

Tab 1 SB 58 by Abruzzo; (Similar to H 3515) Relief of Q.B. by the Palm Beach County School Board

973234	A	S	RCS	JU, Soto	Delete L.82 - 83:	01/20 03:29 PM
499086	AA	S	RCS	JU, Soto	Delete L.5:	01/20 03:29 PM

Tab 2 SB 206 by Clemens; (Identical to H 0111) Jury Service

Tab 3 CS/SB 260 by BI, Smith (CO-INTRODUCERS) Richter; (Similar to CS/CS/H 0145) Financial Transactions

971492	A	S	RCS	JU, Ring	Delete L.24 - 54:	01/20 03:29 PM
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Tab 4 CS/SB 742 by CA, Hutson; (Compare to CS/H 0517) Certificates of Public Convenience and Necessity for Life Support or Air Ambulance Services

425650	A	S	RCS	JU, Bean	Delete L.74 - 104:	01/20 03:29 PM
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Tab 5 SB 1086 by Bradley; (Similar to H 1005) Prejudgment Interest

697344	A	S	WD	JU, Brandes	Delete L.19 - 26:	01/20 03:29 PM
337254	A	S	RCS	JU, Brandes	Delete L.19 - 23:	01/20 03:29 PM
177066	A	S	RCS	JU, Bean	Delete L.29 - 30:	01/20 03:29 PM

Tab 6 CS/SB 122 by CJ, Joyner, Bradley; (Identical to H 0331) Compensation of Victims of Wrongful Incarceration

Tab 7 SB 1244 by Simmons; (Similar to H 0555) Driving Under the Influence

Tab 8 SB 1278 by Ring; (Identical to H 1027) Public Records/Petitions to Determine Incapacity

639650	A	S	RCS	JU, Ring	Delete L.82 - 107:	01/20 03:29 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Diaz de la Portilla, Chair
Senator Ring, Vice Chair

MEETING DATE: Wednesday, January 20, 2016
TIME: 10:00 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 58 Abruzzo (Similar H 3515)	Relief of Q.B. by the Palm Beach County School Board; Providing for the relief of Q.B. by the Palm Beach County School Board; providing for an appropriation to compensate Q.B. for injuries sustained as a result of the negligence of employees of the Palm Beach County School District; providing a limitation on the payment of fees and costs; providing that the appropriation settles all present and future claims related to the negligent act, etc. SM JU 01/20/2016 Fav/CS AED AP	Fav/CS Yeas 9 Nays 1
2	SB 206 Clemens (Identical H 111)	Jury Service; Providing that certain persons permanently incapable of caring for themselves may be permanently excused from jury service upon request; providing requirements for such a request, etc. JU 01/20/2016 Favorable HP RC	Favorable Yeas 8 Nays 0
3	CS/SB 260 Banking and Insurance / Smith (Similar CS/CS/H 145)	Financial Transactions; Providing that certain provisions govern certain funds transfers that are remittance transfers; providing that a requirement that certain mortgages be cancelled within a specified timeframe of satisfaction does not apply to existing or future open-ended mortgages unless the requirement is specified in the loan agreement; revising the grounds for denial of an application for a license to make consumer finance loans, etc. BI 01/11/2016 Fav/CS JU 01/20/2016 Fav/CS RC	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, January 20, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 742 Community Affairs / Hutson (Compare CS/H 517)	Certificates of Public Convenience and Necessity for Life Support or Air Ambulance Services; Requiring, rather than authorizing, county governing boards to adopt ordinances or amend existing ordinances that provide standards for the issuance of certificates of public convenience and necessity for basic or advanced life support services, etc. HP 12/01/2015 Favorable CA 01/11/2016 Fav/CS JU 01/20/2016 Fav/CS FP	Fav/CS Yeas 7 Nays 3
5	SB 1086 Bradley (Similar H 1005)	Prejudgment Interest; Requiring a court to include interest on economic damages, attorney fees, and costs in the final judgment of a negligence action as a result of a personal injury, etc. JU 01/20/2016 Fav/CS ACJ AP	Fav/CS Yeas 9 Nays 1
6	CS/SB 122 Criminal Justice / Joyner / Bradley (Identical H 331)	Compensation of Victims of Wrongful Incarceration; Providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation, etc. CJ 11/02/2015 Fav/CS JU 01/20/2016 Favorable ACJ AP	Favorable Yeas 10 Nays 0
7	SB 1244 Simmons (Similar H 555)	Driving Under the Influence; Providing penalties for a first-time refusal of a chemical or physical test of a person's breath, blood, or urine; providing that a subsequent refusal by a person who has previously had a license suspension for a prior refusal is a misdemeanor of the first degree; requiring the court to impose certain mandatory ignition interlock devices on the vehicles of convicted persons for a specified time under certain circumstances; prohibiting a court from suspending, deferring, or withholding adjudication of guilt or the imposition of a sentence or penalty for specified offenses, etc. JU 01/20/2016 Temporarily Postponed ACJ AP	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Wednesday, January 20, 2016, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 1278 Ring (Similar S 1280, Identical H 1027)	Public Records/Petitions to Determine Incapacity; Providing exemptions from public records requirements for petitions to determine incapacity; listing persons to whom the clerk of the court shall allow access to the petition; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. JU 01/20/2016 Fav/CS GO RC	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

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

DATE	COMM	ACTION
12/17/15	SM	Fav/1 amendment
01/20/16	JU	Fav/CS
	AED	
	AP	

December 17, 2015

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 58** – Judiciary Committee and Senator Abruzzo
HB 3515 – Representative Heather Fitzenhagen
Relief of Q.B. by the Palm Beach County School Board

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLEMENT CLAIM FOR \$600,000 OF LOCAL MONEY BASED ON A JURY AWARD AGAINST THE PALM BEACH COUNTY SCHOOL BOARD TO COMPENSATE Q.B. FOR THE INJURIES SHE SUFFERED FROM MOLESTATION BY ANOTHER STUDENT ON A PALM BEACH COUNTY SCHOOL BUS.

FINDINGS OF FACT:

Generally

In 2006, QB, a three and a half year old girl, had virtually no speech capability and had been determined to have a delayed development of speech and language for which she could receive assistance from Glade View Elementary. The school near her home, Pahokee Elementary, did not have such a program. In addition, QB's family circumstances required that she ride a school bus to get to and from the new school.

Video of the Bus Ride

On January 16, 2007, QB boarded the special needs bus to ride home from school. She sat alone in the second seat behind the bus driver, Ms. Lavern Sellers, on the bus driver side. At a subsequent stop, another student, JC, boarded the

bus and sat immediately behind the bus driver in the seat he was assigned. He sat alone in his seat. At the time, JC was a 15 year old high school student who had been diagnosed with severe emotional and behavioral disorders. In addition to the bus driver, an attendant, Ms. Grenisha Williams, was also on the bus to assist the driver and the students and maintain order. She sat at the rear of the bus.

The school bus was equipped with a video camera with a minutes elapsed indicator that continuously recorded the comings and goings on the bus, as well as while the bus was in transit. The video camera captured the following incident.

Moments after JC sat down in his seat, he looked around, then moved to the next seat behind him that was occupied by QB. Over the course of the next approximately 13 minutes, JC could be observed leaning over QB, moving and positioning her, and two to three times making what could be described as a “humping” motion. During these 13 minutes, JC would occasionally sit up, look around, and then continue leaning over QB.

After about 13 minutes, the bus assistant got up from her seat at the back of the bus and walked up the aisle. She could be seen talking to JC who, at that point, sits up in the seat. The attendant then walks a few feet back down the aisle, stands there for a while, and finally returns to her seat. JC sits in the same seat with QB for the next approximately 18 minutes. He looks around, talks to QB, and then finally gets off the bus. The attendant is then seen walking from the rear of the bus, stopping to talk to QB for a short time, then walking to the front to talk to the bus driver about what happened.

After the bus driver delivered the last student, she and the attendant reported the incident to their supervisor, which was referred to the Palm Beach County School District Police. An officer visited QB's parents to inform them of what had happened on the bus.

Physical Examination of QB

According to the investigative report of the Palm Beach County School District Police, the next day after the incident, QB's mother took her to her physician to be examined. The examination was done by the Physician's Assistant who told

the investigator, according to his report, that “an examination such as those conducted with regards to a sexual battery and as done at the request of law enforcement in conjunction with the Child Protective Team had not been performed.” The report continues that the PA did advise the investigator that she had examined the vaginal area of QB and found no evidence of trauma. The report states that PA further advised the investigator that the examination did not necessarily indicate that penetration had not been made.

Interview with Bus Attendant, Grenisha Williams

On January 26, 2007, Investigator Mintus of the Palm Beach County School District Police met with and obtained a sworn statement from Ms. Grenisha Williams, the bus attendant. Ms. Williams explained that it is her job to function to assist with students on the school bus and to ensure their safety while riding the school bus. Ms. Williams explained that she had not witnessed [suspect] get up and move from his assigned seat to sit beside [victim].

The investigation report states:

It was for some unknown reason that Ms. Williams states, “something in her head told her to get up and check” the area where [victim] had been seated. It was while checking this area the Ms. Williams’ stated she discovered [suspect] down on his knees and in the kneeling position bent over directly facing [victim]. Ms. Williams stated that she witnessed [suspect] with his mouth in an open position, and kissing the right side portion of [victim’s] neck. According to Ms. Williams, [victim] was sitting in the upright position with her back up against the back portion of the school bus seat, while [suspect] was down on both knees knelt directly in front of [victim] with his two hands wrapped around her waist.

The investigation report continues:

After having witnessed [suspect] kissing the neck of [victim], Ms. Williams’s states she questioned the [suspect] asking him, “what are you doing to that little girl?” However, [suspect] refused to respond to her questions, and eventually grabbed his jacket and repositioned himself in the seat alongside [victim]. At this time Ms. Williams states, she looked down the face of [victim] and could see

tears flowing from her eyes. Ms. Williams states that she was shocked with what she had just discovered.

After [suspect] had refused to get up and move to his assigned seat, Ms. Williams states she then returned to the back portion of the school bus where she maintained a close vigilance on [suspect]. When asked why she had left [victim] in such an exploitable position, Ms. Williams states that she “just panicked” not knowing what to do.

Interview with Assailant, JC

On January 27, 2007, detectives from Palm Beach County School District Police interviewed JC who was identified from the school bus video. During the interview, JC stated that he touched QB, unzipped his pants, and had sex with her.

Conclusion of the Investigation Report

In the investigation report of the Palm Beach County School District Police, Investigator A. Goven concluded:

This investigation finds based upon the witness statement of Ms. Williams, the digital video recording from the school bus cameras, and the confession of the [suspect], evidence exists in support of probable cause that [suspect] did commit the crime of sexual battery of a child under the Age of 12 . . . , in violation of [s. 794.011(2)(a), F.S]. This investigation further finds that Ms. Grenisha Williams, entrusted to provide [victim] with care and supervision, did fail to make a reasonable effort to protect [victim] from being sexually exploited by [suspect] while riding a school bus on 01/16/2007, the criminal violation of Neglect of a Child[, s. 827.03(3)(a)2.c., F.S]. (sic)

QB's disabilities

In the fall of 2006, QB was diagnosed with a significant language and speech disorder. Meeting the eligibility requirements for language and speech impairment programs, QB was placed in Belle Glade Elementary School to participate in their programs. A psychoeducational evaluation in June 2009 reports QB as having a full scale IQ of 77. QB follows an ESE plan in the Palm Beach County school system.

QB was evaluated by various psychological experts who all concluded she had a language and speech impairment. These experts diagnosed her with various other impairments such as ADHD and autism, but over time, those conditions have not continued to manifest.

Dr. Harley V. Stock, Ph.D., ABPP, expert for the defendant, opined that the event that occurred to QB has not had any long lasting or permanent effect on her because of her tender age at the time of the event, her cognitive impairment, and lack of memory processing abilities.

Dr. Michael Hughes, M.D. (Psychiatry), expert for the claimant, concluded that:

QB was the victim of physical and sexual assault. That this affected her adversely, aggravating preexisting conditions, complicating ongoing stressors and creating additional adversities and handicaps for her. The psychological injuries she suffered from the physical and sexual assault currently affect her adversely and will be reasonably expected to continue to affect her for her future life.

In support of his conclusion, Dr. Hughes stated in his deposition that “I believe that [QB] has no conscious memory of the incident that she can put into words. She did not have any speech and her language was very limited at the time, but she clearly has a memory of the events.” He continued, “the younger they are, the more difficult it is for them to cope with a traumatic event because they have less ability to understand it, to talk it over with somebody, to put it in perspective, to put into words.” “[T]hings that happened in the early years are enormously important and they are remembered in very basic ways, even though the person may have no cognitive memory of it.”

Having the benefit of hindsight in this case, the diagnoses and predictions of Dr. Hughes appear most correct.

LEGAL PROCEEDINGS:

The incident occurred on January 16, 2007. A trial was held in the fifteenth judicial circuit court, in and for Palm Beach County, Florida. The jury returned its verdict on February 6, 2013, finding for the plaintiff. The jury awarded \$300,000 in total damages sustained by QB for care and treatment to be incurred in the future. The jury awarded \$150,000 for past damages and \$1,250,000 for future damages for pain and

suffering, disability, physical impairment, mental anguish, inconvenience, aggravation of a disease or physical defect or loss of capacity for the enjoyment of life. The total award was \$1,700,000.

The circuit judge issued an order on February 7, 2013, reducing the verdict to a final judgment. The School Board paid \$100,000, their sovereign immunity limit. A cost judgment was entered in the amount of \$77,950.41. The total unsatisfied judgment balance is \$1,677,950.41.

CONCLUSIONS OF LAW:

Section 1006.22, F.S., relating to safety and health of students being transported, states:

Maximum regard for safety and adequate protection of health are primary requirements that must be observed by district school boards in routing buses, appointing drivers, and providing and operating equipment, in accordance with all requirements of law and rules of the State Board of Education in providing transportation pursuant to s. 1006.21[, F.S].

The School District of Palm Beach County had a duty to provide safe transport of QB to and from her home and with adequate protection. The School District of Palm Beach County breached that duty when it scheduled high school students to ride the bus with preschool students and when the attendant and bus driver failed to supervise the students that were on the bus. The failure to adequately supervise the students it allowed on the bus resulted in the injury of QB.

As provided in s. 768.26, F.S. (2007), sovereign immunity shields the school Board against tort liability in excess of \$100,000 per occurrence. Under the doctrine of *respondeat superior*, the School Board is vicariously liable for the negligent acts of its agents and employees, when such acts are within the course and scope of the agency or employment. See *Roessler v. Novak*, 858 So. 2d 1158, 1161 (Fla 2d DCA 2003). School bus attendant Williams, and bus driver Laverne Sellers were acting within the course and scope of their employment when they negligently failed to oversee the movement and activities of the students on the school bus.

LEGISLATIVE HISTORY:

This is the first year that this claim has been presented to the Florida Legislature.

SPECIAL MASTER'S FINAL REPORT – CS/SB 58

December 17, 2015

Page 7

ATTORNEYS FEES:

The bill provides that all fees and related costs are to be capped at 25 percent. The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with s. 768.28(8), F.S. Lobbyist's fees are included with the attorney's fees.

SPECIAL ISSUES:

At the hearing by the Special Master on November 10, 2015, the parties announced a full and final settlement against the School Board of Palm Beach County in the amount of \$600,000 had been reached. Parties are awaiting the final approval of the School Board. This amount is reasonable and responsible

RECOMMENDATIONS:

Based upon the foregoing, the undersigned recommends that SB 58 be amended to reflect the settlement amount of \$600,000 payable to the special needs trust established for the benefit of QB. Otherwise, the undersigned recommends that Senate Bill 58 (2016) be reported FAVORABLY.

Respectfully submitted,

Diana Caldwell
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute reduces the amount awarded in the claim bill to \$600,000 from \$1,677,950 and provides for the payment of the claim in two annual installments of \$300,000. Additionally, these funds must be placed into a special needs trust.



973234

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 82 - 83
and insert:
\$600,000 which, after payment of fees, costs, and expenses as provided in section 3, shall be placed, in a special needs trust for the exclusive use and benefit of Q.B to compensate her for injuries and damages sustained.

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

And the title is amended as follows:

Delete lines 71 - 73



973234

12 and insert:

13 WHEREAS, the parties have agreed to a settlement in
14 the amount of \$600,000, which was approved on December
15 16, 2016, by the Palm Beach County School Board, NOW,
16 THEREFORE,



499086

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment to Amendment (973234)

Delete line 5

and insert:

\$600,000, payable in two annual installments of \$300,000 each,
which, after payment of fees, costs, and expenses as



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human
Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

SENATOR JOSEPH ABRUZZO
Minority Whip
25th District

January 15th, 2016

The Honorable Miguel Diaz de la Portilla
406 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

I respectfully request Senate Bill 58, Relief of Q.B. by the Palm Beach County School Board, be considered for placement on the Judiciary committee agenda. This bill will provide relief for a constituent to compensate for injuries and damages sustained as a result of negligence of employees of the Palm Beach County School District.

Thank you in advance for your consideration. Please do not hesitate to contact me if I can provide you with any additional information.

Sincerely,

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

Joseph Abruzzo

Cc: Tom Cibula, *Staff Director*

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 206

INTRODUCER: Senator Clemens

SUBJECT: Jury Service

DATE: January 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAloon	Cibula	JU	Favorable
2.			HP	
3.			RC	

I. Summary:

SB 206 authorizes a person to be permanently excused from jury service upon written request due of mental illness, intellectual disability, senility, or other physical or mental incapacity. The person's request must be accompanied by a written statement from a doctor verifying the disability. The clerk may approve or deny the request for permanent excuse from jury service.

II. Present Situation:

Background on Jury Selection

To be selected for a jury pool in Florida, a person must be chosen at random from a list of names provided quarterly to the clerk of court by the Department of Highway Safety and Motor Vehicles.¹ All persons on the jury list are required to be United States citizens and legal residents of Florida. Additionally, all persons must be at least 18 years of age and have a driver's license or identification card issued by the Department of Motor Vehicles.²

The Florida Statutes set out two processes for developing a group of persons who may be summoned to court. First, the clerk, under the supervision of a judge, may randomly select from a list of people necessary for a given session.³ Alternatively, the court may request authority of the Florida Supreme Court to operate a special selection process using a mechanical, electronic, or electrical device.⁴ The court has procedures in place to ensure that once a potential juror is selected, he or she is given proper notice of the summons to ensure compliance, or the person

¹ Section 40.011, F.S.

² Section 40.01, F.S.

