Committee on Judiciary

CS/HB 59 — Service of Process

by Civil Justice Subcommittee and Rep. Julien and others (CS/SB 328 by Judiciary Committee and Senator Margolis)

The bill authorizes sheriffs to charge a $40 fee for processing a writ of execution (current law authorizes sheriffs to charge a $40 fee for docketing and indexing a writ of execution) to reflect the modernization of the current practice for processing of the writs of execution. The bill allows the party requesting service to furnish the sheriff with an electronic copy of the process, which must be signed and certified by the clerk of court.

Currently, each process server must document on the copy served the date and time of service and the process server's identification number and initials. The bill specifies that the process server must place this information *on the front page* of the copy served. In addition, the person serving process must list on the return-of-service form all initial pleadings delivered and served along with the process. The return-of-service form must be filed with the court.

The bill provides that a gated residential community, including a condominium association or a cooperative, must grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

The bill revises procedures for serving a corporation's registered agent under the alternative method in s. 48.081(3)(a), F.S. In addition, the bill imposes additional requirements on the return of execution of process to include a server's signature on the return.

The bill reduces the number of copies of process from two to one copy that must be served on a public officer, board, agency, or commission, as the agent for service of process on any person, firm, or corporation. The public officer, board, agency, or commission so served must retain a record of the process and promptly send the copy, by registered mail or certified mail, to the person to be served as shown by his or her or its records. The service of process records may be retained in a paper or an electronic copy.

The bill reduces from three to one the number of copies that must be served on the Chief Financial Officer as the process agent of an insurer. The Chief Financial Officer must retain a record of the process. The service of process records may be retained in a paper copy or an electronic copy.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 38-0; House 117-0

Committee on Judiciary

CS/SB 142 — Negligence

by Commerce and Tourism Committee and Senators Richter, Gaetz, and Hays

The bill changes the apportionment of damages in products liability cases in which a plaintiff alleges that he or she received additional or enhanced injuries in an accident due to a defective product (e.g., crashworthiness cases). Specifically, under the bill, the fact finder in these cases must consider the fault of all persons who contributed to the accident when apportioning fault between or among them. The bill requires the trial judge to instruct the jury on the apportionment of fault in these cases and specifies that the rules of evidence apply to these actions.

The bill contains intent language and legislative findings that the provisions in the bill are intended to be applied retroactively and overrule *D'Amario v. Ford Motor Co.*, 806 So. 2d 424 (Fla. 2001). In that case, the Florida Supreme Court held that the focus in crashworthiness cases is the enhanced injury; therefore, consideration of the conduct that allegedly caused the enhanced and secondary injuries is pivotal, not the conduct that gave rise to the initial accident. As a result, the Court concluded that generally it would not be proper to admit evidence related to the intoxication of a non-party driver which caused the initial collision.

The bill reorganizes the comparative fault statute by moving the definition of "negligence action" to the definitions subsection in the current comparative fault statute, and it also adds definitions of the terms "accident" and "products liability action."

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 28-12; House 80-35

Committee on Judiciary

CS/CS/SB 170 — Electronic Filing and Receipt of Legal Documents

by Budget Subcommittee on Criminal and Civil Justice Appropriations; Judiciary Committee; and Senator Bennett

This bill requires each state attorney and public defender to electronically file court documents with the clerk of the court and electronically receive court documents from the clerk of the court. The bill defines the term "court documents." The bill further expresses the expectation of the Legislature that the state attorneys and public defenders consult with specified entities in implementing the electronic filing and receipt process. The Florida Prosecuting Attorneys Association and the Florida Public Defender Association are required to report to the President of the Senate and the Speaker of the House of Representatives by March 1, 2012, on the progress made in implementing electronic filing through the Florida Courts E-Portal (statewide portal) or other portal for case types not yet approved for filing through the statewide portal.

