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 Commerce Committee

BILL:	SB 1114
INTRODUCER:	Senator Gelber
SUBJECT:	International Commercial Arbitration
DATE:	March 3, 2010
REVISED:	03/03/10

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Cooper	CM	**Fav/2 amendments**
2.			JU	
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....		Statement of Substantial Changes
B. AMENDMENTS.....	X	Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This bill repeals current law relating to international commercial arbitration and adopts instead the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) as amended in 2006.

As adopted by the bill, the UNCITRAL Model Law on International Commercial Arbitration applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. The bill provides certain definitions, principles under which the law is to be interpreted, procedural requirements, discovery and evidentiary requirements, and arbitral tribunal powers and immunity.

The bill also limits a court's authority to intervene in arbitration and specifies when a court should intervene.

This bill creates the following sections of the Florida Statutes: 684.0001, 684.0002, 684.0003, 684.0004, 684.0005, 684.0006, 684.0007, 684.0008, 684.0009, 684.001, 684.0011, 684.0012, 684.0013, 684.0014, 684.0015, 684.0016, 684.0017, 684.0018, 684.0019, 684.002, 684.0021, 684.0022, 684.0023, 684.0024, 684.0025, 684.0026, 684.0027, 684.0028, 684.0029, 684.003,

684.0031, 684.0032, 684.0033, 684.0034, 684.0035, 684.0036, 684.0037, 684.0038, 684.0039, 684.004, 684.0041, 684.0042, 684.0043, 684.0044, 684.0045, 684.0046, 684.0047, and 684.0048.

This bill repeals Parts I, II, and III of chapter 684, Florida Statutes, consisting of sections 684.01, 684.02, 684.03, 684.04, 684.05, 684.06, 684.07, 684.08, 684.09, 684.10, 684.11, 684.12, 684.13, 684.14, 684.15, 684.16, 684.17, 684.18, 684.19, 684.20, 684.21, 684.22, 684.23, 684.24, 684.25, 684.26, 684.27, 684.28, 684.29, 684.30, 684.31, 684.32, 684.33, 684.34, and 684.35.

II. Present Situation:

Florida International Arbitration Act (FIAA)

Background

In 1986 the Florida Legislature passed the Florida International Arbitration Act (FIAA) to "encourage the use of arbitration to resolve disputes arising out of international relationships and to assure access to the courts of this state for legal proceedings ancillary to, or otherwise in aid of, such arbitration."[1]

The FIAA applies to two or more persons, at least one of whom is a nonresident of the United States, or two or more persons all of whom are residents of the United States if the dispute:

- Involves property located outside the United States;
- Relates to an agreement which may foreseeably be performed or enforced in whole or in part outside the United States;
- Involves an investment outside the United States or the ownership, management, or operation of a business entity through which such an investment is effected, or any agreement pertaining to any interest in such an entity; or
- Bears some other relation to one or more foreign countries.

The FIAA applies to arbitration, regardless if it is held within Florida, if the arbitration agreement or the parties thereto agree that Florida law should apply, the arbitration agreement or the contract containing the arbitration agreement is to be governed by Florida law, or the arbitral tribunal decides under conflict of laws principles that Florida law should apply.[2]

The FIAA does not apply to the arbitration of:

- Any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in Florida, unless the parties in writing expressly agree the dispute is to be arbitrated under the FIAA;
- Any dispute involving domestic relations or of a political nature between two or more governments; or

[1] Section 684.02(1), F.S.
[2] Section 684.05, F.S.

- Conciliation or mediation proceedings, except an arbitral tribunal may stay arbitration proceedings until conciliation or mediation proceedings have concluded, if the parties had agreed to submit a dispute to mediation or conciliation.[3]

Arbitral Tribunal

Under the FIAA, an arbitrator or arbitrators may be appointed by a method agreed to by the parties to arbitration, whether agreed to in writing or not. Unless otherwise agreed to by the parties, the FIAA requires the tribunal to consist of one arbitrator.[4]

If the arbitral tribunal consists of more than one arbitrator, its powers shall be exercised by a majority of its members. However, the tribunal may authorize the presiding arbitrator to decide matters of procedure subject to review by the full tribunal.[5]

Under the FIAA, the arbitral tribunal has vast powers and may conduct arbitration as it deems appropriate.[6] For example, the arbitral tribunal:

- May determine the language to be used;
- May determine the relevance and materiality of the evidence presented in an arbitration and is not required to follow formal rules of evidence;
- May take into account its own experience and any customs, usages of trade, or other facts and circumstances which it deems relevant;
- May utilize any lawful method it deems appropriate to obtain evidence additional to that produced by the parties;
- May issue subpoenas or other demands for the attendance of witnesses or for the production of books, records, documents, and other evidence;
- May administer oaths, may order depositions to be taken or other discovery obtained, without regard to the place where the witness or other evidence is located;
- May appoint one or more experts to report to the tribunal;
- May fix such fees for the attendance of witnesses as it deems appropriate;
- May apply for assistance from any court, tribunal, or governmental authority in any jurisdiction;
- May grant interim relief, without prejudice, and may require an applicant for relief to post bond or give other security;
- May issue a final, interim, interlocutory, or partial awards and may vacate, clarify, correct, or amend such an award; and
- May award reasonable fees and expenses actually incurred, including, without limitation, fees and expenses of legal counsel, to any party to the arbitration and may allocate the costs of the arbitration among the parties as it determines appropriate, including interest payments.

[3] *See* s. 684.10, F.S.
[4] Section 684.09, F.S.
[5] Section 684.11, F.S.
[6] Section 684.06, F.S.

However, the arbitral tribunal must decide the merits of a dispute according to equitable principles provided for in the arbitration agreement, or if none, then under the principles established in current law.[7]

Arbitrators are immune from liability under the FIAA.[8]

Procedure and Discovery

Under the FIAA, the parties to arbitration may at any time agree to the rules of arbitration, and incorporate those rules referenced in the arbitration agreement.[9]

Notice

A party wishing to arbitrate a dispute must provide written notice of the commencement of the arbitration.[10] The notice must set forth the nature of the dispute, the names and addresses of the parties, a reference to the written arbitration agreement, a demand that the dispute be referred to arbitration under that agreement, and a statement of the relief sought, including the amount claimed, if any. The notice must be provided in the manner specified by the arbitration agreement, or in the absence of such a provision, in a manner reasonably designed to give other parties actual notice of the proposed proceedings. The arbitral tribunal fixes a time within which any party served with a notice commencing arbitration must file a written answer, counterclaim, or cross-claim. Such answer, counterclaim, or cross-claim must be served upon the other parties to the arbitration in the manner provided in arbitration agreement, or in the absence thereof, in the manner fixed by the arbitral tribunal. Failure to file an answer constitutes a general denial of the claim set forth in the notice commencing the arbitration.

A tribunal must give at least 14 days of notice to the parties prior to a hearing.[11] Parties may request one or more hearings, which may take place outside of Florida and may be in a place other than where the arbitration takes place. If more than one hearing is requested, the arbitral tribunal decides whether the subsequent hearing is permitted.

