1) "Benefit corporation" means a corporation that is
 753 formed, or has elected to become, subject to this part, the
 754 status of which as a benefit corporation has not been

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755 terminated.

756 (2) "Benefit director" means:

757 (a) The director designated as the benefit director of a

758 benefit corporation under s. 607.608; or

759 (b) A person with one or more of the powers, duties, or

760 rights of a benefit director to the extent provided in the

761 articles of incorporation or bylaws under s. 607.608.

762 (3) "Benefit enforcement proceeding" means any claim or

763 action for:

764 (a) The failure of a benefit corporation to pursue or

765 create general public benefit or a specific public benefit

766 purpose set forth in its articles of incorporation; or

767 (b) A violation of any obligation, duty, or standard of

768 conduct under this part.

769 (4) "Benefit officer" means the individual designated as

770 the benefit officer of a benefit corporation under s. 607.610.

771 (5) "General public benefit" means a material, positive

772 effect on society and the environment, taken as a whole, as

773 assessed using a third-party standard which is attributable to

774 the business and operations of a benefit corporation.

775 (6) "Independent" means not having a material relationship

776 with the benefit corporation or a subsidiary of the benefit

777 corporation. A person does not have a material relationship

778 solely by virtue of serving as the benefit director or benefit

779 officer of the benefit corporation or a subsidiary of the

780 benefit corporation. In determining whether a director or

781 officer is independent, a material relationship between an

782 individual and a benefit corporation or any of its subsidiaries

783 will be conclusively presumed to exist, at the time independence

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784 is to be determined, if any of the following apply:

785 (a) The individual is or has been within the prior 3 years

786 an employee, other than a benefit officer, of the benefit

787 corporation or a subsidiary.

788 (b) An immediate family member of the individual is or has

789 been within the prior 3 years an executive officer, other than a

790 benefit officer, of the benefit corporation or a subsidiary.

791 (c) When ownership is calculated as if all outstanding

792 rights to acquire equity interests in the benefit corporation

793 had been exercised, there is beneficial or record ownership of 5

794 percent or more of the outstanding shares of the benefit

795 corporation by:

796 1. The individual; or

797 2. An entity:

798 a. Of which the individual is a director, an officer, or a

799 manager; or

800 b. In which, when ownership is calculated as if all

801 outstanding rights to acquire equity interests in the entity had

802 been exercised, the individual owns beneficially or of record 5

803 percent or more of the outstanding equity interests.

804 (7) "Minimum status vote" means:

805 (a) In the case of a corporation that is to become a

806 benefit corporation, whether by amendment of the articles of

807 incorporation or by way of or pursuant to a merger, conversion,

808 or share exchange; a benefit corporation whose articles of

809 incorporation are to be amended pursuant to s. 607.606(2); or a

810 benefit corporation that is to cease being a benefit

811 corporation, in addition to any other required approval or vote,

812 the satisfaction of the following conditions:

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813 1. The holders of each class or series of shares shall be
 814 entitled to vote as a separate voting group on the corporate
 815 action regardless of any limitation on the voting rights of any
 816 class or series stated in the articles of incorporation or
 817 bylaws.

818 2. The corporate action is approved by vote of each class
 819 or series of shares entitled to vote by at least two-thirds of
 820 the total votes of the class or series.

821 (b) In the case of a domestic entity, other than a
 822 corporation, which is to be simultaneously converted to a
 823 benefit corporation or merged into a benefit corporation, in
 824 addition to any other required approval, vote, or consent, the
 825 satisfaction of the following conditions:

826 1. The holders of each class or series of equity interest
 827 in the entity who are entitled to receive a distribution of any
 828 kind are entitled, as a separate voting group, to vote on or
 829 consent to the action regardless of any applicable limitation on
 830 the voting or consent rights of any class or series.

831 2. The action is approved by vote or consent of each class
 832 or series of equity interest described in subparagraph 1. who
 833 are entitled to vote by at least two-thirds of the votes or
 834 consent of the class or series.

835 (8) "Specific public benefit" includes, but is not limited
 836 to:

837 (a) Providing low-income or underserved individuals or
 838 communities with beneficial products or services;

839 (b) Promoting economic opportunity for individuals or
 840 communities beyond the creation of jobs in the normal course of
 841 business;

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842 (c) Protecting or restoring the environment;

843 (d) Improving human health;

844 (e) Promoting the arts, sciences, or advancement of
 845 knowledge;

846 (f) Increasing the flow of capital to entities that have as
 847 their stated purpose the provision of a benefit to society or
 848 the environment; and

849 (g) Any other public benefit consistent with the purposes
 850 of the benefit corporation.

851 (9) "Subsidiary" means, in relation to a person other than
 852 an individual, an entity in which a person owns beneficially or
 853 of record 50 percent or more of the outstanding equity
 854 interests.

855 (10) "Third-party standard" means a recognized standard for
 856 defining, reporting, and assessing the societal and
 857 environmental performance of a business which is:

858 (a) Comprehensive, because it assesses the effect of the
 859 business and its operations upon the interests provided in s.
 860 607.607(1)(a)2.-5.

861 (b) Developed by an entity that is not controlled by the
 862 benefit corporation.

863 (c) Credible, because it is developed by an entity that has
 864 access to necessary expertise to assess the overall societal and
 865 environmental performance of a business and uses a balanced,
 866 collaborative approach to develop the standard, including a
 867 period for public comment.

868 (d) Transparent, because the following information is
 869 publicly available:

870 1. The criteria considered under the standard when

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871 measuring the overall societal and environmental performance of
 872 a business and the relative weights, if any, of those criteria.

873 2. The identity of the directors, officers, material
 874 owners, and the governing body of the entity that developed and
 875 controlled revisions; the process by which revisions to the
 876 standard and changes to the membership of the governing body are
 877 made; and an accounting of the revenue and sources of financial
 878 support for the entity, with sufficient detail to disclose any
 879 relationships that could reasonably be considered to present a
 880 potential conflict of interest.

881 Section 23. Section 607.603, Florida Statutes, is created
 882 to read:

883 607.603 Incorporation.—To incorporate as a benefit
 884 corporation, an incorporator must satisfy the requirements of
 885 this chapter, and the articles of incorporation must state that
 886 the corporation is a benefit corporation under this part.

887 Section 24. Section 607.604, Florida Statutes, is created
 888 to read:

889 607.604 Election of benefit corporation status.—

890 (1) An existing corporation may become a benefit
 891 corporation under this part by amending its articles of
 892 incorporation to include a statement that the corporation is a
 893 benefit corporation under this part. The amendment must be
 894 adopted by the minimum status vote.

895 (2) A plan of merger, conversion, or share exchange must be
 896 adopted by the minimum status vote if an entity that is not a
 897 benefit corporation is a party to a merger or conversion or if
 898 the exchanging entity in a share exchange and the surviving,
 899 new, or resulting entity is, or will be, a benefit corporation.

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900 (3) If an entity elects to become a benefit corporation by
 901 amendment of the articles of incorporation or by a merger,
 902 conversion, or share exchange, the shareholders of the entity
 903 are entitled to appraisal rights under and pursuant to ss.
 904 607.1301-607.1333.

905 Section 25. Section 607.605, Florida Statutes, is created
 906 to read:

907 607.605 Termination of benefit corporation status.—

908 (1) A benefit corporation may terminate its status as such
 909 and cease to be subject to this part by amending its articles of
 910 incorporation to delete the provision required under s. 607.603
 911 or s. 607.604. The amendment must be adopted by the minimum
 912 status vote.

913 (2) A plan of merger, conversion, or share exchange which
 914 has the effect of terminating the status of a corporation as a
 915 benefit corporation must be adopted by the minimum status vote.
 916 A sale, lease, exchange, or other disposition of all or
 917 substantially all of the assets of a benefit corporation is not
 918 effective unless the transaction is approved by the minimum
 919 status vote. However, a minimum status vote is not required if
 920 the transaction is in the usual and regular course of business,
 921 is pursuant to court order, or is a sale pursuant to which all
 922 or a substantial portion of the net proceeds of the sale will be
 923 distributed to the shareholders within 1 year after the date of
 924 the sale.

925 (3) If a corporation's status as a benefit corporation is
 926 terminated pursuant to subsection (1) or subsection (2),
 927 shareholders of the corporation are entitled to appraisal rights
 928 under and pursuant to ss. 607.1301-607.1333.

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929 Section 26. Section 607.606, Florida Statutes, is created
930 to read:

931 607.606 Corporate purpose.—

932 (1) A benefit corporation has the purpose of creating
933 general public benefit. This purpose is in addition to its
934 purpose under s. 607.0301.

935 (2) The articles of incorporation of a benefit corporation
936 may identify one or more specific public benefits as its purpose
937 in addition to its purposes under s. 607.0301 and subsection
938 (1). A benefit corporation may amend its articles of

939 incorporation to add, amend, or delete the identification of a
940 specific public benefit purpose; however, the amendment must be
941 adopted by the minimum status vote. The identification of a
942 specific public benefit under this subsection does not limit the
943 obligation of a benefit corporation under subsection (1).

944 (3) The creation of general public benefit and a specific
945 public benefit under subsections (1) and (2) is deemed to be in
946 the best interest of the benefit corporation.

947 (4) A professional corporation that is a benefit
948 corporation does not violate s. 621.08 by having as its purpose
949 the creation of general public benefit or a specific public
950 benefit.

951 Section 27. Section 607.607, Florida Statutes, is created
952 to read:

953 607.607 Standard of conduct for directors.—

954 (1) In discharging their duties and in considering the best
955 interests of the benefit corporation, the directors:

956 (a) Shall consider the effects of any action or inaction
957 upon:

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958 1. The shareholders of the benefit corporation;

959 2. The employees and workforce of the benefit corporation,
960 its subsidiaries, and its suppliers;

961 3. The interests of customers and suppliers as
962 beneficiaries of the general public benefit and any specific
963 public benefit purposes of the benefit corporation;

964 4. Community and societal factors, including those of each
965 community in which offices or facilities of the benefit
966 corporation, its subsidiaries, or its suppliers are located;

967 5. The local and global environment;

968 6. The short-term and long-term interests of the benefit
969 corporation, including benefits that may accrue to the benefit
970 corporation from its long-term plans and the possibility that
971 these interests may be best served by the continued independence
972 of the benefit corporation; and

973 7. The ability of the benefit corporation to accomplish its
974 general public benefit purpose and each of its specific public
975 benefit purposes, if any.

976 (b) May consider other pertinent factors or the interests
977 of any other group that they deem appropriate.

978 (c) Are not required to give priority to the interests of a
979 particular person or group referred to in paragraph (a) or
980 paragraph (b) over the interests of any other person or group,
981 unless the benefit corporation has stated in its articles of
982 incorporation its intention to give priority to certain
983 interests.

984 (d) Are not required to give equal weight to the interests
985 of a particular person or group referred to in paragraph (a) or
986 paragraph (b) unless the benefit corporation has stated in its

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987 articles of incorporation its intention to give such equal
 988 weight.
 989 (2) Except as provided in the articles of incorporation, a
 990 director is not personally liable for monetary damages to the
 991 corporation, or to any other person, for the failure of the
 992 benefit corporation to pursue or create general public benefit
 993 or a specific public benefit. A director is subject to the
 994 duties established in s. 607.0830.
 995 (3) Except as provided in the articles of incorporation, a
 996 director does not have a duty to a person who is a beneficiary
 997 of the general public benefit purpose or any one or more
 998 specific public benefit purposes of the benefit corporation.
 999 Section 28. Section 607.608, Florida Statutes, is created
 1000 to read:
 1001 607.608 Benefit director.—
 1002 (1) If the articles of incorporation so provide, the board
 1003 of directors of a benefit corporation may include a director who
 1004 is designated as the benefit director and, in addition to the
 1005 powers, duties, rights, and immunities of the other directors of
 1006 the benefit corporation, has the powers, duties, rights, and
 1007 immunities provided in this part.
 1008 (2) The benefit director shall be elected, and may be
 1009 removed, in the manner provided by this chapter. Except as
 1010 provided under subsection (5), the benefit director shall be
 1011 independent and may serve as a benefit officer. The articles of
 1012 incorporation or bylaws may prescribe additional qualifications
 1013 of the benefit director.
 1014 (3) Unless the articles of incorporation or bylaws provide
 1015 otherwise, the benefit director shall prepare, and the benefit

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1016 corporation shall include in the annual benefit report to
 1017 shareholders required under s. 607.612, the opinion of the
 1018 benefit director on the following:
 1019 (a) Whether the benefit corporation in all material
 1020 respects acted in accordance with its general public benefit
 1021 purpose and any specific public benefit purpose during the
 1022 period covered by the report.
 1023 (b) Whether the directors and officers complied with ss.
 1024 607.607(1) and 607.609(1).
 1025 (c) Whether the benefit corporation or its directors or
 1026 officers failed to comply with paragraph (a) or s. 607.607(1) or
 1027 s. 607.609(1), including a description of the ways in which the
 1028 benefit corporation or its directors or officers failed to
 1029 comply.
 1030 (4) The action or inaction of an individual in his or her
 1031 capacity as a benefit director shall constitute for all purposes
 1032 an action or inaction of that individual in his or her capacity
 1033 as a director of the benefit corporation.
 1034 (5) The benefit director of a corporation formed under
 1035 chapter 621 is not required to be independent.
 1036 Section 29. Section 607.609, Florida Statutes, is created
 1037 to read:
 1038 607.609 Standard of conduct for officers.—
 1039 (1) If an officer of a benefit corporation reasonably
 1040 believes that a matter may have a material effect on the ability
 1041 of the corporation to create, or the creation by the corporation
 1042 of, general public benefit or a specific public benefit
 1043 identified in the articles of incorporation and the officer has
 1044 discretion to act on the matter, the officer shall consider the

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1045 interests and factors provided in s. 607.607(1).

1046 (2) The officer's consideration of interests and factors
 1047 under subsection (1) does not constitute a violation of s.
 1048 607.0841.

1049 (3) Except as provided in the articles of incorporation, an
 1050 officer is not personally liable for monetary damages to the
 1051 corporation or to any other person for the failure of the
 1052 benefit corporation to pursue or create general public benefit
 1053 or a specific public benefit; however, he or she is subject to
 1054 s. 607.0841.

1055 (4) Except as provided in the articles of incorporation, an
 1056 officer does not have a duty to a person who is a beneficiary of
 1057 the general public benefit purpose or any specific public
 1058 benefit purpose of the benefit corporation arising from the
 1059 status of the person as a beneficiary.

1060 Section 30. Section 607.610, Florida Statutes, is created
 1061 to read:

1062 607.610 Benefit officer.-

1063 (1) A benefit corporation may designate an officer as the
 1064 benefit officer.

1065 (2) The benefit officer has the powers and duties set forth
 1066 in the bylaws or determined by the board of directors, which may
 1067 include, but are not limited to:

1068 (a) Powers and duties relating to the general public
 1069 benefit or a specific public benefit purpose of the corporation;
 1070 and

1071 (b) The duty to prepare the annual benefit report required
 1072 under s. 607.612.

1073 Section 31. Section 607.611, Florida Statutes, is created

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1074 to read:

1075 607.611 Right of action.-

1076 (1) (a) Except in a benefit enforcement proceeding, no
 1077 person may bring an action or assert a claim against a benefit
 1078 corporation or its directors or officers with respect to:

1079 1. A failure to pursue or create a general public benefit
 1080 or a specific public benefit set forth in its articles of
 1081 incorporation; or

1082 2. A violation of an obligation, duty, or standard of
 1083 conduct under this part.

1084 (b) A benefit corporation is not liable for monetary
 1085 damages under this part for the failure of the benefit
 1086 corporation to pursue or create general public benefit or a
 1087 specific public benefit.

1088 (2) A benefit enforcement proceeding may be commenced or
 1089 maintained only:

1090 (a) Directly by the benefit corporation; or

1091 (b) Derivatively by:

1092 1. A shareholder of record on the date of the action or
 1093 inaction complained of in the benefit enforcement proceeding;

1094 2. A director;

1095 3. A person or group of persons that owns beneficially or
 1096 of record 5 percent or more of the outstanding equity interests
 1097 in an entity of which the benefit corporation is a subsidiary on
 1098 the date of the action or inaction complained of in the
 1099 proceeding; or

1100 4. Any other person who is specified in the articles of
 1101 incorporation or bylaws of the benefit corporation.

1102 Section 32. Section 607.612, Florida Statutes, is created

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1103 to read:

1104 607.612 Preparation of annual benefit report.—

1105 (1) Unless it is prepared by a benefit director or a
 1106 benefit officer, the board of directors shall prepare an annual
 1107 benefit report. The annual benefit report must include all of
 1108 the following:

1109 (a) A narrative description of:

1110 1. The ways in which the benefit corporation pursued
 1111 general public benefit during the year and the extent to which
 1112 the general public benefit was created.

1113 2. Any circumstance that has hindered the pursuit or
 1114 creation of general public benefit or a specific public benefit
 1115 by the benefit corporation.

1116 3. The process and rationale for selecting or changing the
 1117 third-party standard used to prepare the benefit report.

1118 (b) The name of the benefit director and the benefit
 1119 officer, if those positions exist, and the respective business
 1120 addresses to which correspondence may be directed.

1121 (c) If the corporation has a benefit director, the
 1122 statement as provided in s. 607.608(3).

1123 (d) A statement of any connection between the organization
 1124 that established the third-party standard, or its directors,
 1125 officers, or any holder of 5 percent or more of the governance
 1126 interests in the organization, and the benefit corporation or
 1127 its directors, officers, or any holder of 5 percent or more of
 1128 the outstanding shares of the benefit corporation, including any
 1129 financial or governance relationship that might materially
 1130 affect the credibility of the use of the third-party standard.

1131 (2) The annual benefit report must be prepared in

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1132 accordance with a third-party standard that is:

1133 (a) Applied consistently with any previous application in
 1134 prior annual benefit reports; or

1135 (b) Accompanied by an explanation of the reasons for any
 1136 inconsistent application or any change in the standard from the
 1137 immediate prior report.

1138 (3) If, during the year covered by an annual benefit
 1139 report, a benefit director resigned from, or refused to stand
 1140 for reelection to, his or her position, or was removed from his
 1141 or her position, and he or she furnished written correspondence
 1142 to the benefit corporation concerning the circumstances
 1143 surrounding his or her departure, that correspondence must be
 1144 included as an exhibit in the annual benefit report.

1145 (4) The annual benefit report and the assessment of the
 1146 performance of the benefit corporation in the annual benefit
 1147 report required under subsection (2) are not required to be
 1148 audited or certified by a third-party standards provider.

1149 Section 33. Section 607.613, Florida Statutes, is created
 1150 to read:

1151 607.613 Availability of annual benefit report.—

1152 (1) Each benefit corporation shall send its annual benefit
 1153 report to each shareholder:

1154 (a) Within 120 days after the end of the fiscal year of the
 1155 benefit corporation; or

1156 (b) At the same time that the benefit corporation delivers
 1157 any other annual report to its shareholders.

1158 (2) A benefit corporation shall post each annual benefit
 1159 report on the public portion of its website, if any, and it
 1160 shall remain posted for at least 3 years.

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1161 (3) If a benefit corporation does not have a website, the
 1162 benefit corporation shall provide a copy of its most recent
 1163 annual benefit report, without charge, to any person who
 1164 requests a copy.

1165 (4) If a benefit corporation does not comply with the
 1166 annual benefit report delivery requirement, the circuit court in
 1167 the county in which the principal office of the benefit
 1168 corporation is located or, if no office is located in this
 1169 state, the county in which its registered office is located,
 1170 may, after a shareholder of the benefit corporation requests a
 1171 copy, summarily order the corporation to furnish the report. If
 1172 the court orders the report to be furnished, the court may also
 1173 order the benefit corporation to pay the shareholder's costs,
 1174 including reasonable attorney fees, which were incurred in
 1175 obtaining the order and otherwise enforce his or her rights
 1176 under this section.

1177 Section 34. Subsection (1) of section 617.0401, Florida
 1178 Statutes, is amended to read:

1179 617.0401 Corporate name.—

1180 (1) A corporate name:

1181 (a) Must contain the word "corporation" or "incorporated"
 1182 or the abbreviation "Corp." ~~"corp."~~ or "Inc." ~~"inc."~~ or words or
 1183 abbreviations of like import in language, as will clearly
 1184 indicate that it is a corporation instead of a natural person,
 1185 unincorporated association, or partnership. The name of the
 1186 corporation may not contain the word "company" or its
 1187 abbreviation "Co." ~~"co."~~

1188 (b) May contain the word "cooperative" or "co-op" only if
 1189 the resulting name is distinguishable from the name of any

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1190 corporation, agricultural cooperative marketing association, or
 1191 nonprofit cooperative association existing or doing business in
 1192 this state under part I of chapter 607, chapter 618, or chapter
 1193 619.~~†~~

1194 (c) May not contain language stating or implying that the
 1195 corporation is organized for a purpose other than that permitted
 1196 in this act and its articles of incorporation.~~†~~

1197 (d) May not contain language stating or implying that the
 1198 corporation is connected with a state or federal government
 1199 agency or a corporation chartered under the laws of the United
 1200 States.~~†~~ ~~and~~

1201 (e) Must be distinguishable from the names of all other
 1202 entities or filings that are on file with the Division of
 1203 Corporations, except fictitious name registrations pursuant to
 1204 s. 865.09, general partnership registrations pursuant to s.
 1205 620.8105, and limited liability partnership statements pursuant
 1206 to s. 620.9001 which are organized, registered, or reserved
 1207 under the laws of this state, ~~that are on file with the Division~~
 1208 ~~of Corporations.~~ A name that is different from a name of another
 1209 entity or filing due to any of the following is not considered
 1210 distinguishable:

1211 1. A suffix.

1212 2. A definite or indefinite article.

1213 3. The word "and" and the symbol "&."

1214 4. The singular, plural, or possessive form of a word.

1215 5. A recognized abbreviation of a root word.

1216 6. A punctuation mark or a symbol.

1217 Section 35. Subsection (4) of section 620.1108, Florida
 1218 Statutes, is amended to read:

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1219 620.1108 Name.—

1220 (4) The name of a limited partnership must be

1221 distinguishable in the records of the Department of State from

1222 the names of all other entities or filings that are on file with

1223 the Department of State, except fictitious name registrations

1224 pursuant to s. 865.09, general partnership registrations

1225 pursuant to s. 620.8105, and limited liability partnership

1226 statements pursuant to s. 620.9001 which are organized,

1227 registered, or reserved under the laws of this state, ~~the names~~

1228 ~~of which are on file with the Department of State. A name that~~

1229 ~~is different from the name of another entity or filing due to~~

1230 ~~any of the following is not considered distinguishable:~~

1231 (a) A suffix.

1232 (b) A definite or indefinite article.

1233 (c) The word "and" and the symbol "&."

1234 (d) The singular, plural, or possessive form of a word.

1235 (e) A recognized abbreviation of a root word.

1236 (f) A punctuation mark or a symbol.

1237 Section 36. Subsection (1) of section 48.091, Florida

1238 Statutes, is amended to read:

1239 48.091 Corporations; designation of registered agent and

1240 registered office.—

1241 (1) Every Florida corporation and every foreign corporation

1242 now qualified or hereafter qualifying to transact business in

1243 this state shall designate a registered agent and registered

1244 office in accordance with part I of chapter 607.

1245 Section 37. Paragraph (d) of subsection (6) of section

1246 215.555, Florida Statutes, is amended to read:

1247 215.555 Florida Hurricane Catastrophe Fund.—

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1248 (6) REVENUE BONDS.—

1249 (d) *State Board of Administration Finance Corporation.*—

1250 1. In addition to the findings and declarations in

1251 subsection (1), the Legislature also finds and declares that:

1252 a. The public benefits corporation created under this

1253 paragraph will provide a mechanism necessary for the cost-

1254 effective and efficient issuance of bonds. This mechanism will

1255 eliminate unnecessary costs in the bond issuance process,

1256 thereby increasing the amounts available to pay reimbursement

1257 for losses to property sustained as a result of hurricane

1258 damage.

1259 b. The purpose of such bonds is to fund reimbursements

1260 through the Florida Hurricane Catastrophe Fund to pay for the

1261 costs of construction, reconstruction, repair, restoration, and

1262 other costs associated with damage to properties of

1263 policyholders of covered policies due to the occurrence of a

1264 hurricane.

1265 c. The efficacy of the financing mechanism will be enhanced

1266 by the corporation's ownership of the assessments, by the

1267 insulation of the assessments from possible bankruptcy

1268 proceedings, and by covenants of the state with the

1269 corporation's bondholders.

1270 2.a. There is created a public benefits corporation, which

1271 is an instrumentality of the state, to be known as the State

1272 Board of Administration Finance Corporation.

1273 b. The corporation shall operate under a five-member board

1274 of directors consisting of the Governor or a designee, the Chief

1275 Financial Officer or a designee, the Attorney General or a

1276 designee, the director of the Division of Bond Finance of the

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1277 State Board of Administration, and the Chief Operating Officer
1278 of the Florida Hurricane Catastrophe Fund.

1279 c. The corporation has all of the powers of corporations
1280 under part I of chapter 607 and under chapter 617, subject only
1281 to ~~the provisions of~~ this subsection.

1282 d. The corporation may issue bonds and engage in such other
1283 financial transactions as are necessary to provide sufficient
1284 funds to achieve the purposes of this section.

1285 e. The corporation may invest in any of the investments
1286 authorized under s. 215.47.

1287 f. There shall be no liability on the part of, and no cause
1288 of action shall arise against, any board members or employees of
1289 the corporation for any actions taken by them in the performance
1290 of their duties under this paragraph.

1291 3.a. In actions under chapter 75 to validate any bonds
1292 issued by the corporation, the notice required under ~~by~~ s. 75.06
1293 shall be published in two newspapers of general circulation in
1294 the state, and the complaint and order of the court shall be
1295 served only on the State Attorney of the Second Judicial
1296 Circuit.