The bill also provides for electronic procedures in administrative proceedings. The bill requires parties represented by attorneys in hearings held under the Division of Administrative Hearings and in the Workers' Compensation Appeals Program to file all documents electronically.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 39-0; House 115-0

Committee on Judiciary

CS/CS/HB 277 — Sovereign Immunity

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Goodson and others (CS/CS/SB 594 by Community Affairs Committee; Judiciary Committee; and Senator Hays)

A statute of limitations bars legal claims after a specified period of time, usually based on when the injury occurred or was discovered. Currently, claims against the state or its subdivisions for a negligent or wrongful act are subject to a four-year statute of limitations. However, there is an exception for medical malpractice claims against the state or its subdivisions, which are subject to a two-year limitations period. The bill adds "wrongful death" to the list of exceptions governed by the two-year statute of limitations. Thus, the bill reduces the statute of limitations for wrongful death actions against the state or its subdivisions from four years to two years.

The bill conforms other portions of the statute governing tort claims against the government with the new statute of limitations. Currently, claimants have three years to give notice of their claim to an agency. The agency then has six months, or 90 days for medical malpractice claims, to dispose of the claim. Suit cannot be brought before notice has been given and a final disposition of the claim has been rendered; except that, if no agency action occurs for six months, or 90 days for medical malpractice claims, it is considered an automatic denial of the claim. Currently, the statute of limitations still runs during the period that the agency has to dispose of the claim. The bill reduces the period that a claimant has to give notice to an agency of its wrongful death claim, mandating that a claimant give notice to the agency within two years of the claim accruing. Additionally, the bill adds wrongful death claims to the 90-day period for agency action already in place for medical malpractice claims. Thus, if no agency action occurred on a wrongful death claim for 90 days, such inaction would result in an automatic final denial of the claim. Finally, the bill tolls the statute of limitations for wrongful death and medical malpractice claims during the time period provided for agency action.

If approved by the Governor, these provisions take effect July 1, 2011, and apply to causes of action accruing on or after that date.
Vote: Senate 35-2; House 117-0

Committee on Judiciary

CS/HB 325 — Estates

by Judiciary Committee and Rep. Wood (CS/SB 648 by Banking and Insurance Committee and Senator Joyner)

The bill establishes standards for privilege of communications between a lawyer and a client acting as a fiduciary. The bill provides that a client acts as a fiduciary when serving as a personal representative, a trustee, an administrator ad litem, a conservator, or an attorney in fact. The bill provides that the notice of administration sent by the personal representative of the estate must include a statement that the fiduciary lawyer-client privilege applies with respect to the personal representative and the attorney employed by the personal representative. The bill provides that the notice a trustee provides to qualified beneficiaries must include a statement that the fiduciary lawyer-client privilege applies with respect to the trustee and the attorney employed by the trustee.

Effective October 1, 2011, the bill increases the share a decedent's surviving spouse will receive in an intestate estate to the entire intestate estate when all of the decedent's descendants are also descendants of the surviving spouse and the surviving spouse does not have any other descendants.

Effective July 1, 2011, the bill:

- Permits wills to be reformed for mistake, which would be comparable to an existing provision applicable to testamentary trusts, revocable trusts, and other trusts.

- Allows wills to be modified to achieve the testator's tax objectives where it is not contrary to the testator's probable intent.

- Authorizes a court to award taxable costs, including attorney's fees and guardian ad litem fees, in a proceeding arising to reform a will for mistake or a proceeding for modifications to achieve the testator's tax objectives.

The bill authorizes a challenge to the revocation of a will or trust on the grounds of fraud, duress, mistake, or undue influence after the death of the testator or settlor. The bill limits powers of a guardian to prosecute or defend certain proceedings, to provide that there is a rebuttable presumption that an action challenging the ward's revocation of all or part of a trust is not in the ward's best interest if the revocation relates solely to a devise. This limitation does not preclude a challenge after the ward's death.