Consolidation

If two or more disputes have common questions of law or fact or arise out of a single transaction or enterprise and if at least one of those disputes is to be arbitrated under the FIAA, the disputes may be consolidated and determined by one arbitral tribunal.[12] However consolidation is not permitted if it is prohibited by the arbitral law or the rules otherwise applicable to the separate disputes and all affected parties do not agree to the consolidation, or all of the disputes are not to be submitted to the same tribunal and the tribunal determines that consolidation will not serve the interests of justice and the expeditious resolution of the disputes. The consolidated proceedings are to be conducted under rules agreed upon by the parties or, in the absence of agreement, as determined by the arbitral tribunal.

[7] Section 684.17, F.S.
[8] Section 684.35, F.S.
[9] Section 684.07, F.S.
[10] Section 684.08, F.S.
[11] Section 684.13(1), F.S.
[12] Section 684.12, F.S.

Claims
Prior to a date established by the arbitral tribunal, any party may amend a claim, answer, counterclaim, or cross-claim previously filed by the party or may assert additional claims, counterclaims, or cross-claims.[13] After that date, all such additions and amendments are at the discretion of the tribunal.

The arbitral tribunal may dismiss any claim, counterclaim, or cross-claim which the moving party fails to prosecute with reasonable diligence as determined by the tribunal.[14] If a person against whom a claim, counterclaim, or cross-claim is filed fails to appear or proceed with a defense against that claim without good cause shown, the tribunal shall decide the claim, counterclaim, or cross-claim on the basis of the evidence before it. The tribunal may not base an award solely upon the default of a party, and the failure of any party to appear, proceed, or defend shall not in itself be treated as an admission.

Venue
The parties to arbitration may determine the place of arbitration or, in the absence of such a determination, the arbitral tribunal may determine the place of arbitration.[15] Selection of the place of arbitration does not in itself constitute selection of the procedural or substantive law of that place as the law governing the arbitration.

The arbitral tribunal may hold meetings at any place, whether or not it is the place of arbitration, and may use any means of communication it deems appropriate.[16]

Representation
A party to arbitration has a right to be represented by counsel and any waiver of that right prior to a proceeding is ineffective.[17]

Court Intervention

A court may compel arbitration and enjoin a party from taking action before a court, if the parties have agreed to arbitrate disputes pursuant to an arbitration agreement and if one or more parties are not complying with the agreement. However, a court may not issue an order to compel arbitration if fraud existed in the inducement of the arbitration agreement; submission of the dispute to arbitration would be contrary to the public policy of Florida or of the United States; or an arbitral tribunal impaneled in accordance with the arbitration agreement has previously determined that the dispute is not arbitrable or that the arbitration agreement is invalid or unenforceable. A court may stay arbitration under those circumstances.

A court may appoint arbitrators if the parties have failed to agree upon a method of appointment or if the method agreed upon fails or cannot be followed and the parties have not otherwise agreed upon a named arbitrator or arbitrators.

[13] Section 684.13(2), F.S.
[14] Section 684.13(6), F.S.
[15] Section 684.13(3), F.S.
[16] Section 684.13(4), F.S.
[17] Section 684.14, F.S.

A court may also grant any interim relief, without prejudice, which it is empowered by law to grant. Such grants of interim relief may include temporary restraining orders, preliminary injunctions, attachments, garnishments, or writs of replevin. In addition, under certain circumstances, a court may fix a time within which a final award must be issued by a tribunal.

Upon application of a party and under certain circumstances,[18] a court may confirm or vacate a final award or declare that the award is not entitled to confirmation by the courts of Florida.[19] If an award includes foreign currency and a party requests a market exchange rate for United States Dollars in the court order and no market rate of exchange is available to determine the award amount in United States dollars, the court may fix a rate it deems appropriate.[20]

The following court orders may be appealed:

- An order granting or denying an application to compel or to stay arbitration or to stay judicial proceedings.
- An order granting or denying an application for assistance in obtaining evidence or an application for interim relief.
- An order confirming or vacating a final award or declaring that an award is not entitled to confirmation by the courts of this state.
- A judgment or decree on a final award.

UNCITRAL Model Law

The UNCITRAL Model Law on International Commercial Arbitration (Model Law) was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on June 21, 1985, to address considerable disparities in national laws on arbitration.[21] The Model Law was amended on July 7, 2006. According to UNCITRAL, the Model Law:

> …constitutes a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different legal or economic systems of the world."[22]

UNCITRAL states that not only does the Model Law allow for harmonization and modernization, but it also provides the flexibility for states to use in their unique legal systems.[23]

According to UNCITRAL, the Model Law provides for:

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[18] *See* s. 684.25, F.S.
[19] Section 684.24, F.S.
[20] Section 684.26, F.S.
[21] UNCITRAL Model Law on International Commercial Arbitration, *Part Two*, "Explanatory Note by the UNCITRAL secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006," available at http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf.
[22] *Id*.
[23] *Id*.

- A special procedural regime for international commercial arbitration, which includes a substantive and territorial scope of application and provides for the delimitation of court assistance and supervision;
- Arbitration agreements, by providing a definition and form for such agreements and the enforcement of such agreements by courts;
- The composition of an arbitral tribunal;
- The jurisdiction of an arbitral tribunal, by giving a tribunal competence to rule on its own jurisdiction and power to order interim measures and preliminary orders;
- The conduct of arbitral proceedings, by providing for fundamental procedural rights of a party, determination of the rules of procedure, and default of a party;
- The making of an award and termination of proceedings, including determination of the rules or laws applicable to the substance of the dispute;
- The sole recourse against an award by application for setting aside and the grounds for setting aside an award; and
- The recognition and enforcement of awards, including the uniform treatment of all awards irrespective of country of origin, the procedural conditions for obtaining recognition and enforcement, and the grounds for refusing recognition or enforcement.[24]

UNCITRAL has determined that 61 countries and 6 U.S. states have adopted the Model Law.[25]

The Federal Arbitration Act

The right to resolve any dispute through binding arbitration is established under the Federal Arbitration Act (FAA).[26] A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written arbitration agreement may petition any United States district court for an order directing that such arbitration proceed in the manner provided for in such an agreement.[27]

The FAA preempts state laws and requires the state courts to enforce an applicable arbitration clause if the transaction involves interstate commerce.[28] The scope of the FAA is broadly interpreted to coincide with the reach of the Interstate Commerce Clause of the U.S. Constitution.[29] However, the FAA only preempts a state law when the state law frustrates the purpose and policies of the FAA.[30]

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[24] *Id*.
[25] List of countries that have adopted the Model Law is available at http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html. Note: The six states that have adopted the Model Law include CA, CT, IL, LA, OR, and TX.
[26] 9 U.S.C. ss. 1-16; *United Ins. Co. of America v. Office of Insurance Regulation*. 985 So. 2d 665 (Fla. 1st Dist. Ct. App. 2008).
[27] 9 U.S.C. s. 4. Note: A party must have original jurisdiction under 28 U.S.C. Part IV or 9 U.S.C. 203 to be heard in a U.S. district court.
[28] *See* Douglas J. Giuliano, *Parochialism in Arbitration?*, 81 Fla. B. J. 9, Feb. 2007 (quoting *Gilmer v. Interstate/Johnson Lane Corp*., 500 U.S. 20,24 (1991); 9 U.S.C. ss. 1-16; and Art. VI, Cl. 2, U.S. Const. (the Supremacy Clause).
[29] *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 281-282 (1995).
[30] 19 Am. J. Trial Advoc. 691.