1297 b. The state hereby covenants with holders of bonds of the
1298 corporation that the state will not repeal or abrogate the power
1299 of the board to direct the Office of Insurance Regulation to
1300 levy the assessments and to collect the proceeds of the revenues
1301 pledged to the payment of such bonds as long as any such bonds
1302 remain outstanding unless adequate provision has been made for
1303 the payment of such bonds pursuant to the documents authorizing
1304 the issuance of such bonds.

1305 4. The bonds of the corporation are not a debt of the state

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1306 or of any political subdivision, and neither the state nor any
1307 political subdivision is liable on such bonds. The corporation
1308 does not have the power to pledge the credit, the revenues, or
1309 the taxing power of the state or of any political subdivision.
1310 The credit, revenues, or taxing power of the state or of any
1311 political subdivision shall not be deemed to be pledged to the
1312 payment of any bonds of the corporation.

1313 5.a. The property, revenues, and other assets of the
1314 corporation; the transactions and operations of the corporation
1315 and the income from such transactions and operations; and all
1316 bonds issued under this paragraph and interest on such bonds are
1317 exempt from taxation by the state and any political subdivision,
1318 including the intangibles tax under chapter 199 and the income
1319 tax under chapter 220. This exemption does not apply to any tax
1320 imposed by chapter 220 on interest, income, or profits on debt
1321 obligations owned by corporations other than the State Board of
1322 Administration Finance Corporation.

1323 b. All bonds of the corporation shall be and constitute
1324 legal investments without limitation for all public bodies of
1325 this state; for all banks, trust companies, savings banks,
1326 savings associations, savings and loan associations, and
1327 investment companies; for all administrators, executors,
1328 trustees, and other fiduciaries; for all insurance companies and
1329 associations and other persons carrying on an insurance
1330 business; and for all other persons who are now or may hereafter
1331 be authorized to invest in bonds or other obligations of the
1332 state and shall be and constitute eligible securities to be
1333 deposited as collateral for the security of any state, county,
1334 municipal, or other public funds. This sub-subparagraph is ~~shall~~

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1335 ~~be considered as~~ additional and supplemental authority and may
 1336 ~~shall~~ not be limited without specific reference to this sub-
 1337 subparagraph.

1338 6. The corporation and its corporate existence continues
 1339 ~~shall continue~~ until terminated by law; however, ~~no~~ such law may
 1340 not shall take effect as long as the corporation has bonds
 1341 outstanding unless adequate provision has been made for the
 1342 payment of such bonds pursuant to the documents authorizing the
 1343 issuance of such bonds. Upon termination of the existence of the
 1344 corporation, all of its rights and properties in excess of its
 1345 obligations shall pass to and be vested in the state.

1346 7. The State Board of Administration Finance Corporation is
 1347 for all purposes the successor to the Florida Hurricane
 1348 Catastrophe Fund Finance Corporation.

1349 Section 38. Subsection (1) of section 243.54, Florida
 1350 Statutes, is amended to read:

1351 243.54 Powers of the authority.—The purpose of the
 1352 authority is to assist institutions of higher education in
 1353 constructing, financing, and refinancing projects throughout the
 1354 state and, for this purpose, the authority may:

1355 (1) Exercise all powers granted to corporations under part
 1356 I of the Florida Business Corporation Act, chapter 607.

1357 Section 39. Section 310.171, Florida Statutes, is amended
 1358 to read:

1359 310.171 Pilots may incorporate themselves.—Any one or more
 1360 licensed state pilots may incorporate in the manner provided
 1361 under part I of chapter 607 or chapter 621.

1362 Section 40. Section 310.181, Florida Statutes, is amended
 1363 to read:

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1364 310.181 Corporate powers.—All the rights, powers, and
 1365 liabilities conferred or imposed by the laws of Florida relating
 1366 to corporations for profit organized under part I of chapter 607
 1367 or under chapter 608 before January 1, 1976, or to corporations
 1368 organized under chapter 621 ~~shall~~ apply to corporations
 1369 organized pursuant to s. 310.171.

1370 Section 41. Paragraph (c) of subsection (4) of section
 1371 329.10, Florida Statutes, is amended to read:

1372 329.10 Aircraft registration.—

1373 (4) It is a violation of this section for any person or
 1374 corporate entity to knowingly supply false information to any
 1375 governmental entity in regard to ownership by it or another
 1376 firm, business, or corporation of an aircraft in or operated in
 1377 this state if it is determined that such corporate entity or
 1378 other firm, business, or corporation:

1379 (c) Has lapsed into a state of no longer being a legal
 1380 entity in this state as defined in part I of chapter 607 or s.
 1381 865.09, and no documented attempt has been made to correct such
 1382 information with the governmental entity for a period of 90 days
 1383 after the date on which such lapse took effect with the
 1384 Secretary of State.

1385 Section 42. Subsection (1) of section 339.412, Florida
 1386 Statutes, is amended to read:

1387 339.412 Powers of corporation.—As to designated projects
 1388 and in addition to other powers prescribed by law, a corporation
 1389 may exercise the following powers with respect to the promotion
 1390 and development of transportation facilities, pursuant to a
 1391 written contract for the same, together with all powers
 1392 incidental thereto or necessary for the performance of those

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1393 hereinafter stated:

1394 (1) The corporation may exercise all the powers as granted
 1395 by the department to work directly with landowners, local and
 1396 state governmental agencies, elected officials, and any other
 1397 person to support those activities required to promote and
 1398 develop the projects. These activities shall include:

1399 (a) Acquiring, holding, investing, and administering
 1400 property and transferring title of such property to the
 1401 department for development of projects on behalf of the
 1402 department;

1403 (b) Performing preliminary and final alignment studies in a
 1404 manner consistent with state and federal laws;

1405 (c) Receiving contributions of land for rights-of-way and
 1406 cash donations to be applied to the purchase of rights-of-way
 1407 not donated or to be applied to the design or construction of
 1408 the projects;

1409 (d) Reviewing candidates for advisory directorships and
 1410 adding or removing such advisory directors as may be
 1411 appropriate;

1412 (e) Retaining such administrative staff and legal, public
 1413 relations, and engineering services as may be required for the
 1414 development of the projects and paying such employees and
 1415 consultants from funds donated for this purpose;

1416 (f) Preparing such exhibits, right-of-way documents,
 1417 environmental reports, schematics, and preliminary and final
 1418 engineering plans as are necessary for the development of the
 1419 projects;

1420 (g) Borrowing money to meet any expenses or needs
 1421 associated with the regular operations of the corporation or a

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1422 particular project; provided, however, that no corporation shall
 1423 have the power to issue bonds, the provisions of part I of
 1424 ~~chapter chapters~~ 607 and chapter 617 notwithstanding;

1425 (h) Making official presentations to the state and other
 1426 affected agencies or groups concerning the development of the
 1427 projects;

1428 (i) Issuing press releases and other material to promote
 1429 the activities of the projects; and

1430 (j) Performing any other functions requested by the
 1431 department in order to promote and develop the projects.

1432
 1433 Nothing in this act empowers the corporation to enter into any
 1434 contracts for construction or to undertake any construction, on
 1435 behalf of the department.

1436 Section 43. Subsection (4) of section 420.101, Florida
 1437 Statutes, is amended to read:

1438 420.101 Housing Development Corporation of Florida;
 1439 creation, membership, and purposes.—

1440 (4) Whenever the articles of incorporation have been filed
 1441 in the Department of State and approved by it and all filing
 1442 fees and taxes prescribed by part I of chapter 607 have been
 1443 paid, the subscribers and their successors and assigns shall
 1444 constitute a corporation, and the corporation shall then be
 1445 authorized to commence business, and stock thereof to the extent
 1446 herein or hereafter duly authorized may from time to time be
 1447 issued.

1448 Section 44. Section 420.111, Florida Statutes, is amended
 1449 to read:

1450 420.111 Housing Development Corporation of Florida;

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1451 additional powers.—In furtherance of its purposes and in
 1452 addition to the powers now or hereafter conferred on business
 1453 corporations by part I of chapter 607, the corporation shall,
 1454 subject to the restrictions and limitations ~~herein~~ contained in
 1455 this section, have the following powers:

1456 (1) To elect, appoint, and employ officers, agents and
 1457 employees and to make contracts and incur liabilities for any of
 1458 the purposes of the corporation, except that the corporation may
 1459 ~~shall~~ not incur any secondary liability by way of guaranty or
 1460 endorsement of the obligations of any person, firm, corporation,
 1461 joint-stock company, association, or trust, or in any other
 1462 manner.

1463 (2) To borrow money from its stockholders, other financial
 1464 institutions, and state and federal agencies for any of the
 1465 purposes of the corporation; to issue therefor its bonds,
 1466 debentures, notes, or other evidences of indebtedness, whether
 1467 secured or unsecured, and to secure the same by mortgage,
 1468 pledge, deed of trust, or other lien on its property,
 1469 franchises, rights, and privileges of every kind and nature, or
 1470 any part thereof or interest therein, without securing
 1471 stockholder approval.

1472 (3) To make loans to any person, firm, corporation, joint-
 1473 stock company, association, or trust and to regulate the terms
 1474 and conditions with respect to any such loans and the charges
 1475 for interest and service connected therewith, provided subsidies
 1476 may be in the form of below market interest rates or such other
 1477 assistance as determined by the board with the concurrence of
 1478 the applicable regulatory agencies governing the several
 1479 stockholder industries.

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1480 (4) To purchase, receive, hold, lease, or otherwise
 1481 acquire, and to sell, convey, transfer, lease, or otherwise
 1482 dispose of, real and personal property, together with such
 1483 rights and privileges as may be incidental and appurtenant
 1484 thereto and the use thereof, including, but not restricted to,
 1485 any real or personal property acquired by the corporation from
 1486 time to time in the satisfaction of debts or enforcement of
 1487 obligations.

1488 (5) For the purposes of foreclosure, to acquire the good
 1489 will, business, rights, real and personal property, and other
 1490 assets, or any part thereof, or interest therein, of any
 1491 persons, firms, corporations, joint-stock companies,
 1492 associations or trusts, and to assume, undertake, or pay the
 1493 obligations, debts and liabilities of any such person, firm,
 1494 corporation, joint-stock company, association or trust; to
 1495 acquire improved or unimproved real estate for the purpose of
 1496 constructing new housing or rehabilitation thereof; for the
 1497 purposes of disposing of such real estate to others for the
 1498 construction of housing or rehabilitation thereof; and to
 1499 acquire, construct or reconstruct, alter, repair, maintain,
 1500 operate, sell, convey, transfer, lease, or otherwise dispose of
 1501 such housing, provided, however that nothing herein contained
 1502 shall authorize the acquisition, construction, reconstruction,
 1503 or operation of any public lodging establishment as defined in
 1504 chapter 509.

1505 (6) To acquire, subscribe for, own, hold, sell, assign,
 1506 transfer, mortgage, pledge, or otherwise dispose of the stock,
 1507 shares, bonds, debentures, notes, or other securities and
 1508 evidences of interest in, or indebtedness of, any person, firm,

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1509 corporation, joint-stock company, association, or trust, and,
 1510 while the owner or holder thereof, to exercise all the rights,
 1511 powers, and privileges of ownership, including the right to vote
 1512 thereon.

1513 (7) To mortgage, pledge, or otherwise encumber any
 1514 property, right, or thing of value, acquired pursuant to the
 1515 powers contained in subsection (4), subsection (5), or
 1516 subsection (6), as security for the payment of any part of the
 1517 purchase price thereof.

1518 (8) To cooperate with, and avail itself of the facilities
 1519 of, the United States Department of Housing and Urban
 1520 Development, the Department of Economic Opportunity, and any
 1521 other similar local, state, or Federal Government agency; and to
 1522 cooperate with and assist, and otherwise encourage,
 1523 organizations in the various communities of the state on the
 1524 promotion, assistance, and development of the housing and
 1525 economic welfare of such communities or of this state or any
 1526 part thereof.

1527 (9) To do all acts and things necessary or convenient to
 1528 carry out the powers expressly granted in this part.

1529 Section 45. Subsection (2) of section 420.161, Florida
 1530 Statutes, is amended to read:

1531 420.161 Housing Development Corporation of Florida; period
 1532 of existence; method of dissolution.—

1533 (2) The corporation may, upon the affirmative vote of two-
 1534 thirds of the votes to which the stockholders are shall be
 1535 entitled, dissolve the said corporation as provided under part I
 1536 of by chapter 607, as long as that part does insofar as chapter
 1537 607 is not in conflict with the provisions of this act. Upon any

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1538 dissolution of the corporation, ~~none of~~ the corporation's assets
 1539 may not shall be distributed to the stockholders until all sums
 1540 due the members of the corporation as creditors thereof have
 1541 been paid in full.

1542 Section 46. Subsection (9) of section 440.02, Florida
 1543 Statutes, is amended to read:

1544 440.02 Definitions.—When used in this chapter, unless the
 1545 context clearly requires otherwise, the following terms shall
 1546 have the following meanings:

1547 (9) "Corporate officer" or "officer of a corporation" means
 1548 any person who fills an office provided for in the corporate
 1549 charter or articles of incorporation filed with the Division of
 1550 Corporations of the Department of State or as authorized
 1551 ~~permitted~~ or required under part I of by chapter 607. The term
 1552 "officer of a corporation" includes a member owning at least 10
 1553 percent of a limited liability company created and approved
 1554 under chapter 608.

1555 Section 47. Paragraph (d) of subsection (10) of section
 1556 440.386, Florida Statutes, is amended to read:

1557 440.386 Individual self-insurers' insolvency; conservation;
 1558 liquidation.—

1559 (10) TRANSFERS PRIOR TO PETITION.—

1560 (d) The personal liability of the officers or directors of
 1561 an insolvent individual self-insurer is shall be subject to part
 1562 I of the provisions of chapter 607 and the penalties provided
 1563 therein.

1564 Section 48. Subsection (3) of section 609.08, Florida
 1565 Statutes, is amended to read:

1566 609.08 Merger of association into wholly owned subsidiary

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1567 corporation; dissenters' rights of appraisal.-

1568 (3) If the surviving corporation is to be governed by the
1569 laws of any jurisdiction other than this state, it shall comply
1570 with part I of the provisions of chapter 607 with respect to
1571 foreign corporations if it is to transact business in this
1572 state, and in every case it shall file with the Department of
1573 State of this state:

1574 (a) An agreement that it may be served with process in this
1575 state in any proceeding for the enforcement of any obligation of
1576 the association and in any proceeding for the enforcement of any
1577 rights under the declaration of trust of the association of a
1578 dissenting shareholder of the association against the surviving
1579 corporation.

1580 (b) An irrevocable appointment of the Secretary of State as
1581 its agent to accept service of process in any such proceeding.

1582 (c) An agreement that it will promptly pay to the
1583 dissenting shareholders of the association the amount, if any,
1584 to which they are ~~shall be~~ entitled under ~~the provisions of~~ its
1585 declaration of trust with respect to the rights of dissenting
1586 shareholders.

1587 Section 49. Section 617.1908, Florida Statutes, is amended
1588 to read:

1589 617.1908 Applicability of Florida Business Corporation
1590 Act.—Except as ~~otherwise~~ made applicable by specific reference
1591 in any other section of this chapter, part I ~~the provisions of~~
1592 chapter 607, the Florida Business Corporation Act, does shall
1593 not apply to any corporations not for profit.

1594 Section 50. Section 618.221, Florida Statutes, is amended
1595 to read:

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1596 618.221 Conversion into a corporation for profit.—Any
1597 association incorporated under or that has adopted the
1598 provisions of this chapter, may, by a majority vote of its
1599 stockholders or members be brought under part I of the
1600 ~~provisions of~~ chapter 607, as a corporation for profit by
1601 surrendering all right to carry on its business under this
1602 chapter, and the privileges and immunities incident thereto. It
1603 shall make out in duplicate a statement signed and sworn to by
1604 its directors to the effect that the association has, by a
1605 majority vote of its stockholders or members, decided to
1606 surrender all rights, powers, and privileges as a nonprofit
1607 cooperative marketing association under this chapter and to do
1608 business under and be bound by part I of the provisions of said
1609 chapter 607, as a corporation for profit and has authorized all
1610 changes accordingly. Articles of incorporation shall be
1611 delivered to the Department of State for filing as required
1612 under part I of chapter 607 ~~in and by s. 607.164~~, except that
1613 they shall be signed by the members of the then board of
1614 directors. The filing fees and taxes shall be as provided under
1615 part I of ~~in~~ chapter 607. Such articles of incorporation shall
1616 adequately protect and preserve the relative rights of the
1617 stockholders or members of the association so converting into a
1618 corporation for profit; provided that no rights or obligations
1619 due any stockholder or member of such association or any other
1620 person, firm, or corporation which has not been waived or
1621 satisfied shall be impaired by such conversion into a
1622 corporation for profit as herein authorized.

1623 Section 51. Section 619.04, Florida Statutes, is amended to
1624 read:

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1625 619.04 Articles of incorporation.—Each association formed
 1626 under this chapter must prepare and file articles of
 1627 incorporation in the same manner and under the same regulations
 1628 as required under part I of chapter 607, and therein shall set
 1629 forth:

1630 (1) The name of the association.
 1631 (2) The purpose for which it is formed.
 1632 (3) The place where its principal business will be
 1633 transacted.
 1634 (4) The term for which it is to exist, not exceeding 50
 1635 years.
 1636 (5) The number of directors thereof, which must not be less
 1637 than three and which may be any number in excess thereof, and
 1638 the names and residences of those selected for the first year
 1639 and until their successors shall have been elected and shall
 1640 have accepted office.
 1641 (6) Whether the voting power and the property rights and
 1642 interest of each member shall be equal, or unequal, and if
 1643 unequal these articles shall set forth a general rule applicable
 1644 to all members by which the voting power and the property rights
 1645 and interests, respectively, of each member may and shall be
 1646 determined and fixed, but the association shall have power to
 1647 admit new members, who shall be entitled to vote and to share in
 1648 the property of the association with the old members, in
 1649 accordance with such general rule. This provision of the
 1650 articles of incorporation may ~~shall~~ not be altered, amended, or
 1651 repealed except by the unanimous written consent or the vote of
 1652 all the members.
 1653 (7) Said articles must be subscribed by the original

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1654 members and acknowledged by one of them before an officer
 1655 authorized by the law of this state to take and certify
 1656 acknowledgments of deeds of conveyance, and shall be filed in
 1657 accordance with the provisions of law, and when so filed the
 1658 said articles of incorporation or certified copies thereof shall
 1659 be received in all the courts of this state and other places as
 1660 prima facie evidence of the facts contained therein.

1661 Section 52. Subsection (3) of section 624.430, Florida
 1662 Statutes, is amended to read:
 1663 624.430 Withdrawal of insurer or discontinuance of writing
 1664 certain kinds or lines of insurance.—
 1665 (3) Upon office approval of the surrender of the
 1666 certificate of authority of a domestic property and casualty
 1667 insurer that is a corporation, the insurer may initiate the
 1668 dissolution of the corporation in accordance with the applicable
 1669 provisions of part I of chapter 607.

1670 Section 53. Subsection (1) of section 624.462, Florida
 1671 Statutes, is amended to read:
 1672 624.462 Commercial self-insurance funds.—
 1673 (1) Any group of persons may form a commercial self-
 1674 insurance fund for the purpose of pooling and spreading
 1675 liabilities of its group members in any commercial property or
 1676 casualty risk or surety insurance. Any fund established pursuant
 1677 to subparagraph (2)(a)1. may be organized as a corporation under
 1678 part I of chapter 607.

1679 Section 54. Subsection (3) of section 624.489, Florida
 1680 Statutes, is amended to read:
 1681 624.489 Liability of trustees of self-insurance trust fund
 1682 and directors of self-insurance funds operating as

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1683 corporations.-

1684 (3) The immunities from liability provided in this section
 1685 with respect to trustees also apply to members of the board of
 1686 directors of a commercial self-insurance fund organized as a
 1687 corporation under part I of chapter 607 if the board of
 1688 directors has contracted with an administrator authorized under
 1689 s. 626.88 to administer the day-to-day affairs of the fund.

1690 Section 55. Section 628.041, Florida Statutes, is amended
 1691 to read:

1692 628.041 Applicability of general corporation statutes.—The
 1693 applicable statutes of this state relating to the powers and
 1694 procedures of domestic private corporations formed for profit
 1695 shall apply to domestic stock insurers and to domestic mutual
 1696 insurers, except:

1697 (1) As to any domestic mutual insurers incorporated
 1698 pursuant to chapter 617, which chapter shall govern such
 1699 insurers when in conflict with part I of chapter 607; and

1700 (2) When in conflict with the express provisions of this
 1701 code.

1702 Section 56. Subsection (4) of section 631.262, Florida
 1703 Statutes, is amended to read:

1704 631.262 Transfers prior to petition.—

1705 (4) The personal liability of the officers or directors of
 1706 an insolvent insurer ~~is shall be~~ subject to part I of the
 1707 ~~provisions of~~ chapter 607 and the penalties provided therein.

1708 Section 57. Subsection (1) of section 636.204, Florida
 1709 Statutes, is amended to read:

1710 636.204 License required.—

1711 (1) Before doing business in this state as a discount

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1712 medical plan organization, an entity must be a corporation, a
 1713 limited liability company, or a limited partnership,
 1714 incorporated, organized, formed, or registered under the laws of
 1715 this state or authorized to transact business in this state in
 1716 accordance with part I of chapter 607, chapter 608, chapter 617,
 1717 chapter 620, or chapter 865, and must be licensed by the office
 1718 as a discount medical plan organization or be licensed by the
 1719 office pursuant to chapter 624, part I of this chapter, or
 1720 chapter 641.

1721 Section 58. Section 641.2015, Florida Statutes, is amended
 1722 to read:

1723 641.2015 Incorporation required.—On or after October 1,
 1724 1985, any entity that has not yet obtained a certificate of
 1725 authority to operate a health maintenance organization in this
 1726 state shall be incorporated or shall be a division of a
 1727 corporation formed under the provisions of either part I of
 1728 chapter 607 or chapter 617 or shall be a public entity that is
 1729 organized as a political subdivision. In the case of a division
 1730 of a corporation, the financial requirements of this part shall
 1731 apply to the entire corporation. Incorporation shall not be
 1732 required of any entity which has already been issued an initial
 1733 certificate of authority prior to this date and which is not a
 1734 corporation on October 1, 1985, or which is incorporated in any
 1735 other state on October 1, 1985; nor shall incorporation be
 1736 required on renewal of any certificate of authority by such an
 1737 organization or be required of a public entity that is organized
 1738 as a political subdivision.

1739 Section 59. Subsection (1) of section 655.0201, Florida
 1740 Statutes, is amended to read:

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1741 655.0201 Service of process, notice, or demand on financial
1742 institutions.-

1743 (1) Process against any financial institution authorized by
1744 federal or state law to transact business in this state may be
1745 served in accordance with chapter 48, chapter 49, part I of
1746 chapter 607, or chapter 608, as appropriate.

1747 Section 60. Subsection (2) of section 658.23, Florida
1748 Statutes, is amended to read:

1749 658.23 Submission of articles of incorporation; contents;
1750 form; approval; filing; commencement of corporate existence;
1751 bylaws.-

1752 (2) The articles of incorporation shall contain:

1753 (a) The name of the proposed bank or trust company.

1754 (b) The general nature of the business to be transacted or
1755 a statement that the corporation may engage in any activity or
1756 business permitted by law. Such statement shall authorize all
1757 such activities and business by the corporation.

1758 (c) The amount of capital stock authorized, showing the
1759 maximum number of shares of par value common stock and of
1760 preferred stock, and of every kind, class, or series of each,
1761 together with the distinguishing characteristics and the par
1762 value of all shares.

1763 (d) The amount of capital with which the corporation will
1764 begin business, which ~~may shall~~ not be less than the amount
1765 required by the office pursuant to s. 658.21.

1766 (e) A provision that the corporation is to have perpetual
1767 existence unless existence is terminated pursuant to the
1768 financial institutions codes.

1769 (f) The initial street address of the main office of the

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1770 corporation, which shall be in this state.

1771 (g) The number of directors, which shall be five or more,
1772 and the names and street addresses of the members of the initial
1773 board of directors.

1774 (h) A provision for preemptive rights, if applicable.

1775 (i) A provision authorizing the board of directors to
1776 appoint additional directors, pursuant to s. 658.33, if
1777 applicable.

1778
1779 The office shall provide to the proposed directors form articles
1780 of incorporation which must ~~shall~~ include only those provisions
1781 required under ~~by~~ this section or under part I of ~~by~~ chapter
1782 607. The form articles shall be acknowledged by the proposed
1783 directors and returned to the office for filing with the
1784 Department of State.

1785 Section 61. Paragraph (c) of subsection (11) of section
1786 658.2953, Florida Statutes, is amended to read:

1787 658.2953 Interstate branching.-

1788 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.-

1789 (c) An out-of-state bank may establish and maintain a de
1790 novo branch or acquire a branch in this state upon compliance
1791 with part I of chapter 607 or chapter 608 relating to doing
1792 business in this state as a foreign business entity, including
1793 maintaining a registered agent for service of process and other
1794 legal notice pursuant to s. 655.0201.

1795 Section 62. Section 658.30, Florida Statutes, is amended to
1796 read:

1797 658.30 Application of the Florida Business Corporation
1798 Act.-

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1799 (1) When not in direct conflict with or superseded by
 1800 specific provisions of the financial institutions codes, the
 1801 provisions of the Florida Business Corporation Act, part I of
 1802 chapter 607, ~~shall~~ extend to state banks and trust companies
 1803 formed under the financial institutions codes. This section
 1804 shall be liberally construed to accomplish the purposes stated
 1805 herein.

1806 (2) Without limiting the generality of subsection (1),
 1807 stockholders, directors, and committees of state banks and trust
 1808 companies may hold meetings in any manner authorized ~~permitted~~
 1809 by part I of chapter 607, and any action by stockholders,
 1810 directors, or committees required or authorized ~~permitted~~ to be
 1811 taken at a meeting may be taken without a meeting in any manner
 1812 authorized ~~provided or permitted~~ by part I of chapter 607.