³ Section 40.221, F.S.

⁴ Section 40.225, F.S.

may face penalties imposed by the court.⁵ Once the potential jurors are summoned, they may be placed into the jury pool from which the jury in any given case will be chosen.⁶

Persons Disqualified or Excused from Jury Service

There are two opportunities for a person who has been summoned for jury service to be excused. First, when a person receives a summons for jury service, he or she may provide an excuse from a list of acceptable statutory excuses for why he or she cannot serve. The person will send this notification to the clerk's office. Second, a potential juror may also raise one of the statutory excuses once the person has reported for jury service. Section 40.013, F.S., specifies persons who are disqualified from jury service, persons whom a judge may excuse from jury service, and persons who must be excused from jury service upon request.

Persons who are disqualified from jury service include:

- A person who is under prosecution for a crime, or a felon, unless the person's civil rights have been restored.⁷
- The Governor and Lieutenant Governor, Cabinet officers, clerks of court, and judges.⁸
- Full-time federal, state, or local law enforcement officers and investigative personnel of law enforcement agencies.⁹
- A person interested in any issue to be tried in a case on which the person would serve as a juror.¹⁰
- A person who would be serving as a juror within 1 year of the last day of previous jury service.¹¹
- Any person who does not possess sufficient knowledge of reading, writing or arithmetic to understand a civil case, if the civil case requires such knowledge.¹²

Persons who may be excused include:

- A practicing attorney, a practicing physician, or a person who is physically infirm.¹³
- Any person upon showing of hardship, extreme inconvenience, or public necessity.¹⁴

Persons who must be excused upon request include:

- An expectant mother or parent who is not employed full time and who has custody of a child under 6 years of age.¹⁵
- A person 70 years of age or older.¹⁶

⁵ Section 40.23, F.S.

⁶ Section 40.231, F.S.

⁷ Section 40.013(1), F.S.

⁸ Section 40.013(2)(a), F.S.

⁹ Section 40.013(2)(b), F.S.

¹⁰ Section 40.013(3), F.S.

¹¹ Section 40.013(7), F.S.

¹² Fla. R. Civ. P. 1.431(c)(3).

¹³ Section 40.013(5), F.S.

¹⁴ Section 40.013(6), F.S.

¹⁵ Section 40.013(4), F.S.

¹⁶ Section 40.013(8), F.S.

- A person who is responsible for the care of a person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is incapable of caring for himself or herself.¹⁷

Persons Permanently Excused from Jury Service

Currently, only individuals 70 years of age or older can request to be permanently excused.¹⁸ The request must be in writing.¹⁹ Individuals who are permanently excused can also request to be added back into the jury pool as long as they are otherwise qualified.²⁰

Persons Excused for Care of Disabled Individual

The Florida Statutes provide a mandatory exemption from jury service, upon request, for any person who is responsible for the care of a person who is mentally ill, intellectually disabled, senile, or has other physical or mental incapacity, and is incapable of caring for himself or herself.²¹ An individual who cares for a person with a listed condition must be excused from jury service upon request.²² However, the statute currently does not contain an exemption from jury service for the person who is permanently incapable for caring for himself or herself.

Florida Rules of Civil Procedure

The Florida Rules of Civil Procedure require that a juror be excused in a civil trial if the individual does not possess sufficient knowledge of reading, writing or arithmetic to understand the case, if the case requires such knowledge.²³ However, the rule only applies to civil cases and only arises through a challenge for cause.

III. Effect of Proposed Changes:

SB 206 creates a permanent exemption from jury duty for a person who is permanently incapable for caring for himself or herself. The permanent incapability must be due to “mental illness, intellectual disability, senility, or other physical or mental incapacity.” The person may apply to the clerk for the permanent exemption by submitting a written request. The person must also supply a letter from a physician verifying the permanent incapability. The clerk, in his or her discretion, may decide to issue the permanent exemption for jury service to the incapable individual.

The bill takes effect July 1, 2016.

¹⁷ Section 40.013(9), F.S.

¹⁸ Section 40.013(8), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 40.013(9), F.S.

²² *Id.*

²³ Fla. R. Civ. P. 1.431(c)(3).

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:

The language of the bill provides that a person *may* be permanently excused upon request. This gives the clerk the discretion in making the ultimate decision. In comparison, existing s. 40.013(8), F.S., provides that an individual 70 years of age or older *shall* be permanently excused upon request.

VIII. Statutes Affected:

The bill creates section 40.013 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 Clemens

27-00366-16

2016206__

1 A bill to be entitled
2 An act relating to jury service; amending s. 40.013,
3 F.S.; providing that certain persons permanently
4 incapable of caring for themselves may be permanently
5 excused from jury service upon request; providing
6 requirements for such a request; providing an
7 effective date.
8

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

10
11 Section 1. Present subsection (9) of section 40.013,
12 Florida Statutes, is redesignated as subsection (10), and a new
13 subsection (9) is added to that section, to read:

14 40.013 Persons disqualified or excused from jury service.—
15 (9) Any person who, because of mental illness, intellectual
16 disability, senility, or other physical or mental incapacity, is
17 permanently incapable of caring for himself or herself may be
18 permanently excused from jury service upon request if the
19 request is accompanied by a written statement to that effect
20 from a physician licensed pursuant to chapter 458 or chapter
21 459.

22 Section 2. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Vice Chair*
Banking and Insurance
Criminal Justice
Education Pre-K-12
Ethics and Elections
Fiscal Policy

SENATOR JEFF CLEMENS

27th District

September 24, 2015

Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Diaz de la Portilla:

I respectfully request that SB 206 – Jury Service be added to the agenda for the next Committee on Judiciary meeting.

SB 206 will allow permanently disabled citizens to be permanently excused from jury service upon request with written statement from a medical doctor.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 20, 2016

Meeting Date

1278

Bill Number (if applicable)

Topic Baker Act Confidentiality

Amendment Barcode (if applicable)

Name Stephanie Owens Jaffe

Job Title Assistant Public Defender

Address 407 N. Laura Street

Phone (904) 255-4742 or (904) 271-9667

Street

Jacksonville

FL

32202

Email soj@pd4.coj.net

City

State

Zip

Speaking: For Against Information

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

Representing Indigent individuals subjected to involuntary examination and placement under the Baker Act

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 260

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senators Smith and Richter

SUBJECT: Financial Transactions

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 260 revises various laws on financial transactions.

Remittance Transfers

This bill clarifies that ch. 670, F.S., applies to funds transfers that are remittance transfers under the federal Electronic Funds Transfer Act (EFTA), unless the remittance transfer is also an electronic funds transfer under the EFTA. Current law is silent regarding whether the state Uniform Commercial Code: Funds Transfers law (chapter 670, F.S.) applies to a funds transfer that is a remittance transfer under the federal Electronic Funds Transfer Act. The bill also provides that the federal EFTA will preempt ch. 670, F.S., in the event any inconsistency exists between ch. 670, F.S., and the EFTA regarding a funds transfer.

Funds transfers are generally large, rapid money transfers between commercial entities involving a series of transactions. The rights and obligations of the commercial parties involved in a funds transfer are governed primarily by ch. 670, F.S. (act), which is Florida's codification of the Uniform Commercial Code (UCC) Article 4A. On the other hand, the federal Electronic Funds Transfer Act (EFTA) governs electronic funds transfers initiated through certain electronic means, such as direct deposits and telephone transfers, to authorize a financial institution to debit or credit a consumer's account. Both the act and the EFTA may apply to a transfer, depending on how the transaction is structured. Effective 2013, the EFTA was amended to add consumer

protections for transfers of funds sent from U.S. consumers to individuals or businesses in other countries, known as remittance transfers.

Cancellation of Mortgages

Currently, once a borrower fully repays his or her mortgage securing property in Florida, the lender is required to cancel the mortgage within 60 days after payment. This is required regardless of whether the mortgage is open-end, which allows a borrower to borrow new sums of money on the same loan up to a certain limit. The current cancellation restriction can be burdensome on consumers and lending institutions, as a new line of credit must be established each time the consumer seeks additional access to credit.

This bill also provides that a lender must cancel an open-end mortgage within 45 days after full payment of the mortgage and receipt of the borrower's written notice of intent to close the open-end mortgage. This would allow an open-end mortgage to remain open after the payoff of the mortgage securing the property.

Consumer Finance Loans

The Florida Consumer Finance Act prohibits and imposes disciplinary action on any person who compensates another person for referring a loan applicant to a licensed consumer finance lender. This bill provides a narrow exception to the prohibition, in instances in which an amount is not charged directly or indirectly to the borrower.

Convenience Fees on Credit Cards

Current law authorizes certain private colleges to impose a convenience fee on credit card payments made to the school for tuition, fees, and other student expenses. This bill extends the authority to charge a convenience fee to private schools offering K-12 education.

II. Present Situation:

Federal Electronic Funds Transfer Act

In 1978, Congress enacted the federal Electronic Funds Transfers Act (EFTA) to protect individual consumers who are parties to electronic funds transfers.¹ Under the EFTA, an electronic funds transfer means any transfer of funds initiated through certain electronic means that authorize a financial institution to debit or credit a consumer's account.² Electronic funds transfers include:

- Transfers through automated teller machines (ATMs);
- Point-of-sale (POS) terminals;
- Automated clearinghouse (ACH) systems;
- Telephone bill-payment plans in which periodic or recurring transfers are contemplated;
- Remote banking programs; and

¹ The EFTA is codified at 15 U.S.C. s. 1693 et seq. The EFTA is implemented in Regulation E at 12 C.F.R. pt. 1005.

² 15 U.S.C. s. 1693(7).

- Remittance transfers.

However, electronic funds transfers do not include transactions originated by paper instruments, such as checks, and certain other transfers set forth in the EFTA. The EFTA covers topics such as disclosure of fees and limits, error resolution procedures, liability, preauthorized transfers, and receipts.

Uniform Commercial Code Article 4A and Chapter 670, F.S.

In 1989, the Uniform Law Commission adopted Uniform Commercial Code (UCC) Article 4A for the states' enactment, and described it as an essential statutory backdrop to promote uniformity, efficiency, and certainty by governing the rights and obligations among the commercial participants in funds transfers and allocating the risk of loss for unauthorized or improperly executed payment orders. At the time the original UCC Article 4A was drafted, the intent was to govern large, rapid money transfers, such as wire transfers, between the commercial parties to a funds transfer, keeping in mind that the primary objective of the EFTA is the provision of individual consumer rights.³

A majority of the states have adopted UCC Article 4A. In 1991, the Florida Legislature adopted the UCC Article 4A through the enactment of ch. 670, F.S. (act), relating to funds transfers.⁴ The act defines "funds transfers" as a series of transactions that begin with the originator's payment order (an unconditional instruction to a bank to pay a fixed amount), made for making payment to the beneficiary of the order.⁵ The funds transfer transaction includes the relationship between intermediary banks that execute and settle the payment order, and concludes upon the ultimate, actual payment to the beneficiary.

Frequently, the EFTA may partially apply to a funds transfer because the transfer is intended to credit a consumer's account in a financial institution. In these cases, the act does not apply to the funds transfer to the extent it is governed and preempted by the EFTA.⁶

Remittance Transfers

Consumers transfer tens of billions of dollars from the United States each year.⁷ In the United States, remittance transfers sent by nondepository money transmitters, depository institutions, and credit unions are generally subject to federal anti-money laundering laws and restrictions on transfers to or from certain persons. Although remittances can be sent through depository institutions (such as an ACH transaction or a wire transfer), a large number of U.S. remittance transfers are sent through money transmitters, which are regulated primarily by state regulators. Chapter 560, F.S., governs nondepository money services businesses, which include "money transmitters" who receive and transmit currency or monetary value through a broad range of

³ 15 U.S.C. s.1693(b). See also Uniform Law Commission, *Why States Should Adopt UCC Article 4A*, at <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UCC%20Article%204A>

⁴ Ch. 91-70, Laws of Fla.

⁵ Sections 670.103(1)(c) and 670.104(1), F.S.

⁶ Section 670.108, F.S., Business Law Section of the Florida Bar, *White Paper in Support of the Proposed Amendment to UCC Section 670.108* (on file with the Senate Committee on Judiciary).

⁷ 77 FR 6194 (Feb. 11, 2012).

means within the U.S. or to or from the U.S.⁸ However, ch. 560, F.S., is a regulatory statute administered by the Office of Financial Regulation and does not contain specific consumer protections or private remedies.⁹

On the federal level, wire transfers and transfers sent by money transmitters have generally fallen outside of the scope of the EFTA and its implementing rule, Regulation E. Until 2010, no federal consumer protection law directly regulated foreign remittance transfers, which can be sent through depository institutions as well as money transmitters. In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act¹⁰ was signed into law. Among many changes, Dodd-Frank amended the EFTA to create new compliance requirements for remittance transfers.¹¹ The rule defines a “remittance transfer” to mean the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is an electronic fund transfer.¹² Similar to the other consumer protections in the EFTA, these new remittance regulations require certain protections for the sending consumer, including disclosures, error resolution procedures, cancellation and refund policies, and a remittance transfer provider’s liability for the acts of its agents.

Under the EFTA, not all remittance transfers qualify as an “electronic funds transfer,” raising questions about the applicability of the EFTA. This could occur, for example, if the transfer permits payment in cash and does not instruct nor authorize a financial institution to credit a consumer account in a financial institution. The Uniform Law Commission expressed concern that absent a change to UCC Article 4A, there could be legal uncertainty for some remittance transfers currently governed by Article 4A, particularly for industry participants.¹³ The Consumer Financial Protection Bureau, in its proposed remittance transfer rules (Regulation E), also noted the uncertainty raised for traditional cash-based remittances sent through money transmitters (which have not been covered by the EFTA) and international wire transfers, which are not electronic funds transfers.¹⁴

In 2012, the Uniform Law Commission proposed an amendment to UCC Article 4. A majority of states have adopted this amendment.¹⁵ The amendment provides an affirmative statement of the act’s applicability to remittance transfers that are not electronic funds transfers under the EFTA.

⁸ Section 560.103(23), F.S.

⁹ Ch. 560, F.S., requires money transmitter licensees to maintain a corporate surety bond or a collateral deposit to ensure a source of recovery for aggrieved claimants. Section 560.209, F.S.

¹⁰ Pub. L. 111-203, H.R. 4173, commonly referred to as “Dodd-Frank.”

¹¹ Section 1073 of Dodd-Frank created Section 919 of the EFTA, relating to remittance transfers. Section 919 is codified at 15 U.S.C. s. 1693o-1. Dodd-Frank transferred EFTA rulemaking authority from the Board of Governors of the Federal Reserve System to the Consumer Financial Protection Bureau (CFPB). The CFPB’s remittance transfer rule became effective on October 28, 2013. The CFPB’s final remittance transfer rule was codified as new subpart B to Regulation E, 12 C.F.R. ss. 1005.30-1005.36.

¹² 12 CFR s. 1005.30(e).

¹³ Uniform Law Commission, *UCC Article 4A Amendments (2012) Summary*, at [http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20\(2012\)](http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20(2012)).

¹⁴ Electronic Fund Transfers (Regulation E), Final Rule and Proposed Rule, 77 FR 6211-6212 (Feb. 7, 2012) (codified at 12 C.F.R. pt. 1005).

¹⁵ Uniform Law Commission, *UCC Article 4A Amendments (2012): Enactment Status Map*, at [http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments \(2012\)](http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments (2012)) (last visited Jan. 7, 2016).

Without this amendment, neither the federal EFTA nor UCC Article 4A (as codified in the act) will apply to some aspects of remittance transfers, and the result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries, and other issues beyond the initial sending of the transfer.¹⁶

Cancellation of Mortgages

Under current law, a lender must cancel a mortgage within 60 days after it has been paid in full.¹⁷ The statute does not distinguish as to different types of mortgages, such as open-end mortgages and home equity lines of credit, and does not provide any exceptions. The Florida Statutes do not define the term, “open-end mortgages.” In the context of the financial services industry, these products generally allow borrowers to draw cash, up to the maximum credit limit, and then as the borrower pays down the balance of the loan, the borrower can draw cash again up to the limit. A home equity line of credit is a form of revolving credit in which the home serves as collateral. In contrast, “closed-end mortgages” disburse the entire loan amount upfront to or on behalf of the borrower and do not allow future redraws of credit.¹⁸

According to the Florida Bankers Association, open-end lines of credit provide flexibility to consumers by allowing continual access to their home equity by paying the mortgage in full and then having the ability to access the equity when and if it is needed again by the consumer. Under current law, lenders must cancel “any mortgage” upon payoff and must release the lien without exception. This undermines the purpose of open-end mortgages and creates costly and burdensome work for both the consumer and the lender each time the consumer seeks new access to credit secured by the home.¹⁹ Surrounding states such as Alabama, Georgia, Mississippi, and North Carolina have laws requiring that open-end mortgages and similar lines of credit be cancelled only upon the borrower’s full payment and written notice to the lender requesting termination of the open-end mortgage.²⁰

Consumer Finance Loans

The Division of Consumer Finance of the Florida Office of Financial Regulation (OFR) is responsible for the licensure and regulation of nondepository financial service entities and individuals. One of the regulatory programs, administered by OFR, is the Florida Consumer Finance Act (act),²¹ which sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is permitted in Florida. The act sets

¹⁶ Uniform Law Commission, *supra* note 13.

¹⁷ Section 701.03, F.S.

¹⁸ Consumer Financial Protection Bureau, *Ask CFPB: What is a second mortgage loan or “junior-lien”?* Available at <http://www.consumerfinance.gov/askcfpb/105/what-is-a-second-mortgage-loan-or-junior-lien.html> Additionally, Regulation Z, which implements the federal Truth in Lending Act, defines “open-end credit” as “consumer credit extended by a credit under a plan in which: (1) The creditor reasonably contemplates repeated transactions; (2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (3) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. 12 C.F.R. s. 226.2(20).

¹⁹ E-mail from the Florida Bankers Association, SB 260, Financial Transactions (Sept. 28, 2015) (on file with Senate Committee on Banking and Insurance).

²⁰ Ala. Code 1975 s. 35-10-26; Ga. Code Ann. s. 44-14-3; Miss. Code Ann. s. 89-5-21; N.C.G.S.A. s. 45-36.9.

²¹ Ch. 516, F.S.

forth maximum interest rates for a consumer finance loan, which is a loan of money, credit, goods, or a provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.²²

The act provides the grounds for denial of a license of other disciplinary action by the OFR. In particular, s. 516.07(1)(k), F.S, provides that it is grounds for administrative action, for any person to pay money or anything else of value, either directly or indirectly, to any person as compensation, inducement, or reward for referring a loan applicant to a licensed consumer finance lender.