III. Effect of Proposed Changes:

This bill repeals Florida law pertaining to international commercial arbitration and adopts instead the UNCITRAL Model Law on International Commercial Arbitration.

Section 1 creates s. 684.0001, F.S., to provide a short title, the "Florida International Commercial Arbitration Act," which replaces the "Florida International Arbitration Act."

Section 2 creates s. 684.0002, F.S., to provide the scope of application of the Florida International Commercial Arbitration Act (act). The act applies to any agreement in force between the United States of America and any other country or countries. However, the act only applies if the arbitration takes place in Florida, with exceptions.[31]

Paragraph (3)(a) provides that arbitration is considered "international" if:

- The parties to the arbitration agreement have their places of business[32] in different countries;
- The place of arbitration as determined by the arbitration agreement, any place where a substantial part of the obligations of the commercial relationship are to be performed , or the place with which the subject matter of the dispute is most closely connected are situated outside the country in which the parties have their places of business; or
- The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

Subsection (5) provides that the act does not affect any law prohibiting a matter from being resolved by arbitration or that specifies the manner in which a specific matter may be submitted or resolved by arbitration.

Current law under s. 684.03, F.S., allows, in addition to the conditions of application provided for in the bill, application of the International Arbitration Act to two or more persons whom are residents of the United States if the dispute involves property located outside the United States or bears some other relation to one or more foreign countries. However, current law also specifies certain circumstances under which the International Arbitration Act does not apply, including:

- Any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in this state, unless the parties in writing expressly submit the arbitration of that dispute to this chapter; or
- Any dispute involving domestic relations or of a political nature between two or more governments.

[31] The bill requires that ss. 684.0009 (relating to a court enforcing arbitration agreement), 684.001 (relating to requests for interim measures of protection), 684.0026 (relating to recognition and enforcement of interim measures by a court), 684.0027 (relating to grounds for refusing recognition or enforcement of an interim measure), 684.0028 (relating to a court's authority to issue an interim measure), 684.0047 (relating to recognition and enforcement of an arbitral award by a court), and 684.0048 (relating to grounds for refusing recognition or enforcement of an arbitral award), F.S., are applicable regardless of where the arbitration takes place.

[32] The bill provides that if a party has more than one place of business then the relevant place of business is that business having the closest relationship to the arbitration agreement. Additionally, if a party has no place of business then reference must be made to the party's habitual residence.

Because the bill permits parties to expressly agree on the subject matter of the arbitration agreement if it relates to more than one country, parties could expressly agree to hear disputes involving a dispute over real property, whether or not the property is in Florida, and domestic relations of a political nature between two or more governments.

Section 3 creates s. 684.0003, F.S., to provide the definitions for "arbitral tribunal," "arbitration," "arbitration agreement," and "court." This section also provides for rules of interpretation, which allows parties to authorize a third party to make certain determinations for them, clarifies what constitutes an agreement of the parties, and clarifies that application of the act to claims includes counter-claims and defenses thereto.

Current law under s. 684.04, F.S., defines a "written undertaking to arbitrate," otherwise known as an arbitration agreement, as a "writing by which a person undertakes to submit a dispute to arbitration, without regard to whether that undertaking is sufficient to sustain a valid and enforceable contract or is subject to defenses." Section 684.04, F.S., specifies that a written undertaking to arbitrate may be part of a contract, or may be a separate writing, and may be contained in correspondence, telegrams, telexes, or any other form of written communication.

The definition for "arbitration agreement" under the bill is less specific stating that "'arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not." However other provisions of the bill treat arbitration agreements in a similar manner to current law because the bill specifies that an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the arbitral tribunal that the contract is not valid does not entail *ipso jure* (by the operation of law) the invalidity of the arbitration clause.

Section 4 creates s. 684.0004, F.S., to require the act to be interpreted with regard to its international origin and to promote uniformity in its application while observing good faith.

Under current law s. 684.02(1), F.S., encourages the use of arbitration to resolve disputes arising out of international relationships and s. 684.17, F.S., requires a tribunal to decide the merits of a dispute in accordance with equitable principles established by law or by the arbitration agreement.

Section 5 creates s. 684.0005, F.S., to clarify when a written communication is deemed to be "received" by a party to the arbitration. A written communication is deemed received if it is delivered personally; to the addressee's place of business, habitual residence, or mailing address by registered letter or other means providing a postal record. If the party's location cannot be reasonably found, the communication is deemed received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or other means of postal record. A communication is deemed received on the day it is delivered. This application of "received" is inapplicable to communications in a court proceeding.

Current law does not specify when a written communication is deemed to be "received" by a party to the arbitration. However, s. 684.08, F.S., specifies that the notice commencing arbitration shall be served upon the other parties to arbitrate in the manner provided for in the

arbitration agreement or, in the absence of such a provision, in a manner reasonably designed to give other parties actual notice of the proposed proceedings. Otherwise, under s. 684.07, F.S., the parties may at any time agree in writing to conduct the arbitration in accordance with such rules as they may select, including any system of rules incorporated by reference in the arbitration agreement.

Section 6 creates s. 684.0006, F.S., to provide that a party failing to timely object waives his or her right to object.

A similar provision is provided for under current law in s. 684.07(2), F.S.

Section 7 creates s. 684.0007, F.S., to limit the authority of a court to intervene in an arbitration proceeding.

Although there is no language in current law limiting court authority in general, court authority is limited by several sections of current law including ss. 684.22, F.S. (court proceedings to compel arbitration and to stay certain court proceedings), 684.23, F.S. (court proceedings during arbitration), 684.24, F.S. (court proceedings upon final awards), 684.25, F.S. (grounds for vacating an award or declaring it not entitled to confirmation), and 684.26, F.S. (award in a foreign currency).

Section 8 creates s. 684.0008, F.S., to provide jurisdiction and venue requirements for courts performing arbitration functions pursuant to ss. 684.0012(3) and (4), 684.0013(3), 684.0014, 684.0015(3), 684.0017(3), and 684.0046(2), F.S.[33] Specifically, only a circuit court in the county in which the seat of the arbitration is located may:

- Appoint an arbitrator if the parties to the arbitration fail to agree upon an arbitrator or if the parties fail to act as required under an agreed upon appointment procedure (s. 684.0012(3) and (4));
- Decide a challenge to an appointed arbitrator, upon request of a challenging party (s. 684.0014);
- Decide a challenge to an arbitral tribunal's jurisdiction if the arbitral tribunal has ruled as a preliminary question that it has jurisdiction (s. 684.0017(3)); or
- Determine whether certain circumstances exist to set aside an arbitral award (s. 684.0046(2)).