1813 Section 63. Subsection (3) of section 658.36, Florida
 1814 Statutes, is amended to read:

1815 658.36 Changes in capital.—

1816 (3) If a bank or trust company's capital accounts have been
 1817 diminished by losses to less than the minimum required pursuant
 1818 to the financial institutions codes, the market value of its
 1819 shares of capital stock is less than the present par value, and
 1820 the bank or trust company cannot reasonably issue and sell new
 1821 shares of stock to restore its capital accounts at a share price
 1822 of par value or greater of the previously issued capital stock,
 1823 the office, notwithstanding any other provisions of part I of
 1824 chapter 607 or the financial institutions codes, may approve
 1825 special stock offering plans.

1826 (a) Such plans may include, but are not limited to,
 1827 mechanisms for stock splits including reverse splits;

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1828 revaluations of par value of outstanding stock; changes in
 1829 voting rights, dividends, or other preferences; and creation of
 1830 new classes of stock.

1831 (b) The plan must be approved by majority vote of the bank
 1832 or trust company's entire board of directors and by holders of
 1833 two-thirds of the outstanding shares of stock.

1834 (c) The office shall disapprove a plan that provides unfair
 1835 or disproportionate benefits to existing shareholders,
 1836 directors, executive officers, or their related interests. The
 1837 office shall also disapprove any plan that is not likely to
 1838 restore the capital accounts to sufficient levels to achieve a
 1839 sustainable, safe, and sound financial institution.

1840 (d) For any bank or trust company that the office
 1841 determines to be a failing financial institution pursuant to s.
 1842 655.4185, the office may approve special stock offering plans
 1843 without a vote of the shareholders.

1844 Section 64. Section 663.03, Florida Statutes, is amended to
 1845 read:

1846 663.03 Applicability of the Florida Business Corporation
 1847 Act chapter 607.—Notwithstanding s. 607.01401(12) ~~the definition~~
 1848 ~~of the term "foreign corporation" appearing in s. 607.01401, all~~
 1849 ~~of~~ the provisions of part I of chapter 607 not in conflict with
 1850 the financial institutions codes which relate to foreign
 1851 corporations ~~shall~~ apply to all international banking
 1852 corporations and their offices doing business in this state.

1853 Section 65. Subsection (3) of section 663.04, Florida
 1854 Statutes, is amended to read:

1855 663.04 Requirements for carrying on financial institution
 1856 business.—An international banking corporation or trust company,

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1857 or any affiliate, subsidiary, or other person or business entity
 1858 acting as an agent for, on behalf of, or for the benefit of such
 1859 international banking corporation or trust company who engages
 1860 in such activities from an office located in this state, may not
 1861 transact a banking or trust business, or maintain in this state
 1862 any office for carrying on such business, or any part thereof,
 1863 unless such corporation, trust company, affiliate, subsidiary,
 1864 person, or business entity:

1865 (3) Has filed with the office a certified copy of that
 1866 information required to be supplied to the Department of State
 1867 by those provisions of part I of chapter 607 which are
 1868 applicable to foreign corporations.

1869 Section 66. Paragraph (a) of subsection (1) of section
 1870 663.301, Florida Statutes, is amended to read:

1871 663.301 Definitions.—

1872 (1) As used in this part:

1873 (a) "International development bank" means a corporation
 1874 established for the purpose of promoting development in foreign
 1875 countries by directly or indirectly making funding available to
 1876 foreign business enterprises or foreign governments or by
 1877 providing financing in connection with import-export
 1878 transactions. Subject to the limitations contained in s.
 1879 663.313, an international development bank may be organized
 1880 ~~either~~ under chapter 617 as a corporation not for profit or
 1881 under part I of chapter 607 as a corporation for profit.

1882 Section 67. Subsection (2) of section 663.306, Florida
 1883 Statutes, is amended to read:

1884 663.306 Decision by office.—The office may, in its
 1885 discretion, approve or disapprove the application, but it shall

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1886 not approve the application unless it finds that:

1887 (2) The proposed capital structure is adequate, but in no
 1888 case may the paid-in capital stock be:

1889 (a) Less than \$400,000 in the case of an international
 1890 development bank organized under chapter 617 as a corporation
 1891 not for profit; or

1892 (b) The amount required for a state bank in the case of an
 1893 international development bank organized under part I of chapter
 1894 607 as a corporation for profit.

1895
 1896 The office may disallow any illegally obtained currency,
 1897 monetary instruments, funds, or other financial resources from
 1898 the capitalization requirements of this section.

1899 Section 68. Subsection (4) of section 663.313, Florida
 1900 Statutes, is amended to read:

1901 663.313 Ownership of stock.—

1902 (4) All of the shares of voting stock of an international
 1903 development bank organized under part I of chapter 607 as a
 1904 corporation for profit shall be owned by a regional development
 1905 bank or by one or more wholly owned subsidiaries of a regional
 1906 development bank.

1907 Section 69. Subsection (2) of section 718.111, Florida
 1908 Statutes, is amended to read:

1909 718.111 The association.—

1910 (2) POWERS AND DUTIES.—The powers and duties of the
 1911 association include those set forth in this section and, except
 1912 as expressly limited or restricted in this chapter, those set
 1913 forth in the declaration and bylaws and part I of chapter
 1914 ~~chapters~~ 607 and chapter 617, as applicable.

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1915 Section 70. Subsection (10) of section 719.104, Florida
1916 Statutes, is amended to read:

1917 719.104 Cooperatives; access to units; records; financial
1918 reports; assessments; purchase of leases.—

1919 (10) POWERS AND DUTIES.—The powers and duties of the
1920 association include those set forth in this section and, except
1921 as expressly limited or restricted in this chapter, those set
1922 forth in the articles of incorporation and bylaws and part I of
1923 chapter chapters 607 and chapter 617, as applicable.

1924 Section 71. Subsection (5) of section 720.302, Florida
1925 Statutes, is amended to read:

1926 720.302 Purposes, scope, and application.—

1927 (5) Unless expressly stated to the contrary, corporations
1928 that operate residential homeowners' associations in this state
1929 shall be governed by and subject to part I of chapter 607, if
1930 the association was incorporated under that part chapter, or to
1931 chapter 617, if the association was incorporated under that
1932 chapter, and this chapter. This subsection is intended to
1933 clarify existing law.

1934 Section 72. Paragraph (c) of subsection (1) of section
1935 720.306, Florida Statutes, is amended to read:

1936 720.306 Meetings of members; voting and election
1937 procedures; amendments.—

1938 (1) QUORUM; AMENDMENTS.—

1939 (c) Unless otherwise provided in the governing documents as
1940 originally recorded or permitted by this chapter or chapter 617,
1941 an amendment may not materially and adversely alter the
1942 proportionate voting interest appurtenant to a parcel or
1943 increase the proportion or percentage by which a parcel shares

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1944 in the common expenses of the association unless the record
1945 parcel owner and all record owners of liens on the parcels join
1946 in the execution of the amendment. For purposes of this section,
1947 a change in quorum requirements is not an alteration of voting
1948 interests. The merger or consolidation of one or more
1949 associations under a plan of merger or consolidation under part
1950 I of chapter 607 or chapter 617 is ~~shall not be considered~~ a
1951 material or adverse alteration of the proportionate voting
1952 interest appurtenant to a parcel.

1953 Section 73. Paragraph (a) of subsection (1) of section
1954 766.101, Florida Statutes, is amended to read:

1955 766.101 Medical review committee, immunity from liability.—

1956 (1) As used in this section:

1957 (a) The term "medical review committee" or "committee"
1958 means:

1959 1.a. A committee of a hospital or ambulatory surgical
1960 center licensed under chapter 395 or a health maintenance
1961 organization certificated under part I of chapter 641;7

1962 b. A committee of a physician-hospital organization, a
1963 provider-sponsored organization, or an integrated delivery
1964 system;7

1965 c. A committee of a state or local professional society of
1966 health care providers;7

1967 d. A committee of a medical staff of a licensed hospital or
1968 nursing home, provided the medical staff operates pursuant to
1969 written bylaws that have been approved by the governing board of
1970 the hospital or nursing home;7

1971 e. A committee of the Department of Corrections or the
1972 Correctional Medical Authority as created under s. 945.602, or

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1973 employees, agents, or consultants of either the department or
 1974 the authority or both;~~7~~

1975 f. A committee of a professional service corporation formed
 1976 under chapter 621 or a corporation organized under part I of
 1977 chapter 607 or chapter 617, which is formed and operated for the
 1978 practice of medicine as defined in s. 458.305(3), and which has
 1979 at least 25 health care providers who routinely provide health
 1980 care services directly to patients;~~7~~

1981 g. A committee of the Department of Children and Families
 1982 ~~Family Services~~ which includes employees, agents, or consultants
 1983 to the department as deemed necessary to provide peer review,
 1984 utilization review, and mortality review of treatment services
 1985 provided pursuant to chapters 394, 397, and 916;~~7~~

1986 h. A committee of a mental health treatment facility
 1987 licensed under chapter 394 or a community mental health center
 1988 as defined in s. 394.907, provided the quality assurance program
 1989 operates pursuant to the guidelines that ~~which~~ have been
 1990 approved by the governing board of the agency;~~7~~

1991 i. A committee of a substance abuse treatment and education
 1992 prevention program licensed under chapter 397 provided the
 1993 quality assurance program operates pursuant to the guidelines
 1994 that ~~which~~ have been approved by the governing board of the
 1995 agency;~~7~~

1996 j. A peer review or utilization review committee organized
 1997 under chapter 440;~~7~~

1998 k. A committee of the Department of Health, a county health
 1999 department, healthy start coalition, or certified rural health
 2000 network, when reviewing quality of care, or employees of these
 2001 entities when reviewing mortality records;~~7~~ or

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2002 1. A continuous quality improvement committee of a pharmacy
 2003 licensed pursuant to chapter 465,
 2004
 2005 which committee is formed to evaluate and improve the quality of
 2006 health care rendered by providers of health service, to
 2007 determine that health services rendered were professionally
 2008 indicated or were performed in compliance with the applicable
 2009 standard of care, or that the cost of health care rendered was
 2010 considered reasonable by the providers of professional health
 2011 services in the area; or

2012 2. A committee of an insurer, self-insurer, or joint
 2013 underwriting association of medical malpractice insurance, or
 2014 other persons conducting review under s. 766.106.

2015 Section 74. Subsection (14) of section 865.09, Florida
 2016 Statutes, is amended to read:
 2017 865.09 Fictitious name registration.—
 2018 (14) PROHIBITION.—A fictitious name registered as provided
 2019 in this section may not contain the words "Corporation" or
 2020 "Incorporated," or the abbreviations "Corp." or "Inc.," unless
 2021 the person or business for which the name is registered is
 2022 incorporated or has obtained a certificate of authority to
 2023 transact business in this state pursuant to part I of chapter
 2024 607 or chapter 617.
 2025 Section 75. This act shall take effect July 1, 2014.

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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)

3/18/14
Meeting Date

Topic Business Organizations

Bill Number SB 654
(if applicable)

Name Christie Burrus

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 500 S. Bronough St.
Street

Phone 245-6512

Tallahassee FL 32399
City State Zip

E-mail christie.burrus@dos.myflorida.com

Speaking: For Against Information

Representing Florida Dept. of State

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.18.14

Meeting Date

Topic Business Organizations

Bill Number 654
(if applicable)

Name Sarah Bush

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S Monroe St

Phone 222.8900

TLH FL 32301
City State Zip

E-mail sjb@cardenaspartners.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

APPEARANCE RECORD

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

3/10

Meeting Date

Topic Benefit Corporations

Bill Number 654
(if applicable)

Name Greg Black

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 South Monroe Street, Suite 505
Street

Phone (850)205-9000

Tallahassee FL 32301
City State Zip

E-mail greg.black@metzlaw.com

Speaking: For Against Information

Representing Business Law Section of the FL Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 670

INTRODUCER: Judiciary Committee; Health Policy Committee and Senator Thrasher

SUBJECT: Nursing Home Litigation

DATE: March 18, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 670 amends statutory provisions relating to civil causes of action against nursing homes and the release of nursing home resident records and establishes provisions to help ensure timely payment of adverse final judgments. The bill:

- Limits the class of persons who may be sued in the initial pleading for negligence or a violation of a nursing home resident's rights to only the nursing home licensee and its management or consulting company, managing employees, and direct caregivers, whether employees or contracted. A passive investor is shielded from liability. Definitions are provided for these individuals or entities.
- Requires the court to hold a hearing on a motion for leave to amend the initial pleading before other parties may be sued.
- Makes these provisions of law the exclusive remedy against a nursing home licensee, its management or consulting company, managing employees, and direct caregivers for a cause of action alleging direct or vicarious liability for the recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.
- Specifies when the claimant must elect either survival damages or wrongful death damages, which is after the verdict but before the judgment is entered.
- Requires certain proposed amended pleadings to related back to the original pleading.
- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed.

- Requires payment of a judgment within 60 days, unless agreed otherwise, or the nursing home is subject to licensure sanction by the Agency for Health Care Administration.
- Revises provisions relating to the release of a nursing home resident's records.

II. Present Situation:

“Nursing Homes and Related Health Care Facilities” is the subject of ch. 400, F.S. Part I of ch. 400, F.S., establishes the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local long-term care ombudsman councils. Part II of ch. 400, F.S., provides for the regulation of nursing homes, and part III of ch. 400, F.S., provides for the regulation of home health agencies.

The Agency for Health Care Administration (AHCA) is charged with the responsibility of developing rules related to the operation of nursing homes. Section 400.022, F.S., specifies the rights and responsibilities of nursing home residents. Section 400.023, F.S., creates a statutory cause of action against nursing homes that violate the statutory rights of residents. The action may be brought in any court to enforce the resident's rights and to recover actual and punitive damages for any violation of a resident's statutory rights or for negligence.¹ Prevailing plaintiffs may be entitled to recover reasonable attorney fees plus costs of the action along with actual and punitive damages.²

Sections 400.023-400.0238, F.S., provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights. A claim for punitive damages is not permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.³ A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence as defined in s. 400.0237(2), F.S.⁴

In the case of an employer, principal, corporation, or other entity, punitive damages may be imposed for conduct of an employee or agent only for intentional misconduct or gross negligence which is proven by clear and convincing evidence, and if the employer actively and knowingly participated in the conduct, ratified or consented to the conduct, or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.⁵

Named Defendants and Causes of Action in Nursing Home Cases

Section 400.023, F.S., provides that “any resident whose rights as specified in this part are violated shall have a cause of action.” However, the section does not indicate who may be named as a defendant. Current law in ss. 400.023- 400.0238, F.S., provides the exclusive remedy for a

¹ Sections 400.023 and 400.0237, F.S.

² *Id.*

³ Section 400.0237(1), F.S.

⁴ Section 400.0237(2), F.S.

⁵ Section 400.0237(3), F.S.

cause of action for personal injury or death of a nursing home resident or a violation of the resident's rights statute. Current law further provides that s. 400.023, F.S., "does not preclude theories of recovery not arising out of negligence or s. 400.022[, F.S.,] which are available to the resident or to the [Agency for Health Care Administration]."

Liability of Employees, Officers, Directors, or Owners

In *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825 (Fla. 2d DCA 2004), the court considered whether the managing member of a limited liability company could be held personally liable for damages suffered by a resident in a nursing home. The claimant argued the managing member, Friedbauer, could be held liable.

[The claimant] argues that the concept of piercing the corporate veil does not apply in the case of a tort, and that it presented sufficient evidence of Friedbauer's negligence, by act or omission, for the jury to reasonably conclude that Friedbauer caused harm to Canavan. [The claimant] argues that Friedbauer had the responsibility of approving the budget for the nursing home. He also functioned as the sole member of the "governing body" of the nursing home, and pursuant to federal regulation 42 C.F.R. § 483.75(d) 2002, the governing body is legally responsible for establishing and implementing policies regarding the management and operation of the facility and for appointing the administrator who is responsible for the management of the facility. Friedbauer was thus required by federal mandate to create, approve, and implement the facility's policies and procedures. Because he ignored complaints of inadequate staffing while cutting the operating expenses, and because the problems Canavan suffered, pressure sores, infections, poor hygiene, malnutrition and dehydration, were the direct result of understaffing, [The claimant] argues that a reasonable jury could have found that Friedbauer's elevation of profit over patient care was negligent.⁶

The trial court granted a directed verdict in favor of Friedbauer, finding that there was no basis upon which a corporate officer could be held liable. On appeal, the district court reversed:

We conclude that the trial court erred in granting the directed verdict because there was evidence by which the jury could have found that Friedbauer's negligence in ignoring the documented problems at the facility contributed to the harm suffered by Canavan. This was not a case in which the plaintiffs were required to pierce the corporate veil in order to establish individual liability because Friedbauer's alleged negligence constituted tortious conduct, which is not shielded from individual liability. We, therefore, reverse the order granting the directed verdict and remand for a new trial against Friedbauer.⁷

⁶ *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825, 826 (Fla. 2d DCA 1994).

⁷ *Estate of Canavan v. National Healthcare Corp.*, 889 So. 2d 825, 826-827 (Fla. 2d DCA 1994) (citations omitted). One author has criticized the *Canavan* decision as "arguably an example of personal liability founded on business decisions normally protected by the 'business judgment rule,' which immunizes directors' business decisions from claims founded on

Elements in a Civil Action Under s. 400.023, F.S.

Section 400.023(2), F.S., provides that in any claim alleging a violation of a resident's rights or alleging that negligence caused injury to or the death of a resident, the claimant must prove, by a preponderance of the evidence:

- The defendant owed a duty to the resident;
- The defendant breached the duty to the resident;
- The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- The resident sustained loss, injury, death, or damage as a result of the breach.

The Florida Supreme Court has set forth the elements of a negligence action:

1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the [defendant's] part to conform to the standard required: a breach of the duty....
3. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.
4. Actual loss or damage....⁸

Current law provides in any claim brought pursuant to s. 400.023, F.S., a licensee, person, or entity has the duty to exercise "reasonable care" and nurses⁹ have the duty to exercise care "consistent with the prevailing professional standard of care."¹⁰

Punitive Damages

Current law provides for recovery of punitive damages by a claimant. Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."¹¹ Punitive damages are generally limited to three times the amount of compensatory damages or \$1 million, whichever is greater.¹² Damages can exceed \$1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature

simple negligence." Christopher A. Cazin, *Personal Liability Exposure for Nursing Home Operators: Canavan's Encroachment on the Business Judgment Rule*, 85 FLA. B.J. 46, 46 (May 2011). "Under the [business judgment rule], a company's directors are given liberal discretion to make management and policy decisions, and a court should not substitute its judgment for that of the directors." *Id.* (citing *Lobato-Bleidt v. Lobato*, 668 So. 2d 431, 434 (Fla. 5th DCA 1997)).

⁸ *United States v. Stevens*, 994 So. 2d 1062, 1065-66 (Fla. 2008).

⁹ "The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses." s. 400.023(4), F.S.

¹⁰ See s. 400.023(3) and (4), F.S.

¹¹ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

¹² See s. 400.0238(1)(a), F.S.

of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.¹³ If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.¹⁴

Evidentiary Requirements to Bring a Punitive Damages Claim

Section 400.0237(1), F.S., provides:

In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

A court discussed how a claimant can make a proffer to assert a punitive damages claim:

[A] 'proffer' according to traditional notions of the term, connotes merely an 'offer' of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.^{15, 16}

Punitive damages claims are often raised after the initial complaint has been filed. Once a claimant discovers enough evidence that the claimant believes justifies a punitive damages claim, the claimant files a motion to amend the complaint to add a punitive damages action. Current law provides that the rules of civil procedure are to be liberally construed to allow the claimant discovery of admissible evidence on the issue of punitive damages. The trial judge

¹³ See s. 400.0238(1)(b), F.S.

¹⁴ See s. 400.0238(1)(c), F.S.

¹⁵ *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).

¹⁶ The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.

considers the evidence presented and proffered by the claimant to determine whether the claim should proceed.

Individual Liability for Punitive Damages

Section 400.0237(2), F.S., provides:

A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct¹⁷ or gross negligence.¹⁸

Vicarious Liability for Punitive Damages

Punitive damages claims are sometimes brought under a theory of vicarious liability where an employer is held responsible for the acts of an employee. Section 400.0273(3), F.S., provides:

In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2)¹⁹ and:

- (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or
- (c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

III. Effect of Proposed Changes:

Section 1 amends s. 400.023, F.S., as follows:

Named Defendants in Nursing Home Cases

The bill provides that any claimant who alleges negligence or a violation of nursing home resident's rights for personal injury or death of a nursing home resident has a cause of action against the licensee, the licensee's management company or consulting company, the licensee's managing employees, and any direct caregivers, whether they are employees or contractors. In effect, the bill limits the persons who may be sued in the initial pleading to only these categories of defendants without a preliminary hearing to determine whether there is sufficient evidence in

¹⁷ "Intentional misconduct" is actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant will result and, despite that knowledge, intentionally pursuing a course of conduct that results in injury or damage. *See* s. 400.0237(2)(a), F.S.

¹⁸ "Gross negligence" is conduct that is so reckless or wanting in care such that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. *See* s. 400.0237(2)(b), F.S.

¹⁹ Criteria are whether the defendant was personally guilty of intentional misconduct or gross negligence.

the record or proffered by the claimant to establish a reasonable showing that the elements of liability exist for other parties.

The bill defines “licensee,” “management or consulting company,” and “passive investor.” A passive investor is an individual or entity that does not participate in the decisionmaking or operations of a facility. A passive investor is shielded from liability in a cause of action for damages for the personal injury or death of a nursing home resident due to negligence or a violation of residents’ rights.

Liability of those Other than a Nursing Home Licensee, Management or Consulting Company, Managing Employee, or Direct Caregiver

As a prerequisite to asserting a claim against a party who is not a licensee, management or consulting company, managing employee or direct caregiver, a claimant must file a motion for leave to amend the initial pleading. The court, or an arbitration panel if applicable, will hold a hearing to determine if there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that the individual or entity owed a duty of reasonable care to the resident, the individual or entity breached that duty, and that breach is a legal cause of loss, injury, or damage to, or death of the resident.

The proposed amended pleading, if it asserts that the cause of action arose out of the conduct, transaction, or occurrence as alleged in the initial pleading, the pleading relates back to the original pleading. This is a legal doctrine²⁰ that requires the original pleading to give fair notice of the general fact situation out of which the claim or defense arises and allows amendments to relate back even though the statute of limitations has since expired.

Causes of Action in Nursing Home Cases

Under current law, s. 400.023, F.S., states that “any resident whose rights as specified in this part are violated shall have a cause of action.” An aggrieved nursing home resident may sue under the statute²¹ and may sue under other appropriate legal theories. A remedy created by statute may only supplant other statutory and common law remedies if the statute specifically states that it is an exclusive remedy.²² Section 400.023, F.S., is not an exclusive remedy statute.²³

The bill amends s. 400.023, F.S., to establish an exclusive remedy for a cause of action claiming direct or vicarious liability against a nursing home licensee, a management or consulting company, managing employees, or direct caregivers for recovery of personal injury or death of a nursing home resident arising out of negligence or a violation of a resident’s statutory rights.

²⁰ Florida Rule of Civil Procedure 1.190(c).

²¹ Section 400.023, F.S.

²² *St. Angelo v. Healthcare and Retirement Corp. of America*, 824 So. 2d 997, 999 (Fla. 4th DCA 2002).

²³“Appellant has sufficiently alleged violations of right which are guaranteed him under section 400.022[, F.S.]. Nothing in the statute precludes this lawsuit or requires appellant to first bring a simple negligence action.” *Id.* at 1000.

Section 2 amends s. 400.0237, F.S.

Evidentiary Requirements to Bring a Punitive Damages Claim

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill requires the court to conduct an evidentiary hearing where both sides present evidence. The judge must determine whether there is sufficient admissible evidence to ensure that there is a reasonable basis to believe that the claimant can demonstrate at trial, by clear and convincing evidence, that the recovery of punitive damages is warranted under a claim for direct or vicarious liability.

Current law does not require a showing of admissibility at this stage of the proceedings or authorize the claimant and defendant to present evidence before a judge authorizes a claim for punitive damages. Current law contemplates that the claimant will proffer evidence and the court, considering the proffer in the light most favorable to the claimant, will determine whether reasonable basis exists to allow the claimant's punitive damages case to proceed.²⁴ Under the bill, the claimant may not proceed with discovery on the defendant's net worth until after the trial judge approves the pleading on punitive damages.

Individual Liability for Punitive Damages

The bill provides that a defendant against whom punitive damages is sought, may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that "a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant."

The current law and standard jury instructions provide for punitive damages if the defendant was "personally guilty of intentional misconduct."²⁵ The bill requires that the defendant "actively and knowingly participated in intentional misconduct," instead.

Vicarious Liability for Punitive Damages

The bill provides that in the case of vicarious liability of an individual, employer, principal, corporation, or other legal entity, punitive damages may not be imposed for the conduct of an employee or agent unless:

- An identified employee or agent actively and knowingly participated in intentional misconduct, or engaged in conduct that constituted gross negligence, and that conduct contributed to the loss, damages, or injury suffered by the claimant; and,
- An officer, director, or manager of the actual employer, corporation, or legal entity condoned, ratified, or consented to the specific conduct alleged.

²⁴ See *Estate of Despain*, *supra*, note 16.

²⁵ Standard Jury Instructions in Civil Cases, 503.1, Punitive Damages - Bifurcated Procedure *available at* http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500 (last visited February 19, 2014).

Section 3 creates s. 400.024, F.S.

Satisfying a Judgment or Settlement Agreement

The bill provides that when an adverse judgment that arises from a court award, arbitration award, or settlement agreement relating to a claim of negligence or violation of residents' rights against a licensee is final, the licensee must pay the judgment creditor the entire amount of the judgment and all accrued interest within 60 days, unless otherwise mutually agreed to in writing by the parties. This requirement applies to an adverse final judgment from a claim in contract or tort. If the licensee does not do so, the Agency for Health Care Administration may suspend the nursing home's license, deny a license renewal application, or deny a change of ownership application.