Convenience Fees on Credit Card Transactions

Current law generally prohibits a seller or a lessor from imposing a surcharge on credit card purchases.²³ Charges that are exempt from the prohibition include charges imposed pursuant to an approved state or federal tariff and convenience fees imposed by an institution of higher learning that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program.²⁴

III. Effect of Proposed Changes:

Electronic Funds Transfers (Section 670.108)

Current law is silent regarding whether the state Uniform Commercial Code: Funds Transfers law (chapter 670, F.S.) applies to a funds transfer that is a remittance transfer under the federal Electronic Funds Transfer Act. This bill adopts the federal Uniform Law Commission's 2012 amendment, which clarifies that the act applies to funds transfers that are remittance transfers as defined in the EFTA, unless the remittance transfer is an electronic funds transfer, which would be covered by EFTA. The bill provides that if there is any inconsistency between a funds transfer under the act and the EFTA, the EFTA will govern the inconsistency. This provision is consistent with language in the EFTA providing that state law is preempted only if it is inconsistent with the EFTA or Regulation E, and then only to the extent of the inconsistency.²⁵

Cancellation of Mortgages (Section 701.03, F.S.)

Current law requires a mortgage lender to cancel a mortgage within 60 days after it has been paid in full. Current law treats all types of mortgages the same for purposes of mortgage cancellation. This bill reduces the time period for cancellation of a mortgage from 60 days to 45 days after full payment of the amount due under a promissory note secured by a mortgage.

²² Section 516.01(2), F.S.

²³ Section 501.0117(1), F.S.

²⁴ An independent nonprofit institution of higher learning may qualify for the Florida Resident Access Grant Program if the institution:

- Is located in and chartered by the state;
- Is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;
- Grants baccalaureate degrees; and
- Has a secular purpose (s. 1009.89(3), F.S.).

²⁵ 15 U.S.C. s. 1693q.

The bill provides an additional requirement for open-end mortgages. Mortgage cancellation on an open-end mortgage requires written notice from the borrower that he or she intends to close the mortgage. Upon receipt of the notice, the mortgagee or assignee shall cancel the mortgage within 45 days. The provisions on mortgage cancellation do not apply to an open-end mortgage existing before July 1, 2016, if the loan agreement included procedures for cancelling the mortgage.

Consumer Finance Loans (Section 516.07, F.S.)

The Florida Consumer Finance Act prohibits and imposes disciplinary action on any person who pays money or anything of value to a person for referring a loan applicant to a licensed consumer finance lender. This bill provides a narrow exception to the prohibition, in instances in which an amount is not charged directly or indirectly to the borrower.

Convenience Fees

Current law authorizes certain private colleges to impose a convenience fee on credit card payments made to the school for tuition, fees, and other student expenses. This bill extends the authority to charge a convenience fee to private schools offering kindergarten through grade 12 education.²⁶

This bill takes effect July 1, 2016.

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:

Art. III, s. 6, of the Florida Constitution requires, in part that “Every law shall embrace but one subject and matter properly connected therewith”. This constitutional provision is commonly known as the single-subject requirement.

The bill revises the law on electronic fund transfers, the cancellation of mortgages, activities of licensed consumer finance lenders, and convenience fees on credit card

²⁶ A private school is a nonpublic school which offers kindergarten through grade 12 education. A private school may be any religious, for-profit, or nonprofit school which is not a home education program Section 1002.01(2), F.S.

purchases. Although each of these changes addresses financial transactions, which is the short title of the bill, the bill may appear to address multiple subjects.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's clarification of the coverage of ch. 670, F.S., to remittance transfers may provide greater operational efficiency for remittance transfer providers and intermediary institutions. In addition, the bill's provision to allow an open-end mortgage to remain open after a borrower pays off the amount due under a promissory note secured by a mortgage may reduce administrative costs for lenders and borrowers.

The bill's extension of authority to private kindergarten through grade 12 schools to charge convenience fees on credit card purchases would benefit the private schools. Private schools would be able to impose a convenience fee up to the amount charged by credit card companies per transaction. Parents of children enrolled at private kindergarten through grade 12 schools would now have to pay convenience fees if they use a credit card to purchase tuition, fees, or other charges on student accounts.

C. Government Sector Impact:

The Department of Financial Services indicates that it does not expect a fiscal impact from the provisions of this bill.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.0117, 516.07, 670.108, and 701.03.

²⁷ Letter from Chief Financial Officer Jeff Atwater (Dec. 16, 2015).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS for CS by Judiciary on January 20, 2016:

This CS expands the current ability of certain private schools to charge convenience fees on the use of a credit card to pay tuition, fees, or other student account charges.

CS by Banking and Insurance on January 11, 2016:

The CS:

- Allows a licensed consumer finance lender to pay compensation to any person for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower.
- Requires a lender to cancel a mortgage within 45 days instead of 60 days if certain conditions are met.
- Provides that s. 701.03, F.S., relating to the cancellation of mortgages, does not apply to any existing or future open-end mortgage unless otherwise stated in the loan agreement.
- Clarifies that the act applies to remittance transfers made on or after July 1, 2016, the effective date of the bill.

- B. **Amendments:**

None.



971492

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 24 - 54
and insert:

Section 1. Subsection (1) of section 501.0117, Florida Statutes, is amended to read:

501.0117 Credit cards; transactions in which seller or lessor prohibited from imposing surcharge; penalty.-

(1) A seller or lessor in a sales or lease transaction may not impose a surcharge on the buyer or lessee for electing to use a credit card in lieu of payment by cash, check, or similar



971492

12 means, if the seller or lessor accepts payment by credit card. A
13 surcharge is any additional amount imposed at the time of a sale
14 or lease transaction by the seller or lessor that increases the
15 charge to the buyer or lessee for the privilege of using a
16 credit card to make payment. Charges imposed pursuant to
17 approved state or federal tariffs are not considered to be a
18 surcharge, and charges made under such tariffs are exempt from
19 this section. A convenience fee imposed upon a student or family
20 paying tuition, fees, or other student account charges by credit
21 card to a William L. Boyd, IV, Florida resident access grant
22 eligible institution, as defined in s. 1009.89, or to a private
23 school, as defined in s. 1002.01, is not considered to be a
24 surcharge and is exempt from this section if the amount of the
25 convenience fee does not exceed the total cost charged by the
26 credit card company to the institution. The term "credit card"
27 includes those cards for which unpaid balances are payable on
28 demand. This section does not apply to the offering of a
29 discount for the purpose of inducing payment by cash, check, or
30 other means not involving the use of a credit card, if the
31 discount is offered to all prospective customers.

32 Section 2. Section 670.108, Florida Statutes, is amended to
33 read:

34 670.108 Relationship to Electronic Fund Transfer Act
35 ~~Exclusion of consumer transactions governed by federal law.-~~

36 (1) Except as provided in subsection (2), this chapter does
37 not apply to a funds transfer any part of which is governed by
38 the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. No.
39 95-630, 92 Stat. 3728, 15 U.S.C. ss. 1693 et seq.), as amended
40 from time to time.



971492

41 (2) This chapter applies to a funds transfer that is a
42 remittance transfer as defined in the Electronic Fund Transfer
43 Act, 15 U.S.C. s. 1693o-1, as mended from time to time, unless
44 the remittance transfer is an electronic fund transfer as
45 defined in the Electronic Fund Transfer Act, 15 U.S.C. s. 1693a,
46 as amended from time to time.

47 (3) If there is an inconsistency between a funds transfer
48 under this chapter and the Electronic Fund Transfer Act, the
49 Electronic Fund Transfer Act governs the inconsistency.

50 Section 3. Section 701.03, Florida Statutes is amended to
51 read:

52 701.03 Cancellation.—

53 (1) Whenever the amount of money due under a promissory
54 note secured by a ~~on any~~ mortgage is ~~shall be~~ fully paid, the
55 mortgagee or assignee shall within 45 ~~60~~ days after satisfaction
56 of the mortgage thereafter cancel the mortgage ~~same~~ in the
57 manner provided by law, unless the mortgage is an open-end
58 mortgage.

59 (2) A mortgage that is an open-end mortgage as provided in
60 the loan agreement may be canceled upon written notice from the
61 borrower of the intent to close the mortgage. The mortgagee or
62 assignee shall cancel the open-end mortgage within 45 days after
63 receiving the notice. This subsection does not apply to an open-
64 end mortgage existing before July 1, 2016, if the loan agreement
65 contained procedures for canceling the mortgage.

66
67 ===== T I T L E A M E N D M E N T =====

68 And the title is amended as follows:

69 Delete lines 3 - 16



971492

70 and insert:
71 501.0117, F.S.; providing that a convenience fee
72 imposed upon a student or family paying certain fees
73 by credit card to a private school is not considered a
74 surcharge; amending s. 670.108, F.S.; revising
75 applicability; providing that ch. 670, F.S., governs
76 certain funds transfers that are remittance transfers;
77 providing that the federal Electronic Fund Transfer
78 Act governs any inconsistency between a funds transfer
79 made under the federal act and a funds transfer made
80 under ch. 670, F.S.; amending s. 701.03, F.S.;
81 reducing the time limit for a mortgagee or an assignee
82 to cancel a mortgage, except in cases where the loan
83 is an open-end mortgage; authorizing an open-end
84 mortgage to be canceled within a specified timeframe
85 if the borrower provides written notice of his or her
86 intent to close the open-end mortgage; providing
87 applicability;

By the Committee on Banking and Insurance; and Senators Smith
and Richter

597-02020-16

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A bill to be entitled

An act relating to financial transactions; amending s. 670.108, F.S.; revising applicability; providing that ch. 670, F.S., governs certain funds transfers that are remittance transfers; providing that the federal Electronic Fund Transfer Act governs any inconsistency between a funds transfer made under the federal act and a funds transfer made under ch. 670, F.S.; amending s. 701.03, F.S.; providing that a requirement that certain mortgages be cancelled within a specified timeframe of satisfaction does not apply to existing or future open-ended mortgages unless the requirement is specified in the loan agreement; requiring that an open-ended mortgage be cancelled within a specified timeframe if the borrower provides written notice of his or her intent to close the open-ended mortgage; amending s. 516.07, F.S.; revising the grounds for denial of an application for a license to make consumer finance loans; providing applicability; providing an effective date.

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

Section 1. Section 670.108, Florida Statutes, is amended to read:

670.108 Relationship to Electronic Fund Transfer Act
~~Exclusion of consumer transactions governed by federal law.-~~

(1) Except as provided in subsection (2), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. No. 95-630, 92 Stat. 3728, 15 U.S.C. ss. 1693 et seq.), as amended

Page 1 of 3

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

597-02020-16

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from time to time.

(2) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. s. 1693o-1, as amended from time to time, unless the remittance transfer is an electronic funds transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C s. 1693a, as amended from time to time.

(3) If there is an inconsistency between a funds transfer under this chapter and the Electronic Fund Transfer Act, the Electronic Fund Transfer Act governs the inconsistency.

Section 2. Section 701.03, Florida Statutes, is amended to read:

701.03 Cancellation.-~~When~~ ~~Whenever~~ the amount of money due under a promissory note secured by ~~on~~ any mortgage ~~is shall be~~ fully paid, the mortgagee or assignee shall, within ~~45~~ ~~60~~ days after satisfaction of the mortgage, ~~thereafter~~ cancel the mortgage ~~same~~ in the manner provided by law. This section does not apply to any existing or future open-ended mortgage unless otherwise stated in the loan agreement. If, after fully satisfying the mortgage, the borrower provides written notice of his or her intent to close the open-ended mortgage, the mortgagee or assignee shall cancel the open-ended mortgage within 45 days after receiving the notice.

Section 3. Paragraph (k) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.-

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to

Page 2 of 3

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

597-02020-16

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61 make consumer finance loans and grounds for any of the
62 disciplinary actions specified in subsection (2):

63 (k) Paying money or anything else of value, directly or
64 indirectly, to any person as compensation, inducement, or reward
65 for referring loan applicants to a licensee, if such amount is
66 charged directly or indirectly to the borrower.

67 Section 4. This act applies to remittance transfers
68 initiated on or after July 1, 2016.

69 Section 5. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 14, 2016

I respectfully request that **Senate Bill #260**, relating to Financial Transactions, be placed on the:

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

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

Senator Christopher L. Smith
Florida Senate, District 31

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/2016
Meeting Date

✓
260

~~260~~

Bill Number (if applicable)

971492

Amendment Barcode (if applicable)

Topic Financial Transactions

Name James Herzog

Job Title Associate Director for Education

Address 201 W Park Ave
Street

Phone 850/205-6823

Tallahassee FL 32301
City State Zip

Email jherzog@flaccb.org

Speaking: For Against Information

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

Representing Florida Conference of Catholic Bishops

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)

1-20-16

Meeting Date

SB 260

Bill Number (if applicable)

Topic FINANCIAL TRANSACTIONS

Amendment Barcode (if applicable)

Name STEVE DYAL

Job Title _____

Address 123 S. CALHOUN ST.
Street

Phone 850-570-6286

TALL FL 32301
City State Zip

Email SDYAL@dyaconsulting.com

Speaking: For Against Information

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

Representing FLORIDA FINANCIAL SERVICES 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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

1.20.2016
Meeting Date

260
Bill Number (if applicable)

Topic Financial Transactions

Amendment Barcode (if applicable)

Name Kimberly Siomkos (see-OM-Kos)

Job Title VP of Government Relations

Address 1001 Thomasville Road Suite 201
Street
Tallahassee FL 32303
City State Zip

Phone 561 317 4707
Email ~~ksiomkos@floridabankers.com~~ ksiomkos@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/16

Meeting Date

SB 266

Bill Number (if applicable)

Topic Financial Transactions

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Div. of Governmental Affairs

Address 3692 Coolidge Ct

Phone 850-588-5010

Street

Tallahassee FL 32311

City

State

Zip

Email jennifer.martin@lscu.coop

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against

(The Chair will read this information into the record.)

Representing Florida Credit Union Association

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/16

260

Meeting Date

Bill Number (if applicable)

Topic Financial Transactions

Amendment Barcode (if applicable)

Name Greg Black

Job Title Attorney

Address 119 S. Monroe Street, Suite 200

Phone 8502059000

Street

Tallahassee

FL

32301

Email greg.black@mhdfirm.com

City

State

Zip

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

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

Representing The Business Law Section of the Florida Bar

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 742

INTRODUCER: Judiciary Committee; Community Affairs Committee; and Senator Hutson

SUBJECT: Certificates of Public Convenience and Necessity for Life Support or Air Ambulance Services

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
4.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 742 requires counties to adopt new ordinances or amend existing ones to comply with the provisions of the bill for the issuance of certificates of public convenience and necessity (COPCN) for basic and advanced life support services. Those ordinances must be in effect by January 1, 2017. However, the bill exempts fiscally constrained counties from the requirements.

A county ordinance complying with the bill must:

- Provide a quasi-judicial process for the issuance or denial of an application for a COPCN.
- Authorize an applicant who maintains fire rescue infrastructure and provides first response to appeal the denial of a COPCN to the circuit court.

A county in developing the standards above must consider the recommendations of independent special districts providing fire rescue services, in addition to state guidelines and the recommendations of entities identified in existing law.

As for COPCNs for basic and advanced life support services, the bill requires the same criteria for air ambulance services regarding recommendations of independent special districts providing fire rescue services. However, the bill does not likewise require a quasi-judicial process or the right of appeal to the circuit court for air ambulance providers.

II. Present Situation:

Basic and Advanced Life Support Services

Prehospital life support services fall into two general categories, basic life support services (BLS) and advanced life support services (ALS). BLS is medical care that is used to assure a patient's vital functions until the patient has been transported to appropriate medical care.¹ ALS is sophisticated care using invasive methods, such as intravenous fluids, medications and intubation.² ALS can be performed in a ground ambulance or a helicopter and is usually implemented by physicians or paramedics.³ BLS is typically performed by paramedics or emergency medical technicians (EMT).⁴

In Florida, providers of both BLS and ALS must be licensed by the Department of Health (DOH).⁵ To be licensed, an applicant must pay the license fee,⁶ provide evidence of adequate liability insurance coverage, have a COPCN from each county in which the applicant wishes to operate, and meet the minimum standards applicable to the type of service the applicant wishes to provide.⁷ Licenses for BLS and ALS must be renewed every 2 years.⁸

Certificates of Public Convenience and Necessity for the Provision of Basic or Advanced Life Support Services and Air Ambulance Services

A COPCN is defined as a written statement or document, issued by the governing board of a county, granting permission for an applicant or licensee to provide services authorized under such license for the benefit of the population of that county or an area within the county.⁹ To be licensed to provide basic or advanced life support services or air ambulance services, an applicant must have a COPCN from each county in which the applicant will provide services.¹⁰

¹ Ryyänen, et. al, *Is advanced life support better than basic life support in prehospital care? A systematic review*, Scand J Trauma Resusc. Emerg. Med. 2010; 18: 62. Available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3001418/> (last visited Jan. 15, 2016).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Section 401.25(1), F.S.

⁶ The license fee is \$660 for a BLS provider and \$1,375 for an ALS or Air license provider, plus \$25 for each vehicle permit. See <http://www.floridahealth.gov/licensing-and-regulation/ems-service-provider-regulation-and-compliance/index.html> (last visited Jan. 15, 2016).

⁷ Minimum standards include an approved radio communications system; trauma transport protocols; compliance with minimum vehicle requirements; and adequate staffing including at least one EMT per ambulance for BLS, at least one EMT and one paramedic per ambulance for ALS, and at least one paramedic for air transport. ALS providers are also required to have a medical director with a Drug Enforcement Agency license number. See Rules 64J-1.002, 64J-1.003, and 64J-1.005, F.A.C.

⁸ Florida Department of Health, *EMS Service Provider Licensing*, <http://www.floridahealth.gov/licensing-and-regulation/ems-service-provider-regulation-and-compliance/index.html> (last visited Jan. 15, 2016).

⁹ Rule 64J-1.001(4), F.A.C.