Currently if a court, as authorized under existing law, hears an arbitration dispute, application for such a dispute must be made to the circuit court for the county in which any party to the arbitration resides or has a place of business or in which the place of arbitration is located.[34] However, if no party resides or has a place of business within Florida and if the place of arbitration is outside Florida, then the application may be made to any circuit court of Florida. Section 684.31, F.S., also specifies that all applications made subsequent to an initial application under this chapter shall be made to the court hearing the initial application, unless it shall order otherwise.

[33] As written in the bill, ss. 684.0013 and 684.0015, F.S., do not have a subsection (3). See the section of this analysis titled "Technical Deficiencies" for additional comments.
[34] Section 684.31, F.S.

Section 9 creates s. 684.0009, F.S., to require a court to refer parties to arbitration if the action brought in court concerns a matter subject to an arbitration agreement and a party timely requests enforcement of the arbitration agreement. A court is not required to refer parties to arbitration if it finds the arbitration agreement is null and void, inoperative, or incapable of being performed.

If a party brings a court action, arbitral proceedings may still commence or be continued.

A similar provision exists under current law in s. 684.22, F.S., which authorizes a court to compel arbitration upon application by a party unless the court finds:

- That there was fraud in the inducement of the written undertaking to arbitrate;
- That submission of the dispute to arbitration would be contrary to the public policy of this state or of the United States; or
- That an arbitral tribunal impaneled in accordance with the written undertaking to arbitrate has previously determined that the dispute is not arbitrable or that the undertaking is invalid or unenforceable.

Section 10 creates s. 684.001, F.S., to provide that it is not incompatible with an arbitration agreement for a party to seek an interim measure of protection from a court. This means that a request for an interim measure may not be deemed to be an action in derogation of an arbitration agreement.

A similar provision exists under s. 684.16(1), F.S.

Section 11 creates s. 684.0011, F.S., to provide for the number of arbitrators, which may be determined by the parties, or if there is no agreement between the parties there must be three arbitrators.

Section 684.09, F.S., of existing law, provides that if the parties have not agreed to the appointment of an arbitrator or arbitrators, then a court must appoint an arbitrator. If the parties have not agreed to the number of arbitrators to be appointed, the arbitral tribunal must consist of one arbitrator.

Section 12 creates s. 684.0012, F.S., to provide for the procedure for the appointment of arbitrators. The parties may agree to a procedure for appointing arbitrators. However, if the parties fail to agree on a procedure for appointment, the following procedures apply:

- For an arbitration having three arbitrators, each party appoints one arbitrator and then the two appointed arbitrators choose a third arbitrator. If this procedure fails, then upon request of a party, a court must appoint the third arbitrator.
- For an arbitration having one arbitrator, a court, upon request of a party, must appoint an arbitrator.
- For an arbitration to which the parties agree to a specific appointment procedure, but a party fails to act, or the parties disagree under the procedure, or a third party fails to perform a required function, a court may, upon request, may take necessary measure to appoint an arbitrator.

Any decision by a court concerning the appointment of an arbitrator under this section is not appealable. A court's decision to appoint an arbitrator must be based on certain considerations to ensure appointment of an independent and impartial arbitrator.

A person is not precluded from acting as an arbitrator because of his or her nationality, unless agreed to by the parties.

No provision exists under current law for a detailed procedure for a court to implement when appointing an arbitrator in the absence of an agreement by the parties as to such a procedure.

Section 13 creates s. 684.0013, F.S., to provide grounds for challenging a potential arbitrator. A potential arbitrator must disclose any circumstances that give rise to justifiable doubts as to his or her impartiality or independence, and must continue such disclosure throughout the arbitral proceedings. A party may only challenge an arbitrator's appointment if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not meet the parties agreed upon qualifications. A party may challenge the appointment of an arbitrator it appointed only for circumstances the party became aware of after the appointment.

No provision exists under current law establishing the grounds for challenging a potential arbitrator or for requiring a potential arbitrator to disclose any circumstances giving rise to justifiable doubts as to his or her impartiality or independence. However, under s. 684.25(1)(e), F.S., a final award may be vacated if an arbitrator had a material conflict of interest with the party challenging the award, unless that party had timely notice of the conflict and proceeded without objection to arbitrate the dispute.

Section 14 creates s. 684.0014, F.S., to provide the procedure for challenging an appointed arbitrator when the parties have not otherwise agreed to a procedure. After ascertaining who has been appointed or after discovering any circumstances that would have disqualified an arbitrator from appointment, a party has 15 days to send a written challenge to the arbitral tribunal. The arbitral tribunal decides the challenge, unless the challenged arbitrator has withdrawn from office or the other party agrees to the challenge. If this procedure is not successful then a court, upon the request of a party, may decide the challenge while arbitration continues and the court's decision is not appealable.

No similar provision exists under current law.

Section 15 creates s. 684.0015, F.S., to provide for the termination of an arbitrator's mandate if the arbitrator fails or is unable to perform his or her functions. Termination occurs upon an arbitrator's withdrawal from office or if the parties agree to the termination. Otherwise, upon the request of a party, a court may determine whether an arbitrator's mandate should be terminated; such decision is not appealable.

Grounds alleged by any party for termination are not automatically deemed valid solely because an arbitrator voluntarily withdraws from office.

No similar provision exists under current law.

Section 16 creates s. 684.0016, F.S., to provide the procedure for appointing a substitute arbitrator. A substitute arbitrator is to be appointed under the same procedure that was used to appoint the arbitrator that is being replaced.

No similar provision exists under current law.

Section 17 creates s. 684.0017, F.S., to authorize an arbitral tribunal to rule on its own jurisdiction and provide the procedure for challenging an arbitral tribunal's jurisdiction.

A party, whether or not it appointed the arbitrators, may make a plea that the tribunal does not have jurisdiction, but must make such a plea prior to filing a statement of defense, unless the tribunal permits a delayed plea. Additionally, a party may make a plea that the tribunal is exceeding its scope of authority. However, the challenge must be made as soon as the matter that the tribunal has no alleged jurisdiction over is raised, unless the tribunal permits a delayed plea.

Even while arbitration continues, a party may challenge in a circuit court a tribunal's preliminary ruling that the tribunal has jurisdiction and the court's ruling is not appealable.

This section also clarifies that an arbitration clause contained in a contract must be treated as an independent agreement; therefore, when an arbitral tribunal deems a contract invalid, the arbitration clause is not invalid by operation of law.

Under current law, s. 684.06(2), F.S., also authorizes an arbitral tribunal to rule on its own jurisdiction stating that "the arbitral tribunal shall have the power to rule on all challenges to its jurisdiction," including challenges based on the claim that the arbitration agreement does not exist or does not give rise to a valid and enforceable agreement, challenges asserting that the dispute is not within the scope of the questions referable to arbitration or is otherwise nonarbitrable, and challenges the composition of the tribunal or the method used in forming the tribunal.

