

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 677 Judicial Notice
SPONSOR(S): Judiciary Committee, Robinson, W.
TIED BILLS: IDEN./SIM. **BILLS:** SB 634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	17 Y, 0 N	Mathews	Jones
2) Judiciary Committee	19 Y, 0 N, As CS	Mathews	Kramer

SUMMARY ANALYSIS

Through recent advances in technology, information and mapping images are more widely available than ever before. Certain websites and applications allow instant access to turn-by-turn directions and aerial and street-side views of locations around the globe. Under current law, such information and images are not automatically accepted as evidence or judicially noticed by a court. Any such information sought to be admitted, regardless of how reliable or commonplace the source, generally must be authenticated and admitted pursuant to the requirements of the Florida Evidence Code.

Judicial notice is a legal concept that allows a court to make a finding that a certain piece of evidence is trustworthy without any formal introduction for that basis. Evidence to be judicially noticed may include undisputed facts or facts that are so well known they speak for themselves. Often, judicial notice is used to save time and resources, since presenting evidence in certain situations may cause an unnecessary burden. The Florida Evidence Code authorizes a court to take judicial notice of various items, including its own records, the records of other Florida courts, and records from any other state or federal court of the United States. The Florida Evidence Code differentiates between when a court may or must take judicial notice.

CS/HB 677 creates s. 90.2035, F.S., authorizing a court, upon request of a party, to take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or internet mapping tool. To be judicially noticed, the information must include the date on which the information was created. Further, a party seeking judicial notice of such matters must file a notice of intent to do so. The notice of intent must include a copy of the information sought to be judicially noticed and must specify the internet address or specific pathway where the information may be accessed and inspected.

Under the bill, a party may object to the court's taking judicial notice of the matter in question within a reasonable time or as established by court order. The bill creates a rebuttable presumption in civil cases that the information sought to be judicially noticed should be judicially noticed. For criminal cases, the bill requires the court to instruct the jury that it may or may not accept the noticed fact as conclusive.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Through recent advances in technology, information and mapping images are more widely available than ever before. Websites and mapping allow instant access to turn-by-turn directions and aerial and street-side views of locations around the globe. It is easier than ever to determine the exact distance between locations and even the time it takes to walk, drive, or take public transit to a location. More accurate, precise, and reliable technology improves the quality of information a party can offer in court in furtherance of his or her case. Under current law, such information and images are not automatically accepted or judicially noticed by a court. Any information sought to be admitted, regardless of how reliable or commonplace the source, generally needs to be authenticated and admitted pursuant to the requirements of the Florida Evidence Code.

Judicial Notice

The Florida Evidence Code (Code) authorizes a court to take judicial notice of various items, including its own records, the records of other Florida courts, and records from any other state or federal court of the United States.¹ Judicial notice allows a court to make a finding that a certain piece of evidence is true without any formal introduction for that basis.² Generally, this may involve undisputed facts or facts that are so well known they speak for themselves. Often, judicial notice is used to save time and resources, as formally presenting evidence in certain situations may cause an unnecessary burden. For example, it would be a waste of time and effort to require a party to solicit in-person testimony from the Governor and members of the House of Representatives to establish that a legislative act was enacted and signed into law.

Judicial notice “should be exercised with great caution” and “must be of common and general knowledge [and] authoritatively settled and not doubtful.”³ An example occurred in Ohio where a trial court took judicial notice that “Bud Lite is beer” in a case involving the sale of beer to an underage person.⁴ The conviction was ultimately vacated by the Ohio Supreme Court, which found that despite Bud Lite meeting the “common, everyday understanding” of the term “beer,” this meaning was different than the statutory language enacted by Ohio Legislature, which provided that the beverage must contain “between one-half of one percent and twelve percent alcohol by volume.”⁵ The conviction was thus vacated because the government failed to prove that the Bud Lite in question contained the required percentage of alcohol.

There are practical considerations a court must acknowledge when it is asked to take judicial notice of a fact. In the above-referenced case, for example, judicial notice allowed the prosecutor to avoid the need to test a sample of Bud Lite to determine the alcoholic content and elicit testimony from the scientist who tested the liquid to verify the results.

In light of these considerations, the Florida Evidence Code differentiates between when a court “may” or “shall” take judicial notice upon request of a party. Under the Code, the following matters are required to be judicially noticed by a court:⁶

- Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States.

¹ Florida Courts, *Taking Judicial Notice*, <https://www.flcourts.org/content/download/215911/file/TAKING-JUDICIAL-NOTICE.pdf> (last visited Feb. 8, 2022).

² Legal Information Institute, *Cornell Law School*, https://www.law.cornell.edu/wex/judicial_notice, (last visited Feb. 8, 2022).

³ *State v. Coleman*, 5 So. 2d 60, 62 (Fla. 1941).

⁴ *State v. Kareski*, 2012 WL 1717976, *2 (Ohio 9th Dist. Ct. App. 2012), *vacated*, 998 N.E.2d 410 (Ohio 2013).