¹⁰ Section 401.25(2)(d), F.S.; Specifically for air ambulance services, the requirement to obtain a COPCN may be preempted by the federal Airline Deregulation Act of 1978 (ADA). The ADA restricts states from regulating matters related to airline pricing, routes, and services. In general, states are allowed to regulate the medical aspects of air ambulance services while the aviation components are regulated by the Federal Aviation Administration. Courts have found in other states (most recently in North Carolina) that certificate of need regulation of air ambulance providers is expressly preempted to the federal government and the Federal Department of Transportation has advised that this preemption also applies to COPCN laws. For

Counties are allowed, but not required, to adopt ordinances to provide reasonable standards for the issuance of COPCNs. In adopting such ordinances, the counties must consider state guidelines, the recommendations of the local or regional trauma agency, and the recommendations of municipalities within their jurisdiction.¹¹

County ordinances regarding COPCNs vary in detail from county to county. Of the counties surveyed, all ordinances detail specific application requirements, typically including forms required to be filed with the county and application review criteria.¹² County ordinances may require the county to consider the recommendation of various entities regarding approval or denial of an application.¹³

The amount of detail required for a COPCN application also varies from county to county, but generally includes proof that the applicant has all necessary licenses as well as meets all state criteria standards for the provision of ALS or BLS services. Also included in some ordinances are revocation criteria, responsibilities conveyed on the holder of a COPCN, and a ban on the sale or reassignment of COPCNs. Additionally, the length of time that a COPCN lasts before it expires varies. For example, in Volusia County COPCNs expire after 2 years, in Broward County for ALS after 3 years and for BLS after 5 years, and in Miami-Dade County the COPCNs last for 3 years.

Fiscally Constrained Counties

A fiscally constrained county is a county:

- That is entirely within a rural area of opportunity designated by the Governor; or
- For which millage will raise no more than \$5 million in revenue based on certified taxable value.¹⁴

a detailed analysis of this issue, see the United States Government Accountability Office Report on “Air Ambulance: Effects of Industry Changes on Services Are Unclear,” GAO-10-907, pp. 20-25 and Appendix III (Sep. 2010), <http://www.gao.gov/new.items/d10907.pdf>.

¹¹ Section 401.25(6), F.S.

¹² Counties surveyed include Volusia (Sec. 46-92 Volusia County Code of Ordinances), Broward (Sec. 3½, Broward Cty. Code of Ordinances), Miami-Dade (Ch. 4 Art. I, Miami-Dade Cty. Code of Ordinances), Wakulla (Ch. 11.5 Art. III, Wakulla Cty. Code of Ordinances), Baker (Ch. 16, Art. III, Baker Cty. Code of Ordinances), and Collier (Ch. 50 Art. III, Collier Cty. Code of Ordinances). Counties without ordinances include, but are not limited to, Columbia, Franklin, Levy, and Gadsden Counties (Conversation with Susan Harbin, Florida Association of Counties (Jan. 19, 2016).

¹³ For example, the Broward County ordinance requires the trauma management agency to make a recommendation on renewals of certificates and licenses for nonemergency medical transport services (Sec. 3½-15(b), Broward Cty. Code of Ordinances). Volusia County requires the county to consider application recommendations from current providers or operators in the county (Sec. 46-92(i), Volusia Cty. Code of Ordinances). Wakulla County requires review and comments on applications for ambulance services by various entities: the county fire volunteer department, two municipalities within its jurisdiction, and the county department of emergency management services (Sec. 11.5.058, Wakulla Cty. Code of Ordinances).

¹⁴ Section 218.67(1), F.S. The Governor designates a county as a fiscally constrained county under the same criteria as that used for the Rural Economic Development Initiative (Section 286.0655, F.S.)

Independent Special Districts

A special district is a unit of local government created for a special purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.¹⁵

Special districts can be either independent or dependent. A dependent special district is a district that has one of the following characteristics:

- The membership of the governing body is identical to that of the governing body of a single county or a municipality.
- All members of its governing body are appointed by the governing body of a single county or municipality.
- During their unexpired terms, members of the special district's governing body are subject to removal at will by the governing body of a single county or municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or municipality.

An independent special district is a special district that does not qualify as a dependent special district. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.¹⁶

Quasi-judicial Proceedings

Hearings may be classified as legislative, executive, or quasi-judicial in nature.

If a local tribunal acts in a quasi-legislative capacity, the avenue of appeal is typically to circuit court through an action for a declaratory judgment. However, if the local tribunal acts in a quasi-judicial capacity, petitioners have two options to appeal in the circuit court, a complaint for declaratory judgment or a writ of certiorari.¹⁷

The term "quasi-judicial" generally refers to "judicial decisions taken by an administrative agency."¹⁸ Some modicum of due process is required for quasi-judicial hearings. "A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and an opportunity to be heard."¹⁹

Ex-parte communications are generally forbidden in the quasi-judicial process. Evidence of ex-parte communications made to a body acting quasi-judicially creates a presumption of prejudice. The presumption is rebuttable.²⁰

A petitioner must exhaust all administrative remedies in appealing a decision issued by a quasi-judicial entity. After exhausting administrative remedies, a petitioner may seek an appellate-level

¹⁵ Section 189.012(6), F.S.

¹⁶ Section 189.012(2) and (3), F.S.

¹⁷ *ABCs of Local Land Use and Zoning Decisions*, 84 FLA. B.J. 20 (Jan. 2010).

¹⁸ BLACK'S LAW DICTIONARY (10th ed. 2014).

¹⁹ *Jennings v. Dade County*, 589 So. 2d 1337, 1340 (Fla. 3d DCA 1991).

²⁰ *Id.* at 1343-1344.

review only on a writ of certiorari²¹ to a District Court of Appeal.²² Still, a petitioner may have a right to appeal the decision of the quasi-judicial proceeding to a circuit court if provided by general law.²³

The appropriate standard of review by a circuit court accepting a writ of certiorari to review a local government action is limited to whether:

- Procedural due process is provided;
- Essential elements of law have been observed; and
- Administrative findings and judgment are supported by competent, substantial evidence.²⁴

In 1982, a Florida appellate court in 1982 reviewed a decision made by a county council to deny a COPCN application of a potential provider for emergency medical transportation services.²⁵ The court ruled that proceedings held by counties on COPCN applications are quasi-legislative or quasi-executive, rather than quasi-judicial proceedings. As such, these hearings are not subject to certiorari review by the circuit court.²⁶

In 2013, a circuit court denied a petition for a writ of certiorari filed by an ambulance transport provider challenging the denial of a COPCN.²⁷ The county denied the COPCN application of the provider at a hearing after other hearings on the matter.²⁸ However, the court concluded that denial of the writ was required because the hearings were not quasi-judicial in nature. The hallmarks of a quasi-judicial hearing, according to the court, include:

- The opportunity to cross-examine witnesses;
- Ex-parte communications are banned; and

The hearing is subject to certiorari review.²⁹

III. Effect of Proposed Changes:

The bill requires counties to adopt new ordinances or amend existing ones to comply with the provisions of the bill for the issuance of certificates of public convenience and necessity (COPCN) for basic and advanced life support services. Those ordinances must be in effect by January 1, 2017. However, the bill exempts fiscally constrained counties from the requirements.

A county ordinance complying with the bill must:

- Provide a quasi-judicial process for the issuance or denial of an application for a COPCN.
- Authorize an applicant who maintains fire rescue infrastructure and provides first response to appeal the denial of a COPCN to the circuit court.

²¹ A writ of certiorari is an appeal authorized at the discretion of an appellate court. Therefore, the appellate court must grant the writ of certiorari to the petitioner for the petitioner to proceed.

²² Bruce Epperson, *Redefining "Quasi-Judicial": The Diminishing Role of Quasi-Judicial Determinations in Local Government Personnel Actions*, 80 FLA. B.J. 59, 61 (July/Aug. 2006).

²³ Art. V., Sect. 5(b), FLA. CONST.

²⁴ *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).

²⁵ *County of Volusia v. City of Daytona Beach*, 420 So. 2d 606, 606, 608 (Fla. 5th DCA 1982).

²⁶ *Id.* at 611.

²⁷ *Bonita Springs Fire Control and Rescue District v. Lee Cty.*, Case No. 13CA1115 (Fla. 20th Jud.Cir.Ct. 2013).

²⁸ *Id.* at 9.

²⁹ *Id.* at 3-5.

A county in developing the standards above must consider the recommendations of independent special districts providing fire rescue services, in addition to state guidelines and the recommendations of entities identified in existing law.

As for COPCNs for basic and advanced life support services, the bill requires the same criteria for air ambulance services regarding recommendations of independent special districts providing fire rescue services. However, the bill does not likewise require a quasi-judicial process or the right of appeal to the circuit court for air ambulance providers.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because the bill requires counties to adopt ordinances for the issuance of COPCNs, the bill falls within the purview of Section 18(a), Article VII, Florida Constitution, which provides that counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. Subsection (d) provides an exemption from this prohibition for laws determined to have an “insignificant fiscal impact.” If a fiscal impact is not greater than the average statewide population for the applicable fiscal year³⁰ times \$0.10, the impact is insignificant and therefore exempt from mandates requirements. The fiscal impact of this bill is indeterminate, but if the cost of enacting or revising an ordinance exceeds the threshold for an insignificant impact, the bill will require a 2/3 vote of the membership of each house and a finding of an important state interest.

Fiscally constrained counties, however, are exempt from the requirements of the bill.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁰ Based on the Demographic Estimating Conference’s population adopted annually. The post-conference packet can be found at: <http://edr.state.fl.us/Content/conferences/population/index.cfm>.

B. Private Sector Impact:

The bill may result in more competition for COPCNs or more businesses having a COPCN to provide basic and advanced life support services. These competitive factors may impact the profitability of businesses providing basic and advanced life support services or the cost of services to consumers.

C. Government Sector Impact:

The Department of Health indicates that it expects no impact from the provisions of this bill.³¹

The Office of the State Courts Administrator indicates that it expects an increase in court workload and judicial time due to the right of appeal to circuit courts. However, fiscal impact is unknown due to the unavailability of data needed to determine fiscal impact.³²

The bill may have a negative fiscal impact on counties that are required to create or revise ordinances for the issuance of COPCNs in compliance with the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 401.25 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Judiciary on January 20, 2016:**

- Provides an exemption to fiscally constrained counties from the requirement that counties adopt or amend ordinances that comply with the bill;
- Clarifies that county ordinances on COPCNs for basic and advanced life support services be in compliance by January 1, 2017; and
- Deletes the requirement that counties provide standards for COPCNs which are objective.

CS by Community Affairs on January 11, 2016:

³¹ Department of Health, *2016 Agency Legislative Bill Analysis*.

³² The Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Jan. 16, 2016).

Requires counties having COPCN ordinances to amend them if they are not in compliance with certain standards. If existing ordinances are in compliance, no action needs to be taken. Ordinances must provide a quasi-judicial process for approval or denial of an application for a COPCN, and authorize applicants currently maintaining fire rescue infrastructure and providing first response in the county to appeal the county's decision to the circuit court. Requires that any county ordinances for COPCNs be objective.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 74 - 104
and insert:

(6) (a) The governing body of a each county that is not a fiscally constrained county as defined by s. 218.67(1) shall, unless such county has an ordinance that complies with the requirements of this section on the effective date of this act, may adopt an ordinance or amend an existing ordinance to
~~ordinances that~~ provide reasonable standards for certificates of public convenience and necessity for basic and ~~or~~ advanced life



425650

12 support services by January 1, 2017 ~~and air ambulance services.~~
13 In developing the standards for certificates of public
14 ~~convenience and necessity~~, the governing body of each county
15 must consider state guidelines, recommendations of the local or
16 regional trauma agency created under chapter 395, ~~and the~~
17 recommendations of the municipalities within its jurisdiction,
18 and recommendations of the independent special districts that
19 provide fire rescue services within its jurisdiction. The
20 ordinance shall provide a quasi-judicial process, or some other
21 type of evidentiary process, for approval or denial of an
22 application for a certificate. The ordinance shall also provide
23 that applicants currently maintaining fire rescue infrastructure
24 and providing first response in the county may appeal the
25 county's decision to the circuit court with jurisdiction over
26 the county.

27 (b) The governing body of a county defined as fiscally
28 constrained pursuant to s. 218.67(1) may adopt an ordinance to
29 provide reasonable standards for certificates of public
30 convenience and necessity for basic and advanced life support
31 services. In developing the standards, the governing body of
32 each county must consider state guidelines, recommendations of
33 the local or regional trauma agency created under chapter 395,
34 recommendations of the municipalities within its jurisdiction,
35 and recommendations of the independent special districts that
36 provide fire rescue services within its jurisdiction.

37 (c) The governing body of each county may adopt an
38 ordinance to provide reasonable standards for certificates of
39 public convenience and necessity for air ambulance services. In
40 developing the standards, the governing body of each county must



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41 consider state guidelines, recommendations of the local or
42 regional trauma agency created under chapter 395,
43 recommendations of the municipalities within its jurisdiction,
44 and recommendations of the independent special districts that
45 provide fire rescue services within its jurisdiction.

46
47 ===== T I T L E A M E N D M E N T =====

48 And the title is amended as follows:

49 Delete line 17

50 and insert:

51 such standards; providing an exemption for certain
52 counties; providing an effective date.

By the Committee on Community Affairs; and Senator Hutson

578-02029-16

2016742c1

A bill to be entitled

An act relating to certificates of public convenience and necessity for life support or air ambulance services; amending s. 401.25, F.S.; requiring, rather than authorizing, county governing boards to adopt ordinances or amend existing ordinances that provide standards for the issuance of certificates of public convenience and necessity for basic or advanced life support services; including the recommendations of specified districts in the development of such standards; requiring counties to adopt a process for review of applications; providing an appeal process; authorizing county governing boards to adopt ordinances that provide standards for the issuance of certificates of public convenience and necessity for air ambulance services; specifying considerations for such standards; providing an effective date.

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

Section 1. Section 401.25, Florida Statutes, is amended to read:

401.25 Licensure as a basic life support or an advanced life support service; air ambulance services.—

(1) Every person, firm, corporation, association, or governmental entity owning or acting as agent for the owner of any business or service which furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of providing prehospital or interfacility advanced life support services or basic life support transportation services must be licensed as a basic life support service or an advanced life support service,

Page 1 of 5

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whichever is applicable, before offering such service to the public. The application for such license must be submitted to the department on forms provided for this purpose. The application must include documentation that the applicant meets the appropriate requirements for a basic life support service or an advanced life support service, whichever is applicable, as specified by rule of the department.

(2) The department shall issue a license for operation to any applicant who complies with the following requirements:

(a) The applicant has paid the fees required by s. 401.34.

(b) The ambulances, equipment, vehicles, personnel, communications systems, staffing patterns, and services of the applicant meet the requirements of this part, including the appropriate rules for either a basic life support service or an advanced life support service, whichever is applicable.

(c) The applicant has furnished evidence of adequate insurance coverage for claims arising out of injury to or death of persons and damage to the property of others resulting from any cause for which the owner of such business or service would be liable. The applicant must provide insurance in such sums and under such terms as required by the department. In lieu of such insurance, the applicant may furnish a certificate of self-insurance evidencing that the applicant has established an adequate self-insurance plan to cover such risks and that the plan has been approved by the Office of Insurance Regulation of the Financial Services Commission.

(d) The applicant has obtained a certificate of public convenience and necessity from each county in which the applicant will operate. In issuing the certificate of public

Page 2 of 5

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578-02029-16

2016742c1

62 convenience and necessity, the governing body of each county
63 shall consider the recommendations of municipalities within its
64 jurisdiction.

65 (3) The department may suspend or revoke a license at any
66 time if it determines that the licensee has failed to maintain
67 compliance with the requirements prescribed for operating a
68 basic or advanced life support service.

69 (4) Each license issued in accordance with this part will
70 expire automatically 2 years after the date of issuance.

71 (5) The requirements for renewal of any license issued
72 under this part are the same as the requirements for original
73 licensure that are in effect at the time of renewal.

74 (6) (a) By January 1, 2017, the governing body of each
75 county shall may adopt an ordinance or amend an existing
76 ordinance to ordinances that provide reasonable, objective
77 standards for certificates of public convenience and necessity
78 for basic or advanced life support services and air ambulance
79 services. In developing the standards for certificates of public
80 convenience and necessity, the governing body of each county
81 must consider state guidelines, recommendations of the local or
82 regional trauma agency created under chapter 395, and the
83 recommendations of the municipalities within its jurisdiction,
84 and recommendations of the independent special districts that
85 provide fire rescue services within its jurisdiction. The
86 ordinance shall provide a quasi-judicial process, or some other
87 type of evidentiary process, for approval or denial of an
88 application for a certificate. The ordinance shall also provide
89 that applicants currently maintaining fire rescue infrastructure
90 and providing first response in the county may appeal the

Page 3 of 5

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

578-02029-16

2016742c1

91 county's decision to the circuit court with jurisdiction over
92 the county. A county that, as of January 1, 2016, has adopted an
93 ordinance that complies with this subsection is not required to
94 further amend the ordinance.

95 (b) The governing body of each county may adopt an
96 ordinance to provide reasonable, objective standards for
97 certificates of public convenience and necessity for air
98 ambulance services. In developing the standards, the governing
99 body of each county must consider state guidelines,
100 recommendations of the local or regional trauma agency created
101 under chapter 395, recommendations of the municipalities within
102 its jurisdiction, and recommendations of the independent special
103 districts that provide fire rescue services within its
104 jurisdiction.

105 (7) (a) Each permitted basic life support ambulance not
106 specifically exempted from this part, when transporting a person
107 who is sick, injured, wounded, incapacitated, or helpless, must
108 be occupied by at least two persons: one patient attendant who
109 is a certified emergency medical technician, certified
110 paramedic, or licensed physician; and one ambulance driver who
111 meets the requirements of s. 401.281. This paragraph does not
112 apply to interfacility transfers governed by s. 401.252(1).

113 (b) Each permitted advanced life support ambulance not
114 specifically exempted from this part, when transporting a person
115 who is sick, injured, wounded, incapacitated, or helpless, must
116 be occupied by at least two persons: one who is a certified
117 paramedic or licensed physician; and one who is a certified
118 emergency medical technician, certified paramedic, or licensed
119 physician who also meets the requirements of s. 401.281 for

Page 4 of 5

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

578-02029-16

2016742c1

120 drivers. The person with the highest medical certifications
121 shall be in charge of patient care. This paragraph does not
122 apply to interfacility transfers governed by s. 401.252(1).

123 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 18, 2016

I respectfully request that **Senate Bill #742**, relating to Certificates of Public Convenience and Necessity, be placed on the:

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

A handwritten signature in cursive script, appearing to read "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 6

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/14
Meeting Date

742
Bill Number (if applicable)

Topic COPCN

Amendment Barcode (if applicable)

Name Joseph Daigle

Job Title Fire Chief

Address 27701 Bonita Grande DR.