Section 18 creates s. 684.0018, F.S., to authorize arbitral tribunals to order interim measures, unless otherwise agreed to by the parties. An interim measure must be requested by a party and is a temporary measure that may include an order to:

- Maintain or restore the status quo;
- Take action to prevent, or refrain from an action that is likely to cause, current or imminent harm or prejudice to the arbitral process;
- Preserve assets, which may be used to satisfy an award; or
- Preserve evidence relevant and material to the dispute being arbitrated.

Section 684.16, F.S., currently authorizes a party to seek an interim measure. An arbitral tribunal is not required to notice another party of the request for an interim measure under certain circumstances under current law.

Section 19 creates s. 684.0019, F.S., to require a party to prove certain conditions prior to requesting an interim measure. Specifically, a party must prove:

- Without the interim measure, there would be irreparable harm that an award would not repair and the irreparable harm outweighs the harm that would affect the party to whom the interim measure is against; and
- It is reasonably possible that the party requesting the interim measure will succeed on the merits of its claim.

A tribunal's grant of an interim measure has no bearing on the making of any subsequent decision in the arbitral process.

Currently under s. 684.16, F.S., there are no conditions a party must prove prior to requesting an interim measure. An interim measure may only be granted by an arbitral tribunal if the tribunal deems the measure appropriate.

Section 20 creates s. 684.002, F.S., to provide the procedures for applying for and granting preliminary orders. A party may request a preliminary order along with the request for an interim measure to enforce the measure.

A party is not required to give notice to the other party of such a request, but the request will only be granted by the tribunal if disclosure of the request to the other party would frustrate the purpose of the interim measure. In addition, the party requesting the interim measure must demonstrate there would be irreparable harm to the party requesting the interim measure if the measure is not granted, the harm would not be repaired by an award, and the harm to the party against whom the interim measure is sought would be outweighed by the harm to the party requesting the measure should it not be granted.

No provision exists under current law for the request or granting of a "preliminary order." However, under s. 684.19, F.S., an arbitral tribunal may issue an "interim award," which may be issued in the same manner as any other award. Under s. 684.23(3), F.S., interim relief includes temporary restraining orders, preliminary injunctions, attachments, garnishments, or writs of replevin. The granting of such interim relief is subject to such procedural requirements and other conditions as would apply in a comparable action not pertaining to an arbitration.

Section 21 creates s. 684.0021, F.S., to provide the procedure for granting preliminary orders. An arbitral tribunal must give notice to all parties of the communications related to, and the request, application, and granting of, an interim measure and preliminary order once a determination has been made. The tribunal must allow a party against whom an order is directed to object to the order and the tribunal must decide the matter promptly.

A preliminary order expires after 20 days of its issuance, but the tribunal may adopt or modify the order after notice to the party to whom the order is against and after that party has presented its case.

A preliminary order is not enforceable by a court and does not constitute an award.

Section 22 creates s. 684.0022, F.S., to allow for the modification, suspension, or termination of an interim measure or preliminary order. An interim measure or preliminary order may be

modified, suspended, or terminated upon the request of a party or upon the tribunal's own initiative if there are exceptional circumstances and notice has been provided to all parties.

Existing law under s. 684.16(4), F.S., authorizes the arbitral tribunal to modify or terminate any interim relief granted by it at any time.

Section 23 creates s. 684.0023, F.S., to authorize an arbitral tribunal to require a party requesting an interim measure or preliminary order to provide security. For preliminary orders, security must be required, unless the tribunal considers such security inappropriate or unnecessary.

A similar provision for requiring security or a bond is found in current law under s. 684.16(1), F.S.

Section 24 creates s. 684.0024, F.S., to authorize an arbitral tribunal to require a party to disclose any material change in circumstances under which an interim measure was requested or granted. A party to whom a preliminary order was granted is continually obligated to disclose whether any circumstances relevant to the request for a preliminary order have changed. Such obligation ends when the opposing party has an opportunity to present its case in light of the new circumstances.

No similar provision is found under current law.

Section 25 creates s. 684.0025, F.S., to authorize an arbitral tribunal to award costs and damages at any point during arbitration proceedings against a party that applied for and was granted a preliminary measure or order, which is later determined by the tribunal as inappropriate.

No similar provision exists under current law for the award of costs and damages against a party who requested an interim measure or preliminary order, which was deemed inappropriate by the tribunal.

Section 26 creates s. 684.0026, F.S., to provide for the recognition and enforcement of an interim measure. An interim measure is binding upon the parties and enforced, upon application of a party, by a court or a country's equivalent authority. Such court or equivalent authority may order the party requesting the interim measure to provide security if the arbitral tribunal has not already done so or if it is necessary to protect the rights of third parties.

The party seeking to obtain or who has obtained an interim measure must promptly notify the enforcing court of the termination, suspension, or modification of the interim measure.

Section 684.16(2), F.S., authorizes the arbitral tribunal to seek assistance from any court, tribunal, or other governmental authority within or outside of Florida in securing the objectives intended by the interim order or request for interim relief.

Section 27 creates s. 684.0027, F.S., to authorize a court to refuse recognition or enforcement of an interim measure, provided that the refusal is not based on the substance of the interim measure, if certain conditions are met. Specifically a court may refuse recognition or

enforcement of an interim measure if the party opposing the interim measure requests the court to refuse recognition or enforcement of the interim measure and that party proves:

- That a party to the arbitration agreement was under some incapacity;
- The arbitration agreement is not valid under the law to which the parties have subjected it or under the law of the country where the award was made;
- The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator, any proceedings, or was unable to present its case;
- The award addresses a dispute not contemplated by or not within the terms or scope of the arbitration agreement; or
- The composition of the arbitral tribunal or its procedure did not conform to the agreement of the parties or did not conform to the law of the country where the arbitration took place.

In addition, a court can, upon the request of the opposing party, refuse recognition or enforcement of an interim measure if the arbitral tribunal's decision to require security has not been complied with or the interim measure has been terminated by the arbitral tribunal or the court of competent jurisdiction under which the interim measure was granted.

A court may also determine that it does not have the power to recognize or enforce the measure, unless it is able to change the interim measure to conform to its powers without modifying the interim measure's substance.

Under s. 684.23(4), F.S., a court that has issued an order for interim relief must, upon application by the tribunal, modify or terminate its order as appropriate.

Section 28 creates s. 684.0028, F.S., to provide that a court exercises the same power in issuing an interim measure as it does with any other court proceeding, regardless if the arbitration proceedings are held in Florida, as long as it does so in accordance with its own procedures while also considering that the nature of the arbitration is international.

Comparatively, s. 684.23(3), F.S., provides that the granting of interim relief is subject to such procedural requirements and other conditions as would apply in a comparable action not pertaining to an arbitration.

Section 29 creates s. 684.0029, F.S., to require that all parties be treated equally and given a full opportunity to present its case.

No similar provision exists under current law.

Section 30 creates s. 684.003, F.S., to authorize parties to determine the rules of procedure for arbitration. Otherwise, the arbitral tribunal may determine the rules of procedure, including the power to determine the admissibility, relevance, materiality, and weight of evidence.