The bill outlines the procedures the Agency must follow upon notification of the existence of an unsatisfied judgment or settlement. The Agency must notify the licensee that within 30 days after receipt of the notification the licensee is subject to disciplinary action unless it provides the Agency with proof of compliance with one of five conditions pertaining to the judgment or settlement. The five conditions are:

- The judgment or settlement has been paid;
- A mutually agreed upon payment plan exists;
- A notice of appeal has been timely filed;
- A court order staying execution of the final judgment exists; or
- The court or arbitration panel that is overseeing the action documents that the licensee is seeking indemnification from an insurance carrier or other party that may be required to pay the award.

If the licensee fails to provide proof of one of the five conditions within the 30 days, the Agency must issue an emergency order finding that the nursing home facility lacks financial ability to operate and that the agency is in the process of revoking the facility's license or denying an application to renew the facility's license. Unless the licensee complies with one of the conditions, the agency must deny any change of ownership application which would allow the transfer the facility to a person or entity having a controlling interest in the facility.

Section 4 amends s. 400.145, F.S.

Release of a resident's records

This section of law is substantially reworded to comply with the federal Health Insurance Portability and Accountability Act (HIPAA) and to provide for release of a deceased resident's medical records.

Upon receipt of a written request that complies with HIPAA or this section of law, a nursing home must provide to a competent resident or to a resident's representative who is authorized to make requests for the resident's records copies of medical records and records concerning the care and treatment of the resident performed by the facility. However, progress notes and consultation report sections of a psychiatric nature may not be released.

The bill requires the nursing home to provide the requested records within 14 working days after receipt of a request relating to a current resident or within 30 working days after receipt of a request relating to a former resident. Current law requires a nursing home to release requested records pertaining to a current resident within 7 working days after receipt of a written request and within 10 working days after receipt of a written request pertaining to a former resident.

The bill identifies to whom and under what circumstances medical records relating to a deceased resident may be released. The list is presented in the order of priority, as follows:

- A court appointed personal representative, executor, administrator, curator, or temporary administrator of the deceased resident's estate, upon submission of a copy of the court order.
- If a judicial appointment has not been made, the personal representative designated in the resident's self-proved will.
- If a judicial appointment or person designated by will is not available, the following individuals may request the medical records upon submission of a letter from the person's attorney verifying the relationship to the deceased resident:
 - A surviving spouse.
 - A surviving child of the resident if there is no spouse.
 - A parent of the resident if there is no spouse or child.

The bill authorizes a nursing home to refuse to release records to the resident if it would be detrimental to the physical or mental health of the resident. However, the nursing home must provide the records to another medical provider if requested to do so by the resident.

A nursing home is granted immunity from criminal or civil laws and is not civilly liable to the resident or other persons for any damages resulting from release of the medical records if the nursing home relies on this section of law and releases the records in good faith. The agency may not cite a nursing home through the survey process for noncompliance with the requirements of this section of law.

The bill restates current law with respect to the fees a nursing home may charge for copies of the records and allowing an authorized person to examine original records on site. The fees may not exceed \$1 per page for the first 25 pages and 25 cents for each additional page. As in current law, the bill provides that a nursing home is not required to provide copies of requested records more frequently than once per month, except that copies of physician reports must be released as often as necessary to allow the effective monitoring of the resident's condition.

Section 5 creates an unnumbered section of law to apply the amendments to ss. 400.023 and 400.0237, F.S., to causes of action accruing on or after the effective date of this bill.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may facilitate the payment of judgments against nursing homes by requiring the Agency for Health Care Administration to take action against nursing homes that do not timely pay a judgment. The provisions that facilitate access to the records of nursing home residents may facilitate the monitoring of patient care.

C. Government Sector Impact:

The Agency for Health Care Administration will incur administrative and legal costs to take action against licensees that do not satisfy adverse final judgments or terms of a settlement agreement. As of the date of this analysis, the Agency has not provided staff with an estimate of its additional costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 of the bill, creating s. 400.024, F.S., may need to address additional procedural matters, including but not limited to, abatement of suspension actions or other sanctions if conditions such as those enumerated in subsection (2) occur.

Section 4 of the bill, amending s. 400.145, F.S., authorizes a nursing home to furnish records to a competent resident or to a representative of *that* resident who is authorized to make requests for the resident's records. This appears to limit release of resident records to competent residents and to representatives of competent residents. The bill is silent regarding release of a resident's records to his or her representative when the resident is not competent.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 400.023, 400.0237, and 400.145. This bill creates section 400.024 of the Florida Statutes. The bill creates 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.)

CS/CS by Judiciary on March 18, 2014:

The committee substitute makes minor drafting edits to the language of the bill and revises the sanctions applicable to a nursing home that fails to pay a judgment within 60 days after the date of the judgment. The committee substitute also refines the language used in the bill for the release of a nursing home resident's records.

CS by Health Policy on February 18, 2014:

Clarifies that the exclusive cause of action for negligence or a violation of residents' rights relates to claims arising from either direct or vicarious liability.

- Sets the timeframe for electing survival damages or wrongful death damages.
- Specified parties who may be sued in original pleading:
 - Adds two more categories of defendants to include the licensee's consulting company and the licensee's managing employees and clarifies that the defendants may be either employees or contractors.
 - Shields a passive investor from liability.
 - Defines "licensee," "management or consulting company," and "passive investor."
- Hearing to sue non-specified parties:
 - Changes the type of hearing to a "motion for leave to amend hearing" instead of an "evidentiary hearing."
 - Includes an arbitration panel, in addition to the court, as a body that may determine whether the requirements are met to sue non-specified parties.
 - Rather than a finding of sufficient evidence to establish a reasonable basis for duty, breach, and causation; there is a determination of sufficient evidence to establish a reasonable showing of duty, breach, and causation.
 - Requires that a proposed amended pleading that asserts the cause of action arose out of the conduct, transaction, or occurrence set forth in the original pleading must relate back to the original pleading.
- Punitive Damages:
 - Clarifies that the hearing to determine whether the evidentiary requirements have been met to amend the complaint to include a claim for punitive damages applies to both a claim for direct liability and vicarious liability.
 - Reinstates current law that the rules of civil procedures shall be liberally construed to allow discovery to support the issue of punitive damages.
 - No longer prohibits using the state or federal survey report to establish an entitlement to punitive damages.

- Requires the payment of the judgment, arbitration award, or settlement agreement to occur within 60 days after it becomes final, unless otherwise agreed and provides administrative procedures for sanctions by the AHCA.
- Revises provisions relating to the release of a resident's records to comply with HIPAA; increases the timeframe for producing the records; specifies who and under what conditions a person may get a deceased resident's medical records; authorizes a nursing home to refuse to release records to the resident under certain conditions; provides immunity for good faith compliance with this section of law; and precludes the AHCA from citing a nursing home for noncompliance.
- Provides that the amendments made to the civil enforcement and punitive damages sections of law apply to causes of action accruing on or after the date the act becomes a law.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/19/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Thrasher) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 400.023, Florida Statutes, is amended to
read:

400.023 Civil enforcement.—

(1) An exclusive cause of action for negligence or a
violation of residents' Any resident whose rights as specified
under in this part which alleges direct or vicarious liability
for the personal injury or death of a nursing home resident



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12 arising from such negligence or violation of rights and which
13 seeks damages for such injury or death may be brought only
14 against the licensee, the licensee's management or consulting
15 company, the licensee's managing employees, and any direct
16 caregivers, whether employees or contractors are violated shall
17 have a cause of action. A passive investor is not liable under
18 this section. An action against any other individual or entity
19 may be brought only pursuant to subsection (3).

20 (a) The action may be brought by the resident or his or her
21 guardian, by a person or organization acting on behalf of a
22 resident with the consent of the resident or his or her
23 guardian, or by the personal representative of the estate of a
24 deceased resident regardless of the cause of death.

25 (b) If the action alleges a claim for the resident's rights
26 or for negligence that caused the death of the resident, the
27 claimant shall, after the verdict, but before the judgment is
28 entered, be required to elect either survival damages pursuant
29 to s. 46.021 or wrongful death damages pursuant to s. 768.21. If
30 the action alleges a claim for the resident's rights or for
31 negligence that did not cause the death of the resident, the
32 personal representative of the estate may recover damages for
33 the negligence that caused injury to the resident.

34 (c) The action may be brought in any court of competent
35 jurisdiction to enforce such rights and to recover actual and
36 punitive damages for the any violation of the rights of a
37 resident or for negligence.

38 (d) A Any resident who prevails in seeking injunctive
39 relief or ~~a claim for~~ an administrative remedy is entitled to
40 recover the costs of the action, and a reasonable attorney fees



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41 ~~attorney's fee~~ assessed against the defendant of up to not to
42 ~~exceed~~ \$25,000. Fees shall be awarded solely for the injunctive
43 or administrative relief and not for any claim or action for
44 damages whether such claim or action is brought ~~together~~ with a
45 request for an injunction or administrative relief or as a
46 separate action, except as provided under s. 768.79 or the
47 Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238~~
48 ~~provide the exclusive remedy for a cause of action for recovery~~
49 ~~of damages for the personal injury or death of a nursing home~~
50 ~~resident arising out of negligence or a violation of rights~~
51 ~~specified in s. 400.022.~~

52 (e) This section does not preclude theories of recovery not
53 arising out of negligence or s. 400.022 which are available to a
54 resident or to the agency. ~~The provisions of Chapter 766~~ does de
55 not apply to a any cause of action brought under ss. 400.023-
56 400.0238.

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

58 (a) "Licensee" means an individual, corporation,
59 partnership, firm, association, governmental entity, or other
60 entity that is issued a permit, registration, certificate, or
61 license by the agency, and that is legally responsible for all
62 aspects of the operation of the nursing home facility.

63 (b) "Management or consulting company" means an individual
64 or entity who contracts with, or receives a fee from, a licensee
65 to provide any of the following services for a nursing home
66 facility:

67 1. Hiring or firing of the administrator or director of
68 nursing;

69 2. Controlling or having control over the staffing levels



70 at the facility;

71 3. Having control over the budget of the facility; or

72 4. Implementing and enforcing the policies and procedures
73 of the facility.

74 (c) "Passive investor" means an individual or entity that
75 has an interest in a facility but does not participate in the
76 decisionmaking or operations of the facility.

77 (3) A cause of action may not be asserted against an
78 individual or entity other than the licensee, the licensee's
79 management or consulting company, the licensee's managing
80 employees, and any direct caregivers, whether employees or
81 contractors, unless, after a motion for leave to amend hearing,
82 the court or an arbitration panel determines that there is
83 sufficient evidence in the record or proffered by the claimant
84 to establish a reasonable showing that:

85 (a) The individual or entity owed a duty of reasonable care
86 to the resident and that the individual or entity breached that
87 duty; and

88 (b) The breach of that duty is a legal cause of loss,
89 injury, death, or damage to the resident.

90
91 For purposes of this subsection, if, in a proposed amended
92 pleading, it is asserted that such cause of action arose out of
93 the conduct, transaction, or occurrence set forth or attempted
94 to be set forth in the original pleading, the proposed amendment
95 relates back to the original pleading.

96 (4)~~(2)~~ In a ~~any~~ claim brought pursuant to this part
97 alleging a violation of residents' ~~resident's~~ rights or
98 negligence causing injury to or the death of a resident, the



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99 claimant has ~~shall have~~ the burden of proving, by a
100 preponderance of the evidence, that:

101 (a) The defendant owed a duty to the resident;

102 (b) The defendant breached the duty to the resident;

103 (c) The breach of the duty is a legal cause of loss,
104 injury, death, or damage to the resident; and

105 (d) The resident sustained loss, injury, death, or damage
106 as a result of the breach.

107

108 ~~Nothing in~~ This part does not ~~shall be interpreted to~~ create
109 strict liability. A violation of the rights set forth in s.
110 400.022, ~~or~~ in any other standard or guidelines specified in
111 this part, or in any applicable administrative standard or
112 guidelines of this state or a federal regulatory agency is ~~shall~~
113 ~~be~~ evidence of negligence but is ~~shall~~ not ~~be~~ considered
114 negligence per se.

115 (5)(3) In a any claim brought pursuant to this section, a
116 licensee, individual person, or entity has ~~shall have~~ a duty to
117 exercise reasonable care. Reasonable care is that degree of care
118 which a reasonably careful licensee, individual person, or
119 entity would use under like circumstances.

120 (6)(4) In a any claim for a residents' ~~resident's~~ rights
121 violation or negligence by a nurse licensed under part I of
122 chapter 464, such nurse has ~~shall have~~ the duty to exercise care
123 consistent with the prevailing professional standard of care for
124 a nurse. The prevailing professional standard of care for a
125 nurse is ~~shall be~~ that level of care, skill, and treatment
126 which, in light of all relevant surrounding circumstances, is
127 recognized as acceptable and appropriate by reasonably prudent



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128 similar nurses.

129 ~~(7)-(5)~~ A licensee is ~~shall~~ not be liable for the medical
130 negligence of a ~~any~~ physician rendering care or treatment to the
131 resident except for the administrative services of a medical
132 director as required under ~~in~~ this part. ~~Nothing in~~ This
133 subsection does not ~~shall be construed to~~ protect a licensee,
134 individual person, or entity from liability for failure to
135 provide a resident with appropriate observation, assessment,
136 nursing diagnosis, planning, intervention, and evaluation of
137 care by nursing staff.

138 ~~(8)-(6)~~ The resident or the resident's legal representative
139 shall serve a copy of a ~~any~~ complaint alleging in whole or in
140 part a violation of any rights specified in this part to the
141 agency ~~for Health Care Administration~~ at the time of filing the
142 initial complaint with the clerk of the court for the county in
143 which the action is pursued. The requirement of providing a copy
144 of the complaint to the agency does not impair the resident's
145 legal rights or ability to seek relief for his or her claim.

146 ~~(9)-(7)~~ An action under this part for a violation of rights
147 or negligence recognized herein is not a claim for medical
148 malpractice, and ~~the provisions of~~ s. 768.21(8) does ~~de~~ not
149 apply to a claim alleging death of the resident.

150 Section 2. Section 400.0237, Florida Statutes, is amended
151 to read:

152 400.0237 Punitive damages; pleading; burden of proof.—

153 (1) ~~A In any action for damages brought under this part, no~~
154 claim for punitive damages may not be brought under this part
155 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by
156 admissible evidence that has been submitted by the parties that



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157 ~~provides in the record or proffered by the claimant which would~~
158 ~~provide~~ a reasonable basis for recovery of such damages when the
159 criteria in this section are applied.

160 (a) The claimant may move to amend her or his complaint to
161 assert a claim for punitive damages as allowed by the rules of
162 civil procedure in accordance with evidentiary requirements set
163 forth in this section.

164 (b) The court shall conduct a hearing to determine whether
165 there is sufficient admissible evidence submitted by the parties
166 to ensure that there is a reasonable basis to believe that the
167 claimant, at trial, will be able to demonstrate by clear and
168 convincing evidence that the recovery of such damages is
169 warranted under a claim for direct liability as specified in
170 subsection (2) or under a claim for vicarious liability as
171 specified in subsection (3).

172 (c) The rules of civil procedure shall be liberally
173 construed so as to allow the claimant discovery of evidence
174 which appears reasonably calculated to lead to admissible
175 evidence on the issue of punitive damages. ~~No~~ Discovery of
176 financial worth may not shall proceed until ~~after~~ the pleading
177 on concerning punitive damages is approved by the court
178 permitted.

179 (2) A defendant may be held liable for punitive damages
180 only if the trier of fact, by based on clear and convincing
181 evidence, finds that a specific person or corporate defendant
182 actively and knowingly participated in intentional misconduct or
183 engaged in conduct that constitutes gross negligence and
184 contributed to the loss, damages, or injury suffered by the
185 claimant ~~the defendant was personally guilty of intentional~~



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186 ~~misconduct or gross negligence~~. As used in this section, the
187 term:

188 (a) "Intentional misconduct" means that the defendant
189 against whom punitive damages are sought had actual knowledge of
190 the wrongfulness of the conduct and the high probability that
191 injury or damage to the claimant would result and, despite that
192 knowledge, intentionally pursued that course of conduct,
193 resulting in injury or damage.

194 (b) "Gross negligence" means that a ~~the~~ defendant's conduct
195 was so reckless or wanting in care that it constituted a
196 conscious disregard or indifference to the life, safety, or
197 rights of persons exposed to such conduct.

198 (3) In the case of vicarious liability of an individual,
199 employer, principal, corporation, or other legal entity,
200 punitive damages may not be imposed for the conduct of an
201 employee or agent unless ~~only if~~ the conduct of the employee or
202 agent meets the criteria specified in subsection (2) and an
203 officer, director, or manager of the actual employer,
204 corporation, or legal entity condoned, ratified, or consented to
205 the specific conduct as provided in subsection (2):

206 ~~(a) The employer, principal, corporation, or other legal~~
207 ~~entity actively and knowingly participated in such conduct;~~

208 ~~(b) The officers, directors, or managers of the employer,~~
209 ~~principal, corporation, or other legal entity condoned,~~
210 ~~ratified, or consented to such conduct; or~~

211 ~~(c) The employer, principal, corporation, or other legal~~
212 ~~entity engaged in conduct that constituted gross negligence and~~
213 ~~that contributed to the loss, damages, or injury suffered by the~~
214 ~~claimant.~~



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215 (4) The plaintiff shall ~~must~~ establish at trial, by clear
216 and convincing evidence, its entitlement to an award of punitive
217 damages. The "greater weight of the evidence" burden of proof
218 applies to a determination of the amount of damages.

219 ~~(5) This section is remedial in nature and shall take~~
220 ~~effect upon becoming a law.~~

221 Section 3. Section 400.024, Florida Statutes, is created to
222 read:

223 400.024 Failure to satisfy a judgment or settlement
224 agreement.—

225 (1) Upon the entry by a Florida court of an adverse final
226 judgment against a licensee as defined in s. 400.023(2) which
227 arises from an award pursuant to s. 400.023, including an
228 arbitration award, for a claim of negligence or a violation of
229 residents' rights, in contract or tort, or from noncompliance
230 with the terms of a settlement agreement as determined by a
231 court or arbitration panel, which arises from a claim pursuant
232 to s. 400.023, the licensee shall pay the judgment creditor the
233 entire amount of the judgment, award, or settlement and all
234 accrued interest within 60 days after the date such judgment,
235 award, or settlement becomes final and subject to execution
236 unless otherwise mutually agreed to in writing by the parties.
237 Failure to make such payment shall result in additional grounds
238 that may be used by the agency for revoking a license or for
239 denying a renewal application or a related party change of
240 ownership application as provided in this section.

241 (2) The agency is deemed notified of an unsatisfied
242 judgment or settlement under subsection (1) when a certified
243 copy of the judgment and a certified copy of a valid judgment



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244 lien certificate, filed in accordance with ss. 55.202 and
245 55.203, are served to the agency by process server or received
246 by certified mail, return receipt requested. Within 60 days
247 after receiving such documents, the agency shall notify the
248 licensee by certified mail, return receipt requested, that it is
249 subject to disciplinary action unless, within 30 days after the
250 date of mailing the notice, the licensee:

251 (a) Shows proof that the unsatisfied judgment or settlement
252 has been paid in the amount specified;

253 (b) Shows proof of the existence of a payment plan mutually
254 agreed upon by the parties in writing;

255 (c) Furnishes the agency with a copy of a timely filed
256 notice of appeal;

257 (d) Furnishes the agency with a copy of a court order
258 staying execution of the final judgment; or

259 (e) Shows proof by submitting an order from a court or
260 arbitration panel that is overseeing any action seeking
261 indemnification from an insurance carrier or other party that
262 the licensee believes is required to pay the award.

263 (3) If the agency is placed on notice pursuant to
264 subsection (2) and proof pursuant to subsection (2) is not
265 provided by the licensee, the agency shall issue an emergency
266 order pursuant to s. 120.60 declaring that the facility lacks
267 financial ability to operate and a notice of intent to revoke or
268 deny a license.

269 (4) If, after the agency is placed on notice pursuant to
270 subsection (2) and:

271 (a) The license is subject to renewal, the agency may deny
272 the license renewal unless compliance with this section is



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273 achieved; and

274 (b) A change of ownership application for the facility at
275 issue is submitted by the licensee, by a person or entity
276 identified as having a controlling interest in the licensee, or
277 by a related party, the agency shall deny the change of
278 ownership application unless compliance with this section is
279 achieved.

280 Section 4. Section 400.145, Florida Statutes, is amended to
281 read:

282 (Substantial rewording of section. See
283 s. 400.145, F.S., for present text.)

284 400.145 Copies of records of care and treatment of
285 resident.—

286 (1) Upon receipt of a written request that complies with
287 the federal Health Insurance Portability and Accountability Act
288 of 1996 (HIPAA) and this section, a nursing home facility shall
289 furnish to a competent resident, or to a representative of that
290 resident who is authorized to make requests for the resident's
291 records under HIPAA or subsection (2), copies of the resident's
292 paper and electronic records that are in possession of the
293 facility. Such records must include any medical records and
294 records concerning the care and treatment of the resident
295 performed by the facility, except for progress notes and
296 consultation report sections of a psychiatric nature. The
297 facility shall provide the requested records within 14 working
298 days after receipt of a request relating to a current resident
299 or within 30 working days after receipt of a request relating to
300 a former resident.

301 (2) Requests for a deceased resident's medical records



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302 under this section may be made by:

303 (a) A person appointed by a court to act as the personal
304 representative, executor, administrator, curator, or temporary
305 administrator of the deceased resident's estate;

306 (b) If a judicial appointment has not been made as provided
307 in paragraph (a), a person designated by the resident to act as
308 his or her personal representative in a last will that is self-
309 proved under s. 732.503; or

310 (c) If no judicial appointment has been made as provided in
311 paragraph (a) or no person has been designated by the resident
312 in a last will as provided in paragraph (b), only the following
313 individuals:

314 1. A surviving spouse.

315 2. If there is no surviving spouse, a surviving child of
316 the resident.

317 3. If there is no surviving spouse or child, a parent of
318 the resident.

319 (3) All requests for a deceased resident's records made by
320 a person authorized under:

321 (a) Paragraph (2) (a) must include a copy of the letter of
322 administration and a copy of the court order appointing such
323 person as the representative of the resident's estate.

324 (b) Paragraph (2) (b) must include a copy of the self-proved
325 last will designating the person as the resident's
326 representative.

327 (c) Paragraph (2) (c) must be accompanied by a letter from
328 the person's attorney verifying the person's relationship to the
329 resident and the absence of a court-appointed representative and
330 self-proved last will.



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331 (4) A nursing home facility may charge a reasonable fee for
332 the copying of resident records. Such fee may not exceed \$1 per
333 page for the first 25 pages and 25 cents per page for each
334 additional page. The facility shall allow a person who is
335 authorized to act on behalf of the resident to examine the
336 original records, microfilms, or other suitable reproductions of
337 the records in its possession upon any reasonable terms imposed
338 by the facility to ensure that the records are not damaged,
339 destroyed, or altered.

340 (5) If a nursing home facility determines that disclosure
341 of the records to the resident would be detrimental to the
342 physical or mental health of the resident, the facility may
343 refuse to furnish the record directly to the resident; however,
344 upon such refusal, the resident's records shall, upon written
345 request by the resident, be furnished to any other medical
346 provider designated by the resident.

347 (6) A nursing home facility that in good faith and in
348 reliance upon this section releases copies of records shall be
349 indemnified by the party who requested the records pursuant to
350 subsection (2) for any damages resulting from such release, and
351 may not be found to have violated any criminal or civil laws,
352 and is not civilly liable to the resident, the resident's
353 estate, or any other person for any damages resulting from such
354 release.

355 (7) A nursing home facility is not required to provide
356 copies of a resident's records requested pursuant to this
357 section more than once per month, except that copies of
358 physician reports in the resident's records must be provided as
359 often as necessary to allow the effective monitoring of the



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360 resident's condition.

361 (8) A nursing home facility may not be cited by the agency
362 through the survey process for any alleged or actual
363 noncompliance with any of the requirements of this section.

364 (9) This section does not limit any right to obtain records
365 by subpoena or other court process.

366 Section 5. The amendments to ss. 400.023 and 400.0237,
367 Florida Statutes, made by this act apply to causes of action
368 accruing on or after the effective date of this act.

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

370

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

372 And the title is amended as follows:

373 Delete everything before the enacting clause
374 and insert:

375 A bill to be entitled
376 An act relating to nursing home litigation; amending
377 s. 400.023, F.S.; specifying that a cause of action
378 for negligence or violation of residents' rights
379 alleging direct or vicarious liability for the injury
380 or death of a nursing home resident may be brought
381 against a licensee, its management or consulting
382 company, its managing employees, and any direct
383 caregiver employees or contractors; providing that a
384 cause of action may not be asserted against other
385 individuals or entities except under certain
386 circumstances; revising related judicial procedures;
387 defining terms; amending s. 400.0237, F.S.; providing
388 that a claim for punitive damages may not be brought



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389 unless there is a showing of evidence that provides a
390 reasonable basis for recovery of such damages when
391 certain criteria are applied; requiring the court to
392 conduct a hearing to determine whether there is
393 sufficient evidence to demonstrate that the recovery
394 of punitive damages is warranted; requiring the trier
395 of fact to find that a specific person or corporate
396 defendant participated in or engaged in conduct that
397 constituted gross negligence and contributed to the
398 damages or injury suffered by the claimant before a
399 defendant may be held liable for punitive damages;
400 requiring an officer, director, or manager of the
401 employer, corporation, or legal entity to condone,
402 ratify, or consent to specified conduct before holding
403 such person or entity vicariously liable for punitive
404 damages; creating s. 400.024, F.S.; authorizing the
405 Agency for Health Care Administration to revoke the
406 license or deny a license renewal or change of
407 ownership application of a nursing home facility that
408 fails to pay a judgment or settlement agreement;
409 providing for notification to the agency of such
410 failure and for agency notification to the licensee of
411 disciplinary action; providing licensee grounds for
412 overcoming failure to pay; authorizing the agency to
413 issue an emergency order and notice of intent to
414 revoke or deny a license; authorizing the agency to
415 deny a license renewal and requiring the agency to
416 deny a change of ownership; amending s. 400.145, F.S.;

417 revising procedures for obtaining the records of a



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418 resident; specifying which records may be obtained and
419 who may obtain them; providing immunity from liability
420 to a facility that provides such records in good
421 faith; providing that the agency may not cite a
422 facility that does not meet these records
423 requirements; providing applicability; providing an
424 effective date.