Phone 239 850 0105

Street

Bonita Springs FL 34135

Email Daigle@BonitaFire.org

City

State

Zip

Speaking: For Against Information

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

Representing Bonita Springs Fire District

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)

1/20/2016

Meeting Date

742

Bill Number (if applicable)

Topic Certificate of Public Convenience and Necessity

Amendment Barcode (if applicable)

Name Jorge Aguilera

Job Title Deputy Chief of EMS

Address 1885 Veterans Park Drive

Phone (239) 597-3222

NAPLES Fla

Fla

34109

Email jaguilera@northcollinesfire.com

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

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

Representing NORTH COLLINES FIRE CONTROL & RESCUE DISTRICT

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

1/20/2016

Meeting Date

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

CS/SB 742

Bill Number (if applicable)

Topic COPCN

Amendment Barcode (if applicable)

Name Cari Roth

Job Title

Address 215 N. Monroe Suite 815

Phone 850/591-1094

Street

Tallahassee FL 32301

Email croth@deanmead.com

City

State

Zip

Speaking: For Against Information

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

Representing Fla. Ambulance Association, Manatee, Charlotte & Pinellas Counties

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)

1/20/16
Meeting Date

742
Bill Number (if applicable)

Topic COPCN

Amendment Barcode (if applicable)

Name Arlene Smith

Job Title Legislative Liaison

Address 724 N Ridgewood

Phone 386-405-1552

Deland FL 32720
City State Zip

Email arsmith@volusia.org

Speaking: For Against Information

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

Representing Volusia County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1-20-16

Meeting Date

742

Bill Number (if applicable)

Topic CRPCN

Amendment Barcode (if applicable)

Name Con Killingsworth

Job Title Attorney/Lobbyist

Address 315 S. Calhoun St. 34870

Phone 8702225700

Street

Tallahassee

City

FL

State

32301

Zip

Email killingsworth@law.com

Speaking: For Against Information

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

Representing Bonita Springs Fire Control District

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)

1/20/16

Meeting Date

SB 742

Bill Number (if applicable)

Topic COPEN SB 742

Amendment Barcode (if applicable)

Name Tracey Vause

Job Title EMS Chief Okaloosa County

Address 90 College Blvd East

Phone 850-651-7150

Street

Niceville

FL

32578

City

State

Zip

Email Trace.Vause@co.okaloosa.fl.us

Speaking: For Against Information

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

Representing Okaloosa County BOCC

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)

1/27/11
Meeting Date

1742
Bill Number (if applicable)

Topic OS, CN

Amendment Barcode (if applicable)

Name Simon Harbin

Job Title Legislative Advocate

Address Law Office
Street
1111 Commerce IL 37201
City State Zip

Phone 772-446-1115

Email sharbin@leg.state.fl.us

Speaking: For Against Information

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

Representing Simon Harbin Legislative Advocate

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)

12-16

Meeting Date

6587 742

Bill Number (if applicable)

Topic COPCN

Amendment Barcode (if applicable)

Name John Hall

Job Title Chairman - Polk County Board of County Commissioners

Address PO Box 9005

Phone (863) 534-6008

Street

Falton

FL

33830

City

State

Zip

Email john.hall@polk-county.net

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/20/16

Meeting Date

SB 742

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Kraig Conn

Job Title _____

Address 301 S. Bronough Suite 300

Phone 272 9684

Street

Tall FL 32301

Email Kconn@flcitics.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Citic's

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/20/16

Meeting Date

742

Bill Number (if applicable)

Topic COPEN

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 101 N. MADISON

Phone 681-4270

Street

Toll

City

State

FL

Zip

Email _____

Speaking: For Against Information

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

Representing City of Palm Coast / City of South Daytona

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)

1/20

Meeting Date

SB 742

Bill Number (if applicable)

Topic COPCN

Amendment Barcode (if applicable)

Name Kelley Teague

Job Title Legislative Affairs Director

Address 201 S. Rosalind Ave

Phone

Street

Orlando,

FL

32801

Email

City

State

Zip

Speaking: For Against Information

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

Representing Orange County Government

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/SB 1086

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Prejudgment Interest

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	FAV/CS
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1086 requires a court to award prejudgment interest on economic damages to a prevailing plaintiff in a personal injury action. If economic damages are recovered, the court must include interest in its final judgment on:

- Each component of economic damages, with the interest accruing from the date of the loss of an economic benefit or payment made by the plaintiff; and
- Costs, if awarded, with the interest computed on the costs beginning on the first day of the month immediately following the month in which costs were paid.

The applicable rate of interest is established by the Chief Financial Officer pursuant to statute. That rate is currently 4.75 percent per annum.

The bill applies to all causes of action that accrue on or after the effective date of the act, July 1, 2016.

II. Present Situation:

Prejudgment Interest

Prejudgment interest is the interest on a judgment which is calculated from the date of the injury or loss until a final judgment is entered for the plaintiff. In contrast, post-judgment interest is

interest on a judgment that is calculated from the date of the final judgment until the plaintiff collects the award from the defendant.

Under English common law, prejudgment interest was permitted for claims that were “liquidated” but not for claims that were “unliquidated.” A liquidated claim is a claim for an amount that can be determined or measured back to a fixed point in time. It is not speculative or intangible. An unliquidated claim, in contrast, is one that is based on intangible factors and is generally disputed until a jury determines the amount. In personal injury law, examples of these types of damages include pain and suffering, mental anguish, loss of enjoyment of life, and permanent injury.

In assessing prejudgment interest, a claim becomes liquidated when a verdict has the effect of fixing damages as of a prior date.¹

Florida does not generally allow the award of prejudgment interest for plaintiffs in personal injury² and wrongful death claims, but does allow it in some tort areas.³ The theory for denying prejudgment interest is that damages in personal injury cases are too speculative to liquidate before a final judgment is rendered. An exception to that rule is when a plaintiff can establish that he or she suffered the loss of a vested property right.⁴

One theory of prejudgment interest is that it is not awarded to penalize the losing party but to compensate the claimant for losing the use of the money between the date he or she was entitled to it and the date of the judgment.⁵ Appellants who seek prejudgment interest assert that it promotes fairness by allowing a plaintiff to be fully compensated for his or her injury, including the time span that litigation took place, particularly if the litigation was protracted. Opponents assert that prejudgment interest provides over-compensation and encourages premature settlements.

Economic Damages

Economic damages are damages that can be computed from records or documents. They generally include past and future medical bills, loss of past wages and future earning capacity, funeral expenses, and damage to someone’s personal and real property.⁶ Non-economic damages, which are not addressed in the bill, are the subjective intangible items which cannot be measured with certainty. Those items generally include physical pain and suffering, mental anguish, and the loss of enjoyment of life.

¹ *Argonaut Insurance Company, et al., v. May Plumbing Company, et al.*, 474 So. 2d 212 (Fla. 1985).

² *Parker v. Brinson Construction Company and Florida Industrial Commission*, 78 So. 2d 873 (1955).

³ *Alvarado v. Rice*, 614 So. 2d 498, 500 (Fla. 1993). The Court held that a claimant in a personal injury action is entitled to prejudgment interest on past medical expenses when a trial court finds that the claimant had made actual, out-of-pocket payments on the medical bills at a date before the entry of judgment.

⁴ *Amerace Corporation v. Stallings*, 823 So. 2d 110 (Fla. 2002).

⁵ *Kearney v. Kearney*, 129 So. 3d 381, 391 (Fla. 1st DCA 2013) rehearing denied January 17, 2014.

⁶ See s. 768.81(1)(b), F.S., for a more detailed list.

Costs

If a plaintiff prevails in a personal injury action, he or she is entitled to recover some of the costs involved in the litigation. Pursuant to the Statewide Uniform Guidelines for Taxation of Costs in Civil Actions, the burden of proof is on the moving party to show that all requested costs were reasonably necessary either to defend or prosecute the case when the action was taken. The guidelines are advisory only and the taxation of costs is within the broad discretion of the court.⁷

III. Effect of Proposed Changes:

This bill requires a court, in its final order in which a plaintiff recovers economic damages in a personal injury claim, to include interest on:

- Each component of economic damages, with the interest accruing from the date of the loss of an economic benefit or payment made by the plaintiff; and
- Costs, if awarded, with the interest computed on the costs beginning on the first day of the month immediately following the month in which costs were paid.

This award of costs does not create a right to costs where no right exists under current law.

The applicable rate of interest is established by the Chief Financial Officer pursuant to s. 55.03, F.S. The Chief Financial Officer is required to establish the rate of interest payable on judgments or decrees each quarter using a formula prescribed in statute. The Chief Financial Officer is then responsible for communicating that interest rate to the clerk of courts and chief judge of each judicial circuit for the upcoming quarter. The current quarterly interest rate is 4.75 percent.⁸

The bill takes effect July 1, 2016, and applies to all actions that accrue on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁷ Fla. R. Civ. P. Taxation of Costs. The costs that should be taxed generally include costs associated with certain depositions, documents and exhibits, expert witnesses, witnesses, court reporting costs other than for depositions, and reasonable charges incurred for requiring special magistrates, guardians ad litem, and attorneys ad litem. Litigation costs that may be taxed as costs include mediation fees and expenses, reasonable travel expenses, and electronic discovery expenses. Litigation costs that should not be taxed as costs include the cost of long distance telephone calls with witnesses, any expenses relating to consulting but non-testifying experts, cost incurred in connection with any matter which was not reasonably calculated to lead to the discovery of admissible evidence, the travel time of attorneys and experts, travel expenses of attorneys, and the cost of privilege review of documents, including electronically stored information. See the guidelines for more specific criteria, available at <http://www.bing.com/search?q=florida+rules+of+civil+procedure&src=IE-SearchBox&FORM=IESR02> at 265-267.

⁸ Division of Accounting and Auditing, Office of the Chief Financial Officer, *Judgment on Interest Rates*, <http://www.myfloridacfo.com/division/AA/Vendors/#.VPtaBk0cSUI> (last visited Jan. 16, 2016).

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Plaintiffs who are successful in their claims and entitled to prejudgment interest will benefit financially from this bill by being permitted to receive prejudgment interest from the date of their loss or injury. Defendants may have an incentive to settle lawsuits to avoid the accrual of prejudgment interest.

C. Government Sector Impact:

The Office of the State Courts Administrator has not yet provided a Judicial Impact Statement for this bill. However, in an analysis of a similar bill from 2015, the Office of the State Courts Administrator noted that the fiscal impact of the legislation could not be accurately determined due to the unavailability of data needed to establish the effects on judicial time and workload resulting from the bill's provisions.⁹

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 55.035 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

CS by Judiciary on January 20, 2016:

The committee substitute removes the retroactive clause in the bill. The bill now applies only to causes of actions that accrue on or after the effective date of the bill, July 1, 2016.

⁹ Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 794* (March 31, 2015) (on file with the Senate Committee on Judiciary).

The committee substitute deletes the provision permitting the recovery of attorney fees by the prevailing plaintiff.

B. Amendments:

None.

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



697344

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 26

and insert:

payment made by the plaintiff. The rate of interest

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

And the title is amended as follows:

Delete line 4

and insert:

economic damages in the



337254

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 19 - 23

and insert:

payment made by the plaintiff. If the plaintiff recovers costs,
the

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

And the title is amended as follows:

Delete line 4

and insert:



337254

12

economic damages and costs in the



177066

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 29 - 30
and insert:

Section 2. This act applies to causes of action which
accrue on or after the effective date of the act.

By Senator Bradley

7-01133-16

20161086__

1 A bill to be entitled

2 An act relating to prejudgment interest; creating s.
3 55.035, F.S.; requiring a court to include interest on
4 economic damages, attorney fees, and costs in the
5 final judgment of a negligence action as a result of a
6 personal injury; specifying the date from which
7 interest accrues; providing applicability; providing
8 an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Section 55.035, Florida Statutes, is created to
13 read:

14 55.035 Prejudgment interest.—In a negligence action in
15 which a plaintiff recovers economic damages as the result of a
16 personal injury, the court shall include in the final judgment
17 interest on each component of economic damages. Such interest
18 accrues from the date of the loss of an economic benefit or
19 payment made by the plaintiff. If the plaintiff recovers
20 attorney fees, the court shall include in the final judgment
21 interest on such fees beginning on the first day of the month
22 immediately following the month in which the attorney provided
23 services to the plaintiff. If the plaintiff recovers costs, the
24 court shall include in the final judgment interest on such costs
25 beginning on the first day of the month immediately following
26 the month in which costs were paid. The rate of interest
27 applicable to this section is the rate established pursuant to
28 s. 55.03.

29 Section 2. This act applies to all actions pending on July
30 1, 2016, and to any action initiated on or after that date.

31 Section 3. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 5, 2016

I respectfully request that **Senate Bill # 1086**, relating to Prejudgment Interest, be placed on the:

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

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

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE

APPEARANCE RECORD

1/20/16

Meeting Date

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

SB 1086

Bill Number (if applicable)

Topic Pre Judgment Interest

Amendment Barcode (if applicable)

Name Matthew Pogany

Job Title attorney

Address 136 E. Bay St.

Phone 904-356-6071

City Jacksonville, FL 32202

Email mp@cockerlaw.com

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

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

Representing Florida Justice Association and my clients

Appearing at request of Chair: [] Yes [X] 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.

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)

01.20.16

Meeting Date

1086

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name William Large

Job Title President

Address 210 South Monroe Street

Phone 850-222-0170

Street

Tallahassee

Florida

32301

Email William@fljustice.org

City

State

Zip

Speaking: For Against Information

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

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.

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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)

1-20-16

Meeting Date

1086

Bill Number (if applicable)

Topic Pre judgment Interest

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.

Phone 850-445-5367

Tallahassee FL 32301
City State Zip

Email tim.nungesser@nfib.org

Speaking: For Against Information

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

Representing NFIB - National Federation of Independent Business

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)

Jan 20 2016
Meeting Date

1086
Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Samantha Pudgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.
Street

Phone 227-4087

Tallahassee FL 32301
City State Zip

Email Samantha@flf.org

Speaking: For Against Information

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

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.

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)

1-20-16

Meeting Date

1086

Bill Number (if applicable)

Topic Pre Judgment Interest

Amendment Barcode (if applicable)

Name Gary Guzzo

Job Title Lobbyist

Address 108 S. Monroe St

Phone 681-0024

Street

Tallahassee, Fla

Email gguzzo@flupastres.com

City

State

32301

Zip

Speaking: For Against Information

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

Representing Florida Insurance Council, CNA

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)

1-20-16

Meeting Date

1086

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Frank Meiners

Job Title _____

Address PO Box 1633

Phone 591-0177

Street

Jackson FL 32302

Email frank@chqmail.com

City

State

Zip

Speaking: For Against Information

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

Representing FL Collectors 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)

1/20/16

Meeting Date

1086

Bill Number (if applicable)

Topic Prejudgment Interest

Amendment Barcode (if applicable)

Name Tammy Perdue

Job Title General Counsel

Address 516 N. Adams St

Phone 850. ~~933~~ 224-7173

Tallahassee FL 32301
City State Zip

Email tperdue@aif.com

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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1/20/2015
Meeting Date

SR1086
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Maile Delegal

Job Title Counsel

Address 315 Calhoun

Phone 224-7000

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Chamber

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-20-16

Meeting Date

1086

Bill Number (if applicable)

Topic Pro judicial Interest

Amendment Barcode (if applicable)

Name TROY RAIFERTY

Job Title ATTORNEY

Address 306 S. Baylen

Phone 850 435-7163

Street

PENSACOLA

FL

State

32507

Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 122

INTRODUCER: Criminal Justice Committee and Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: January 20, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Brown	Cibula	JU	Favorable
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 122 amends chapter 961, F.S., which establishes an administrative process for compensation for a person who has been wrongfully incarcerated.

Under current law, a person is not eligible for compensation for wrongful incarceration if he or she has a criminal history that includes any felony.¹ This is commonly known as the “clean hands” provision of Florida’s wrongful incarceration compensation law. The bill narrows the list of felony offenses that disqualify a person from compensation from all felonies to violent felonies. What constitutes a violent felony is defined in the bill. By narrowing the types of disqualifying felonies, the bill expands the pool of potential applicants for compensation through the administrative process.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act has been in effect since July 1, 2008.² The law establishes an administrative process for a person to petition the original sentencing court for an order finding the petitioner to have been wrongfully incarcerated and eligible for compensation.

¹ Section 961.04, F.S.

² Chapter 961, F.S. (ch. 2008-39, L.O.F.).

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.³ The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.⁴

“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes

In cases in which sufficient evidence of actual innocence can be shown, the person is still ineligible for compensation if:

- Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense; or
- During the person's wrongful incarceration, the person was also serving a concurrent sentence for another felony for which the person was not wrongfully convicted.⁵

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.⁶

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person convicted of a felony may be sentenced to a split sentence, which is a sentence including both incarceration and release under supervision. Alternatively, a person could be granted parole if he or she meets the statutory criteria.⁷ Therefore, a person could potentially be wrongfully incarcerated for a crime and then placed on parole or community supervision as part

³ Section 961.05(2), F.S.

⁴ Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System Institution as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled. The wrongfully incarcerated person is also entitled to reimbursement of the amount of any fine, penalty, or court costs paid, and the amount of any reasonable attorney's fees and expenses incurred for all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon supporting documentation submitted as specified in s. 961.05, F.S.. Finally, the wrongfully incarcerated person is entitled to immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

⁵ Section 961.04, F.S.

⁶ *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org; (“Clean hands” meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Other states generally take these matters up by “personal bills,” a process much like Florida's claim bill process.

⁷ Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., could include controlled release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

of the sentence. If a person violates a condition of parole or community supervision, he or she may have parole or community supervision revoked. The basis for revocation of parole or community supervision may affect eligibility for compensation for wrongful incarceration.

Under s. 961.06(2), F.S., if a person commits a misdemeanor or a technical violation while under supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, a felony law violation results in revocation, the person is no longer eligible for compensation.⁸ Ineligibility based on a felony violation applies to any felony.

Wrongful Incarceration Claims

To date, four persons have been compensated under the administrative process for a total of \$4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.⁹

III. Effect of Proposed Changes:

The bill amends chapter 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., currently provides an administrative process for a person who has been wrongfully incarcerated for a felony conviction to seek a court order finding the person to be eligible for compensation. Current law disqualifies a person who is otherwise eligible for compensation if he or she has a record of any prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill limits disqualifying felonies to violent felonies. In other words, the bill provides that in order to be found ineligible for compensation based on other crimes, the person must have committed a violent felony, not a simple felony. Specifically:

- Before the person's wrongful incarceration, he or she committed a violent felony;¹⁰
- During the person's wrongful incarceration, he or she committed a violent felony;¹¹ or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony which resulted in the revocation of the parole or community supervision.¹²

A violent felony is defined in the bill by a cross-reference to ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those violent felony offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

⁸ Section 961.06(2), F.S.