Existing law, under s. 684.07, F.S., provides for the freedom of parties to fix rules for arbitration. It provides that the parties may at any time agree in writing to conduct the arbitration in accordance with the rules they select, including any system of rules incorporated by reference in the arbitration agreement.

Section 31 creates s. 684.0031, F.S., to authorize the parties to agree on the place of arbitration and authorize the arbitral tribunal to determine the location of arbitration in the absence of such an agreement. The tribunal must regard the circumstances of the case, including the convenience of a place for the parties, when determining the place of arbitration.

In addition, the tribunal may choose a location for proceedings attendant to the arbitration, such as meetings and hearings, if the parties have not agreed on a location for such matters.

Section 684.13, F.S., authorizes the arbitral tribunal to determine the place of any hearings. The place of arbitration, whether within or outside of Florida, is to be determined by the parties to the arbitration. In the absence of such a determination by the parties, the arbitral tribunal having regard to the circumstances of the arbitration, must determine the place of arbitration.

Section 32 creates s. 684.0032, F.S., to provide for the commencement date of arbitral proceedings. Arbitral proceedings are considered commenced either upon such a time as agreed by the parties, or on the date on which a request for arbitration is received by the respondent.

Section 684.08, F.S., requires a party that wants to arbitrate a dispute to provide a notice of commencing arbitration and provides the procedures for providing such notice.

Section 33 creates s. 684.0033, F.S., to authorize parties to agree on the language to be used in arbitration, arbitration proceedings, and arbitral communications. In the absence of such an agreement, the arbitral tribunal is authorized to specify the language to be used. The arbitral tribunal may order a document to be translated into the agreed upon or specified language.

Under s. 684.06(1), F.S., the arbitral tribunal may determine the language to be used in the arbitration proceedings, unless the arbitration agreement specifies otherwise or unless the parties have agreed otherwise.

Section 34 creates s. 684.0034, F.S., to provide for the procedure for stating and defending against a claim. Prior to the deadline for submitting a claim or defense as agreed upon by the parties or as set by the arbitral tribunal, a claimant must state the facts supporting its claim, the points at issue, and the relief or remedy sought and respondent must state its defense to the claim. However, the parties may agree to submit different elements of such statements. Parties may submit supporting documents with their statements or may reference a document or other evidence they will submit.

A party is permitted to amend or supplement its claim or defense, unless such action is barred by the arbitral tribunal.

Section 684.08(4), F.S., under current law, authorizes the arbitral tribunal to fix a time within which any party served with a notice commencing arbitration must file a written answer, counterclaim, or cross-claim. Such answer, counterclaim, or cross-claim must be served upon the other parties to the arbitration in the manner provided for in the arbitration agreement or, in the absence thereof, in the manner fixed by the arbitral tribunal.

Section 35 creates s. 684.0035, F.S., to authorize the arbitral tribunal to determine whether to hold oral hearings or whether to allow only documentary evidence to be considered, in the absence of an agreement between the parties as to how the arbitration proceedings are to be conducted.

If a party requests a hearing, the tribunal shall hold a hearing at the appropriate stage of the proceedings, unless the parties had agreed that no hearings would be held. The tribunal must provide adequate notice of such a hearing or of any meeting of the tribunal to inspect goods, other property, or documents.

Evidence supplied to the arbitral tribunal must be provided to the other party, including any expert report.

Similar procedural provisions for hearings exist under current law in s. 684.13, F.S.

Section 36 creates s. 684.0036, F.S., to authorize the arbitral tribunal, in the absence of an agreement by the parties to do otherwise, to rule on the default of a party. A tribunal may find a party defaulted if it failed to provide a statement of claim and the tribunal must terminate the proceedings. However, if a respondent fails to state a defense, proceedings must continue and the absence of a defense does not constitute an admission. In addition, if a party fails to appear at a hearing or fails to produce documentary evidence, the proceedings may continue and an award may be made based on the evidence presented.

Comparatively, s. 684.13(6), F.S., authorizes an arbitral tribunal to dismiss any claim, counterclaim, or cross-claim which the moving party fails to prosecute with reasonable diligence as determined by the tribunal. If a person against whom a claim, counterclaim, or cross-claim is filed fails to appear or proceed with a defense against that claim without good cause shown, the tribunal must decide the claim, counterclaim, or cross-claim on the basis of the evidence before it. The arbitral tribunal may not base an award solely upon the default of a party, and the failure of any party to appear, proceed, or defend must not in itself be treated as an admission.

Section 37 creates s. 684.0037, F.S., to authorize an arbitral tribunal to appoint one or more experts to report to it on issues to be determined by the tribunal and require the parties to provide information and evidence to the expert or experts, unless the parties agree otherwise. The expert or experts, at the request of a party or the tribunal, must participate in a hearing after providing a written or oral report.

A similar provision exists under current law in s. 684.15(2), F.S.

Section 38 creates s. 684.0038, F.S., to authorize an arbitral tribunal, or a party permitted by the tribunal, to request assistance from a court in taking evidence.

A similar provision exists under current law in s. 684.15(4), F.S.

Section 39 creates s. 684.0039, F.S., to require the arbitral tribunal to abide by the rules of law chosen by the parties to apply to the substance of the dispute and not to that state or country's

conflict-of-laws rule. Otherwise, if the parties have not designated a rule of law, the tribunal shall apply the law determined by the conflict-of-laws rules that it considers applicable.

The arbitral tribunal is authorized to decide a matter under certain principles of law if the parties have expressly permitted it to do so. Specifically, the tribunal may decide *ex aequo et bono*, meaning according to the right and good, or *amiable compositeur*, meaning a just or ethical decision, with express permission from the parties.

For all cases, the tribunal must make a decision in accordance with the contract terms and must account for the usages of trade which apply to the transaction.

A similar provision exists under current law in s. 684.17, F.S.

Section 40 creates s. 684.004, F.S., to require a decision by an arbitral tribunal having more than one arbitrator to be made by a majority, unless the parties have agreed otherwise. However, a presiding arbitrator may decide questions of procedure if authorized by the parties or all members of the tribunal.

A similar provision exists under current law in s. 684.11, F.S.

Section 41 creates s. 684.0041, F.S., to require the arbitral tribunal to terminate proceedings if a settlement has been reached by the parties. The tribunal, unless it objects, must also record the settlement in the form of an award if the parties so request. The award must be in the same form and must have the same status and effect as any other award and must state that it is an award.

A similar provision exists under current law in s. 684.10(2), F.S.

Section 42 creates s. 684.0042, F.S., to provide for the form and content of an award. An award must be in writing and signed by the arbitral tribunal or a majority of the tribunal if the reason for the omitted signature or signatures is stated. The award must contain the tribunal's reasoning for the award, unless the parties have agreed that no reasons are to be stated or the award is on agreed terms. The award must state the date and place of arbitration. A signed copy of the award must be delivered to each party.

Similar requirements for the content and form of an award are found under current law in s. 684.19, F.S.