⁵ Ohio Rev. Code Ann. s. 4301.01(6)(b).

⁶ S. 90.201, F.S.

- Florida rules of court that have statewide application, the court's own rules, and certain federal court rules.
- Rules of court of the United States Supreme Court and of the United States Courts of Appeal.

Additionally, under s. 90.202, F.S., a court may judicially notice the following matters:⁷

- Special, local, and private acts and resolutions of the Congress of the United States and of the Florida Legislature.
- Decisional, constitutional, and public statutory law of every other state, territory, and jurisdiction of the United States.
- Contents of the Federal Register.
- Laws of foreign nations and of an organization of nations.
- Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States.
- Records of any Florida court or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.
- Rules of a Florida court or of any court of record of the United States or of any other state, territory, or jurisdiction of the United States.
- Provisions of all municipal and county charters and charter amendments within Florida, provided they are available in printed copies or as certified copies.
- Rules promulgated by Florida governmental agencies which are published in the Florida Administrative Code or in bound written copies.
- Duly enacted ordinances and resolutions of municipalities and counties located in Florida, provided such ordinances and resolutions are available in printed copies or as certified copies.
- Facts that are not subject to dispute because they are generally known within the territorial jurisdiction of the court.
- Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.
- Official seals of governmental agencies and departments of the United States and of any state, territory, or jurisdiction of the United States.

A court may take judicial notice of a matter listed under s. 90.202, F.S., if the requesting party:

- Gives each adverse party timely written notice of the request; and
- Provides the court with sufficient information to enable it to take judicial notice of the matter.⁸

In determining whether to judicially notice a matter, the court must allow each party reasonable opportunity to present information relevant to the propriety of taking judicial notice and of the nature of the matter or material to be noticed.⁹ A court may use any source of reliable information in making its determination to judicially notice a matter, regardless of whether the information is provided by a party or obtained by the court independently.¹⁰

The Florida Evidence Code and Separation of Powers

The Florida Evidence Code specifies what types of evidence and testimony are admissible in court.¹¹ Generally, Florida's separation of powers principle teaches that the legislature may enact substantive law, and the judiciary may enact procedural rules.¹² The Florida Evidence Code contains both procedural and substantive law. Depending on the type of proceeding, the Evidence Code is generally applicable to all proceedings in Florida courts,¹³ including actions based on federal claims.¹⁴ Statutes

⁷ S. 90.202, F.S.

⁸ S. 90.203, F.S.

⁹ S. 90.204(1), F.S.

¹⁰ S. 90.204(2), F.S.

¹¹ Ch. 90, F.S.

¹² See art. II, s. 3, Fla. Const.; art. V, s. 2(a), Fla. Const.; *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1228 (Fla. 2018).

¹³ S. 90.103, F.S.

¹⁴ *Byrd v. BT Foods, Inc.*, 26 So. 3d 600, 605 (Fla. 4th DCA 2009) (“[S]tate evidence codes control evidentiary questions presented in state court. This is so even where federal claims are litigated, unless the state rules would affect substantive federal rights.”).

that contain procedural elements, such as those amending the Evidence Code, must generally be approved by Supreme Court.¹⁵

Effect of Proposed Changes

CS/HB 677 creates s. 90.2035, F.S., authorizing a court, upon request of a party, to take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or internet mapping tool. To be judicially noticed, the information must include the date on which the information was created. Further, a party seeking judicial notice of such matters must file a notice of intent to do so. The notice of intent must include a copy of the information sought to be judicially noticed and must specify the internet address or specific pathway where the information may be accessed and inspected.

Under the bill, a party may object to the court's taking judicial notice of the matter in question within a reasonable time or as established by court order. The bill establishes a rebuttable presumption in civil cases that the information sought to be judicially noticed should be judicially noticed. This presumption may be overcome if the court determines by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove or that it would be inadmissible under the Evidence Code. If the court overrules the objection, the court must then take judicial notice of the information and admit it into evidence.

For criminal cases, the bill requires the court to instruct the jury that it may or may not accept the noticed fact as conclusive.

The bill clarifies that the new section it creates "does not affect, expand, or limit standards for any matters that may otherwise be judicially noticed."

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Creates s. 90.2035, F.S., relating to judicial notice of information taken from web mapping services, global satellite imaging sites, or internet mapping tools upon request of a party.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹⁵ See, e.g., *In re Florida Evidence Code*, 372 So. 2d 1369 (Fla. 1979); *In re Amendments to Florida Evidence Code*, 278 So. 3d 551 (Fla. 2014).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on litigating parties who otherwise would have to spend time and money to authenticate information that could be admitted by judicial notice.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

To ensure the separation of powers, the Legislature has the authority to enact substantive laws and the judiciary has the authority to create procedural rules. To the extent the bill touches on any procedural subjects, the Florida Supreme Court may decide to adopt such provisions.¹⁶

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 8, 2022, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that in criminal cases, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

¹⁶ See *In re Florida Evidence Code*, 372 So. 2d 1369 (1979).