⁹ Email correspondence with the Office of the Attorney General (Jan. 14, 2016) (on file with the Senate Committee on Judiciary). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).

¹⁰ Section 961.04(1), F.S.

¹¹ Section 961.04(2), F.S.

¹² Section 961.06(2), F.S.

Violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;
- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- Robbery;
- Carjacking;
- Home invasion robbery;
- Sexual Battery;
- Aggravated battery;
- Armed burglary and other burglary offenses that are first or second degree felonies;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Arson;
- Aggravated assault;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Treason;
- Aggravated stalking;
- Aircraft piracy;
- Abuse of a dead human body;
- Poisoning food or water;
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer;
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person;
- Sexual performance by a child;
- Computer pornography;
- Transmission of child pornography; and
- Selling or buying of minors.

In limiting disqualifying felonies to violent felonies, the pool of potential persons eligible for compensation due to wrongful incarceration may increase.

The bill takes effect October 1, 2016.

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:

More persons are potentially are eligible for compensation under the provisions of the bill. A person who is entitled to compensation based on wrongful incarceration would be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million.¹³ Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person.

C. Government Sector Impact:

Impact on General Revenue

Although statutory limits on compensation under the Victims of Wrongful Incarceration Compensation Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future. Four successful claims since the Act became effective total \$4,276,901.

Fiscal Impact on Agencies

The following agencies do not expect a fiscal impact from the provisions of this bill:

- The Office of the Attorney General;
- The Department of Financial Services; and
- The Florida Department of Law Enforcement.¹⁴

Fiscal Impact on the Judiciary

Making eligibility rules more lenient may increase the number of persons filing wrongful incarceration claims. How many additional petitions would be filed is unknown.

¹³ The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. Section 961.06(1)(a), F.S.

¹⁴ Email correspondence with the Office of the Attorney General (Jan. 15, 2016) (on file with the Senate Judiciary Committee); The Department of Financial Services, Letter from Chief Financial Officer Jeff Atwater (Sept. 29, 2015) (on file with the Senate Judiciary Committee); The Florida Department of Law Enforcement, *2016 FDLE Legislative Bill Analysis* (on file with the Senate Judiciary Committee).

However, the Office of the State Courts Administrator does not expect a significant effect on judicial workload from this bill.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, and 961.06.

This bill reenacts the following sections of the Florida Statutes: 961.03 and 961.055.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Criminal Justice on November 2, 2015:

Makes a clarifying change to the title of the bill.

B. Amendments:

None.

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

¹⁵ The Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Nov. 2, 2015)

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

591-01035-16

2016122c1

A bill to be entitled

An act relating to compensation of victims of wrongful incarceration; reordering and amending s. 961.02, F.S.; defining the term "violent felony"; amending s. 961.04, F.S.; providing that a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act if, before or during the person's wrongful conviction and incarceration, the person was convicted of, pled guilty or nolo contendere to any violent felony, or was serving a concurrent sentence for another felony; amending s. 961.06, F.S.; providing that a wrongfully incarcerated person who commits a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is ineligible for compensation; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of eligibility for compensation, to incorporate the amendments made to s. 961.04, F.S., in references thereto; reenacting s. 961.055(1), F.S., relating to application for compensation for a wrongfully incarcerated person and exemption from application by nolle prosequi, to incorporate the amendments made to s. 961.06, F.S., in references thereto; providing an effective date.

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

Section 1. Section 961.02, Florida Statutes, is reordered

Page 1 of 7

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

591-01035-16

2016122c1

and amended to read:

961.02 Definitions.—As used in ss. 961.01-961.07, the term:

(1) "Act" means the Victims of Wrongful Incarceration Compensation Act.

(2) "Department" means the Department of Legal Affairs.

(3) "Division" means the Division of Administrative Hearings.

~~(7)(4)~~ "Wrongfully incarcerated person" means a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and who is the subject of an order issued by the original sentencing court pursuant to s. 961.03, with respect to whom pursuant to the requirements of s. 961.03, the original sentencing court has issued its order finding that the person did not commit ~~neither committed~~ the act or ~~nor~~ the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.

~~(4)(5)~~ "Eligible for compensation" means that a person meets the definition of the term "wrongfully incarcerated person" and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.

~~(5)(6)~~ "Entitled to compensation" means that a person meets the definition of the term "eligible for compensation" and satisfies the application requirements prescribed in s. 961.05, and may receive compensation pursuant to s. 961.06.

~~(6)~~ "Violent felony" means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

Section 2. Section 961.04, Florida Statutes, is amended to

Page 2 of 7

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591-01035-16

2016122c1

59 read:

60 961.04 Eligibility for compensation for wrongful
61 incarceration.—A wrongfully incarcerated person is not eligible
62 for compensation under the act if:

63 (1) Before the person's wrongful conviction and
64 incarceration, the person was convicted of, or pled guilty or
65 nolo contendere to, regardless of adjudication, any violent
66 felony ~~offense~~, or a crime committed in another jurisdiction the
67 elements of which would constitute a violent felony in this
68 state, or a crime committed against the United States which is
69 designated a violent felony, excluding any delinquency
70 disposition;

71 (2) During the person's wrongful incarceration, the person
72 was convicted of, or pled guilty or nolo contendere to,
73 regardless of adjudication, any violent felony ~~offense~~; or

74 (3) During the person's wrongful incarceration, the person
75 was also serving a concurrent sentence for another felony for
76 which the person was not wrongfully convicted.

77 Section 3. Subsection (2) of section 961.06, Florida
78 Statutes, is amended to read:

79 961.06 Compensation for wrongful incarceration.—

80 (2) In calculating monetary compensation under paragraph
81 (1) (a), a wrongfully incarcerated person who is placed on parole
82 or community supervision while serving the sentence resulting
83 from the wrongful conviction and who commits anything less than
84 a violent felony ~~law-violation~~ that results in revocation of the
85 parole or community supervision is eligible for compensation for
86 the total number of years incarcerated. A wrongfully
87 incarcerated person who commits a violent felony ~~law-violation~~

Page 3 of 7

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591-01035-16

2016122c1

88 that results in revocation of the parole or community
89 supervision is ineligible for any compensation under subsection
90 (1).

91 Section 4. For the purpose of incorporating the amendments
92 made by this act to section 961.04, Florida Statutes, in
93 references thereto, paragraph (a) of subsection (1) and
94 subsections (2), (3), and (4) of section 961.03, Florida
95 Statutes, are reenacted to read:

96 961.03 Determination of status as a wrongfully incarcerated
97 person; determination of eligibility for compensation.—

98 (1) (a) In order to meet the definition of a "wrongfully
99 incarcerated person" and "eligible for compensation," upon entry
100 of an order, based upon exonerating evidence, vacating a
101 conviction and sentence, a person must set forth the claim of
102 wrongful incarceration under oath and with particularity by
103 filing a petition with the original sentencing court, with a
104 copy of the petition and proper notice to the prosecuting
105 authority in the underlying felony for which the person was
106 incarcerated. At a minimum, the petition must:

107 1. State that verifiable and substantial evidence of actual
108 innocence exists and state with particularity the nature and
109 significance of the verifiable and substantial evidence of
110 actual innocence; and

111 2. State that the person is not disqualified, under the
112 provisions of s. 961.04, from seeking compensation under this
113 act.

114 (2) The prosecuting authority must respond to the petition
115 within 30 days. The prosecuting authority may respond:

116 (a) By certifying to the court that, based upon the

Page 4 of 7

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591-01035-16

2016122c1

117 petition and verifiable and substantial evidence of actual
 118 innocence, no further criminal proceedings in the case at bar
 119 can or will be initiated by the prosecuting authority, that no
 120 questions of fact remain as to the petitioner's wrongful
 121 incarceration, and that the petitioner is not ineligible from
 122 seeking compensation under the provisions of s. 961.04; or

123 (b) By contesting the nature, significance, or effect of
 124 the evidence of actual innocence, the facts related to the
 125 petitioner's alleged wrongful incarceration, or whether the
 126 petitioner is ineligible from seeking compensation under the
 127 provisions of s. 961.04.

128 (3) If the prosecuting authority responds as set forth in
 129 paragraph (2) (a), the original sentencing court, based upon the
 130 evidence of actual innocence, the prosecuting authority's
 131 certification, and upon the court's finding that the petitioner
 132 has presented clear and convincing evidence that the petitioner
 133 committed neither the act nor the offense that served as the
 134 basis for the conviction and incarceration, and that the
 135 petitioner did not aid, abet, or act as an accomplice to a
 136 person who committed the act or offense, shall certify to the
 137 department that the petitioner is a wrongfully incarcerated
 138 person as defined by this act. Based upon the prosecuting
 139 authority's certification, the court shall also certify to the
 140 department that the petitioner is eligible for compensation
 141 under the provisions of s. 961.04.

142 (4) (a) If the prosecuting authority responds as set forth
 143 in paragraph (2) (b), the original sentencing court shall make a
 144 determination from the pleadings and supporting documentation
 145 whether, by a preponderance of the evidence, the petitioner is

Page 5 of 7

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591-01035-16

2016122c1

146 ineligible for compensation under the provisions of s. 961.04,
 147 regardless of his or her claim of wrongful incarceration. If the
 148 court finds the petitioner ineligible under the provisions of s.
 149 961.04, it shall dismiss the petition.

150 (b) If the prosecuting authority responds as set forth in
 151 paragraph (2) (b), and the court determines that the petitioner
 152 is eligible under the provisions of s. 961.04, but the
 153 prosecuting authority contests the nature, significance or
 154 effect of the evidence of actual innocence, or the facts related
 155 to the petitioner's alleged wrongful incarceration, the court
 156 shall set forth its findings and transfer the petition by
 157 electronic means through the division's website to the division
 158 for findings of fact and a recommended determination of whether
 159 the petitioner has established that he or she is a wrongfully
 160 incarcerated person who is eligible for compensation under this
 161 act.

162 Section 5. For the purpose of incorporating the amendments
 163 made by this act to section 961.06, Florida Statutes, in
 164 references thereto, subsection (1) of section 961.055, Florida
 165 Statutes, is reenacted to read:

166 961.055 Application for compensation for a wrongfully
 167 incarcerated person; exemption from application by nolle
 168 prosequi.—

169 (1) A person alleged to be a wrongfully incarcerated person
 170 who was convicted and sentenced to death on or before December
 171 31, 1979, is exempt from the application provisions of ss.
 172 961.03, 961.04, and 961.05 in the determination of wrongful
 173 incarceration and eligibility to receive compensation pursuant
 174 to s. 961.06 if:

Page 6 of 7

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591-01035-16

2016122c1

175 (a) The Governor issues an executive order appointing a
176 special prosecutor to review the defendant's conviction; and

177 (b) The special prosecutor thereafter enters a nolle
178 prosequi for the charges for which the defendant was convicted
179 and sentenced to death.

180 Section 6. This act shall take effect October 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Health Policy
Higher Education
Judiciary
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR ARTHENIA L. JOYNER

Democratic Leader
19th District

November 2, 2015

Senator Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

This is to request that CS/SB 122, Compensation of Victims of Wrongful Incarceration, be placed on the agenda for the Committee on Judiciary. Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Arthenia L. Joyner".

Arthenia L. Joyner
State Senator, District 19

REPLY TO:

- 508 W. Dr. Martin Luther King, Jr. Blvd., Suite C, Tampa, Florida 33603-3415 (813) 233-4277
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5019 FAX: (813) 233-4280

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

SB 122

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

1/20/15

Meeting Date

Bill Number (if applicable)

Topic Gov. Acc, Compensation of Victims

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise

Phone _____

Street

Largo

City

Fla.

State

33773

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Families

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 1244

INTRODUCER: Senator Simmons

SUBJECT: Driving Under the Influence

DATE: January 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McAloon	Cibula	JU	Pre-meeting
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1244 increases the penalties on a person who refuses to submit to an alcohol test, incidental to lawful detention, while operating a motor vehicle. The penalties include a fine, probation, and points assessed against an individual's license. The increased penalties for first refusal closer resemble the penalties for a first-time DUI conviction under Florida law.

The bill also increases penalties on a person who refuses to submit to an alcohol test, incidental to lawful detention, and whose driving privileges were suspended for a prior refusal to submit to testing. In addition to the potential fines and jail time under current law, the person must have an ignition interlock device placed on his or her vehicle for a period of at least 1 year. Furthermore, a court may not withhold adjudication of guilt, or the imposition of a sentence or penalty, on a person who has had a prior license suspension for refusing testing.

II. Present Situation:

Florida's Informed Consent Refusal

Any person who accepts the privilege of operating a motor vehicle within this state is deemed to have given his or her consent to submit to an approved test of the alcohol content of his or her blood, breath, or urine.¹ The test must be incidental to a lawful arrest, and administered at the request of a law enforcement officer who has a reasonable belief such person was driving a motor vehicle while under the influence of alcoholic beverages.²

The Department of Motor Vehicles will administratively suspend a person's driving privileges for 1 year after the first refusal of alcohol testing.³ The second refusal to consent to a test will

¹ Section 316.1932(1)(a)1.a., F.S.

² *Id.*

³ Section 322.2615(1)(b)1.a., F.S.

result in an administrative suspension as well as criminal charges. A second refusal occurs when a person's driving privileges were suspended for a prior refusal, and he or she refuses to submit to an alcohol test for a second time. A person's motor vehicle license is suspended by the Department of Motor Vehicles for 18 months if found liable for a second refusal.⁴ A person who refuses to submit to a alcohol test for a second time faces criminal liability for a first degree misdemeanor, punishable by up to 1 year in jail and \$1,000 fine.⁵

Florida's DUI Laws

Florida's current DUI laws provide for both administrative and criminal sanctions. A first conviction results in a fine of not less than \$500 or more than \$1,000.⁶ If the individual's blood or breath-alcohol level is 0.15 or higher, or if he or she has a minor in the vehicle, the fine is not less than \$1,000 or more than \$2,000.⁷ There is a community service requirement of 50 hours.⁸ A first-time conviction can also lead to imprisonment for a period of no more than 6 months and up to 1 year of probation.⁹

Breath Test Refusal Rates

In 2014, the U.S. Department of Transportation National Highway Traffic Safety Administration released a study regarding breath test refusal rates.¹⁰ The study found Florida had a breath test refusal rate of 82 percent in 2011, as compared to a rate of 40 percent in 2005. The National Highway Traffic Safety Administration also found the average refusal rate for the country as a whole ranged from 19 to 25 percent. State authorities reported to the authors of the study that refusal rates will remain high if the sanctions for failing a breath-alcohol concentration test are more severe than those for refusing to submit to the test. States recommended the license suspension periods for first and repeat refusals be at least as severe as those penalties for driving under the influence.

Ignition Interlock Device

The Florida Legislature's Office of Program Policy Analysis & Government Accountability conducted a study researching ignition interlock devices and DUI recidivism rates.¹¹ An ignition interlock device prevents the start of a vehicle with a breath sample above .025, collects data, and records and stores visual evidence of device use.¹² Research shows that ignition interlock devices, while installed, were more effective at reducing re-arrest rates for alcohol-impaired driving when compared to other sanctions, such as license suspensions.¹³ The study found the six

⁴ Section 316.1939(1)(c), F.S.

⁵ Sections 316.1939(1)(e), 322.2615, F.S.

⁶ Section 316.193(2)(a)-(b), F.S.

⁷ Section 316.193(4), F.S.

⁸ Section 316.193 (6)(a), F.S.

⁹ Sections 316.193 (2)(a), 316.193 (5)(6), F.S.

¹⁰ Esther S. Namuswe, Heidi L. Coleman, Amy Beming, *Breath Test Refusal Rates in the United States – 2011 Update*, U.S. Dept. of Transportation National Highway Traffic Safety Administration (March 2014).

¹¹ Office of Program Policy Analysis & Government Accountability, *Ignition Interlock Devices and DUI Recidivism Rates*, (December 2014).

¹² *Ignition Interlock Program* at www.flhsmv.gov.

¹³ Office of Program Policy Analysis & Government Accountability, *supra* note 11 at 1.

month recidivism rate for first-time DUI offenders that were not required to install an ignition interlock device was 1.74 percent. When compared, the recidivism rate for first-time offenders required to use the ignition interlock device was less with a rate of 0.34 percent.¹⁴ However, the study also found that only 49 percent of Florida DUI offenders installed an ignition interlock device, as required, after completing their period of license revocation.¹⁵

III. Effect of Proposed Changes:

SB 1244 amends section 316.1939, F.S., to require stricter penalties for all first time and subsequent alcohol test refusals. The heightened penalties reduce the incentive for a person to refuse submission to a testing for the first time in order to receive an advantage of a lesser penalty. Under the proposed law, a person who refuses to submit to testing for the first time faces the following additional penalties:

- A fine of at least \$500 but not more than \$1,000;
- Probation for 6 months; and
- 4 points assessed against his or her driver license.

The bill also increases penalties on a person whose driving privilege was suspended for a prior refusal and he or she subsequently refuses to comply with requirements for testing. A person who fails to comply with testing after having driving privileges previously suspended for a prior refusal commits a misdemeanor of the first degree, punishable by up to 1 year in jail or a fine of up to \$1,000.

Additionally, the court is required to implement an ignition interlock device upon all vehicles that are owned and routinely operated by an individual convicted of a second refusal. The ignition interlock device remains on the vehicle for at least 1 year at the convicted individual's sole expense. Furthermore, the court may not suspend, defer, or withhold adjudication of guilt or the imposition of a sentence or penalty for an individual who has failed to comply with informed consent for a second time.

The bill takes effect October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁴ *Id.* at 8.

¹⁵ *Id.* at 4-5.

D. Other Constitutional Issues:

An alcohol test is a search subject to Fourth Amendment protections.¹⁶ Under the unconstitutional conditions doctrine, the government may not deny a benefit to a person because he exercises a constitutional right.¹⁷ However, the Constitution does not prohibit every government-imposed choice in the criminal process that has the effect of discouraging the exercise of constitutional rights.¹⁸ Not a single court that has dealt with a criminal refusal-to-submit statute has struck it down as unconstitutional.¹⁹

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Highway Safety and Motor Vehicles estimated that it costs \$420,000 to administer the ignition interlock device program in Fiscal Year 2013-2014.²⁰ These costs include salaries and benefits for department staff who work directly with ignition interlock device vendors, the DUI programs, and indirect costs. The department receives a \$12 interlock fee for each installation.²¹ This fee is collected by the vendors and in Fiscal Year 2013-2014 the department received \$187,596 in interlock fees. The figures will rise due to the fact the bill requires mandatory placement of an ignition interlock device for a second refusal to submit to an alcohol test.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The proposed changes do not interfere with a person's ability to refuse alcohol testing as is presently recognized. The proposed changes enhance the penalties for refusing to comply.