Section 43 creates s. 684.0043, F.S., to provide for the termination of arbitral proceedings. An arbitral proceeding is either terminated by a final award or by an order of termination issued:

- When a claimant withdraws its claim, unless the withdrawal is objected to by the respondent and the tribunal determines a legitimate interest in obtaining a final settlement of the dispute;
- Because the parties agree on the termination of the proceedings; or
- Because the tribunal finds that the continuation of the proceedings is unnecessary or impossible.

The arbitral tribunal's authority and responsibilities also terminate when the arbitral proceedings have been terminated, unless a correction or interpretation is required of an award or a court requires a tribunal to resume the arbitration proceedings.

Current law only provides for the termination of arbitration proceedings when a settlement has been reached.[35]

Section 44 creates s. 684.0044, F.S., to permit a party to request the arbitral tribunal to correct an award containing minor or technical errors or to interpret a specific point or part of an award. A party must give the other party notice of its request to the tribunal for such correction or interpretation. A tribunal may correct minor or technical errors on its own initiative within 30 days of the date of the award. Whether requested by a party or by its own initiative, a tribunal may extend the period of time needed to make a correction.

A party's request for a correction or interpretation must be within 30 days of receipt of the award, unless the parties have agreed on a different time period for such a request. The tribunal must correct or make an interpretation of the award within 30 days of the request. The tribunal's interpretation becomes a part of the award.

A party may request, if it has provided notice of its request to the other party, an additional award to be made if claims were presented in the proceedings, but an award was omitted. The request for an additional reward must be made within 30 days of receipt of the award and, if the tribunal finds the request appropriate, it must make the additional award within 60 days.

Current law authorizes an arbitral tribunal to vacate, clarify, correct, or amend an award.[36] Section 684.24(4), F.S., allows a court reviewing an award to request a tribunal to clarify, modify, or correct an award for any evident miscalculation or mistake in the description of any person or property or for any imperfection of form not affecting the merits. However, no provision is made for the request or the granting of an additional award.

Section 45 creates s. 684.0045, F.S., to extend judicial immunity to arbitrators serving under this chapter of law.

Current law is more specific under s. 684.35, F.S., which specifies that no person may sue in the courts of Florida or assert a cause of action under the law of Florida against any arbitrator when the suit or action arises from the performance of the arbitrator's duties.

Section 46 creates s. 684.0046, F.S., to provide that the only recourse to a court against an arbitral award is by application to set aside the award.

An arbitral award may be set aside by a court if the party applying for the award to be set aside proves:

- A party to the arbitration agreement was under some incapacity;

[35] Section 684.10(2), F.S.
[36] Section 684.20, F.S.

- The arbitration agreement is not valid under the law to which the parties have subjected it or the law applying by default;
- The party making the application was not given proper notice of the appointment of an arbitrator or of the proceedings or was unable to present its case;
- The award deals with a dispute not contemplated by or within the scope or terms agreed to be submitted to arbitration; or
- The composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless the agreement by the parties was prohibited by a provision within this chapter of the law.

If an award deals with a dispute not contemplated by or not falling within the terms or scope of the submission to arbitration, the decisions on matters submitted to arbitration may be separated and may stand.

An arbitral award may also be set aside by a court that finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Florida or that the award is in conflict with the public policy of Florida.

A party must apply to set aside an award within 3 months of receiving the award or, if a request to have the award corrected or interpreted has been made, by the time the request for a correction or an interpretation of an award has been disposed of.

A court may suspend the proceedings to set aside an award if a party requests and if it is appropriate in order to allow the arbitral tribunal and opportunity to resume the arbitral proceedings or take such action that will eliminate the grounds to set aside the award.

Similar provisions authorizing a court to vacate a final order are provided for in ss. 684.24 and 684.25, F.S.

Section 47 creates s. 684.0047, F.S., to provide for the recognition and enforcement of an award by a court or its equivalent authority if a party has requested in writing such recognition and enforcement and has supplied the award or a copy of the award to the court. A court may require the award to be translated if the award is not made in English.

Section 684.24, F.S., under current law, provides for the confirmation of an award, upon the request of a party.

Section 48 creates s. 684.0048, F.S., to provide grounds for a court to refuse recognition or enforcement of an arbitral award. Specifically, a court may refuse to recognize or enforce an award if the party against whom the award was invoked proves:

- A party to the arbitration agreement was under some incapacity;
- The arbitration agreement is not valid under the law to which the parties have subjected it or the law applying by default;
- The party making the application was not given proper notice of the appointment of an arbitrator or of the proceedings or was unable to present its case;

- The award deals with a dispute not contemplated by or within the scope or terms agreed to be submitted to arbitration;
- The composition of the tribunal or the arbitral procedure was not in accordance with the agreement of the parties or not in accordance with the law of the country where the arbitration took place; or
- The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

If an award deals with a dispute not contemplated by or not falling within the terms or scope of the submission to arbitration, the decisions on matters submitted to arbitration may be separated and may stand.

In addition, a court may refuse to recognize or enforce an award if it finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Florida or that the award is in conflict with the public policy of Florida.

If a party has applied to have the award set aside or suspended with a different court than the court where recognition or enforcement is sought, the court where recognition and enforcement is sought may adjourn its decision and may request the party that applied to have the award set aside or suspended to provide security.

Similar provisions authorizing a court to deny confirmation of a final order are provided for in ss. 684.24 and 684.25, F.S.

Section 49 repeals Parts I, II, and III of ch. 684, F.S., consisting of ss. 684.01, 684.02, 684.03, 684.04, 684.05, 684.06, 684.07, 684.08, 684.09, 684.10, 684.11, 684.12, 684.13, 684.14, 684.15, 684.16, 684.17, 684.18, 684.19, 684.20, 684.21, 684.22, 684.23, 684.24, 684.25, 684.26, 684.27, 684.28, 684.29, 684.30, 684.31, 684.32, 684.33, 684.34, and 684.35.

With the repeal of Parts I, II, and III of ch. 684, F.S., the following international commercial arbitration laws in Florida are repealed:

- The title ("Florida International Arbitration Act"), policy, scope, and definitions.
- Provisions on how arbitration is to be conducted.
- The freedom of parties to fix rules for arbitration.
- Procedural rules, including the requirement of written notice of commencement of arbitration and the procedure for providing an answer or counter-claim.
- Procedures for appointing an arbitral tribunal.
- A provision to allow for the consolidation of arbitrations.
- Provisions to allow hearings and provide procedures to determine the venue of the arbitration proceedings.
- A provision establishing the right of a party to arbitration to be represented by counsel and invalidating a waiver of that right.
- Authorization of an arbitral tribunal to determine evidentiary rules, issue subpoenas, make evidentiary demands, administer oaths, take depositions, and appoint experts.
- Provisions for interim relief by an arbitral tribunal, or court in certain circumstances.