The bill provides that Florida Rule of Civil Procedure 1.525 applies to clarify when and under what circumstances a trustee or beneficiary of a trust or attorney must file a motion for attorney's fees and costs incurred in a judicial proceeding concerning a trust, with exceptions. Florida Rule of Civil Procedure 1.525 requires a party seeking costs or attorney's fees to serve a motion within the 30 days that follow the filing of a judgment.

If approved by the Governor, these provisions take effect upon becoming law, except as otherwise provided in the bill. The bill applies to all proceedings pending before such date and all cases commenced on or after the effective date.
Vote Senate 39-0; House 119-0

Committee on Judiciary

CS/HB 567 — Judgment Interest

by Judiciary Committee and Rep. Hudson (CS/CS/SB 866 by Governmental Oversight and Accountability Committee; Judiciary Committee; and Senator Bogdanoff)

This bill requires the Chief Financial Officer (CFO) to adjust the statutory rate of interest payable on judgments or decrees on a quarterly basis by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate. The bill also provides that the interest rate at the time the judgment is obtained will be adjusted annually on January 1 of each year in accordance with the interest rate in effect on that date as set by the CFO until the judgment is paid, with the exception of certain judgments entered by the clerk of court.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 39-0; House 114-2

Committee on Judiciary

CS/HB 621 — Child Custody

by Civil Justice Subcommittee and Rep. Renuart and others (CS/SB 1650 by Military Affairs, Space, and Domestic Security Committee and Senators Storms and Altman)

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of a permanent time-sharing agreement. The bill adds to previously existing law prohibiting a court from modifying time-sharing during the time a parent is away for military service, except to issue a temporary modification order if it is in the best interest of the child, by including a specific provision stating that military service cannot be the sole factor in granting a petition for modification.

If approved by the Governor, these provisions take effect July 1, 2011.
Vote: Senate 38-0; House 116-0

Committee on Judiciary

CS/CS/HB 647 — Protection of Volunteers

by Judiciary Committee; Civil Justice Subcommittee; and Rep. McBurney and others (CS/CS/SB 930 by Children, Families, and Elder Affairs Committee; Judiciary Committee; and Senators Lynn, Rich, and Sobel)

The "Florida Volunteer Protection Act" (Act), codified in s. 768.1355, F.S., provides that any person who volunteers to perform any service for any nonprofit organization, without compensation, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under the volunteer services. Such person may not incur civil liability for any act or omission by the person which results in personal injury or property damage under specified circumstances.

The bill amends the Act to specify that, as long as a volunteer is not being compensated by the nonprofit organization for which he or she is volunteering, liability for the volunteer's acts still may be shifted to the nonprofit organization, provided the other criteria of the Act are satisfied. In addition, if the volunteer is being compensated by another source and is not acting as an agent of the source of compensation, neither the volunteer nor the source of the compensation may incur any liability for the volunteer's acts or omissions if the other criteria of the Act are also met.

Specifically, under the bill, any person who volunteers for any nonprofit organization, including an officer or director of such organization, without compensation *from the nonprofit organization, regardless of whether the person is receiving compensation from another source*, except reimbursement for actual expenses, shall be considered an agent of such nonprofit organization when acting within the scope of any official duties performed under such volunteer services.

The bill also provides that the volunteer and *the source that provides compensation, if the volunteer is not acting as an agent of the source*, may not incur any civil liability for any act or omission by the volunteer which results in personal injury or property damage if other specified criteria in the Act are also met.

If approved by the Governor, these provisions take effect July 1, 2011, and apply to causes of action accruing on or after that date.
Vote: Senate 38-0; House 113-0

Committee on Judiciary

CS/SB 670 — Powers of Attorney

by Judiciary Committee and Senator Joyner

The bill seeks to conform Florida's power of attorney law under ch. 709, F.S., to the Uniform Power of Attorney Act adopted by the National Conference of Commissioners on Uniform State Laws, with some modifications to achieve greater consistency among state laws.