By the Committee on Health Policy; and Senator Thrasher

588-01866-14

2014670c1

1 A bill to be entitled
 2 An act relating to nursing home litigation; amending
 3 s. 400.023, F.S.; specifying that a cause of action
 4 for negligence or violation of residents' rights
 5 alleging direct or vicarious liability for the injury
 6 or death of nursing home resident may be brought
 7 against a licensee, its management or consulting
 8 company, its managing employees, and any direct
 9 caregiver employees; providing that a cause of action
 10 may not be asserted against other individuals or
 11 entities except under certain circumstances; revising
 12 related judicial procedures; defining terms; amending
 13 s. 400.0237, F.S.; providing that a claim for punitive
 14 damages may not be brought unless there is a showing
 15 of evidence that provides a reasonable basis for
 16 recovery of such damages when certain criteria are
 17 applied; requiring the court to conduct a hearing to
 18 determine whether there is sufficient evidence to
 19 demonstrate that the recovery of punitive damages is
 20 warranted; requiring the trier of fact to find that a
 21 specific person or corporate defendant participated in
 22 or engaged in conduct that constituted gross
 23 negligence and contributed to the damages or injury
 24 suffered by the claimant before a defendant may be
 25 held liable for punitive damages; requiring an
 26 officer, director, or manager of the employer,
 27 corporation, or legal entity to condone, ratify, or
 28 consent to certain specified conduct before holding
 29 such person or entity vicariously liable for punitive

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30 damages; creating s. 400.024, F.S.; authorizing the
 31 Agency for Health Care Administration to suspend the
 32 license of a nursing home facility that fails to pay a
 33 judgment or settlement agreement; providing
 34 exceptions; providing agency procedures for
 35 suspension; prohibiting certain parties from applying
 36 for a license for an affected facility; amending s.
 37 400.145, F.S.; revising procedures for obtaining the
 38 records of a resident; specifying which records may be
 39 obtained and who may obtain them; providing immunity
 40 from liability to a facility that provides such
 41 records in good faith; providing that the agency may
 42 not cite a facility that does not meet these records
 43 requirements; providing applicability; providing an
 44 effective date.

45
 46 Be It Enacted by the Legislature of the State of Florida:

47
 48 Section 1. Section 400.023, Florida Statutes, is amended to
 49 read:

50 400.023 Civil enforcement.—

51 (1) An exclusive cause of action for negligence or a
 52 violation of residents' rights as specified
 53 under ~~in~~ this part which alleges direct or vicarious liability
 54 for the personal injury or death of a nursing home resident
 55 arising from such negligence or violation of rights and which
 56 seeks damages for such injury or death may be brought against
 57 the licensee, the licensee's management or consulting company,
 58 the licensee's managing employees, and any direct caregivers,

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59 ~~whether employees or contractors are violated shall have a cause~~
 60 ~~of action. A passive investor is not liable under this section.~~
 61 An action against any other individual or entity may be brought
 62 only pursuant to subsection (3).

63 (a) The action may be brought by the resident or his or her
 64 guardian, by a person or organization acting on behalf of a
 65 resident with the consent of the resident or his or her
 66 guardian, or by the personal representative of the estate of a
 67 deceased resident regardless of the cause of death.

68 (b) If the action alleges a claim for the resident's rights
 69 or for negligence that caused the death of the resident, the
 70 claimant shall, after the verdict, but before the judgment is
 71 entered, be required to elect either survival damages pursuant
 72 to s. 46.021 or wrongful death damages pursuant to s. 768.21. If
 73 the action alleges a claim for the resident's rights or for
 74 negligence that did not cause the death of the resident, the
 75 personal representative of the estate may recover damages for
 76 the negligence that caused injury to the resident.

77 (c) The action may be brought in any court of competent
 78 jurisdiction to enforce such rights and to recover actual and
 79 punitive damages for the any violation of the rights of a
 80 resident or for negligence.

81 (d) ~~A~~ Any resident who prevails in seeking injunctive
 82 relief or ~~a claim for~~ an administrative remedy is entitled to
 83 recover the costs of the action, and a reasonable attorney
 84 ~~attorney's~~ fee assessed against the defendant of up to not to
 85 ~~exceed~~ \$25,000. Fees shall be awarded solely for the injunctive
 86 or administrative relief and not for any claim or action for
 87 damages whether such claim or action is brought ~~together~~ with a

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88 request for an injunction or administrative relief or as a
 89 separate action, except as provided under s. 768.79 or the
 90 Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238~~
 91 ~~provide the exclusive remedy for a cause of action for recovery~~
 92 ~~of damages for the personal injury or death of a nursing home~~
 93 ~~resident arising out of negligence or a violation of rights~~
 94 ~~specified in s. 400.022.~~

95 (e) This section does not preclude theories of recovery not
 96 arising out of negligence or s. 400.022 which are available to a
 97 resident or to the agency. ~~The provisions of Chapter 766 does de~~
 98 ~~not apply to a any~~ cause of action brought under ss. 400.023-
 99 400.0238.

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

101 (a) "Licensee" means an individual, corporation,
 102 partnership, firm, association, governmental entity, or other
 103 entity that is issued a permit, registration, certificate, or
 104 license by the agency, and that is legally responsible for all
 105 aspects of the operation of the nursing home facility.

106 (b) "Management or consulting company" means an individual
 107 or entity who contracts with, or receives a fee from a licensee
 108 to provide any of the following services for a nursing home
 109 facility:

- 110 1. Hiring or firing of the administrator or director of
 111 nursing;
- 112 2. Controlling or having control over the staffing levels
 113 at the facility;
- 114 3. Having control over the budget of the facility; or
- 115 4. Implementing and enforcing the policies and procedures
 116 of the facility.

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117 (c) "Passive investor" means an individual or entity that
 118 does not participate in the decisionmaking or operations of a
 119 facility.

120 (3) A cause of action may not be asserted against an
 121 individual or entity, other than the licensee, the licensee's
 122 management or consulting company, the licensee's managing
 123 employees, and any direct caregivers, whether employees or
 124 contractors, unless, after a motion for leave to amend hearing,
 125 the court or an arbitration panel determines that there is
 126 sufficient evidence in the record or proffered by the claimant
 127 to establish a reasonable showing that:

128 (a) The individual or entity owed a duty of reasonable care
 129 to the resident and the individual or entity breached that duty;
 130 and

131 (b) The breach of that duty is a legal cause of loss,
 132 injury, or damage to or death of the resident.

133
 134 For purposes of this subsection, if, in a proposed amended
 135 pleading, it is asserted that such cause of action arose out of
 136 the conduct, transaction, or occurrence set forth or attempted
 137 to be set forth in the original pleading, the proposed amendment
 138 relates back to the original pleading.

139 (4)(2) In a ~~any~~ claim brought pursuant to this part
 140 alleging a violation of ~~residents' resident's~~ rights or
 141 negligence causing injury to or the death of a resident, the
 142 claimant ~~has shall have~~ the burden of proving, by a
 143 preponderance of the evidence, that:

144 (a) The defendant owed a duty to the resident;

145 (b) The defendant breached the duty to the resident;

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146 (c) The breach of the duty is a legal cause of loss,
 147 injury, death, or damage to the resident; and

148 (d) The resident sustained loss, injury, death, or damage
 149 as a result of the breach.

150
 151 ~~Nothing in~~ This part does not shall be interpreted to create
 152 strict liability. A violation of the rights set forth in s.
 153 400.022, ~~or~~ in any other standard or guidelines specified in
 154 this part, or in any applicable administrative standard or
 155 guidelines of this state or a federal regulatory agency is shall
 156 ~~be~~ evidence of negligence but is shall not ~~be~~ considered
 157 negligence per se.

158 (5)(3) In a ~~any~~ claim brought pursuant to this section, a
 159 licensee, ~~individual person~~, or entity ~~has shall have~~ a duty to
 160 exercise reasonable care. Reasonable care is that degree of care
 161 which a reasonably careful licensee, ~~individual person~~, or
 162 entity would use under like circumstances.

163 (6)(4) In a ~~any~~ claim for a ~~residents' resident's~~ rights
 164 violation or negligence by a nurse licensed under part I of
 165 chapter 464, such nurse ~~has shall have~~ the duty to exercise care
 166 consistent with the prevailing professional standard of care for
 167 a nurse. The prevailing professional standard of care for a
 168 nurse ~~is shall be~~ that level of care, skill, and treatment
 169 which, in light of all relevant surrounding circumstances, is
 170 recognized as acceptable and appropriate by reasonably prudent
 171 similar nurses.

172 (7)(5) A licensee ~~is shall~~ not ~~be~~ liable for the medical
 173 negligence of a ~~any~~ physician rendering care or treatment to the
 174 resident except for the administrative services of a medical

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175 director as required ~~under~~ in this part. ~~Nothing in~~ This
 176 subsection ~~does not shall be construed to~~ protect a licensee,
 177 individual person, or entity from liability for failure to
 178 provide a resident with appropriate observation, assessment,
 179 nursing diagnosis, planning, intervention, and evaluation of
 180 care by nursing staff.

181 ~~(8)(6)~~ The resident or the resident's legal representative
 182 shall serve a copy of ~~a any~~ complaint alleging in whole or in
 183 part a violation of any rights specified in this part to the
 184 agency ~~for Health Care Administration~~ at the time of filing the
 185 initial complaint with the clerk of the court for the county in
 186 which the action is pursued. The requirement of providing a copy
 187 of the complaint to the agency does not impair the resident's
 188 legal rights or ability to seek relief for his or her claim.

189 ~~(9)(7)~~ An action under this part for a violation of rights
 190 or negligence recognized herein is not a claim for medical
 191 malpractice, and ~~the provisions of s. 768.21(8) does de~~ not
 192 apply to a claim alleging death of the resident.

193 Section 2. Section 400.0237, Florida Statutes, is amended
 194 to read:

195 400.0237 Punitive damages; pleading; burden of proof.—

196 (1) ~~A In any action for damages brought under this part, no~~
 197 claim for punitive damages may not be brought under this part
 198 ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by
 199 admissible evidence in the record or proffered by the parties
 200 which provides claimant which would provide a reasonable basis
 201 for recovery of such damages when the criteria in this section
 202 are applied.

203 (a) The claimant may move to amend her or his complaint to

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204 assert a claim for punitive damages as allowed by the rules of
 205 civil procedure in accordance with evidentiary requirements set
 206 forth in this section.

207 (b) The court shall conduct a hearing to determine whether
 208 there is sufficient admissible evidence submitted by the parties
 209 to ensure that there is a reasonable basis to believe that the
 210 claimant, at trial, will be able to demonstrate by clear and
 211 convincing evidence that the recovery of such damages is
 212 warranted under a claim for direct liability as specified in
 213 subsection (2), or a claim for vicarious liability as specified
 214 in subsection (3).

215 (c) The rules of civil procedure shall be liberally
 216 construed so as to allow the claimant discovery of evidence
 217 which appears reasonably calculated to lead to admissible
 218 evidence on the issue of punitive damages. ~~No~~ Discovery of
 219 financial worth may not shall proceed until ~~after~~ the pleading
 220 on concerning punitive damages is approved by the court
 221 permitted.

222 (2) A defendant may be held liable for punitive damages
 223 only if the trier of fact, by based on clear and convincing
 224 evidence, finds that a specific person or corporate defendant
 225 actively and knowingly participated in intentional misconduct or
 226 engaged in conduct that constitutes gross negligence and
 227 contributed to the loss, damages, or injury suffered by the
 228 claimant the defendant was personally guilty of intentional
 229 misconduct or gross negligence. As used in this section, the
 230 term:

231 (a) "Intentional misconduct" means that the defendant
 232 against whom punitive damages are sought had actual knowledge of

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233 the wrongfulness of the conduct and the high probability that
 234 injury or damage to the claimant would result and, despite that
 235 knowledge, intentionally pursued that course of conduct,
 236 resulting in injury or damage.

237 (b) "Gross negligence" means that ~~a the~~ defendant's conduct
 238 was so reckless or wanting in care that it constituted a
 239 conscious disregard or indifference to the life, safety, or
 240 rights of persons exposed to such conduct.

241 (3) In the case of vicarious liability of an individual,
 242 employer, principal, corporation, or other legal entity,
 243 punitive damages may not be imposed for the conduct of an
 244 employee or agent unless only if the conduct of the employee or
 245 agent meets the criteria specified in subsection (2) and an
 246 officer, director, or manager of the actual employer,
 247 corporation, or legal entity condoned, ratified, or consented to
 248 the specific conduct as provided in subsection (2)+

249 ~~(a) The employer, principal, corporation, or other legal~~
 250 ~~entity actively and knowingly participated in such conduct;~~

251 ~~(b) The officers, directors, or managers of the employer,~~
 252 ~~principal, corporation, or other legal entity condoned,~~
 253 ~~ratified, or consented to such conduct; or~~

254 ~~(c) The employer, principal, corporation, or other legal~~
 255 ~~entity engaged in conduct that constituted gross negligence and~~
 256 ~~that contributed to the loss, damages, or injury suffered by the~~
 257 ~~claimant.~~

258 (4) The plaintiff shall ~~must~~ establish at trial, by clear
 259 and convincing evidence, its entitlement to an award of punitive
 260 damages. The "greater weight of the evidence" burden of proof
 261 applies to a determination of the amount of damages.

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262 ~~(5) This section is remedial in nature and shall take~~
 263 ~~effect upon becoming a law.~~

264 Section 3. Section 400.024, Florida Statutes, is created to
 265 read:

266 400.024 Failure to satisfy a judgment or settlement
 267 agreement.-

268 (1) Upon the entry of an adverse final judgment arising
 269 from an award, including an arbitration award, from a claim of
 270 negligence or violation of residents' rights, in contract or
 271 tort, or from noncompliance with the terms of a settlement
 272 agreement arising from a claim pursuant to s. 400.023, as
 273 determined by a court or arbitration panel, the licensee, as
 274 defined in s. 400.023(2), shall pay the judgment creditor the
 275 entire amount of the judgment and all accrued interest within 60
 276 days after the date such judgment becomes final and subject to
 277 execution, unless otherwise mutually agreed to in writing by the
 278 parties. Failure to pay shall provide grounds for the agency to
 279 suspend a nursing home facility license, deny a license renewal
 280 application, or deny a change of ownership application as
 281 provided in this section.

282 (2) Upon notification of the existence of an unsatisfied
 283 judgment or settlement pursuant to subsection (1), the agency
 284 shall notify the licensee by certified mail that it is subject
 285 to disciplinary action unless, within 30 days after receipt of
 286 the notification, the licensee:

287 (a) Provides proof that the unsatisfied judgment or
 288 settlement has been paid in the amount specified;

289 (b) Provides proof of the existence of a payment plan
 290 mutually agreed upon by the parties in writing;

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291 (c) Furnishes the agency with a copy of a timely filed
 292 notice of appeal;

293 (d) Furnishes the agency with a copy of a court order
 294 staying execution of the final judgment; or

295 (e) Provides written proof from a court or an arbitration
 296 panel overseeing the action that it is seeking indemnification
 297 from an insurance carrier or any other party that it believes is
 298 required to pay the award.

299 (3) If, after 30 days, the licensee fails to demonstrate
 300 compliance in accordance with subsection (2), the agency shall
 301 issue an emergency order finding that the nursing home facility
 302 lacks financial ability to operate and that the agency is in the
 303 process of suspending the facility's license.

304 (4) Following or during the period of suspension, an
 305 individual or entity identified as having a controlling interest
 306 in the facility whose license is being suspended, as identified
 307 on the facility's licensee application, may not file an
 308 application for licensure of the facility at issue. Further, if
 309 a judgment at trial or arbitration occurs, the agency may not
 310 approve a change of ownership application to a related party
 311 until the requirements of subsection (1) or subsection (2) are
 312 met.

313 Section 4. Section 400.145, Florida Statutes, is amended to
 314 read:

315 (Substantial rewording of section. See
 316 s. 400.145, F.S., for present text.)

317 400.145 Copies of records of care and treatment of
 318 resident.-

319 (1) Upon receipt of a written request that complies with

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320 the federal Health Insurance Portability and Accountability Act
 321 of 1996 (HIPAA) and this section, a nursing home facility shall
 322 furnish to a competent resident or to a representative of that
 323 resident who is authorized to make requests for the resident's
 324 records under HIPAA or subsection (2) copies of the resident's
 325 paper and electronic records that are in possession of the
 326 facility. Such records must include any medical records and
 327 records concerning the care and treatment of the resident
 328 performed by the facility, except for progress notes and
 329 consultation report sections of a psychiatric nature. The
 330 facility shall provide the requested records within 14 working
 331 days after receipt of a request relating to a current resident
 332 or within 30 working days after receipt of a request relating to
 333 a former resident.

334 (2) Requests for a deceased resident's medical records
 335 under this section may be made by:

336 (a) Any person appointed by a court to act as the personal
 337 representative, executor, administrator, or temporary
 338 administrator of the deceased resident's estate.

339 (b) If a judicial appointment has not been made as provided
 340 in paragraph (a), any person designated by the resident to act
 341 as his or her representative in a legally valid will; or

342 (c) If there is no judicially appointed representative or
 343 person designated by the resident in a valid will, by only the
 344 following individuals:

345 1. A surviving spouse;

346 2. If there is no surviving spouse, a surviving child of
 347 the resident;

348 3. If there is no surviving spouse or child, a parent of

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349 the resident.

350 (3) All requests for a deceased resident's records made by
 351 a person authorized under:

352 (a) Paragraph (2) (a) must include a copy of the court order
 353 appointing such person as the representative of the resident's
 354 estate.

355 (b) Paragraph (2) (b) must include a copy of the will
 356 designating the person as the resident's representative.

357 (c) Paragraph (2) (c) must be accompanied by a letter from
 358 the person's attorney verifying the person's relationship to the
 359 resident and the absence of a court-appointed representative and
 360 will.

361 (4) A nursing home facility may charge a reasonable fee for
 362 the copying of resident records. Such fee may not exceed \$1 per
 363 page for the first 25 pages and 25 cents per page for each
 364 additional page. The facility shall allow a person who is
 365 authorized to act on behalf of the resident to examine the
 366 original records, microfilms, or other suitable reproductions of
 367 the records in its possession upon any reasonable terms imposed
 368 by the facility to ensure that the records are not damaged,
 369 destroyed, or altered.

370 (5) If a nursing home facility determines that disclosure
 371 of the records to the resident would be detrimental to the
 372 physical or mental health of the resident, the facility may
 373 refuse to furnish the record; however, upon such refusal, the
 374 resident's record shall, upon written request by the resident,
 375 be furnished to any other medical provider designated by the
 376 resident.

377 (6) A nursing home facility that in good faith and in

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378 reliance upon this section releases copies of records shall be
 379 indemnified by the requesting party, and may not be found to
 380 have violated any criminal or civil laws, and is not civilly
 381 liable to the resident, the resident's estate, or any other
 382 person for any damages resulting from such release.

383 (7) A nursing home facility is not required to provide
 384 copies of a resident's records requested pursuant to this
 385 section more than once per month, except that copies of
 386 physician reports in the resident's records must be provided as
 387 often as necessary to allow the effective monitoring of the
 388 resident's condition.

389 (8) A nursing home facility may not be cited by the agency
 390 through the survey process for any alleged or actual
 391 noncompliance with any of the requirements of this section.

392 Section 5. The amendments to ss. 400.023 and 400.0237 made
 393 by this act apply to causes of action accruing on or after the
 394 effective date of this act.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14
Meeting Date

Topic Nursing Home Reform

Bill Number SB 670
(if applicable)

Name Barbara DeLano

Amendment Barcode _____
(if applicable)

Job Title _____

Address 625 E. Brevard St

Phone 850-222-3969

Tallahassee FL 32308
City State Zip

E-mail barbaradelano1@
yahoo.com

Speaking: For Against Information

Representing FL NOW & FL Alliance for Retired Americans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic Nursing Home Litigation

Bill Number SB 670
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior Vice President

Address 516 W Adams St
Street
Tally FL 32301
City State Zip

Phone 224-7173

E-mail bbevis@afica

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/18/14
Meeting Date

Topic NURSING HOME LITIGATION

Bill Number CS/SB 670
(if applicable)

Name JACK McRAY

Amendment Barcode 437100
(if applicable)

Job Title _____

Address 200 W. COLLEGE ST. #304
Street

Phone 250-577-5127

TALH FL 32301
City State Zip

E-mail jmcra@aar.org

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic _____

Bill Number SB670
(if applicable)

Name Emmett Reed

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 307 W Park Ave
Street

Phone 850-224-3907

Tallahassee FL 32301
City State Zip

E-mail ereed@fhca.org

Speaking: For Against Information

Representing Florida Health Care Assoc

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)

3/18/13

Meeting Date

Topic Nursing Home Bill

Bill Number 670 (if applicable)

Name Brian Lee

Amendment Barcode (if applicable)

Job Title Exec. Director

Address PO Box 982 Street

Phone

City TLH State FL Zip 32302

E-mail brian@familiesforbettercare.com

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

Representing Families for Better Care

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

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.

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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)

3-18-14
Meeting Date

Topic Nursing Home Litigation

Bill Number CS/SB - 670
(if applicable)

Name Robby BERNAL

Amendment Barcode _____
(if applicable)

Job Title Dir. Business Development

Address 1812 Riggins Road
Street

Phone (850) 671-3700

TALLAHASSEE, FL. 32301
City State Zip

E-mail RBERNAL@LEADINGAGEFLORIDA.ORG

Speaking: For Against Information

Representing LEADING AGE FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic _____

Bill Number SB 670
(if applicable)

Name CHANTELLE FERNANDEZ

Amendment Barcode _____
(if applicable)

Job Title ADMINISTRATOR (BERKSHIRE MANOR)

Address 1255 NE 135 TH STREET
Street

Phone _____

NORTH MIAMI FL 33161
City State Zip

E-mail CFERNANDEZ@qchc.com

Speaking: For Against Information

Representing BERKSHIRE MANOR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

18 MAR 2014
Meeting Date

Topic _____

Bill Number 670
(if applicable)

Name PAUL JESS

Amendment Barcode 437100
(if applicable)

Job Title _____

Address 218 S MONROE ST
Street

Phone 224-9403

TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

AMENDMENT 437100

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18

Meeting Date

Topic Nursing home Bill Number 670
(if applicable)

Name ~~Carolyn Johnson~~ Carolyn Johnson Amendment Barcode _____
(if applicable)

Job Title ~~Policy Director~~ Policy Director

Address 134 S Bronaugh Phone _____
Street

City State Zip

E-mail _____

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic Nursing Home Tort Reform

Bill Number SB 670
(if applicable)

Name Matthew Van Name

Amendment Barcode _____
(if applicable)

Job Title Legislative Director

Phone 786-459-1798

Address _____
Street

E-mail matthew.vaname@1199.org

City _____ State _____ Zip _____

Speaking: For Against Information

Representing 1199SEIU FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014

Meeting Date

Topic Nursing Home Litigation

Bill Number SB 670
(if applicable)

Name Melanie Bostick

Amendment Barcode _____
(if applicable)

Job Title Vice President

Address 113 E. College Ave, Suite 300

Phone (850) 688-3183

Street

Tallahassee

FL

32301

City

State

Zip

E-mail melanie@libertypartnersfl.com

Speaking: For Against Information

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic _____

Bill Number SB 670
(if applicable)

Name Bobby Brantley

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 6659 Practor Rd
Street

Phone 850-521-0600

Tallahassee FL 32309
City State Zip

E-mail bbrantley@shutts.com

Speaking: For Against Information

Representing FL Life Care Residents Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14

Meeting Date

Topic Nursing Home Litigation

Bill Number SB670 strike All
(if applicable)

Name BRIAN BURSA

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 3812 Coconut Palm Drive

Phone 813-739-1900

Street

TAMPA

FL

33619

City

State

Zip

E-mail bbursa@lbbslaw.com

Speaking: For Against Information

Representing Florida Health Care Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/18

Meeting Date

Topic NURSING HOME LITIGATION

Bill Number 670 (if applicable)

Name BRECHT HEUCHAN

Amendment Barcode (if applicable)

Job Title LOBBYIST

Address 118 E SIXTH AVE

Phone (850) 702-0144

Street

TALLAHASSEE FL 32303

City

State

Zip

E-mail

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

Representing WILKES & MCHUGH, PA.

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 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 764

INTRODUCER: Senator Detert

SUBJECT: Hearsay

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Pre-meeting
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____

I. Summary:

SB 764 expands a hearsay exception currently in law. Current law considers as non-hearsay inconsistent statements made by the declarant, provided that the declarant:

- Testifies at trial and is subject to cross-examination; and
- The declarant made the out-of-court statement under oath subject to the penalty of perjury at a trial, hearing, deposition, or other proceeding.

This bill removes the requirement that prior inconsistent statements have been made while the declarant was under oath and subject to the penalty of perjury.

In effect, the bill provides that any inconsistent statement made by a person who testifies at trial or a hearing is admissible as evidence.

II. Present Situation:

A declarant is a person who makes a statement.¹ Hearsay is an out-of-court statement that is offered into evidence to prove the truth of the matter asserted.²

Hearsay evidence is generally inadmissible as evidence in a court hearing or trial. Courts note of particular importance the questioning of hearsay in criminal cases based on the constitutional right of the accused to cross-examine all witnesses appearing against him or her.³ Still, courts

¹ Section 90.801(1)(b), F.S.