¹⁶ *Skinner v. Ry. Labor Execs. Ass'n*, 489 U.S. 602, 616–17 (1989)

¹⁷ *Koontz v. St. Johns River Water Mgmt. Dist.*, —U.S. —, 133 S.Ct. 2586, 2594 (2013) (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 545 (1983)).

¹⁸ *Jenkins v. Anderson*, 447 U.S. 231, 236 (1980) (quoting *Chaffin v. Stynchcombe*, 412 U.S. 17, 30 (1973)).

¹⁹ *Williams v. State*, 167 So. 3d 483, 492 (Fla. 5th DCA 2015), *reh'g denied* (July 1, 2015), *review granted*, No. SC15-1417, 2015 WL 9594290 (Fla. Dec. 30, 2015); *see also Hawaii v. Yong Shik Won*, 134 Hawai'i 59, 332 P.3d 661 (App. 2014); *State v. Bernard*, 859 N.W.2d 762 (Minn. 2015); *North Dakota v. Birchfield*, 858 N.W.2d 302 (N.D. 2015).

²⁰ Office of Program Policy Analysis & Government Accountability, *supra* note 11 at 4.

²¹ Section 322.2715(5), F.S. requires vendors to collect and remit \$12 for each installation to the department, which is deposited into the Highway Safety Operating Trust Fund to administer the ignition interlock device program.

VIII. Statutes Affected:

The bill creates section 316.1939 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

10-00909-16

20161244__

A bill to be entitled

An act relating to driving under the influence; amending s. 316.1939, F.S.; providing penalties for a first-time refusal of a chemical or physical test of a person's breath, blood, or urine; providing that a subsequent refusal by a person who has previously had a license suspension for a prior refusal is a misdemeanor of the first degree; requiring the court to impose certain mandatory ignition interlock devices on the vehicles of convicted persons for a specified time under certain circumstances; prohibiting a court from suspending, deferring, or withholding adjudication of guilt or the imposition of a sentence or penalty for specified offenses; providing an effective date.

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

Section 1. Section 316.1939, Florida Statutes, is amended to read:

316.1939 Refusal to submit to testing; penalties.—

(1) Any person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 316.1932, ~~and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood,~~ and:

(a) Who the arresting law enforcement officer had probable cause to believe was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages, chemical substances, or controlled substances;

(b) Who was placed under lawful arrest for a violation of

10-00909-16

20161244__

s. 316.193 unless such test was requested pursuant to s. 316.1932(1)(c);

(c) Who was informed that, if he or she refused to submit to such test, his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months;

(d) Who was informed that a refusal to submit to a lawful test of his or her breath, urine, or blood, ~~if his or her driving privilege has been previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood,~~ is subject to penalties a misdemeanor; and

(e) Who, after having been so informed, refused to submit to any such test when requested to do so by a law enforcement officer or correctional officer shall be punished:

1. By a fine of at least \$500 but not more than \$1,000;

2. By probation for 6 months; and

3. By having 4 points assessed against his or her driver license.

(2) (a) A person who has refused to submit to a chemical or physical test of his or her breath, blood, or urine, as described in s. 316.1932, and whose driving privilege was previously suspended for a prior refusal to submit to a lawful test of his or her breath, urine, or blood, commits a misdemeanor of the first degree and is subject to punishment as provided in s. 775.082 or s. 775.083.

(b) The court shall impose mandatory placement, for a period of at least 1 year at the convicted person's sole expense, of an ignition interlock device approved by the department in accordance with s. 316.1938 upon all vehicles that

10-00909-16

20161244__

62 are individually or jointly leased or owned and routinely
63 operated by the convicted person, when the convicted person
64 qualifies for a permanent or restricted license.

65 (c) A court may not suspend, defer, or withhold
66 adjudication of guilt or the imposition of a sentence or penalty
67 for an offense under paragraph (a).

68 (3)(2) The disposition of any administrative proceeding
69 that relates to the suspension of a person's driving privilege
70 does not affect an offense ~~a criminal action~~ under this section.

71 (4)(3) The disposition of an offense ~~a criminal action~~
72 under this section does not affect any administrative proceeding
73 that relates to the suspension of a person's driving privilege.
74 The department's records showing that a person's license has
75 been previously suspended for a prior refusal to submit to a
76 lawful test of his or her breath, urine, or blood shall be
77 admissible and shall create a rebuttable presumption of such
78 suspension.

79 Section 2. This act shall take effect October 1, 2016.

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 1278

INTRODUCER: Judiciary Committee and Senator Ring

SUBJECT: Public Records/Petitions to Determine Incapacity

DATE: January 21, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1278 creates new exemptions from the public records inspection and access requirements of Art. 1, s. 24(a) of the State Constitution and s. 119.07(1), F.S. These exemptions are created for certain petitions, orders, and personal identifying information generated during Baker Act proceedings. The information may be disclosed upon request to certain enumerated persons involved in the proceedings or when directed by the court.

The exemptions will be repealed on October 2, 2021, unless reviewed and reenacted by the Legislature before that date. The bill also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

II. Present Situation:

Public Records Law

The Florida Constitution

Under the State Constitution, the public is guaranteed the right of access to government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting

on their behalf, unless the record is exempted or specifically made confidential.¹ This right of access to records and meetings specifically includes the legislative, executive, and judicial branches of government, their agencies and departments, local governmental entities, and any person acting on behalf of the government.²

The Florida Statutes

Similarly, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, F.S., which is known as the Public Records Act, provides that the public may access legislative and executive branch records.³ According to the Public Records Act, a public record includes most any document, recording, or other material, regardless of its physical form or characteristics or how it is transmitted.⁴ Anyone who violates the Public Records Act may be punished by civil or criminal penalties or suspension and removal or impeachment from office.⁵

The Legislature may create an exemption to public records or open meetings requirements.⁶ An exemption must specifically state the public necessity justifying the exemption and must be tailored narrowly to accomplish the stated purpose of the law.⁷ Additionally, the exemption must pass by two-thirds vote of the House and Senate.⁸ An exemption that does not meet these criteria may be held unconstitutional.⁹

When the Legislature creates a public records exemption, it may classify the record as “confidential and exempt” or “exempt.” When designated as “confidential and exempt,” the record may be released by the records custodian only under the limited circumstances defined by the Legislature. When a record is designated as “exempt,” it may be released at the discretion of the records custodian.

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature’s records are public pursuant to s. 11.0431, F.S.

⁴ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵ Section 119.10, F.S.

⁶ FLA. CONST., art. I, s. 24(c).

⁷ *Id.*

⁸ *Id.*

⁹ *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (1999). In this case the Florida Supreme Court determined that a public meeting exemption was unconstitutional because the statement of public necessity did not define essential terms and the exemption was written too broadly. The Court also decided that it could not move into the legislature’s realm to narrow the exemption to save the statute.

Open Government Sunset Review Act

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. However, in order to save an exemption from repeal, the Legislature must reenact the exemption before it expires.¹¹

The Sunset Review Act provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is written no broader than is necessary.¹² An exemption serves an identifiable purpose if it meets one of the stated requirements below *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption. The exemption must:

- Allow the state or its political subdivisions to effectively and efficiently administer a program, which administration would be significantly impaired without the exemption;¹³
- Protect sensitive personal information that would be defamatory or damaging to someone's reputation or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁴ or
- Protect confidential information of entities including trade or business secrets.¹⁵

The act also requires specified questions to be considered during the review process.¹⁶ In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁸

¹⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

¹³ Section 119.15(6)(b)1., F.S.

¹⁴ Section 119.15(6)(b)2., F.S.

¹⁵ Section 119.15(6)(b)3., F.S.

¹⁶ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁷ FLA. CONST., art. I, s. 24(c).

¹⁸ Section 119.15(7), F.S.

The Florida Mental Health Act, also known as The Baker Act

The Legislature adopted the Florida Mental Health Act, also known as The Baker Act, in 1971.¹⁹ It is designed to help people receive treatment who are suffering with mental, emotional, and behavioral disorders. Baker Act proceedings provide people with emergency services, sometimes through temporary detention, to obtain a mental health evaluation and treatment. The treatment may be voluntary or involuntary. The act requires that programs offer comprehensive services to people who need intensive short-term treatment and continued treatment to aid in their recovery. The Baker Act also provides protections and rights for people examined or treated for mental illness. Legal procedures are established for mental health examination and treatment, including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Confidentiality of Records under the Baker Act

The concern has been expressed that while “clinical records”²⁰ under the Baker Act are designated and maintained as confidential by the clerk of the court, it is not clear whether other Baker Act records are open to the public for review.²¹ There appears to be a difference of opinion among various clerks of court as to what is and what is not exempt from disclosure. If the petitions, orders, and identifying information in this bill were all classified as confidential and exempt, then there would be uniformity among the clerks of the court in administering these provisions statewide.

III. Effect of Proposed Changes:

Newly Created Public Records Exemptions in the Baker Act

CS/SB 1278 provides public records exemptions in four specific sections of the Baker Act to shield the sensitive information from public view.

Involuntary Examination and Ex Parte Order- Section 1

In s. 394.463(2), F.S., a petition for an involuntary examination and the court’s ex parte order stating that the person appears to meet the criteria for involuntary examination are made confidential and exempt under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. A petition that is made confidential and exempt under this provision must be disclosed, upon request, by the clerk of the court to a judge in the circuit, a respondent, a guardian, health care surrogate of proxy, an attorney for the respondent, and to any other person as directed by an order of the court.

¹⁹ Chapter 71-131, s. 1, Laws of Fla. The Baker Act is contained in Part I of chapter 394.

²⁰ Section 394.4615, F.S., states that “A clinical record is confidential and exempt from the provisions of s. 119.07(1).” The Judicial Administration Rules also provide for the confidentiality of clinical records under the Baker Act. Fla. R. Jud. Admin. 2.420(d)(1)(B)(viii).

²¹ Section 394.455(3), F.S. Clinical records are defined as being all parts of the record required to be maintained, including medical records, progress notes, charts, admission and discharge data, and other information recorded by the facility that pertains to the patient’s hospitalization or treatment. In lay terms, this is often characterized as records requiring a medical signature.

Petition for Involuntary Outpatient Placement – Section 2

In s. 394.4655(3)(d), F.S., a petition and order entered by the court for involuntary outpatient placement are made confidential and exempt from the public records provisions in the statutes and the State Constitution. A petition that is made confidential and exempt shall be disclosed by the clerk of the court, upon request, to a judge in the circuit, the respondent, a guardian, health care surrogate or proxy, an attorney for the respondent, and to any other person as directed in a court order. Additionally, the clerk is prohibited from posting any personal identifying information on the court docket or in publicly accessible files.

Petition for Involuntary Inpatient Placement – Section 3

Section 394.467(3), F.S., is amended to provide that a petition and any order entered by the court for involuntary inpatient placement is confidential and exempt under the statutes and State Constitution. As in the above sections, the clerk must, upon request, disclose the petition to a judge in the circuit, the respondent, a guardian, a health care surrogate or proxy, an attorney for the respondent, and any other person as directed by the court. In addition, the clerk may not post any personal identifying information from the petition on the court docket or in publicly accessible files.

Clinical Records- Section 4

The bill amends s. 394.4615, F.S., to provide that all personal identifying information about an individual for whom a petition is filed or an order entered and filed with the clerk of court under the Baker Act is confidential and exempt from the statutory and constitutional public records provisions. Consistent with the above sections, the clerk must, upon request, disclose the petition or order to a judge in the circuit, the respondent, a guardian, a health care surrogate or proxy, an attorney for the respondent, and any other person as directed by the court. The clerk is also prohibited from posting any personal identifying information on the court docket or in publicly accessible files.

Open Government Sunset Review Provisions

Each of the four sections is subject to the Open Government Sunset Review Act as explained above in the Present Situation. Accordingly, each of these four public record exemptions will be repealed on October 2, 2021, unless each provision is reviewed and saved from repeal through reenacting legislation before that date.

Statement of Public Necessity

The final section of this bill provides a statement of public necessity explaining why these public records exemptions are needed. The statement says that these amendments are needed to preserve the privacy of information that would otherwise be made available to the public and that the disclosure of the information would produce undue harm to the person alleged to have a mental illness.

Effective Date

This bill takes effect July 1, 2016.

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

None.

B. Public Records/Open Meetings Issues:

Because the bill creates a public records exemption, the State Constitution requires passage by a two-thirds vote in each house of the Legislature.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.463, 394.4655, 394.467, and 394.4615.

This 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 by Judiciary on January 20, 2016:

The committee substitute makes technical changes to ss. 394.4655(3)(d) and 394.467(3)(b), F.S. by adding the phrase “under this section.” The court has not been mentioned at this time in the chronology of the sections, so for clarity, the sentence is rephrased to state that “The petition and any order entered by the court *under this section* are confidential and exempt . . .”

Also, the singular verb “is” is replaced with the plural verb “are” for correct subject-verb agreement in the first sentence of s. 394.467(3)(b), F.S.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment

Delete lines 82 - 107
and insert:

(d) The petition and any order entered by the court under this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. A petition made confidential and exempt by this paragraph shall be disclosed by the clerk of the court, upon request, to a judge of the circuit, the respondent, a guardian, a health care surrogate or proxy, an attorney of record for the respondent, and to any other person



639650

12 as directed by order of the court. The clerk of the court may
13 not post any personal identifying information on the docket or
14 in publicly accessible files. This paragraph is subject to the
15 Open Government Sunset Review Act in accordance with s. 119.15
16 and shall stand repealed on October 2, 2021, unless reviewed and
17 saved from repeal through reenactment by the Legislature.

18 Section 3. Subsection (3) of section 394.467, Florida
19 Statutes, is amended to read:

20 394.467 Involuntary inpatient placement.—

21 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

22 (a) The administrator of the facility shall file a petition
23 for involuntary inpatient placement in the court in the county
24 where the patient is located. Upon filing, the clerk of the
25 court shall provide copies to the department, the patient, the
26 patient's guardian or representative, and the state attorney and
27 public defender of the judicial circuit in which the patient is
28 located. No fee shall be charged for the filing of a petition
29 under this subsection.

30 (b) The petition and any order entered by the court under
31 this section are

32

By Senator Ring

29-01403A-16

20161278__

1 A bill to be entitled
 2 An act relating to public records; amending ss.
 3 394.463, 394.4655, 394.467, and 394.4615, F.S.;

4 providing exemptions from public records requirements
 5 for petitions to determine incapacity; listing persons
 6 to whom the clerk of the court shall allow access to
 7 the petition; providing for future legislative review
 8 and repeal of the exemptions; providing a statement of
 9 public necessity; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (a) of subsection (2) of section
 14 394.463, Florida Statutes, is amended to read:

15 394.463 Involuntary examination.—
 16 (2) INVOLUNTARY EXAMINATION.—
 17 (a) An involuntary examination may be initiated by any one
 18 of the following means:

19 1.a. A court may enter an ex parte order stating that a
 20 person appears to meet the criteria for involuntary examination,
 21 giving the findings on which that conclusion is based. The ex
 22 parte order for involuntary examination must be based on sworn
 23 testimony, written or oral. If other less restrictive means are
 24 not available, such as voluntary appearance for outpatient
 25 evaluation, a law enforcement officer, or other designated agent
 26 of the court, shall take the person into custody and deliver him
 27 or her to the nearest receiving facility for involuntary
 28 examination. The order of the court shall be made a part of the
 29 patient's clinical record. No fee shall be charged for the
 30 filing of an order under this subsection. Any receiving facility
 31 accepting the patient based on this order must send a copy of
 32 the order to the Agency for Health Care Administration on the

Page 1 of 6

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

29-01403A-16

20161278__

33 next working day. The order shall be valid only until executed
 34 or, if not executed, for the period specified in the order
 35 itself. If no time limit is specified in the order, the order
 36 shall be valid for 7 days after the date that the order was
 37 signed.

38 b. The petition and any ex parte order entered by the court
 39 under this subparagraph are confidential and exempt from s.
 40 119.07(1) and s. 24(a), Art. I of the State Constitution. A
 41 petition made confidential and exempt by this sub-subparagraph
 42 shall be disclosed by the clerk of the court, upon request, to a
 43 judge of the circuit, the respondent, a guardian, a health care
 44 surrogate or proxy, an attorney of record for the respondent,
 45 and to any other person as directed by order of the court. This
 46 sub-subparagraph is subject to the Open Government Sunset Review
 47 Act in accordance with s. 119.15 and shall stand repealed on
 48 October 2, 2021, unless reviewed and saved from repeal through
 49 reenactment by the Legislature.

50 2. A law enforcement officer shall take a person who
 51 appears to meet the criteria for involuntary examination into
 52 custody and deliver the person or have him or her delivered to
 53 the nearest receiving facility for examination. The officer
 54 shall execute a written report detailing the circumstances under
 55 which the person was taken into custody, and the report shall be
 56 made a part of the patient's clinical record. Any receiving
 57 facility accepting the patient based on this report must send a
 58 copy of the report to the Agency for Health Care Administration
 59 on the next working day.

60 3. A physician, clinical psychologist, psychiatric nurse,
 61 mental health counselor, marriage and family therapist, or

Page 2 of 6

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

29-01403A-16

20161278__

62 clinical social worker may execute a certificate stating that he
 63 or she has examined a person within the preceding 48 hours and
 64 finds that the person appears to meet the criteria for
 65 involuntary examination and stating the observations upon which
 66 that conclusion is based. If other less restrictive means are
 67 not available, such as voluntary appearance for outpatient
 68 evaluation, a law enforcement officer shall take the person
 69 named in the certificate into custody and deliver him or her to
 70 the nearest receiving facility for involuntary examination. The
 71 law enforcement officer shall execute a written report detailing
 72 the circumstances under which the person was taken into custody.
 73 The report and certificate shall be made a part of the patient's
 74 clinical record. Any receiving facility accepting the patient
 75 based on this certificate must send a copy of the certificate to
 76 the Agency for Health Care Administration on the next working
 77 day.