The bill creates ch. 709, part I, F.S., consisting of ss. 709.02-709.07, F.S., titled "Powers of Appointment." The bill creates ch. 709, part II, F.S., consisting of ss. 709.2101-709.2402, F.S., titled "Powers of Attorney."

The revised power of attorney law applies only to powers of attorney created by an individual. Powers of attorney validly executed under Florida law before the effective date of this bill will remain valid. If the power of attorney is durable (a power of attorney that is not terminated by the principal's incapacity) or springing (a power of attorney that does not take effect until the principal loses capacity), it will remain durable or springing under the new law. To be effective in Florida, powers created on or after the effective date of this bill must be exercisable as of the time they are executed. The meaning and effectiveness of a power of attorney are governed by ch. 709, part II, F.S. A power of attorney executed in another state that does not comply with the execution requirement of this part (ch. 709, part II, F.S.) is valid in Florida only if the execution of the power of attorney complied with the law of the state of execution.

Powers of attorney that are executed after the effective date of ch. 709, part II, F.S., may not create springing powers, with an exception for military powers. Qualified agents as defined in the bill are entitled to reasonable compensation. The revised power of attorney law provides requirements for written notice with special notice for financial institutions, and special rules for banking and investment transactions; provides default duties for the agent; creates co-agents and successor agents; prohibits blanket or default powers granted to an agent; prescribes requirements for the rejection by a third person of a power of attorney; prescribes requirements for an agent's liability under a power of attorney; and provides grounds for judicial relief and dealing with conflicts of interest.

If approved by the Governor, these provisions take effect October 1, 2011.
Vote: Senate 39-0; House 115-0

Committee on Judiciary

HB 951 — Recording of Real Property Documents

by Rep. Albritton (CS/SB 1072 by Judiciary Committee and Senator Latvala)

Instruments affecting title to real property are recorded in the public records in order to provide a public record of the chain of title to the property, together with a record of encumbrances against the title.

Prior law only allowed original papers, properly signed, to be presented for recording. Recently, state law was amended to allow for electronic recording of real property instruments. However, several of the clerks of the court and county recorders were accepting electronic recordings relating to real property prior to the 2007 adoption of the Uniform Real Property Electronic Recording Act. Others began accepting electronic documents for recording before rules contemplated in the Act were formally adopted.

The bill retroactively and prospectively ratifies the validity of all such electronic documents submitted to and accepted by a county recorder for recordation, whether or not the electronic documents were in strict compliance with the statutory or regulatory framework in effect at that time. This bill provides that all such recorded documents are deemed to provide constructive notice of ownership and encumbrances. The bill also clarifies that changes made by the bill do not alter the duty of a clerk or county recorder to comply with the Uniform Real Property Electronic Recording Act or rules adopted by the Department of State pursuant to that act.

If approved by the Governor, these provisions take effect upon becoming law.
Vote: Senate 39-0; House 119-0

Committee on Judiciary

CS/CS/CS/HB 1111 — Family Law

by Judiciary Committee; Health and Human Services Committee; Civil Justice Subcommittee; and Rep. Mayfield (CS/SB 1622 by Children, Families, and Elder Affairs Committee and Senator Flores)

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and for which implementing legislation is pending approval by Congress, to be eventually adopted in each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Maintenance Convention). The 2008 UIFSA amendments affect existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Maintenance Convention. The bill builds on previously existing Florida law providing uniform standards for interstate enforcement of support orders to include enforcement procedures internationally. The bill designates the Department of Revenue as the support enforcement agency of the state, and it directs the department to apply for a waiver from the Federal Office of Child Support Enforcement pursuant to the state plan requirement under the Social Security Act upon passage of the bill.