² Section 90.801(1)(c), F.S.

³ The Confrontation Clause of the Sixth Amendment of the U.S. Constitution provides, in part “that in all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” Section 16, Art. I, of the State Constitution, provides, in part “In all criminal prosecutions the accused ... shall have the right to have compulsory process for witnesses, to confront at trial adverse witnesses” “Indeed, “the right to confront one’s accusers is a concept that dates back to Roman times.” *Crawford v. Washington*, 541 U.S. 36, 43 (2004).

permit the admission of hearsay as testimony if the statement falls under a firmly-rooted exception in law. Courts consider these exceptions to possess a circumstantial guarantee of trustworthiness.⁴

Florida's evidence code groups hearsay exceptions together as non-hearsay, hearsay exceptions where the availability of the declarant is immaterial, and hearsay exceptions where the declarant is unavailable.

Non-hearsay (s. 90.801, F.S.)

Current law contains an exception to hearsay based on it not being hearsay.

A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination and the statement is:

- Inconsistent with the declarant's testimony and given under oath subject to perjury at a trial, hearing, or other proceedings or in a deposition;
- Consistent with the declarant's testimony and offered to rebut an express or implied charge against the declarant of improper influence, motive, or recent fabrication; or
- A statement of identification of a person made after perceiving the person.⁵

Before Florida adopted the Evidence Code, prior inconsistent statements were inadmissible as substantive evidence. The 1978 Legislature based the provision of s. 90.801(2)(a), F.S., in part on Federal Rule of Evidence 801(d)(1), which requires a statement to have been given under oath, subject to perjury, at a trial, hearing, or deposition.⁶

Hearsay Exceptions Where the Availability of the Declarant is Immaterial (s. 90.803, F.S.)

This list of hearsay exceptions applies, regardless of whether the declarant is a witness.

Regardless of whether the declarant is available as a witness, current law includes the following statements as hearsay exceptions:

- Spontaneous Statement: A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when the statement is made under circumstances that indicate lack of trustworthiness;
- Excited Utterance: A statement relating to a startling event or condition made under the stress of excitement caused by the event or condition;
- Then-existing Mental, Emotional, or Physical Condition: A statement of then-existing state of mind, emotion, or physical sensation, when the state is an issue in the case;
- Statements for Purposes of Medical Diagnosis or Treatment: A statement that describes medical history, symptoms, pain or sensations reasonably pertinent to diagnosis or treatment;

⁴ 29 AM. JUR. 2D EVIDENCE S. 689

⁵ Section 90.801(2), F.S.

⁶ FRE Rule 801, 28 U.S.C.A.; *Corbett v. Wilson*, 48 So.3d 131, 134 (5th DCA 2010); *State v. Green*, 667 So.2d 756, 758-759 (1995).

- Recorded Recollection: A memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection, shown to have been made when the matter was fresh;
- Records of Regularly Conducted Business Activity: A memorandum, report, record, or data compilation made at or near the time by a person with knowledge;
- Absence of Entry in Records of Regularly Conducted Activity: Evidence that a matter is not included in the memoranda, reports, records, or data compilation if the matter was of the kind regularly made and preserved; and
- Public Records and Reports: Records, reports, statements reduced to writing, or data compilations, of public officers or agencies.⁷

Hearsay Exceptions Where the Declarant is Unavailable (s. 90.804, F.S.)

Hearsay exceptions that apply when the declarant is unavailable⁸ for a hearing or trial include:

- Statement of Former Testimony: Testimony given as a witness at another hearing of the same or different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding if the other party had an opportunity to develop the testimony through direct, cross, or redirect examination;
- Statement under Belief of Impending Death: A statement made by a declarant while reasonably believing death was imminent, regarding the cause of what the declarant believed to be impending death;
- Statement against Interest: A statement which, at the time of its making, was so far contrary to the declarant's pecuniary or proprietary interest or tended to subject the declarant to liability or render invalid a claim by the declarant against another, that a declarant wouldn't have made the statement unless he or she believed it to be true.
- Statement of Personal or Family History: A statement about the declarant's birth, adoption, marriage, divorce, parentage, ancestry, or other similar fact, even though the declarant had no means of acquiring personal knowledge of the matter stated.
- Statement by Deceased or Ill Declarant Similar to One Previously Admitted: A statement by a deceased or ill declarant about the same subject matter as another statement made by the declarant that has previously been offered by an adverse party and admitted in evidence, in an action brought against the personal representative, heir at law, assignee, legatee, devisee, or survivor of a deceased person; and
- Statement Offered Against a Party that Wrongfully Caused the Declarant's Unavailability: A statement offered against a party that wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

⁷ Section 90.803, F.S.

⁸ A witness is unavailable if he or she is exempted by a court ruling based on privilege; persists in refusing to testify concerning the subject matter of the declarant's statement despite a court order; has suffered a lack of memory of the subject matter of the statement so as to destroy the declarant's effectiveness as a witness during the trial; may not attend or testify at the hearing due to death or then-existing physical or mental infirmity; or is absent from the hearing, and the proponent of the statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means. Section 90.804(1), F.S.

Hearsay within Hearsay

Hearsay within hearsay, also known as double hearsay, is not automatically inadmissible. Instead, these statements are admissible provided that they each and separately conform to a hearsay exception.⁹

III. Effect of Proposed Changes:

SB 764 expands a hearsay exception currently in law. Current law provides a hearsay exception for inconsistent statements made by the declarant, provided that the declarant:

- Testifies at trial and is subject to cross-examination; and
- The declarant made the out-of-court statement under oath subject to the penalty of perjury at a trial, hearing, deposition, or other proceeding.

This bill removes the requirement that in order for a court to consider a statement as non-hearsay, the declarant be under oath and subject to perjury when they gave the inconsistent statement. This change significantly broadens the exception of non-hearsay to render admissible prior inconsistent statements made under any circumstances. These statements may be less reliable than statements given under oath.

The bill takes effect July 1, 2014.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

⁹ Section 90.805, F.S.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) indicates that the fiscal impact on expenditures cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial workload. The Office of the State Courts Administrator (OSCA) specifically noted an impact as follows:

Likely having a proportionately greater impact in relation to criminal matters, one might anticipate prosecutors will bring more cases to trial. This may be especially true of domestic violence and gang-related matters in which it is common for victim statements to change before trial.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Trial Lawyers Section of The Florida Bar expresses the following concerns about the bill:

- The requirement that a declarant be subject to perjury or oath insures that the witness understands the seriousness of the matter and guards against a lie.
- The current bill language does not contain any safeguards to ensure the reliability of an out-of-court statement. In the past, when the Legislature considered hearsay exceptions dealing with abuse of children and the elderly, those sections limited the exception to specific areas of need (child or elder abuse). The Legislature added notice requirements and limitations on use, and court review before admission.¹¹

VIII. Statutes Affected:

This bill substantially amends section 90.801 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

¹⁰ Office of the State Courts Administrator, *2014 Judicial Impact Statement SB 764* (February 10, 2014) (on file with the Senate Judiciary Committee).

¹¹ Trial Lawyers Section of the Florida Bar, *White Paper House Bill 429 and Senate Bill 764 ("Hearsay")* (on file with the Senate Judiciary Committee).



768396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (25) is added to section 90.803,
Florida Statutes, to read:

90.803 Hearsay exceptions; availability of declarant
immaterial.—The provision of s. 90.802 to the contrary
notwithstanding, the following are not inadmissible as evidence,
even though the declarant is available as a witness:

(25) DOMESTIC VIOLENCE.—A statement describing any act of



768396

12 domestic violence, as such is defined in s. 741.28, that was
13 made to enable law enforcement assistance to meet an ongoing
14 emergency.

15 Section 2. This act shall take effect upon becoming a law.

16

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

18 And the title is amended as follows:

19 Delete everything before the enacting clause

20 and insert:

21

A bill to be entitled

22

An act relating to hearsay; amending s. 90.803, F.S.;

23

providing that certain statements are an exception to

24

the hearsay rule and thus admissible; providing an

25

effective date.

By Senator Detert

28-00745A-14

2014764__

1 A bill to be entitled

2 An act relating to hearsay; amending s. 90.801, F.S.;
3 providing that a statement that is inconsistent with
4 the declarant's testimony is not hearsay regardless of
5 whether it was given under oath subject to the penalty
6 of perjury at a trial, hearing, or other proceeding or
7 in a deposition; providing an effective date.
8

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

10
11 Section 1. Subsection (2) of section 90.801, Florida
12 Statutes, is amended to read:

13 90.801 Hearsay; definitions; exceptions.—

14 (2) A statement is not hearsay if the declarant testifies
15 at the trial or hearing and is subject to cross-examination
16 concerning the statement and the statement is:

17 (a) Inconsistent with the declarant's testimony ~~and was~~
18 ~~given under oath subject to the penalty of perjury at a trial,~~
19 ~~hearing, or other proceeding or in a deposition;~~

20 (b) Consistent with the declarant's testimony and is
21 offered to rebut an express or implied charge against the
22 declarant of improper influence, motive, or recent fabrication;
23 or

24 (c) One of identification of a person made after perceiving
25 the person.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

MARCH 18, 2014

Meeting Date

Topic HEARSAY

Bill Number 764
(if applicable)

Name NANCY DANIELS

Amendment Barcode _____
(if applicable)

Job Title PUBLIC DEFENDER, 2nd CIRCUIT

Address 301 S. MONROE ST

Phone 850-606-1002

TALLAHASSEE FL 32301
City State Zip

E-mail NANCY.DANIELS@FLPD2.SON

Speaking: For Against Information

Representing FLORIDA PUBLIC DEFENDER ASSOC., INC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

MARCH 18, 2014

Meeting Date

Topic HEARSAY

Bill Number 764
(if applicable)

Name NANCY DANIELS

Amendment Barcode 768396
(if applicable)

Job Title PUBLIC DEFENDER, 2ND CIRCUIT

Address 301 S. MONROE ST.

Phone 850-606-1000

Street

TALLAHASSEE

FL

State

32301

Zip

E-mail NANCY.DANIELS@FLPD2.COM

Speaking: For Against Information

Representing FLORIDA PUBLIC DEFENDER ASSOC., INC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1242

INTRODUCER: Senator Simmons

SUBJECT: No Contact Orders

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1242 stipulates conditions that a court must include in a no contact order.

When a person is detained and charged with a crime, the accused is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions is that the defendant have no contact with the victim. This bill stipulates that if the court issues an order of no contact, the order is effective immediately and enforceable until the case is over or the court modifies the order.

The bill also requires the court to include specific prohibited acts in the order of no contact.

Prohibited acts include:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of violence against the victim;
- Intentionally making any unlawful threat, word, or act to do violence to the victim;
- Communicating with the victim directly or indirectly unless the order permits indirect contact;
- Intentionally coming within 100 feet of the victim's vehicle;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

II. Present Situation:

The Florida Constitution provides a presumption in favor of release for a defendant charged with a crime and detained pending resolution of the charge.¹ Section 14, Article I of the Florida Constitution provides, in part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime ... shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm ... , assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

The pretrial release provision in Florida Rule of Criminal Procedure 3.131 contains language identical to that of the state constitution.²

The terms “bail” and “bond” indicate any and all forms of pretrial release.³

Florida law stipulates guidelines for a court to use in ordering bail or detention and imposing reasonable conditions of pretrial release.⁴

The court has two purposes in setting bail of a defendant in a criminal case:

- Ensuring the appearance of the criminal defendant in court; and
- Protecting the community from unreasonable danger.⁵

In determining pretrial release, a court must consider:

- The nature and circumstances of the offense charged;
- The weight of evidence against the defendant;
- The defendant’s family ties, length of residence in the community, employment history, financial resources, and mental condition;
- The defendant’s past and present conduct, including convictions, previous flight to avoid prosecution, or failure to appear in court;
- The nature and probability of danger from release into the community;
- The source of funds used to post bail;
- Whether the defendant is already on release for another criminal charge or on probation, parole, or other release pending completion of a sentence;
- The street value of any drug or controlled substance connected to the criminal charge;
- The nature and probability of intimidation and danger to victims;
- Whether probable cause exists that the defendant committed a new crime while on pretrial release;
- Any other facts that the court considers relevant;

¹ Section 14, Art. 1, Florida Constitution.

² Fla. R. Crim. P. 3.131(a)

³ Section 903.011(1), F.S.

⁴ Section 903.046, F.S.; *State v. Blair*, 39 So.3d 1190, 1192 (Fla. 2010).

⁵ Section 903.046(1), F.S.

- Whether the crime charged is gang-related or alleged to be subject to enhanced punishment due to gang involvement under ch. 874, F.S.; and
- Whether the defendant is required to register as a sexual offender or predator.⁶

The court must impose, at minimum, statutory conditions of pretrial release. These conditions are that the defendant:

- Refrain from criminal activity of any kind;
- Refrain from any contact of any type with the victim, except through pretrial discovery; and
- Comply with all conditions of pretrial release.⁷

Section 741.31, F.S., imposes a first degree misdemeanor on a person who violates an injunction for protection against domestic violence. A court will consider a person to have violated a protective injunction if they commit any of the following:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of domestic violence against the victim;
- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.⁸

III. Effect of Proposed Changes:

When a person is detained and charged with a crime, the accused is brought before the court for a bail determination. If the court sets bail, the court may impose conditions of pretrial release. One of the conditions is that the defendant have no contact with the victim. This bill stipulates that when the court issues an order requiring a defendant to have no contact with the victim, the order is effective immediately and enforceable until the case concludes or the court modifies the order. In providing for immediate effect, it is unclear whether an order is effective immediately upon release, or immediately upon a court issuing an order, as these conditions are conditions that take place upon pretrial release from incarceration.

The bill also requires the court to include specific prohibited acts in the order of no contact. These acts are the same prohibited acts that constitute a violation of a protective injunction against domestic violence. These acts are:

- Refusing to vacate the dwelling that the parties share;
- Going to, or being within 500 feet of the victim's residence, school, employment, or a place frequented regularly by the victim and any named family or household member;
- Committing an act of violence against the victim;

⁶ Section 903.046(2), F.S.

⁷ Section 903.047(1), F.S.

⁸ Section 741.31(4)(a), F.S.

- Intentionally making an unlawful threat, word, or act to do violence to the victim;
- Phoning, contacting, or otherwise communicating with the victim directly or indirectly unless the order permits indirect contact;
- Knowingly and intentionally coming within 100 feet of the victim's vehicle, whether or not the vehicle is occupied;
- Defacing or destroying the victim's personal property, including a motor vehicle; or
- Refusing to surrender firearms or ammunition if ordered to do so by the court.

The court has authority to impose additional conditions of pretrial release in an order of no contact.

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of State Courts Administrator indicates that the fiscal impact of the bill cannot be accurately determined at this time. However, the OSCA expects to absorb any impact with existing resources.⁹

VI. Technical Deficiencies:

None.

⁹ Office of the State Courts Administrator, *2014 Judicial Impact Statement, SB 1242* (March 13, 2014); on file with the Senate Judiciary Committee.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 903.047 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Simmons

10-01271A-14

20141242__

1 A bill to be entitled
 2 An act relating to no contact orders; amending s.
 3 903.047, F.S.; providing for the effect and
 4 enforceability of orders of no contact as a part of
 5 pretrial release; specifying acts prohibited in a no
 6 contact order; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Paragraph (b) of subsection (1) of section
 11 903.047, Florida Statutes, is amended to read:
 12 903.047 Conditions of pretrial release.—
 13 (1) As a condition of pretrial release, whether such
 14 release is by surety bail bond or recognizance bond or in some
 15 other form, the defendant shall:
 16 (b) Refrain from any contact of any type with the victim,
 17 except through pretrial discovery pursuant to the Florida Rules
 18 of Criminal Procedure. An order of no contact shall be effective
 19 immediately upon the order of the court and enforceable until
 20 the originating offense is resolved or the order is modified by
 21 the court. For the purposes of this section, unless modified by
 22 the court, an order of no contact shall include the following
 23 prohibited acts:
 24 1. Refusing to vacate the dwelling that the parties share;
 25 2. Going to, or being within 500 feet of, the victim's
 26 residence, school, place of employment, or a specified place
 27 frequented regularly by the victim and any named family or
 28 household member;
 29 3. Committing an act of violence against the victim;

Page 1 of 2

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

10-01271A-14

20141242__

30 4. Committing any other violation of the order through an
 31 intentional unlawful threat, word, or act to do violence to the
 32 victim;
 33 5. Telephoning, contacting, or otherwise communicating with
 34 the victim directly or indirectly, unless the order specifically
 35 allows indirect contact through a third party;
 36 6. Knowingly and intentionally coming within 100 feet of
 37 the victim's motor vehicle, whether or not that vehicle is
 38 occupied;
 39 7. Defacing or destroying the victim's personal property,
 40 including the victim's motor vehicle; or
 41 8. Refusing to surrender firearms or ammunition if ordered
 42 to do so by the court.
 43 Section 2. This act shall take effect October 1, 2014.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic No Contact Orders Bill Number 1242
(if applicable)

Name Leisa Wiseman Amendment Barcode _____
(if applicable)

Job Title Dir. Communications & Govt. Affairs

Address 425 Office Plaza Dr Phone 850/425-2749
Street

Tally FL 32301 E-mail wiseman-leisa@fladv.org
City State Zip

Speaking: For Against Information

Representing FL Coalition Against Domestic Violence

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting. S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 926

INTRODUCER: Senator Simpson

SUBJECT: Wage Dispute Protection

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 926 creates s. 448.111, F.S., to govern county and state regulation of wage theft. The bill provides requirements for county ordinances regulating wage theft and authorizes county funding to assist in addressing claims of wage theft. The bill provides an exemption for county ordinances enacted by a certain date, but otherwise preempts further regulation of wage theft to the state.

The bill provides definitions for “legal services organization” and “wage theft.”

II. Present Situation:

Wage Theft

“Wage theft” is a general term sometimes used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Wage theft may occur if:

- An employee is paid below the state or federal minimum wage;
- An employee is paid partial wages or not paid at all;
- A non-exempt employee is not paid time and a half for overtime hours;
- An employee is required to work off the clock;
- An employee has their time card altered;
- An employee is misclassified as an independent contractor; or
- An employee does not receive a final paycheck after the termination of employment.

Employee Protection: Federal and State

A variety of federal and state laws protect employees from wage theft. Federal laws are administered by the United States Department of Labor, and may be enforced by federal

authorities or by private lawsuits.¹ The Fair Labor Standards Act (FLSA)² is the federal law most often used to address wage theft. State court actions to recover unpaid wages can be brought under Florida's minimum wage laws or through a common law breach of contract claim.

Federal Protection of Employees: Fair Labor Standards Act

The FLSA establishes a federal minimum wage, which is the lowest hourly wage that can be paid in the United States. Currently, the federal minimum wage is \$7.25 per hour.³ A state may set the rate higher than the federal minimum but not lower.⁴

The FLSA also requires employers to pay one and one-half times regular wages for any time worked in excess of 40 hours during a workweek.⁵ In addition, it establishes standards for recordkeeping and child labor. The FLSA applies to most classes of workers, but a major exception is that it does not apply to most employees of businesses doing less than \$500,000 in annual business.⁶

The FLSA provides for enforcement in three separate ways:

- Civil actions or lawsuits by the federal government;
- Criminal prosecutions by the United States Department of Justice; or
- Private lawsuits by employees or workers, which includes individual lawsuits and collective actions.

An employer who violates section 206 (minimum wage) or section 207 (maximum hours) of the FLSA is liable to the employee for the amount of the unpaid wages and may be liable for liquidated damages equal to the amount of the unpaid wages.

State Protection of Employees

State law provides for protection of employees, including anti-discrimination,⁷ work safety,⁸ and a state minimum wage. Article X, s. 24(c) of the Florida Constitution provides that "Employers shall pay Employees Wages no less than the Minimum Wage for all hours worked in Florida."

If an employer does not pay the state minimum wage, the Constitution provides that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld. If the employee prevails, in addition to the unpaid wages, a court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs. Further, any employer that willfully violates the minimum wage law is subject to

¹ Links to most federal laws and regulations that affect wage and hour issues are located at www.dol.gov/whd/reg-library.htm (last visited March 13, 2014).

² 29 U.S.C. ch. 8.

³The U.S. Department of Labor Wage and Hour Division provides information about the minimum wage and minimum wage laws at <http://www.dol.gov/whd/minimumwage.htm> (last visited February 28, 2014).

⁴ 29 U.S.C. s. 218(a).

⁵ 29 U.S.C. s. 207(a)(1).

⁶ The U.S. Department of Labor provides lists of the types of employees covered and exempt from the FLSA at <http://www.dol.gov/compliance/guide/minwage.htm#who> (last visited March 13, 2014).

⁷ Section 760.10, F.S.

⁸ Sections 448.20-26 and 487.2011-2071, F.S.

a fine of \$1,000 for each violation. The Attorney General is also empowered to bring a civil action to enforce the state's minimum wage laws.

The current state minimum wage is \$7.93 per hour, which is higher than the federal minimum wage.⁹ Federal law requires the payment of the higher of the federal or state minimum wages.¹⁰

Chapter 448, F.S., includes the Florida Minimum Wage Act, which implements the constitutional minimum wage requirements. Chapter 448, F.S., also prohibits an employer from retaliating against the employee for enforcing his or her rights, and it preserves the rights that an employee has under any collective bargaining agreement or employee contract.¹¹

In addition to remedies under state minimum wage laws, an employee may bring a common law breach of contract claim for unpaid wages. Section 448.08, F.S., allows the court to award attorney's fees and costs to the prevailing party in an action for unpaid wages.

Home Rule and Preemption

Article VIII, ss. 1 and 2 of the State Constitution establish two types of local governments: counties¹² and municipalities. Local governments have wide authority to enact various ordinances to accomplish their local needs.¹³ Under home rule powers, a municipality or county may legislate concurrently with the Legislature on any subject that has not been preempted to the state.

Preemption reserves the power to legislate on specific topics exclusively to the state and thereby abrogates the typical broad home-rule powers of local governments.¹⁴ Florida law recognizes two types of preemption: express and implied.¹⁵ Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.¹⁶

In the absence of express preemption a court may still find that the state's regulation of an area of law is so pervasive as to constitute implied preemption.¹⁷ However, courts "are careful in imputing intent on behalf of the Legislature to preclude a local government from using its home rule powers."¹⁸ A court will then consider whether strong public policy reasons exist for finding an area to be preempted by the Legislature.¹⁹ Regulation of public records is an example of an area where the courts have found implied preemption.²⁰

⁹ See http://www.floridajobs.org/minimumwage/Announcement_2014.pdf (last visited March 13, 2014).

¹⁰ 29 U.S.C. §218(a).

¹¹ Section 448.105, F.S.

¹² Florida has both charter and non-charter counties.

¹³ Article VIII of the State Constitution establishes the powers of charter counties, non-charter counties, and municipalities. Chapters 125 and 166, F.S., provide additional powers and constraints on counties and municipalities.

¹⁴ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006) (citations omitted).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

¹⁸ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010) (citations omitted).

¹⁹ *Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996) (citations omitted).

²⁰ See *Tribune Co. v. Cannella*, 458 So. 2d 1075 (Fla. 1984).

Currently, there is no express preemption of the enforcement of wage laws to the federal or state government. It is unclear whether a court would find that the existing laws regarding employee wages are an implied preemption of the subject.

Local Regulation of Wage Theft

Florida's two most populous counties, Miami-Dade County and Broward County, have passed ordinances dealing with wage theft claims. Alachua County has also passed a wage theft ordinance.²¹ In addition, Palm Beach County has passed a resolution condemning wage theft and has created a program for wage theft claimants to be represented by the Legal Aid Society of Palm Beach County.²²

Miami-Dade's ordinance,²³ passed in February 2010, was one of the first local wage theft ordinances in the United States. The ordinance is administered by the county's Department of Small Business Development (SBD) and provides a local process for employees to file claims for unpaid wages. The process cannot be used if the employee has made a claim under state or federal law; however, a claim under the ordinance does not preclude later claims under state or federal law. The ordinance only applies to claims for payment of more than \$60 in wages, and claims must be filed within one year after the last day the unpaid work was performed. Claims that are not resolved before the hearing are heard by a hearing examiner who is deemed to be qualified to hear wage theft matters. If the hearing officer determines by a preponderance of the evidence that back wages are owed, the employee must be awarded three times the amount of the wages found to be owed and the employer must pay the county's administrative processing costs and costs of the proceeding. If the employee is not successful, neither party reimburses the county's costs.

Broward County's ordinance took effect on January 2, 2013.²⁴ It provides a process that is similar to Miami-Dade County's ordinance but with some significant differences. These differences include:

- A claim cannot be considered unless the employee gave the employer written notice of the failure to pay wages within 60 days after the date the wages were due and the employer had a minimum of 15 days to pay or resolve the claim before it was filed.
- A successful claimant is awarded double the amount of unpaid wages, rather than triple wages as in the Miami-Dade County ordinance.
- In addition to paying the county's costs as is required by the Miami-Dade County ordinance, a losing employer is also required to reimburse the employee for reasonable costs and attorney's fees incurred in connection with the hearing.

²¹ Kelcee Griffis, Gainesville Sun, *County commission passes wage-theft ordinance Tuesday*, THE INDEPENDENT FLORIDA ALLIGATOR, April 17, 2013, http://www.alligator.org/news/local/article_7074e0f8-a710-11e2-bf3b-0019bb2963f4.html (last visited March 13, 2014).

²² Andy Reid, *Palm Beach County renews compromise wage theft effort*, SUN-SENTINEL, January 15, 2014, http://articles.sun-sentinel.com/2014-01-15/news/sfl-palm-beach-county-renews-compromise-wage-theft-effort-20140115_1_wage-county-commission-low-income-workers (last visited March 13, 2014).

²³ Miami Dade County, Fla., Code ch. 22.

²⁴ Broward County Code of Ordinances, ch. 20½, Non-Payment of Earned Wages.