78 Section 2. Paragraph (d) is added to subsection (3) of
 79 section 394.4655, Florida Statutes, to read:

80 394.4655 Involuntary outpatient placement.—

81 (3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

82 (d) The petition and any order entered by the court are
 83 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 84 of the State Constitution. A petition made confidential and
 85 exempt by this paragraph shall be disclosed by the clerk of the
 86 court, upon request, to a judge of the circuit, the respondent,
 87 a guardian, a health care surrogate or proxy, an attorney of
 88 record for the respondent, and to any other person as directed
 89 by order of the court. The clerk of the court may not post any
 90 personal identifying information on the docket or in publicly

29-01403A-16

20161278__

91 accessible files. This paragraph is subject to the Open
 92 Government Sunset Review Act in accordance with s. 119.15 and
 93 shall stand repealed on October 2, 2021, unless reviewed and
 94 saved from repeal through reenactment by the Legislature.

95 Section 3. Subsection (3) of section 394.467, Florida
 96 Statutes, is amended to read:

97 394.467 Involuntary inpatient placement.—

98 (3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—

99 (a) The administrator of the facility shall file a petition
 100 for involuntary inpatient placement in the court in the county
 101 where the patient is located. Upon filing, the clerk of the
 102 court shall provide copies to the department, the patient, the
 103 patient's guardian or representative, and the state attorney and
 104 public defender of the judicial circuit in which the patient is
 105 located. No fee shall be charged for the filing of a petition
 106 under this subsection.

107 (b) The petition and any order entered by the court is
 108 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 109 of the State Constitution. A petition made confidential and
 110 exempt by this paragraph shall be disclosed by the clerk of the
 111 court, upon request, to a judge of the circuit, the respondent,
 112 a guardian, a health care surrogate or proxy, an attorney of
 113 record for the respondent, and to any other person as directed
 114 by order of the court. The clerk of the court may not post any
 115 personal identifying information on the docket or in publicly
 116 accessible files. This paragraph is subject to the Open
 117 Government Sunset Review Act in accordance with s. 119.15 and
 118 shall stand repealed on October 2, 2021, unless reviewed and
 119 saved from repeal through reenactment by the Legislature.

29-01403A-16

20161278__

120 Section 4. Subsection (12) is added to section 394.4615,
 121 Florida Statutes, to read:
 122 394.4615 Clinical records; confidentiality.-
 123 (12) All personal identifying information about an
 124 individual for whom a petition is filed or order entered by a
 125 judge pursuant to part I of chapter 394, and filed with the
 126 clerk of the court is confidential and exempt from s. 119.07(1)
 127 and s. 24(a), Art. I of the State Constitution. A petition or
 128 order made confidential and exempt by this subsection shall be
 129 disclosed by the clerk of the court, upon request, to a judge of
 130 the circuit, the respondent, a guardian, a health care surrogate
 131 or proxy, an attorney of record for the respondent, and to any
 132 other person as directed by order of the court. The clerk of the
 133 court may not post any personal identifying information on the
 134 docket or in publicly accessible files. This subsection is
 135 subject to the Open Government Sunset Review Act in accordance
 136 with s. 119.15 and shall stand repealed on October 2, 2021,
 137 unless reviewed and saved from repeal through reenactment by the
 138 Legislature.

139 Section 5. The Legislature finds that it is a public
 140 necessity to exempt from s. 119.07(1), Florida Statutes, and s.
 141 24(a), Article I of the State Constitution all personal
 142 identifying information about an individual for whom a petition
 143 is filed or order entered by a judge pursuant to part I of
 144 chapter 394, Florida Statutes, that is contained in such
 145 petitions or orders, or dockets concerning them, whether
 146 initial, amended, or supplementary, in order to preserve the
 147 privacy of the person by preserving the privacy of information
 148 in the petition or order or docket that would otherwise be

Page 5 of 6

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

29-01403A-16

20161278__

149 accessible to the public. The Legislature finds that the public
 150 disclosure of such information in the petition or order or
 151 docket would produce undue harm to an individual alleged to have
 152 a mental illness.

153 Section 6. This act shall take effect July 1, 2016.

Page 6 of 6

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The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 13, 2016

I respectfully request that **Senate Bill #1278**, relating to Public Records/Petitions to Determine Incapacity, be placed on the:

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

Jeremy Ring

Senator Jeremy Ring
Florida Senate, District 29

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 1/20/2016 10:05:09 AM

Ends: 1/20/2016 11:57:03 AM Length: 01:51:55

10:05:08 AM Meeting called to order by Chair Diaz de la Portilla
10:05:12 AM Roll call by Administrative Assistant, Joyce Butler
10:05:24 AM Quorum present
10:05:33 AM Comments from Chair Diaz de la Portilla regarding bill SB 1244 being TP'd
10:05:52 AM Tab 3, CS/SB 260 introduced by Chair Diaz de la Portilla
10:06:00 AM Explanation of CS/SB 260, Financial Transactions by Senator Smith
10:06:47 AM Comments from Chair Diaz de la Portilla
10:06:56 AM Amendment Barcode No. 971491 introduced by Chair Diaz de la Portilla
10:07:05 AM Explanation of Amendment Barcode No. 971492 by Senator Smith
10:07:26 AM Comments from Chair Diaz de la Portilla
10:07:36 AM James Herzog, Associate Director for Education, Florida Conference of Catholic Bishops waives in support of Amendment
10:07:59 AM Comments from Chair Diaz de la Portilla
10:08:12 AM Senator Smith waives closure on Amendment Barcode No. 971492
10:08:16 AM Amendment Barcode No. 971492 adopted
10:08:21 AM Comments from Chair Diaz de la Portilla regarding bill as amended
10:08:30 AM Question from Senator Joyner
10:08:42 AM Response from Senator Smith
10:09:00 AM Comments from Senator Joyner
10:09:11 AM Steve Dyal, Florida Financial Services Association waives in support
10:09:18 AM Kimberly Siomkes, Vice President of Governmental Relations, Florida Bankers Association waives in support
10:09:33 AM Jennifer Martin, Director of Governmental Affairs, Florida Credit Union Association waives in support
10:09:42 AM Greg Black, Attorney, The Business Law Section of the Florida Bar waives in support
10:09:52 AM Closure by Senator Smith
10:10:05 AM Roll call on CS/SB 260 by Administrative Assistant, Joyce Butler
10:10:22 AM CS/SB 260 reported favorably
10:10:32 AM Tab 5, SB 1086 introduced by Chair Diaz de la Portilla
10:10:39 AM Explanation of Tab 5, SB 1086, Prejudgment Interest by Senator Bradley
10:12:17 AM Comments from Chair Diaz de la Portilla
10:12:20 AM Question from Senator Soto
10:12:24 AM Response from Senator Bradley
10:13:15 AM Comments from Chair Diaz de la Portilla
10:13:19 AM Question from Senator Stargel
10:13:25 AM Response from Senator Bradley
10:14:21 AM Follow-up question from Senator Stargel
10:14:28 AM Response from Senator Bradley
10:15:15 AM Question from Senator Brandes
10:15:22 AM Response from Senator Bradley
10:16:28 AM Follow-up question from Senator Brandes
10:16:41 AM Response from Senator Bradley

10:16:53 AM Additional question from Senator Brandes
10:17:12 AM Response from Senator Bradley
10:18:49 AM Follow-up from Senator Brandes
10:18:57 AM Response from Senator Bradley
10:19:33 AM Additional question from Senator Brandes
10:19:41 AM Response from Senator Bradley
10:21:10 AM Comments from Chair Diaz de la Portilla
10:21:30 AM Question from Senator Soto
10:21:36 AM Response from Senator Bradley
10:21:41 AM Follow-up question from Senator Soto
10:21:49 AM Response from Senator Bradley
10:21:58 AM Response from Chair Diaz de la Portilla
10:23:11 AM Question from Senator Simpson
10:23:38 AM Response from Senator Bradley
10:26:53 AM Question from Senator Stargel
10:27:03 AM Response from Senator Bradley
10:28:22 AM Comments from Chair Diaz de la Portilla
10:28:36 AM Introduction of Amendment Barcode No. 177066 by Chair Diaz de la Portilla
10:28:43 AM Explanation of Amendment Barcode No. 177066 by Senator Bradley
10:28:59 AM Comments from Chair Diaz de la Portilla regarding the technical amendment
10:29:08 AM Amendment Barcode No. 177066 adopted
10:29:12 AM Comments Chair Diaz de la Portilla
10:29:31 AM Speaker Matthew Posgay, Attorney, Florida Justice Association in support
10:33:49 AM Question from Senator Simpson
10:33:57 AM Response from Mr. Posgay
10:34:33 AM Follow-up question from Senator Simpson
10:34:40 AM Response from Mr. Posgay
10:35:19 AM Additional question from Senator Simpson
10:35:26 AM Response from Mr. Posgay
10:35:46 AM Additional question from Senator Simpson
10:35:53 AM Response from Mr. Posgay
10:38:07 AM Additional question from Senator Simpson
10:38:17 AM Response from Mr. Posgay
10:41:27 AM Question from Senator Brandes
10:41:34 AM Response from Mr. Posgay
10:41:54 AM Follow-up question from Senator Brandes
10:42:02 AM Response from Mr. Posgay
10:42:46 AM Follow-up question from Senator Brandes
10:42:54 AM Response from Mr. Posgay
10:43:36 AM Follow-up from Senator Brandes
10:43:42 AM Response from Mr. Posgay
10:44:31 AM Speaker William Large, President, Florida Justice Reform Institute in opposition
10:48:45 AM Question from Senator Soto
10:48:50 AM Response from Mr. Large
10:49:24 AM Question from Senator Ring
10:49:31 AM Response from Mr. Large
10:50:54 AM Follow-up question from Senator Ring
10:51:05 AM Response from Mr. Large
10:52:00 AM Question from Senator Ring
10:52:04 AM Response from Mr. Large
10:52:56 AM Statement from Senator Ring
10:53:08 AM Tim Nungeswser, Legislative Director, National Federation of Independent Business

waives in opposition

10:53:27 AM Samantha Padgett, Vice President & General Counsel, Florida Retail Federation waives in opposition

10:53:35 AM Gary Guzzo, Lobbyist, Florida Insurance Council, CNA waives in opposition

10:53:43 AM Frank Meiners, Florida Collectors Association waives in opposition

10:53:49 AM Speaker Tammy Perdue, General Counsel, Associated Industries of Florida in opposition

10:56:37 AM Speaker Mark Delegal, Counsel, Florida Chamber of Commerce in opposition

11:00:57 AM Speaker Troy Rafferty, Attorney in support

11:02:41 AM Question from Senator Soto

11:02:46 AM Response from Mr. Rafferty

11:03:15 AM Question from Chair Diaz de la Portilla

11:03:24 AM Response from Mr. Rafferty

11:03:43 AM Late-filed hand-written amendment by Senator Brandes

11:04:09 AM Comments from Chair Diaz de la Portilla

11:04:15 AM Question from Senator Soto

11:04:20 AM Response from Senator Bradley regarding attorney fees

11:04:49 AM Response from Senator Brandes

11:04:57 AM Comments from Chair Diaz de la Portilla regarding agreement of the late-filed amendment

11:05:15 AM Senator Ring in debate regarding amendment

11:05:36 AM Comments from Chair Diaz de la Portilla

11:05:53 AM Late-filed amendment withdrawn by Senator Brandes

11:06:05 AM SB 1086 temporarily TP'd

11:06:13 AM Tab 1, SB 58 introduced by Chair Diaz de la Portilla

11:06:28 AM Explanation of Tab 1, SB 58, Relief of Q.B. by the Palm Beach County School Board by Senator Abruzzo

11:06:57 AM Comments from Chair Diaz de la Portilla

11:07:07 AM Amendment Barcode No. 973234 introduced by Chair Diaz de la Portilla

11:07:16 AM Explanation of Amendment Barcode No. 973234 by Senator Bradley

11:07:23 AM Introduction of Amendment to the Amendment by Chair Diaz de la Portilla, Barcode No. 499086 by Senator Soto

11:07:38 AM Explanation of Amendment to Amendment, Barcode No. 973234 by Senator Abruzzo

11:07:53 AM Comments from Chair Diaz de la Portilla

11:08:01 AM Question from Senator Joyner regarding Amendment to Amendment

11:08:16 AM Response from Senator Abruzzo

11:08:50 AM Comments from Chair Diaz de la Portilla

11:08:59 AM Follow-up question from Senator Joyner

11:10:39 AM Comments from Chair Diaz de la Portilla

11:11:03 AM Closure waived on Amendment to Amendment

11:11:13 AM Amendment to Amendment, Barcode No. 973234 adopted

11:11:30 AM Comments from Chair Diaz de la Portilla

11:11:39 AM Closure waived on Amendment

11:11:45 AM Amendment to Amendment adopted

11:11:48 AM Comments from Chair Diaz de la Portilla

11:11:57 AM Senator Joyner in debate

11:13:33 AM Comments from Chair Diaz de la Portilla

11:13:58 AM Closure by Senator Abruzzo

11:15:06 AM Roll call by Administrative Assistant, Joyce Butler

11:15:17 AM CS/SB 58 reported favorably

11:15:48 AM Returned to Tab 5, CS 1086, late-filed amendment by Senator Brandes explained by Senator Bradley

11:16:20 AM Late-filed amendment adopted
11:16:25 AM Comments from Chair Diaz de la Portilla
11:16:34 AM Comments from Senator Simmons
11:18:30 AM Comments from Senator Stargel
11:19:35 AM Comments from Senator Soto
11:20:25 AM Comments from Chair Diaz de la Portilla
11:21:12 AM Closure by Senator Bradley
11:23:04 AM Roll call on CS/SB 1086 by Administrative Assistant, Joyce Butler
11:23:22 AM CS/SB 1086 reported favorably
11:23:48 AM Tab 8, SB 1278 introduced by Chair Diaz de la Portilla
11:24:12 AM Explanation of SB 1278, Public Records/Petitions to Determine Incapacity by Senator Ring
11:24:58 AM Introduction of Amendment Barcode No. 639650 by Chair Diaz de la Portilla
11:25:05 AM Explanation of Amendment Barcode #639650 by Senator Ring
11:25:27 AM Amendment adopted
11:25:30 AM Comments from Chair Diaz de la Portilla
11:25:35 AM Question from Senator Joyner
11:25:40 AM Response from Senator Ring
11:26:07 AM Speaker, Stephanie Owens Jaffe, Assistant Public Defender, Indigent Individuals subjected to involuntary examination and placement under the Baker Act for the bill
11:28:47 AM Comments from Chair Diaz de la Portilla
11:28:57 AM Closure by Senator Ring
11:29:27 AM Roll call on CS/SB 1278 by Administrative Assistant, Joyce Butler
11:29:44 AM CS/SB 1278 reported favorably
11:29:59 AM Tab 6, CS/SB 122 introduced by Chair Diaz de la Portilla
11:30:15 AM Explanation of CS/SB 122, Compensation of Victims of Wrongful Incarceration by Senator Joyner
11:31:55 AM Comments from Chair Diaz de la Portilla
11:32:04 AM Nancy Daniels, Public Defender, Florida Public Defender Association waives in support
11:32:14 AM Speaker, Greg Pound representing Florida Families
11:33:22 AM Comments from Chair Diaz de la Portilla
11:33:29 AM Comments from Senator Ring
11:33:57 AM Senator Ring waives closure
11:34:00 AM Roll call on CS/SB 122 by Administrative Assistant, Joyce Butler
11:34:14 AM CS/SB 122 reported favorably
11:34:23 AM Tab 4, CS/SB 742 introduced by Chair Diaz de la Portilla
11:34:42 AM Explanation of CS/SB 742, Certificates of Public Convenience and Necessity for Life Support or Air Ambulance Services
11:35:26 AM Comments from Chair Soto
11:35:33 AM Question from Senator Soto
11:36:31 AM Response from Senator Hutson
11:36:36 AM Question from Senator Joyner
11:36:42 AM Response from Senator Hutson
11:37:31 AM Follow-up question from Senator Joyner
11:37:45 AM Response from Senator Hutson
11:38:17 AM Question from Senator Soto
11:38:35 AM Response from Senator Hutson
11:39:29 AM Follow-up question from Senator Soto
11:39:38 AM Response from Senator Hutson
11:39:46 AM Question from Senator Simmons
11:40:16 AM Introduction of Amendment Barcode No. 425650 by Senator Bean
11:40:53 AM Explanation of Amendment Barcode No. 425650 by Senator Hutson

11:41:50 AM Comments from Chair Diaz de la Portilla
11:41:55 AM Amendment adopted without objection
11:42:03 AM Question from Senator Joyner
11:42:09 AM Response from Senator Hutson
11:42:57 AM Speaker, Joseph Daigle, Fire Chief, Bonita Springs Fire District in opposition
11:44:56 AM Speaker, Jorge Aguilera, Deputy Chief of EMS in support of bill as amended
11:48:28 AM Comments from Chair Diaz regarding time certain
11:48:43 AM Moved by Senator Joyner
11:49:03 AM Speaker, Cari Roth, Florida Ambulance Association in opposition
11:50:49 AM Speaker, Arlene Smith, Legislative Liaison, Volusia County in opposition
11:52:12 AM Lori Killinger, Attorney/Lobbyist, Bonita Springs Fire Control District waives in support
11:52:22 AM Speaker, Tracey Vause, EMS Chief Okaloosa County BOCC in opposition
11:52:52 AM Speaker, Susan Harbin, Legislative Advocate, Florida Association of Counties in opposition
11:53:36 AM John Hall, Chairman, Polk County Board of County Commissioner waives in opposition
11:53:48 AM Kraig Conn, Florida League of Cities waives in support
11:53:56 AM Doug Bell, City of Palm Coast/City of South Daytona in support
11:54:06 AM Kelley Teague, Legislative Affairs Orange County Government waives in opposition
11:54:20 AM Closure by Senator Hutson
11:54:39 AM Roll call on CS/SB 742 by Administrative Assistant, Joyce Butler
11:55:00 AM CS/SB 742 reported favorably
11:55:12 AM Tab 2, SB 206 introduced by Chair Diaz de la Portilla
11:55:15 AM Explanation of SB 206, Jury Service by Senator Clemens
11:55:37 AM Comments from Chair Diaz de la Portilla
11:55:48 AM Closure by Senator Clemens
11:55:57 AM Roll call on SB 206 by Administrative Assistant, Joyce Butler
11:56:00 AM SB 206 reported favorably
11:56:21 AM Senator Stargel would like to be shown as voting favorably on SB 1278 and CS/SB 122
11:56:32 AM Senator Bean would like to be shown as voting favorably on SB 260
11:56:45 AM Senator Stargel moves to adjourn without objection
11:56:50 AM Meeting adjourned