In addition, the bill revises Florida law relating to alimony to:

- Provide that the court determine the proper type and amount of alimony or maintenance pursuant to statutory provisions that contain descriptions of the different types of alimony;

- Specify that durational alimony can be awarded following a long-term marriage if there is no need for permanent support;

- Require a showing of clear-and-convincing evidence to award permanent alimony in the case of a marriage of moderate duration;

- Require written findings of exceptional circumstances to award permanent alimony after a short-term marriage;

- Require the court to find that no other form of alimony is fair and reasonable before awarding permanent alimony;

- Specify that an alimony award may not leave the paying parting with significantly less income than the receiving party unless there are written findings of exceptional circumstances; and

- Specify that these provisions apply to all initial awards of alimony and modifications of awards of alimony entered after the effective date, but do not serve as a basis to modify awards entered before the effective date. The provisions are applicable to all cases pending on or filed after the effective date.

If the bill is approved by the Governor, the support provisions take effect upon the earlier of 90 days following Congress amending federal law to allow or require states to adopt the 2008 version of the Uniform Interstate Family Support Act, or 90 days following the state obtaining a waiver of its state plan requirement under the Social Security Act. The provisions in the bill amending guidelines for the determination of alimony awards take effect July 1, 2011.
Vote: Senate 35-0; House 117-0

Committee on Judiciary

SB 1142 — Adverse Possession

by Senator Dockery

Under the statute governing adverse possession, a person who occupies land continuously without color of title (i.e., without any legal document to support a claim for title) may seek title to the property. The person must file a return with the county property appraiser's office within one year of entry onto the property and pay all property taxes and any assessed liens during the possession of the property for seven consecutive years. The adverse possessor may demonstrate possession of the property by showing that he or she protected the property by a substantial enclosure (typically a fence) or cultivated or improved the property.

The bill amends the current statutory process for gaining title to real property via an adverse possession claim without color of title. Specifically, the bill:

- Includes occupation and maintenance as one of the forms of proof of possession of property subject to an adverse possession claim;
- Requires the property appraiser to provide notice to the owner of record that an adverse possession claim was made;
- Specifies that the Department of Revenue must develop a uniform adverse possession return;
- Requires the adverse possessor to provide a "full and complete" legal description of the property on the return;
- Requires the adverse possessor to attest to the truthfulness of the information provided in the return under penalty of perjury;
- Requires an adverse possessor to describe, on the return, how he or she is using the property subject to the adverse possession claim;
- Includes emergency rulemaking authority for the Department of Revenue related to the adverse possession return;
- Prescribes procedures governing an adverse possession claim against a portion of an identified parcel of property, or against property that does not currently have a unique parcel identification number;
- Specifies when the property appraiser may add and remove the adverse possessor to and from the parcel information on the tax roll;

- Requires property appraisers to include a notation of an adverse possession claim in any searchable property database maintained by the property appraiser;

- Provides for priority of property tax payments made by owners of record by allowing for refunds of tax payments made by adverse possessors who submit a payment prior to the owner of record; and

- Provides that tax notices must be sent to the owner of property subject to an adverse possession claim even if the county commission has authorized the tax collector to not send out tax notices for bills under a certain amount.

If approved by the Governor, these provisions take effect July 1, 2011. The provisions apply to adverse possession claims in which the return was submitted on or after that date, except for the procedural provisions governing the property appraiser's administration of the adverse possession claims included in proposed s. 95.18(4)(c) and (d) (requiring the property appraiser to add a notation of the adverse possession filing and maintain a copy of the return) and (7), F.S. (delineating when the property appraiser shall remove the adverse possession notation). These latter provisions will apply to adverse possession claims in which the return was submitted before, on, or after July 1, 2011.
Vote: Senate 39-0; House 117-0

Committee on Judiciary

CS/HJR 1471 — Religious Freedom

by Judiciary Committee and Rep. Plakon and others (SJR 1218 by Senator Altman)

The joint resolution amends s. 3, Art. I, of the State Constitution relating to religious freedom. The resolution:

- Repeals a limit on the power of the state and its subdivisions to spend funds "directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." The repealed provision is often cited as a "Blaine Amendment."