- Like the Miami-Dade County ordinance, an unsuccessful claimant is not required to pay either the employer's or the county's costs. However, under the Broward County ordinance the employee must be ordered to pay the employer's reasonable costs and attorney's fees and the county's costs if the hearing officer finds that the claim had no basis in law or fact.

Alachua County's ordinance was implemented on January 1, 2014. It is similar to the Broward ordinance in several respects. It also provides that an employee must contact an employer regarding a claim within 60 days after the date that wages were due to be paid and allow the employer 15 days to respond. The ordinance awards twice the amount of unpaid wages to a successful claimant. However, the Alachua County ordinance requires that a complaint be filed within 180 days after the date that wages were due to be paid (as opposed to one year). The Alachua County ordinance does not provide a minimum dollar threshold that claims must meet in order to be filed.

Palm Beach County has also considered passing a wage theft ordinance since a proposed ordinance was brought before the commissioners in February 2011. Following that time, Palm Beach County supported a Wage Recovery Program administered by the Legal Aid Society of Palm Beach County. The Legal Aid Society program assists employees in collecting unpaid wages through existing civil or administrative remedies. On January 11, 2014, the commission passed a resolution renewing a contract for \$104,000 with the Legal Aid Society to manage the Wage Recovery Program.²⁵ According to the society, the program has recovered approximately \$200,000 in back wages.²⁶

Small Claims Court Costs

Fees for filing an action in Small Claims Court, which is a part of the County Court, are set by s. 34.041(1)(a), F.S., as follows:

- \$50 for claims less than \$100;
- \$75 for claims from \$100 - \$500;
- \$170 for claims from \$500.01 - \$2500; and
- \$295 for claims of more than \$2,500.

In addition to the filing fee, the claimant must serve the employer with notice of the suit. Process may be served on a Florida defendant by certified mail, which costs approximately \$6. If that is unsuccessful, process must be served by the sheriff or an authorized process server. The cost for service by the sheriff is \$40 as provided in s. 30.231(1)(a), F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 448.111, F.S., to authorize county ordinances regulating wage theft so long as the ordinances meet certain requirements. If a county determines that local regulation of wage theft is necessary, it may adopt an ordinance with the following provisions:

²⁵ Andy Reid, *Palm Beach County renews compromise wage theft effort*, SUN-SENTINEL (January 15, 2014), http://articles.sun-sentinel.com/2014-01-15/news/sfl-palm-beach-county-renews-compromise-wage-theft-effort-20140115_1_wage-county-commission-low-income-workers (last visited March 13, 2014).

²⁶ *Id.*

- The county partners with a local legal services organization to establish a process for addressing wage theft claims by the legal services organization.
- Upon a request for assistance by an individual that has experienced wage theft, the legal services organization shall determine whether the individual has a bona fide claim.
- The legal services organization notifies the individual's employer and provides the employer with an opportunity to resolve the matter.
- The legal services organization works with the employee and employer to resolve the issue informally and quickly. Informal resolution may include obtaining attorney fees and costs from the employer.
- The legal services organization shall file court actions as appropriate and refer unresolved claims to local pro bono or other counsel for resolution.
- The county establishes a reporting mechanism to receive regular reports regarding the legal services organization's work on cases of wage theft.

A legal services organization is defined in the bill as "an organization that provides free or low-cost legal services to qualified persons and meets the minimum standards established by The Florida Bar for providing such services, including a legal practice clinic operated by an accredited Florida law school." A legal services organization qualifies as "local" under the bill if it is located within the relevant county or within an adjoining county.

The bill defines "wage theft" as "an illegal or improper underpayment or nonpayment of an individual employee's wage, salary, commission, or other similar form of compensation within a reasonable time after the date on which the employee performed the work to be compensated."

The bill authorizes counties to dedicate county funds to assist the legal services organization in addressing claims of wage theft.

The bill expressly preempts to the state any other regulation of wage theft by a county, municipality, or other political subdivision that exceeds the provisions described above. However, the bill provides an exemption from preemption for local ordinances governing wage theft that were enacted on or before January 1, 2014.

Section 2 provides that the bill shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As noted in the discussion of the effects of the bill, the State Constitution sets forth certain requirements and remedies regarding minimum wage claims. This bill cannot be interpreted to preclude an employee from exercising those state constitutional rights, which are currently implemented in ch. 448, F.S.

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

None.

B. Private Sector Impact:

This bill will preclude employees from pursuing the resolution of wage theft claims before local code enforcement bodies. This bill will allow employers to defend wage theft claims in courts instead of before local code enforcement bodies.

C. Government Sector Impact:

To the extent that the bill will increase the number of wage theft claims in courts, the bill may increase costs to the judiciary as a result of the increased number of claims. It is unknown how many additional claims will be filed therefore, the net impact on judicial workload cannot be predicted according to the Office of the State Courts Administrator.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 448.111 of the Florida Statutes.

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

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

None.

²⁷ Office of the State Courts Administrator, *2014 Judicial Impact Statement, SB 926* (March 11, 2014).

B. Amendments:

None.

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



136984

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
03/18/2014	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Between lines 74 and 75

insert:

(6) PENALTY.—A person who commits wage theft under this section commits theft pursuant to s. 812.014.

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

And the title is amended as follows:

Delete line 9

and insert:



136984

12
13
14

date; providing that a person who commits wage theft
commits theft under s. 812.014, F.S.; providing an
effective date.

By Senator Simpson

18-01390-14

2014926__

A bill to be entitled

An act relating to local regulation of wage theft; creating s. 448.111, F.S.; defining terms; providing requirements for county ordinances regulating wage theft; authorizing county funding to assist in addressing claims of wage theft; preempting further regulation of wage theft to the state; providing an exception for an ordinance enacted by a specified date; providing an effective date.

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

Section 1. Section 448.111, Florida Statutes, is created to read:

448.111 Local regulation of wage theft.-

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

(a) "Legal services organization" means an organization that provides free or low-cost legal services to qualified persons and meets the minimum standards established by The Florida Bar for providing such services, including a legal practice clinic operated by an accredited Florida law school.

(b) "Wage theft" means an illegal or improper underpayment or nonpayment of an individual employee's wage, salary, commission, or other similar form of compensation within a reasonable time after the date on which the employee performed the work to be compensated. A wage theft occurs when an employer fails to pay a portion of the wages, salary, commissions, or other similar forms of compensation due to an employee within a reasonable time after the date on which the employee performed

Page 1 of 3

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

18-01390-14

2014926__

the work, according to the current applicable rate and the pay schedule of the employer established by policy or practice.

(2) LOCAL ORDINANCES; REQUIRED PROVISIONS.-Upon the determination by a county that a local solution to wage theft is necessary, the county may adopt a local ordinance that includes the following provisions:

(a) The county shall partner with a local legal services organization for the purpose of establishing a local process through which claims of wage theft shall be addressed by the legal services organization. The county may partner with a legal services organization located within the county itself or within an adjoining county.

(b) An individual who has experienced wage theft may contact the legal services organization for assistance in recovering wages. The legal services organization shall determine whether the individual has a bona fide claim for unpaid wages.

(c) The legal services organization shall notify the employer and provide the employer with an opportunity to resolve the matter of unpaid wages in the manner deemed most appropriate to each claim. The notification may occur by telephone, written correspondence, or any other means deemed appropriate by the legal services organization.

(d) The legal services organization shall work with the employee and employer to resolve the issue informally but expeditiously. The informal resolution may include obtaining attorney fees and costs from the employer.

(e) The legal services organization shall file court actions as appropriate and refer unresolved claims to local pro

Page 2 of 3

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

18-01390-14

2014926__

59 bono or other counsel for resolution.

60 (f) The county shall establish a reporting mechanism
61 through which the county receives regular reports regarding the
62 legal services organization's work on cases of wage theft. The
63 county may require monthly, quarterly, or annual reports, or any
64 combination thereof.

65 (3) FUNDING.—The county may dedicate county funds to assist
66 the legal services organization in addressing claims of wage
67 theft.

68 (4) PREEMPTION.—Except as provided in subsection (5), any
69 regulation of wage theft by a county, municipality, or other
70 political subdivision that exceeds the provisions in this
71 section is preempted to the state.

72 (5) CURRENT ORDINANCES.—Notwithstanding subsection (4), a
73 local ordinance governing wage theft which was enacted on or
74 before January 1, 2014, is not preempted by this section.

75 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.18.14

Meeting Date

Topic Wage Theft

Bill Number 926

Name Sarah Busk

(if applicable)

Amendment Barcode

(if applicable)

Job Title

Address 215 S Monroa

Phone 222.8400

Street

TLT FL 32301

City

State

Zip

E-mail sjb@cardenas

partners.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

8/18

Meeting Date

Topic wage protection

Bill Number 926
(if applicable)

Name Carolyn Johnson

Amendment Barcode _____
(if applicable)

Job Title Policy Director

Address _____
Street

Phone _____

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FL Chamber of Commerce

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)

4/18/14

Meeting Date

Topic Local Regulation Wage Theft

Bill Number 926

(if applicable)

Name Richard Watson

Amendment Barcode

(if applicable)

Job Title Legislative Counsel

Address P.O. Box 16038

Phone 850 222-0000

Street

Jacksonville FL 32302

E-mail rick@rwatsonand

City

State

Zip

associates.com

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

Representing Associated Builders and Contractors of FL

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.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic Wage Theft.

Bill Number 926
(if applicable)

Name RICHARD GENTRY

Amendment Barcode _____
(if applicable)

Job Title _____

Address 2305 BRAEBURN CIR.

Phone 850-251-1837

Street

THH FL 32309

City

State

Zip

E-mail RGentry@comcast.net

Speaking: For Against Information

Representing Economic Council of Palm Beach Co.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 18, 2014
Meeting Date

Topic LOCAL Regulation of Wage Theft

Bill Number SB 926
(if applicable)

Name RICHARD TURNER

Amendment Barcode _____
(if applicable)

Job Title V.P. GOVERNMENT RELATIONS

Address 230. S. ADAMS ST.
Street

Phone 850. 224. 2250

TALLAHASSEE FL 32301
City State Zip

E-mail rturner@frla.org

Speaking: For Against Information

Representing FLORIDA RESTAURANT & LODGING ASSOC

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)

3/18/2014

Meeting Date

Topic Wage Theft Bill Number 926
(if applicable)

Name Warren Husband Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 South Monroe Street, Suite 505 Phone (850)205-9000
Street

Tallahassee FL 32301 E-mail whh@metzlaw.com
City State Zip

Speaking: For Against Information

Representing Florida Restaurant & Lodging Association (FRLA)

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/18/2014

Meeting Date

Topic Wage Theft

Bill Number 926

(if applicable)

Name Warren Husband

Amendment Barcode

(if applicable)

Job Title

Address 215 South Monroe Street, Suite 505

Phone (850)205-9000

Street

Tallahassee

FL

32301

E-mail whh@metzlaw.com

City

State

Zip

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

Representing Associated General Contractors of Florida (AGC)

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/18/14
Meeting Date

Topic Local Regulation of Wage Theft

Bill Number 926
(if applicable)

Name Samantha Padgett

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 227 S. Adams St.
Street

Phone 850-222-4682

Tallahassee FL 32301
City State Zip

E-mail Samantha@fla.org

Speaking: For Against Information

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 18 / 14
Meeting Date

Topic Wage Theft

Bill Number 526
(if applicable)

Name Rock Templin

Amendment Barcode Amendment
(if applicable)

Job Title Legislative and Political Director

Address 135 S. Monroe
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic Wage Theft

Bill Number SB 926
(if applicable)

Name Ralph Dallas Jr.

Amendment Barcode _____
(if applicable)

Job Title _____

Address 899 N SR 19

Phone 386-538-1286

^{Street}
Palatka FL 32177
_{City} _{State} _{Zip}

E-mail RDallasJr@hofmail.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

MARCH 18, 2014
Meeting Date

Topic Wage Theft

Bill Number SB 926
(if applicable)

Name CALVIN T. COAN

Amendment Barcode _____
(if applicable)

Job Title Mechanix Mill Right

Address 1006 Leno Rd
Street

Phone 904-284-4714

Green Cove Springs FL 32043
City State Zip

racoon5761@bellsouth.net
E-mail ~~racoon5761@bellsouth.net~~

Speaking: For Against Information

Representing Rob Bradley

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Wage Theft

Bill Number SB 926
~~SB 110 926~~
(if applicable)

Name Karen Houston

Amendment Barcode _____
(if applicable)

Job Title _____

Address 237 Lemon St.
Street

Phone 321-205-6989

Cocoa FL. 32922
City State Zip

E-mail mzkah@aol.com

Speaking: For Against Information

Representing myself

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)

3/18

Meeting Date

Topic wage Protection

Bill Number 926
(if applicable)

Name Cardyn Johnson

Amendment Barcode 136984
(if applicable)

Job Title Police Director

Address 136 S Bronough

Phone _____

Street

Tallahassee

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 18, 2014
Meeting Date

Topic Wage Theft

Bill Number SB 926
(if applicable)

Name Richard Turner

Amendment Barcode 136984
(if applicable)

Job Title General Counsel

Address 230 S. Adams
Street

Phone 850 224-2250

Tallahassee FL 32301
City State Zip

E-mail RTurner@FRLA.org

Speaking: For Against Information

Representing Florida Restaurant & Lodging Assn.
Amendment

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)

3/18/14
Meeting Date

Topic Wage Theft

Bill Number 926
(if applicable)

Name Samantha Padgett

Amendment Barcode 136984
(if applicable)

Job Title General Counsel

Address 227 S. Adams St.
Street
Tallahassee FL 32301
City State Zip

Phone 222-4082

E-mail Samantha@flf.org

Speaking: For Against Information

Representing Florida Retail Federation

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)

3/18
Meeting Date

Topic Wage Theft

Bill Number _____
(if applicable)

Name Brenster Benis

Amendment Barcode 136984
(if applicable)

Job Title Senior VP

Address 516 N Adams
Street

Phone _____

Talig
City State Zip

E-mail _____

Speaking: For Against Information

Representing AIF

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)

3/18/2014
Meeting Date

Topic WAGE THEFT

Bill Number SB-926
(if applicable)

Name JAVIER ALMAZAN

Amendment Barcode _____
(if applicable)

Job Title LABOR ORGANIZER

Address 125 N.W. 2ND AVE

Phone 561-859-3889

South Bay FL 33493
City State Zip

E-mail JAVIERALMAZAN@AOL.COM

Speaking: For Against Information

Representing WORKING FAMILIES OF FLORIDA,

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic Wage theft

Bill Number 926
(if applicable)

Name Arthur Rosenberg

Amendment Barcode # 136984
(if applicable)

Job Title Attmy

Address _____

Phone 850-509-2085

Street Miami State F Zip 33137

E-mail arthur@floridalegal

Speaking: For Against Information

Amendment service

Representing Florida Legal Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

Meeting Date _____

Topic Wage Theft Amendment

Bill Number 926
(if applicable)

Name Greg Thompson

Amendment Barcode _____
(if applicable)

Job Title _____

Address 308 Flagler St

Phone _____

Street
Clewiston Fl. 33440
City *State* *Zip*

E-mail _____

Speaking: For Against Information

Representing Working 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.

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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)

3/18/14
Meeting Date

Topic wage theft Bill Number SB 926
Name Frank C. Onti's Amendment Barcode _____ (if applicable)
Job Title Pres. of the IAM/machinists union (if applicable)
Address 1321 NW 114 Ave Phone 954-224-4477
Pembroke Pines FL 33026 E-mail UNIONIZERC@
City State Zip 901.com
Speaking: For Against Information

Representing IAM & AW wave my time in opposition

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic WAGE Theft

Bill Number 926
(if applicable)

Name James Ingle

Amendment Barcode _____
(if applicable)

Job Title Electrician

Address 3509 NW 22nd Dr

Phone 901-483-4800

Street

Gainesville FL 32605

E-mail JWCWI@yahoo.com

City

State

Zip

Speaking: For Against Information

Representing Alachua County WAGE Theft Task Force

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03.18.14

Meeting Date

Topic Wage Theft

Bill Number 926
(if applicable)

Name JoAnne Alvarez

Amendment Barcode _____
(if applicable)

Job Title 911 Operator

Address 16659 SW 6 Street

Phone 954 431-7564

Street

Pembroke Pines, FL 33027

City

State

Zip

E-mail kajake@bellsouth.net

Speaking: For Against Information

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic WAGE Theft Bill (SB 926) Bill Number (SB 926)
(if applicable)

Name SANDRA MALDONADO-ROSS Amendment Barcode _____
(if applicable)

Job Title TEACHER

Address 6919 Compass Ct. Phone 407-694-6481
Street

Orlando, FL 32810 E-mail Sandra.rossrec@aol.com
City State Zip

Speaking: For Against Information ⁴ I waive my time in opposition.

Representing self

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic STEALING of WAGES

Bill Number 926
(if applicable)

Name GAIL MARIE PERRY

Amendment Barcode _____
(if applicable)

Job Title CHAIR

Address Po Box 1766

Phone 954/850 4053

Street
POMPANO BCH FLA 33061
City State Zip

E-mail workingfolk@hotmail.com
COUNCIL of FLORIDA

Speaking: For Against Information

Representing COMMUNICATIONS WORKERS of AMERICA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/18/14
Meeting Date

Topic WAGE THEFT

Bill Number SB 926
(if applicable)

Name O.D. ELLIOTT

Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE LIAISON, FSALC

Address 101 - 78th AVE NE
Street

Phone 727-608-6027

ST. PETE. FL. 33702
City State Zip

E-mail adebr1477@adl.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

18 MAR 14

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

Meeting Date

Topic WAGE THEFT

Bill Number SB 924
(if applicable)

Name WILLIAM THEODORE

Amendment Barcode _____
(if applicable)

Job Title APR CRATE MECHANIC

Address 9002 TARA WYND CT
Street

Phone 813 924 3825

ODESSA FL 33556
City State Zip

E-mail WILLIAMTHEODORE@MSA.CORP

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014

Meeting Date

Topic Wage Theft

Bill Number SB 926
(if applicable)

Name Mike Phillips

Amendment Barcode _____
(if applicable)

Job Title Father / Grandfather

Address 6084 Kocol Lane

Phone 321-652-2089

Street

Cocoa

FL

32927

City

State

Zip

E-mail mphilips185@cfi.fl.com

Speaking: For Against Information

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14
Meeting Date

Topic WAGE THEFT

Bill Number SB 926
(if applicable)

Name ALBERT E. CARROLL

Amendment Barcode _____
(if applicable)

Job Title LEGISLATIVE LIAISON

Address 5369 PARK BLVD

Phone 727-742-1640

Street

PINELLAS PARK FL 33781

City

State

Zip

E-mail FLMAILMAN3@AOL.COM

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/2014

Meeting Date

Topic WAGE THEFT

Bill Number SB 926
(if applicable)

Name RAYMOND DAVIS

Amendment Barcode _____
(if applicable)

Job Title Retired

Address 643 POINSETTIA DR.
Street

Phone 727-475-8512

LARGO FL. 35770
City State Zip

E-mail DAVISRC112@OL.COM

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic Wage Theft

Bill Number SB 924
(if applicable)

Name Carolyn R. Davis

Amendment Barcode _____
(if applicable)

Job Title Retired

Address 643 Poinsettia Dr.

Phone 727-475-8512

Street

Largo

FL

State

33770

Zip

E-mail davisrc11@aol.com

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic WAGE Theft

Bill Number SB 926
(if applicable)

Name GEORGE SPENCER

Amendment Barcode _____
(if applicable)

Job Title CPA - Attorney

Address 1668 BISCAYNE BAY

Phone (904) 716-6063

Street

Jacksonville FL 32218

City

State

Zip

E-mail gspencerCPA@aol.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic Wage theft

Bill Number SB 926
(if applicable)

Name Greg Thompson

Amendment Barcode _____
(if applicable)

Job Title Power Plant Op.

Address 308 Flagler St.

Phone _____

Clewiston Florida 33440
City State Zip

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/18
Meeting Date

Topic Wage Theft
Name Steve Hall

Bill Number SB 926
(if applicable)
Amendment Barcode _____
(if applicable)

Job Title _____

Address 2619 CORRINE DR.
Street
Ocala FL 32807
City State Zip

Phone _____
E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

Meeting Date

Topic Wage theft

Bill Number SB 926
(if applicable)

Name Robert Miller

Amendment Barcode _____
(if applicable)

Job Title Business Representative

Address 1921 Ridgely Road
Street

Phone 321-652-2182

Clewiston Fl. 33440
City State Zip

E-mail rmiller12855@gmail.com

Speaking: For Against Information

Representing Robert Miller

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)

3-18-14

Meeting Date

Topic WAGE THEFT

Bill Number SB 0926
(if applicable)

Name ANTHONY MARCIANO

Amendment Barcode _____
(if applicable)

Job Title SERGEANT (SHERIFF)

Address 10221 DORCHESTER DR.

Phone 954 632 6878

Street

BOCA RATON FL 33428

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing MYSELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic Wage theft

Bill Number SB 926
(if applicable)

Name Robert Livingston

Amendment Barcode _____
(if applicable)

Job Title Crane operator

Address 274 Galbraith Av,

Phone 904-669-8699

Street

Oak Hill Fl. 32759

City

State

Zip

E-mail r.livingston7@dfi.rr.com
r.livingston7@dfi.rr.com

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-2014

Meeting Date

Topic Wage Theft

Bill Number SB 926
(if applicable)

Name LINDA DONAHUE

Amendment Barcode _____
(if applicable)

Job Title Sec TREAS TAMAW

Address 5235 FLORIDA PALM AVE
Street

Phone 321 544-0213

Co Coa FL 32927
City State Zip

E-mail BOO LMD @ AOL. Com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-18-14
Meeting Date

Topic Wage theft

Bill Number SB926
(if applicable)

Name Nina Giransden

Amendment Barcode _____
(if applicable)

Job Title Correctional Officer Sgt

Address 5235 Florida Palm Ave

Phone 321-501-3597

Street

Cocoa

City

FL.

State

32927

Zip

E-mail wkndg72@yahoo.com

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-18-14

Meeting Date

Topic Wage Theft

Bill Number ~~9246~~ 926
(if applicable)

Name _____

Amendment Barcode _____
(if applicable)

Job Title SBBC-School Food Service Manager

Address 2265 S.W. 33rd Way

Phone 954-683-7312

Street

Ft. Lauderdale

FL

33312

City

State

Zip

E-mail gayle.roberts@browardschools.com

Speaking: For Against Information

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic wage theft

Bill Number SB 926
(if applicable)

Name Vincent L. Graham

Amendment Barcode _____
(if applicable)

Job Title Deputy Sheriff

Address 1007 W. Jasmine Lane.
Street

Phone 459 614-8442

N. Lauderdale FL 33068
City State Zip

E-mail cowboys1471@gmail.com

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-18-14

Meeting Date

Topic WAGE THEFT Bill Number 926
(if applicable)

Name JAMES PRESTON Amendment Barcode _____
(if applicable)

Job Title STATE PRESIDENT FRATERNAL ORDER OF POLICE

Address 242 OFFICE PLAZA Phone 813 495 3959
Street

TALLAHASSEE FL 32301
City State Zip

E-mail PRESTON@FLORIDASenateFOP.ORG

Speaking: For Against Information

Representing FOP

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)

3/18/14

Meeting Date

Topic WAGE THEFT

Bill Number SB926

Name ~~WAGE THEFT~~ CARLOS RAMOS

Amendment Barcode _____ (if applicable)

Job Title _____

Address 2825 SW 3rd AVE

Phone _____

Street MIAMI, FL 33129
City State Zip

E-mail _____

Speaking: For Against Information

Representing SELF - I WAIVE MY TIME IN OPPOSITION

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)

3-18-14
Meeting Date

Topic LOAGE THEFT

Bill Number SB-926
(if applicable)

Name JACK PIETTINECK

Amendment Barcode _____
(if applicable)

Job Title BUSINESS REPRESENTATIVE

Address 12835 SUGAR BLUFF RD
Street

Phone 321-436-9130

CHELMONT, FLORIDA 34715
City State Zip

E-mail jpiettineck@bc78.org

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3/18/14
Meeting Date

Topic WAGE THEFT

Bill Number 926
(if applicable)

Name Arthur Rosenberg

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 3000 Biscayne BLVD
Street
Miami, FL 33137
City State Zip

Phone 750-509-2085

E-mail arthur@floridalegal.org

Speaking: For Against Information

Representing Florida Legal Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14
Meeting Date

Topic Wage Theft

Bill Number SB 926
(if applicable)

Name Rich Templin

Amendment Barcode _____
(if applicable)

Job Title Legislative & Political Director

Address 135 S. Monroe

Phone 850-224-6926

Street

Tallahassee

FL

32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3-18-14
Meeting Date

Topic Wage Theft
Name Barbara DeBane
Job Title _____

Bill Number SB 924 (if applicable)
Amendment Barcode _____ (if applicable)

Address 625 E. Bernard St
Tallahassee FL 32308
City State Zip

Phone 850-222-3969
E-mail barbaradebane1@yahoo.com

Speaking: For Against Information

Representing FL NOW

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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APPEARANCE RECORD

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3-18-14

Meeting Date

Topic Wage Theft

Bill Number 926
~~SB 110~~
(if applicable)

Name Roger Simmermaker

Amendment Barcode _____
(if applicable)

Job Title _____

Address 13112 Aronomink Lane

Phone 407-234-4626

Orlando FL 32828
City State Zip

E-mail buyamerican1@comcast.net

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
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3-18-14

Meeting Date

Topic SB-926

Bill Number 926
~~SB-110~~
(if applicable)

Name Murray Caldwell

Amendment Barcode _____
(if applicable)

Job Title Logistics coordinator

Address 146 E. Park Ln.

Phone 321-292-4258

City Cocoa State _____ Zip 32931

E-mail MURRAY@AOL.COM

Speaking: For Against Information

Representing I AM CC 2061 Dist 166

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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3-18-14

Meeting Date

Topic SB-926

Bill Number 726
~~SB 110~~
(if applicable)

Name ~~Wage~~ bill Jeff Jobs

Amendment Barcode _____
(if applicable)

Job Title Facilities Mechanic

Address 3747 Canberra Ct.