- Provisions for the application of the law or certain principles of law including *ex aequo et bono* or *amiables compositeurs* or conflict-of-law principles.
- Procedures for issuing awards, including the award of interest.
- Procedures for an arbitral tribunal to vacate, clarify, correct, or amend an award.
- Provisions authorizing court proceedings to compel arbitration and to stay certain court proceedings.
- Provisions authorizing certain court proceedings during arbitration.
- Provisions authorizing certain court proceedings upon final awards.
- A provision providing the grounds for vacating an award or declaring it not entitled to confirmation.
- Procedures to follow when an award is in a foreign currency.
- A provision for the entry of a judgment or decree on a final award.
- A requirement for the clerk to prepare a judgment roll upon the entry of a judgment or decree, which may be docketed.
- Provisions for the form and process of an application to circuit court.
- A provision providing that conduct of arbitration or an agreement to arbitrate in Florida is deemed consent to the exercise of *in personam* jurisdiction by the courts of Florida.
- A provision for the appropriate court venue.
- A provision authorizing appeals for certain orders or for a judgment or decree.
- A transitional rule clarifying when the laws under ch. 684, F.S., are applicable.
- A provision providing for the severability of any clause deemed invalid, so that the remaining law maintains its validity, and providing for the characterization of laws under ch. 684, F.S., as substantive if they are called into question.
- A provision providing for the immunity for arbitrators.

Section 50 provides an effective date of July 1, 2010.

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:

Preemption is always a concern when a state regulates some type of conduct that is also regulated by the federal government. This bill would require the regulation of international commercial arbitration by Florida and arbitration concerning domestic and

foreign commerce is regulated by the federal government under the Federal Arbitration Act (FAA).[37]

The Supremacy Clause of the Constitution under art. VI, cl. 2, provides that the laws of the United States "shall be the supreme Law of the Land…" Federal law supersedes state law when Congress expressly preempts state law or establishes a comprehensive regulatory scheme over an area, removing the entire field from state regulation.[38] Preemption also occurs when state law directly conflicts with federal law or interferes with the achievement of federal objectives.[39]

Generally, there is a presumption against the preemption of state laws.[40] Courts will interpret a preemption clause narrowly to avoid encroachment upon the authority of the states, especially in areas of health and safety, under which states have traditionally been within their police powers.[41]

It is unlikely that this bill, should it become law, would be preempted by the federal government because there is no express preemption clause under the FAA. In addition, it is unlikely that adoption of the Model Law would be interpreted as conflicting with the FAA, because the FAA provides for the enforcement of the Inter-American Convention on International Commercial Arbitration's rules under 9 U.S.C. ss. 301-07, which are consistent with the Model Law.[42]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The International Law Section of the Florida Bar posits that adoption of the Model Law will strengthen Florida's "position as one of the leading world-wide centers for conducting international arbitration proceedings" because the Model Law is "widely accepted by leading international arbitration practitioners and arbitral institutions as the most universally known and understood international arbitration law in the world."[43]

If more foreign commercial entities are enticed to come to Florida to arbitrate their disputes because Florida has adopted the UNCITRAL Model Law, that may generate

[37] 9 U.S.C. ss. 1-16.
[38] *Colon v. Bic U.S.A., Inc.*, 136 F.Supp.2d 196, 201 (S.D.N.Y. 2000)(citing *English v. General Elec. Co.*, 496 U.S. 72, 78-79 (1990)).
[39] *Id*. at 201.
[40] *See* 14 A.L.R. Fed. 2d 501.
[41] *See* 14 A.L.R. Fed. 2d 501, s. 3.
[42] Information provided by Gross, Claudia; Office of Legal Affairs for the International Trade Law Division of UNCITRAL; on file with the Commerce Committee.
[43] Palmer, Eduardo, P.A.; International Law Section of the Florida Bar Memorandum; February 22, 2010; on file with the Commerce Committee.

revenue for certain industries. For example, tourism and hospitality industries would benefit from foreigners coming into Florida for arbitration.

In addition, international companies may be more attracted to locating in Florida or may conduct more business transactions in Florida because of the adoption of the Model Law.

C. Government Sector Impact:

With the adoption of the Model Law, there is no provision for the preparation of judgment rolls or the docketing of such judgments, which may mean less work for clerks of courts.

If adoption of the Model Law brings more international commercial arbitration to Florida, Florida's courts may see an increase in the number of claims filed concerning arbitration proceedings or awards. Any resulting increase in costs to the courts would be offset by the filing fees collected.

VI. Technical Deficiencies:

Lines 226 through 232 state that a party who knows of "any provision under the chapter from which the parties may derogate…" and "…yet proceeds with the arbitration without stating his or her objection to such noncompliance…" is deemed to have waived his or her right to object. If the intent of this language in the bill is to prevent a party from objecting when it has not elected to derogate from the law, although it is permitted to under the law, and proceeds to arbitrate without timely objection, then the language may need to be reworded for clarification as the meaning of the language is not immediately apparent.

The catch line, found in line 241 of the bill, states "Court or other authority." However, in the section correlating to the catch line there is no reference or explanation for "other authority." Because the section specifically says the court being referenced is a circuit court in the county in which the seat of the arbitration is located and does not provide for any other authority, the words "other authority" should be deleted. In addition, any reference to "other authority" in the bill should also be deleted.

In line 243 of the bill ss. 684.0013(3) and 684.0015(3), F.S., are referenced. However, neither of those sections contains a subsection (3). If the language in the bill is intended to mirror the Model Law, then the reference to s. 684.0013(3) should be changed to s. 684.0014(3) and the reference to s. 684.0014, F.S., should be changed to 684.0015, F.S. The reference to s. 684.0015(3), F.S., should be deleted.

VII. Related Issues:

Lines 817 through 818 of the bill authorize an arbitral tribunal to make an additional award, if it finds a request for such an award justified, within 60 days. However, it is not clear whether the arbitral tribunal must make the award within 60 days of the request for the additional reward or within 60 days of the date of receipt of the original award. The language should be clarified to specify when the additional award is due.

Lines 867 through 871 of the bill requires a party's application to set aside an arbitral award to be made within 3 months of the party receiving the award or, if the party has made a request to have the award corrected or interpreted under s. 684.0044, F.S., then after the date the request for such a correction or interpretation has been disposed of. It is not clear whether the longer of the two dates applies from the language. If that is not the case, then a party requesting to have the award corrected or interpreted may have a disadvantage and may have less time to request to set aside an award if the tribunal decides on the request for a correction or interpretation in less than 3 months from the party receiving the award.

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 578372 by Commerce on March 3, 2010:

- Changes section 6 of the bill, to reword the conditions under which a party waives his or her right to object to an action in an arbitration proceeding (the substance of the provision remains unchanged);
- Changes sections 12, 14 and 15 of the bill, to delete references to "other authorities" that may arbitrate disputes (the bill does not provide for any authority other than the courts to arbitrate disputes); and
- Corrects a scribner's error (incorrect references) in section 8 of the bill.

Barcode 424460 by Commerce on March 3, 2010:

- Changes section 44 of the bill, to clarify that an arbitral tribunal has 60 days from the request for an additional reward to make an additional award rather than from 60 days of the award of the final award; and
- Corrects section 46 of the bill, to clarify that a party may not request a court to set aside an award granted through arbitration "after 3 months have elapsed" after the date on which a request for clarification or interpretation of the award has been disposed of by the arbitral tribunal, consistent with the other restriction stated in the subsection.