- Provides that government may not deny the benefits of any program, funding, or other support on the basis of religious identity or belief, except to the extent required by the First Amendment to the United States Constitution.

If approved by at least 60 percent of the electors voting on the measure at the November 2012 general election, the constitutional amendment will take effect January 8, 2013.
Vote: Senate 26-10; House 81-35

Committee on Judiciary

HB 4067 — Residence of the Clerk of the Circuit Court

by Rep. McBurney (SB 1100 by Senator Detert)

The State Constitution provides for there to be an elected clerk of the circuit court in each county. The constitution also requires, in every county, that there be a county seat at which the principal offices and permanent records of the county are located.

Section 28.08, F.S., requires the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat. The Legislature enacted the law in 1871. The act creating the requirement included the same requirement applicable to the county sheriff. The original act required compliance within three months, and it allowed the court to fine the clerk between $100 and $500 for noncompliance.

This bill (Chapter 2011-10, L.O.F.) repeals the statutory requirement for the clerk of the circuit court, or a deputy, to reside at the county seat or within two miles of the county seat.

These provisions were approved by the Governor and take effect July 1, 2011.
Vote: Senate 38-0; House 118-0

Committee on Judiciary

HB 7081 — Open Government Sunset Review/Statewide Public Guardianship Office

by Government Operations Subcommittee and Rep. Bileca (CS/SB 572 by Governmental Oversight and Accountability Committee and Judiciary Committee)

The bill saves from repeal the public-records exemption under s. 744.7082(6), F.S., for the identity of donors or potential donors to the direct-support organization affiliated with the Statewide Public Guardianship Office. The exemption currently is scheduled for repeal on October 2, 2011, unless retained by the Legislature following a review under the Open Government Sunset Review Act.

If approved by the Governor, these provisions take effect October 1, 2011.
Vote: Senate 36-0; House 114-0

Committee on Judiciary

HB 7083 — Open Government Sunset Review/Interference with Custody

by Government Operations Subcommittee and Rep. Young (SB 570 by Judiciary Committee)

This bill is the result of the Legislature's Open Government Sunset Review of a public-records exemption for information submitted to the sheriff or state attorney for the purpose of obtaining immunity from prosecution for the offense of interference with custody.

Under the offense of interference with custody, it is a third-degree felony for any person – without legal authority – to knowingly or recklessly take a minor or any incompetent person from the custody of his or her parent, a guardian, a public agency in charge of the child or incompetent person, or any other lawful custodian. It is also a third-degree felony – in the absence of a court order determining custody or visitation rights – for a parent, stepparent, legal guardian, or relative who has custody of a minor or incompetent person to take or conceal the minor or incompetent person with a malicious intent to deprive another person of his or her right to custody.

There is an exception, however, in cases in which a person is the victim of domestic violence, has reasonable cause to believe he or she is about to become the victim of domestic violence, or believes that the action was necessary to preserve the minor or the incompetent person from danger. For the exception to apply, a person who takes a minor or incompetent person must, within 10 days of the taking, make a report to the sheriff or state attorney for the county in which the minor or incompetent person resided. The report must include the name of the person taking the minor or incompetent person, the current address and telephone number of the person and the minor or incompetent person, and the reasons the minor or incompetent person was taken.

Currently, the public-records exemption protects from disclosure the current address and telephone number of the person who takes a minor or incompetent person, as well as the address and telephone number of the minor or incompetent person, contained in the report to the sheriff or state attorney. The bill retains the public-records exemption by deleting language providing for the scheduled repeal of the exemption. The exemption will expire on October 2, 2011, unless the reenactment by the Legislature becomes law.