Phone 321-360-2531

Street

Titusville Fl. 32780

City

State

Zip

E-mail jestes15@yahoo.com

Speaking: For Against Information

Representing I AM U2061 Dist 166

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/18/14
Meeting Date

Topic Wage Theft

Bill Number 926
(if applicable)

Name Francesca Menes

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____

Phone _____

Miami, FL
City State Zip

E-mail _____

Speaking: For Against Information

Representing WAGE THEFT Task Force

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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3/18/14
Meeting Date

Topic Wage Theft

Bill Number 926
(if applicable)

Name Karen Woodall

Amendment Barcode _____
(if applicable)

Job Title _____

Address 579 E. Coll St.

Phone 850-321-9386

Tallahassee, FL 32301
City State Zip

E-mail fctep@yahoo.com

Speaking: For Against Information

Representing Florida Center for Fiscal + Economic Policy, Farmworker's Self-Help, Fla. New Negro

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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3-18-14
Meeting Date

Topic WAGE THEFT

Bill Number SB 926
(if applicable)

Name LARRY DUPREE

Amendment Barcode _____
(if applicable)

Job Title _____

Address 8301 N. RIVER HIGHLAND DL
Street

Phone 813 984-8828

TAMPA FL 33617
City State Zip

E-mail _____

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3-18-14

Meeting Date

Topic Wage Theft

Bill Number SB926
(if applicable)

Name Carol Horton

Amendment Barcode _____
(if applicable)

Job Title Teacher

Address 5954 Triphammer Rd.

Phone 561-762-7635

Street

Lake Worth FL 33463

City

State

Zip

E-mail hsch10@bellsouth.net

Speaking: For Against Information

Representing Individual

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14
Meeting Date

Topic Wage Theft-

Bill Number SB 926
(if applicable)

Name Karen Zaremba

Amendment Barcode _____
(if applicable)

Job Title Teacher

Address 3871 Island Club Cir.
Street

Phone 561-642-0513

Lantana Fl. 33462
City State Zip

E-mail KZarem@aol.com.

Speaking: For Against Information

Representing Teachers + Students

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3-18-14

Meeting Date

Topic Wage Theft

Bill Number 926
(if applicable)

Name Ken Williams

Amendment Barcode _____
(if applicable)

Job Title Driver

Address 7411 Meadow Dr
Street

Phone 813-886-1753

Tampa FL 33634
City State Zip

E-mail 79KWILLIAMS@gmail

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14
Meeting Date

Topic Wage Theft

Bill Number 926
(if applicable)

Name Cary A. Henderson

Amendment Barcode _____
(if applicable)

Job Title Aviation Life Support Technician

Address 1986 Coral Reef Rd

Phone 850-291-4695

Street

Pensacola

FL

32506

City

State

Zip

E-mail cary.henderson@gmail.com

Speaking: For Against Information

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/2018

Meeting Date

Topic Weg Theft

Bill Number 926
(if applicable)

Name REGINA HOLMES

Amendment Barcode _____
(if applicable)

Job Title AVIATION Plane Captain

Address 4845 Greenwood Rd
Street

Phone 850 910 5071

Jay Fl 32565
City State Zip

E-mail LILLICHOLMESREGMAIL.COM

Speaking: For Against Information

Representing JAMA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14

Meeting Date

Topic Local Regulation of Wage Theft

Bill Number SB926
(if applicable)

Name Matthew Van Name

Amendment Barcode _____
(if applicable)

Job Title Legislative Director

Address _____
Street

Phone 786-459-1798

City _____ State _____ Zip _____

E-mail matthew.vanname@1199.org

Speaking: For Against Information

Representing SEIU FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14
Meeting Date

Topic WAGE THEFT

Bill Number SB-926
(if applicable)

Name J. B. CLARK

Amendment Barcode _____
(if applicable)

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE

Phone 850-556-8143

Street

TAUHANASSER, FL 32303

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing FL. ELECTRICAL WORKERS 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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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14

Meeting Date

Topic Local Regulation of Wage Theft

Bill Number SB 0926
(if applicable)

Name Michael V. Cecco

Amendment Barcode _____
(if applicable)

Job Title Attactions Host

Address 2833 Mayflower Loop

Phone 352 255 1317

Street

Clermont
City

FL
State

34714
Zip

E-mail Wing of the Courtyard@gmail.com

Speaking: For Against Information

Representing Working Family Lobby Corps

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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3/18/14

Meeting Date

Topic Local Regulation of Wage Theft

Bill Number SB 0926

(if applicable)

Name Travis Joyner

Amendment Barcode _____

(if applicable)

Job Title _____

Address 15853 Wilkinson Dr

Phone 229 630-8455

Street

Clermont

FL

34714

E-mail tkjoyner@wildblue

City

State

Zip

Net

Speaking: For Against Information

Representing Working Family Lobby Corps

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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APPEARANCE RECORD

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3-18-14

Meeting Date

Topic Wage theft

Bill Number 926
(if applicable)

Name Amy Datz

Amendment Barcode _____
(if applicable)

Job Title Retired State Employee

Address 1130 Crestview Ave.

Phone 850.322.7599

Street

Tallahassee

State

FL.

Zip

32303

E-mail _____

Speaking: For Against Information

Representing AFSCME Retiree

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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APPEARANCE RECORD

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3/18/14

Meeting Date

Topic Wage Theft

Bill Number SB 926
(if applicable)

Name Michael Kimmel

Amendment Barcode _____
(if applicable)

Job Title Trustee IAM LL 40

Address 9128 Hampton Cove Ct. S.

Phone 904 745 5062

Jacksonville FL 32225
City State Zip

E-mail mnrkimmel@hotmail.com

Speaking: For Against Information

Representing Machinists

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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18 MAR 14

Meeting Date

Topic LOCAL WAGE THEFT

Bill Number SB926 (if applicable)

Name Anthony Williams

Amendment Barcode (if applicable)

Job Title Machinist

Address 2019 BOB WHITE CT

Phone 850 803 5925

Street

MARY ESTHER FL 32569

City

State

Zip

E-mail AJSUR25@20L.COM

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

Representing IAM

Appearing at request of Chair: [] Yes [X] 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 602

INTRODUCER: Ethics and Elections Committee and Senator Latvala

SUBJECT: Residency of Candidates and Public Officers

DATE: March 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Roberts	EE	Fav/CS
2.	Davis	Cibula	JU	Pre-meeting
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 602 clarifies what the term “residence” means when used in “residence” requirements for candidates and public officers in the Florida Constitution and Florida Statutes. The bill provides a non-exhaustive list of factors that a court may consider in determining where a candidate or officer resides. The analysis for determining a person’s “residence” applies to those subject to a residence requirement upon qualifying as a candidate, regardless of whether the person is seeking partisan office, and for the residence requirements that apply only when a person takes office.

II. Present Situation:

The Florida Constitution and Florida Statutes contain various provisions requiring that certain public officers “reside” in a prescribed geographic area. Some of the residence requirements apply at the time that a person qualifies as a candidate for that office, while others apply only once a person takes office. For example, the Florida Constitution specifies that, unless otherwise provided in county charter, the counties must be divided into districts and that “One commissioner residing in each district shall be elected as provided by law.”¹

Currently, there is no definition of the term “residence” in the Florida Constitution or Florida Statutes that pertains to a candidate for office or a person once elected to office. However, over

¹ Article VIII, s. 1(e), Fla. Const.

the past 100 years, the courts have consistently opined that, for purposes of residence requirements, a person's residence is his or her domicile.² "Domicile" is a legal term of art. The courts have explained domicile as follows:

One can have only one domicile.³ Legal residence, or domicile, means a residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.⁴ Legal residence consists of the concurrence of both fact and intention. In terms of establishing residence, the bona fides of the intention is a highly significant factor.⁵ Historically, the place where a married person's family resides is generally deemed to be his legal residence. However, this presumption can be overcome by other circumstances.⁶ Absence from one's current domicile or legal residence without the intent to abandon it does not result in the obtainment of a new domicile at wherever one might be presently located, even where the absence may be for an extended period of time.⁷ Establishment of residence will usually depend on a variety of acts or declarations all of which must be weighed in the particular case as evidence would be weighed upon any other subject.⁸

Some of the factors that have been considered by the courts are:

- selling the home where one was previously domiciled;⁹
- transferring one's bank accounts to where one maintains a residence;¹⁰
- maintaining a residence with one's family;¹¹
- where one conducts business affairs;¹²
- where one leases an apartment;¹³
- where one plans the construction of a new home;¹⁴
- where one registers as a voter;¹⁵
- where one maintains a homestead exemption;¹⁶

² "The rule is well settled that the terms 'residence,' 'residing,' or equivalent terms, when used in statutes, or actions, or suits relating to taxation, right of suffrage, divorce, limitations of actions, and the like, are used in the sense of 'legal residence'; that is to say, the place of domicile or permanent abode, as distinguished from temporary residence." *Herron v. Passailaigue*, 110 So. 539, 543 (Fla. 1926).

³ *Minick v. Minick*, 111 Fla. 469, (Fla. 1933).

⁴ *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).

⁵ *Id.*

⁶ *Smith v. Croom*, 7 Fla. 81 (Fla. 1857).

⁷ See e.g. *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955); *Wade v. Wade*, 113 So. 374 (Fla. 1927); and *Dennis v. State*, 17 Fla. 389 (1879).

⁸ *Wade v. Wade*, 113 So. 374, 376 (Fla. 1927).

⁹ See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).

¹⁰ *Id.*

¹¹ See *id.*; see also *Smith v. Croom*, 7 Fla. 81 (1857).

¹² See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364 (Fla. 1955).

¹³ See *Frank v. Frank*, 75 So. 2d 282 (Fla. 1954).

¹⁴ See *Biederman v. Cheatham*, 161 So. 2d 538 (Fla. 2d DCA 1964).

¹⁵ See Op. Atty. Gen. 063-31 (March 20, 1963).

¹⁶ *Weiler v. Weiler*, 861 So. 2d 472, 477 (Fla. 5th DCA 2003).

- where one has identified the residence on his or her driver's license or other government documents;¹⁷
- where one receives mail and correspondence;
- where one customarily resides;¹⁸
- whether the structure has the normal features of a home;¹⁹ and
- statements made indicating intention to move to the district.²⁰

In essence, any evidence that would indicate that one has adopted a particular location as one's home and the "chief seat of [one's] affairs and interests" would be instrumental in proving permanent residency when combined with one's intent to make that location one's permanent residence.²¹ Although some authorities suggest that factors such as where one possesses and exercises political rights might be given less weight,²² the better course indicates that all the evidence should be weighed in the totality of the circumstances.²³

Failure to maintain the legal residence required results in a vacancy in office.²⁴ The Legislature has codified Article X, s. 3, Fla. Const., and provided a mechanism to address such vacancies.²⁵ Specifically, if an officer fails to maintain the residence required of him or her by law, the Governor is required to file an Executive Order with the Secretary of State setting forth the facts which give rise to the vacancy.²⁶ The office shall be considered vacant as of the date specified in the Executive Order or, in the absence of such a date, as of the date the order is filed with the Secretary of State. The office would then be filled as provided by law.²⁷

III. Effect of Proposed Changes:

CS/SB 602 creates two new statutes codifying the criteria used by courts to determine whether a candidate or state officer is complying with residency requirements. Newly created s. 99.0125, F.S., applies to all candidate residence requirements regardless of whether the office sought is partisan.²⁸ Newly created s. 111.015, F.S., applies to residence requirements once a person assumes office. Both new sections establish statutory guidance for determining whether a candidate or officer is a resident of the geographic area. Specifically, the bill states that a person

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *Perez v. Marti*, 770 So. 2d 284 (Fla. 3rd DCA 2000).

²⁰ See *Walker v. Harris*, 398 So. 2d 955 (Fla. 4th DCA 1981) and *Butterworth v. Espey*, 565 So. 2d 398 (Fla. 2nd DCA 1990).

²¹ See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).

²² *Smith v. Croom*, 7 Fla. 81, 159 (1857).

²³ See *Bloomfield v. City of St. Petersburg Beach*, 82 So. 2d 364, 368 (Fla. 1955).

²⁴ Article X, s. 3, Fla. Const., provides, "Vacancy in office shall occur upon the creation of an office, upon the death, removal from office, or resignation of the incumbent or the incumbent's succession to another office, unexplained absence for sixty consecutive days, **or failure to maintain the residence required when elected or appointed**, and upon failure of one elected or appointed to office to qualify within thirty days from the commencement of the term." (Emphasis supplied.)

²⁵ Section 114.01, F.S.

²⁶ Section 114.01(2), F.S.

²⁷ Section 114.04, F.S.

²⁸ Historically, courts have been reluctant to insert themselves into the political realm of whether a member can occupy a seat. Article III, s. 2, Fla. Const., provides that "Each house of the Legislature is the sole judge of the qualifications, election, and returns of its members..." As such, complaints concerning residence of a member of the Legislature should be sent to each house pursuant to its rules. Those complaints would be governed by Florida's Constitution, the Joint Rules of the Florida Legislature, and the rules of the respective house.

may have only one domicile. CS/SB 602 provides that the address of a person's domicile must be used to determine whether the residence requirement is satisfied. The building claimed as the domicile must be zoned for residential use and must comply with all requirements necessary to obtain a certificate of occupancy or certificate of completion pursuant to applicable building codes. The bill provides a non-exhaustive list of factors that may be considered in determining whether a residence requirement is satisfied. Those factors are:

- A formal declaration of domicile in the public records of the county;
- A statement, whether oral or written, indicating the intention to establish a place as his or her domicile;
- Whether he or she transferred the title to his or her previous residence;
- The address at which he or she claims a homestead exemption;
- An address at which he or she has purchased, rented, or leased property;
- The address where he or she plans to build a new home;
- The amount of time that he or she spends at property he or she owns, leases, or rents;
- Proof of payment for, and usage activity of, utilities at property owned by the candidate or public officer;
- The address at which he or she receives mail and correspondence;
- The address provided to register his or her dependent children for school;
- The address of his or her spouse or immediate family members;
- The physical address of his or her employment;
- Previous permanent residency in a state other than Florida or in another country, and the date his or her residency was terminated;
- The address on his or her voter information card or other official correspondence from the supervisor of elections providing proof of voter registration;
- The address on his or her valid Florida driver license issued under s. 322.18, F.S., valid Florida identification card issued under s. 322.051, F.S., or any other license required by law;
- The address on the title to, or a certificate of registration of, his or her motor vehicle;
- The address listed on filed federal income tax returns;
- The location where his or her bank statements and checking accounts are registered;
- A request made to a federal, state, or local government agency to update or change his or her address; and
- Whether he or she has relinquished a license or permit held in another jurisdiction.

Additionally, the bill provides that active duty military members do not automatically establish or abandon domicile in the state of Florida solely by virtue of where he or she is stationed. However, the bill does not impair the right of active duty military members to establish a new domicile.

Because the State Constitution provides that "Each house shall be the sole judge of the qualifications, elections, and returns of its members..."²⁹ this bill does not apply to members of the Legislature. However, on March 4, 2014, the Senate and House of Representatives adopted Joint Rule Seven, Qualifications of Members, which establishes residency requirements for the members of the Legislature.

²⁹ FLA. CONST. Article III, s. 2.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 99.0125, and 111.015.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Ethics and Elections on March 3, 2014:

The committee substitute clarifies that active duty military members do not automatically establish or abandon domicile in the state of Florida *solely* by virtue of where he or she is stationed.

B. Amendments:

None.

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



358564

LEGISLATIVE ACTION

Senate

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. .
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House

The Committee on Judiciary (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 134 and 135

insert:

Section 3. In accordance with s. 2, Art. III of the State Constitution, this act does not apply to members of the Legislature.

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

And the title is amended as follows:

Delete line 8



358564

12 and insert:
13 exceptions for active duty military members; providing
14 for applicability; providing

By the Committee on Ethics and Elections; and Senator Latvala

582-02089-14

2014602c1

1 A bill to be entitled
 2 An act relating to the residency of candidates and
 3 public officers; creating ss. 99.0125 and 111.015,
 4 F.S.; requiring a candidate or public officer required
 5 to reside in a specific geographic area to have only
 6 one domicile at a time; providing factors that may be
 7 considered when determining residency; providing
 8 exceptions for active duty military members; providing
 9 an effective date.

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

11 Section 1. Section 99.0125, Florida Statutes, is created to
 12 read:

13 99.0125 Residency; candidates.-
 14 (1) The address at which a candidate maintains his or her
 15 domicile must be used to satisfy any candidate residency
 16 requirement. A candidate may have only one domicile at a time.
 17 The building claimed as a domicile must be zoned for residential
 18 use and must comply with all requirements necessary to obtain a
 19 certificate of occupancy or certificate of completion pursuant
 20 to applicable building codes.
 21 (2) Factors that may be considered in determining whether a
 22 candidate meets a residency requirement include, but are not
 23 limited to:
 24 (a) A formal declaration of domicile in the public records
 25 of the county.
 26 (b) A statement, whether oral or written, indicating the
 27 intention to establish a place as his or her domicile.
 28
 29

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

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30 (c) Whether he or she transferred the title to his or her
 31 previous residence.
 32 (d) The address at which he or she claims a homestead
 33 exemption.
 34 (e) An address at which he or she has purchased, rented, or
 35 leased property.
 36 (f) The address where he or she plans to build a new home.
 37 (g) The amount of time that he or she spends at property he
 38 or she owns, leases, or rents.
 39 (h) Proof of payment for, and usage activity of, utilities
 40 at property owned by the candidate.
 41 (i) The address at which he or she receives mail and
 42 correspondence.
 43 (j) The address provided to register his or her dependent
 44 children for school.
 45 (k) The address of his or her spouse or immediate family
 46 members.
 47 (l) The physical address of his or her employment.
 48 (m) Previous permanent residency in a state other than
 49 Florida or in another country, and the date his or her residency
 50 was terminated.
 51 (n) The address on his or her voter information card or
 52 other official correspondence from the supervisor of elections
 53 providing proof of voter registration.
 54 (o) The address on his or her valid Florida driver license
 55 issued under s. 322.18, valid Florida identification card issued
 56 under s. 322.051, or any other license required by law.
 57 (p) The address on the title to, or a certificate of
 58 registration of, his or her motor vehicle.

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59 (q) The address listed on filed federal income tax returns.

60 (r) The location where his or her bank statements and
61 checking accounts are registered.

62 (s) A request made to a federal, state, or local government
63 agency to update or change his or her address.

64 (t) Whether he or she has relinquished a license or permit
65 held in another jurisdiction.

66 (3) An active duty military member may not be deemed to
67 have acquired a domicile in this state solely by reason of being
68 stationed on duty in this state; nor shall an active duty
69 military member be deemed to have abandoned domicile in this
70 state solely because he or she is stationed in another
71 municipality, state, or country. However, this subsection does
72 not prohibit an active duty military member from establishing a
73 new domicile where he or she is stationed.

74 Section 2. Section 111.015, Florida Statutes, is created to
75 read:

76 111.015 Residency; public officers.-

77 (1) The address at which a public officer maintains his or
78 her domicile must be used to satisfy any residency requirement.
79 A public officer may have only one domicile at a time. The
80 building claimed as a domicile must be zoned for residential use
81 and must comply with all requirements necessary to obtain a
82 certificate of occupancy or certificate of completion pursuant
83 to applicable building codes.

84 (2) Factors that may be considered in determining whether a
85 public officer meets a residency requirement include, but are
86 not limited to:

87 (a) A formal declaration of domicile in the public records

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88 of the county.

89 (b) A statement, whether oral or written, indicating the
90 intention to establish a place as his or her domicile.

91 (c) Whether he or she transferred the title to his or her
92 previous residence.

93 (d) The address at which he or she claims a homestead
94 exemption.

95 (e) An address at which he or she has purchased, rented, or
96 leased property.

97 (f) The address where he or she plans to build a new home.

98 (g) The amount of time that he or she spends at property he
99 or she owns, leases, or rents.

100 (h) Proof of payment for, and usage activity of, utilities
101 at property owned by the public officer.

102 (i) The address at which he or she receives mail and
103 correspondence.

104 (j) The address provided to register his or her dependent
105 children for school.

106 (k) The address of his or her spouse or immediate family
107 members.

108 (l) The physical address of his or her employment.

109 (m) Previous permanent residency in a state other than
110 Florida or in another country, and the date his or her residency
111 was terminated.

112 (n) The address on his or her voter information card or
113 other official correspondence from the supervisor of elections
114 providing proof of voter registration.

115 (o) The address on his or her valid Florida driver license
116 issued under s. 322.18, valid Florida identification card issued

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117 under s. 322.051, or any other license required by law.
118 (p) The address on the title to, or a certificate of
119 registration of, his or her motor vehicle.
120 (q) The address listed on filed federal income tax returns.
121 (r) The location where his or her bank statements and
122 checking accounts are registered.
123 (s) A request made to a federal, state, or local government
124 agency to update or change his or her address.
125 (t) Whether he or she has relinquished a license or permit
126 held in another jurisdiction.
127 (3) An active duty military member may not be deemed to
128 have acquired a domicile in this state solely by reason of being
129 stationed on duty in this state; nor shall an active duty
130 military member be deemed to have abandoned domicile in this
131 state solely because he or she is stationed in another
132 municipality, state, or country. However, this subsection does
133 not prohibit an active duty military member from establishing a
134 new domicile where he or she is stationed.
135 Section 3. This act shall take effect January 1, 2015.

CourtSmart Tag Report

Room: EL 110
Caption: Senate Judiciary Committee

Case:
Judge:

Type:

Started: 3/18/2014 8:06:37 AM
Ends: 3/18/2014 12:16:54 PM Length: 04:10:18

8:06:39 AM Meeting called to order
8:06:53 AM Roll called by CAA
8:07:15 AM SB 1242 by Senator Simmons
8:08:44 AM Senator Simmons explain SB 1242
8:09:41 AM Leisa Wiseman w/Florida Against Domestic Violence - Waive in support
8:09:49 AM Senator Simmons waive closing
8:09:55 AM Roll called on SB 1242
8:10:12 AM SB 1242 by Senator Simmons - Favorable
8:10:24 AM CS/SB 764 by Senator Detert
8:12:37 AM Nancy Daniels, Florida Public Defender Association, Inc.
8:13:39 AM A768396 by Bradley
8:14:27 AM Questions and Debate on A768396
8:19:33 AM A768396 by Senator Bradley - Favorable
8:24:31 AM Senator Detert waive closing on CS/SB 764
8:24:34 AM Roll called on CS/SB 764
8:24:55 AM SB 764 by Senator Detert - Favorable as a CS
8:25:20 AM CS/SB 654 by Clemens
8:26:49 AM Senator Clemens explain CS/SB 654
8:27:29 AM A609448 by Senator Ring - Favorable
8:28:07 AM A394950 by Senator Ring - Favorable
8:28:47 AM Sarah Bush w/Associated Industries of Florida - Waive in support
8:28:50 AM Christie Burnes w/Florida Dept. of State - Waive in support
8:28:54 AM Greg Black w/The Florida Bar - Waive in support
8:29:03 AM Senator Clemons waive closing
8:29:20 AM Roll called on CS/SB 654
8:29:30 AM CS/SB 654 by Senator Clemens - Favorable as a CS
8:30:11 AM CS/SB 670 by Senator Thrasher
8:33:01 AM A437100 by Senator Thrasher - Favorable
8:35:57 AM Questions and debate
8:38:23 AM Public testimony on A437100
8:40:19 AM Ms. Barbara DeVane w/Florida NOW
8:42:46 AM Jack McRay w/AARP - Waive in support
8:44:12 AM Brian Lee, w/Families for Families for Better Care
8:46:02 AM Questions and debate
8:46:10 AM Barbara DeVane, FL Now & Fl. Alliance for Retired American
8:47:27 AM Bobby Bernal w/Leading Age Florida - Waive in support
8:47:45 AM Paul Jess, w/Florida Justice Association - Waive in support
8:48:16 AM Matthew Van Name, w/1199 SEIO Florida - Waive against
8:48:28 AM Bobby Brantley w/Leading Age Florida - Waive in support
8:48:46 AM Brian Bursa, w/Florida Health Care Association - Waive in support
8:49:25 AM Chantelle Fernandez, w/Berkshire Manor - Waive in support
8:51:44 AM Melanie Bostick, Florida Justice Reform Institute - Waive in support
8:55:20 AM Brech Heuchan, w/Wilkes & McHugh, P.A. - Waive against
8:56:21 AM Carolyn Johnson, w/Fl. Chamber of Commerce - Waive in support
8:56:50 AM Emmett Reed, w/Florida Health Care Association - Waive in support
8:57:09 AM Brewster Bevis, w/Associated Industries of Florida - Waive in support
9:00:08 AM Questions or Debate
9:03:33 AM A437100 by Senator Thrasher - Favorable
9:09:41 AM Senator Thrasher waive closing on CS/SB 670
9:12:40 AM Roll called on CS/SB 670
9:13:08 AM CS/SB 670 by Senator Thrasher - Favorable as a CS
9:13:20 AM SB 926 by Senator Simpson

9:14:36 AM A136984 by Senator Soto
9:15:29 AM Questions and Debate
9:20:00 AM Karen Houston against the amendment
9:20:14 AM Richard Turner against the amendment
9:20:29 AM Samantha Padgett, Florida Retail Federation against the amendment
9:21:21 AM Brewster Weaver - Waive against the amendment
9:23:33 AM Javier Almazan, Working Families of Florida for the amendment
9:25:58 AM Rich Tipland for the amendment
9:27:21 AM Arthur Rosenberg waive and support
9:27:31 AM Senator Simpson request negative vote on A136984
9:28:16 AM Roll called on A136984
9:28:42 AM A136984 by Senator Soto - Unfavorable
9:29:16 AM Motion to TP SB 926 by Chairman Lee - Favorable
9:29:42 AM Motion to adjourned