If approved by the Governor, these provisions take effect October 1, 2011.
Vote: Senate 38-0; House 114-0

Committee on Judiciary

HB 7085 — Open Government Sunset Review/Court Monitors in Guardianship Cases

by Government Operations Subcommittee and Rep. Young (SB 568 by Judiciary Committee)

Court monitoring is a mechanism courts use to review a guardian's activities, assess the well-being of the ward, and ensure that the ward's assets are being protected. Court monitors may be appointed by a court, on a nonemergency or an emergency basis, upon inquiry by an interested person or upon its own motion. A court monitor has the authority to investigate, seek information, examine documents, and interview the ward. The court monitor's findings must be reported to the court, and if it appears from the monitor's report that further action by the court is necessary to protect the ward's interests, the court must hold a hearing and enter any order necessary to protect the ward.

In conjunction with the creation of the court monitor system in guardianship proceedings, the Legislature created exemptions from public access to judicial records related to court monitors. This bill is the result of the Legislature's Open Government Sunset Review of the public-records exemptions for orders appointing nonemergency and emergency court monitors, monitors' reports, and orders finding no probable cause in guardianship proceedings.

The bill retains the public-records exemptions and makes organizational changes for clarity. The bill also removes the confidential status of court orders appointing nonemergency court monitors and makes these orders exempt rather than confidential and exempt. In addition, the bill eliminates a reference to "court determinations" in the public-records exemption relating to determinations and orders finding no probable cause for further court action because, in practice, the probable cause determination is typically contained in a written order included in the guardianship file.

These public-records exemptions stand repealed on October 2, 2011, unless the reenactment by the Legislature becomes law.

If approved by the Governor, these provisions take effect October 1, 2011.
Vote Senate 38-0; House 113-0

Committee on Judiciary

CS/HJR 7111 — Judiciary

by Judiciary Committee; Civil Justice Subcommittee; and Rep. Eisnaugle and others (SJR 2084 by Judiciary Committee)

The joint resolution revises Art. V of the State Constitution, relating to the Judiciary, as follows:

- Currently, justices of the Florida Supreme Court are selected by the Governor from a list of qualified candidates nominated by a judicial nominating commission. This joint resolution adds a requirement that a Supreme Court justice appointed by the Governor must be confirmed by the Senate to take office. Under the proposed constitutional amendment, the Senate is authorized to meet for purposes of the confirmation regardless of whether the House of Representatives is in session. If the Senate fails to vote on the appointment within 90 days, the justice is deemed confirmed. If the Senate votes to not confirm the appointment, the judicial nominating commission shall reconvene but may not renominate the same person to fill that same vacancy.

- Currently, the Constitution authorizes the Supreme Court to adopt rules for the practice and procedure in all courts. Court rules may be repealed by a two-thirds vote of the membership of each house of the Legislature. This proposed amendment authorizes repeal of a court rule by general law (a simple majority), provided that the general law expresses the policy rationale for the repeal. The Court may not readopt a rule without conforming the rule to the expressed policy reasons for the repeal. If the Legislature repeals a readopted rule, the Court may not readopt the rule again without prior legislative approval.

- Currently, the Constitution authorizes the House of Representatives to investigate charges against a judge and allows the House to request information in the possession of the Judicial Qualifications Commission (JQC) "for use in consideration of impeachment." Accordingly, the House of Representatives cannot review the JQC files in general. This joint resolution would allow the House of Representatives, at the Speaker's request, to review all files of the JQC without regard to whether the request is specifically related to impeachment considerations. The information would remain confidential during any investigation and until the information is used in the pursuit of impeachment.

The joint resolution includes three different ballot summaries. The joint resolution directs that the first summary will be placed on the ballot, and that each subsequent summary will be placed on the ballot in the event that a court declares the preceding ballot summary defective and the decision of the court is not reversed.

If approved by at least 60 percent of the electors voting on the measure at the November 2012 general election, the constitutional revision will take effect January 8, 2013.
Vote: Senate 24-11; House 80-38