



Judiciary Committee

**Tuesday, January 30, 2024
12:30 PM - 2:30 PM
404 HOB**

Meeting Packet

**Paul Renner
Speaker**

**Tommy Gregory
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Tuesday, January 30, 2024 12:30 pm
End Date and Time: Tuesday, January 30, 2024 02:30 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 103 Pub. Rec./County and City Attorneys by Civil Justice Subcommittee, Arrington
CS/HB 231 Exposures of First Responders to Fentanyl and Fentanyl Analogs by Criminal Justice Subcommittee, Baker
HB 353 Alternative Headquarters for District Court Judges by Maney
HB 429 Timeshare Properties by Robinson, W.
CS/HB 481 Building Construction Regulations and System Warranties by Civil Justice Subcommittee, Maggard
HB 521 Equitable Distribution of Marital Assets and Liabilities by Koster
HB 533 DNA Samples from Inmates by Fabricio
CS/HB 761 Interpersonal Violence Injunction Petitions by Civil Justice Subcommittee, Garcia, Daniels
CS/HB 923 Wills and Estates by Civil Justice Subcommittee, Fabricio
HB 937 Purple Alert by Casello
CS/HB 983 Pub. Rec./Clerks of the Circuit Court, Deputy Clerks, and Clerk Personnel by Civil Justice Subcommittee, Daley
HB 1109 Security for Jewish Day Schools and Preschools by Fine
HB 1131 Online Sting Operations Grant Program by Temple
CS/HB 6007 Relief/Julia Perez/St. Johns County Sheriff's Office by Civil Justice Subcommittee, Yarkosky, Daniels

Consideration of the following proposed committee substitute(s):

PCS for HB 1473 -- School Safety
PCS for HB 1509 -- Public Records

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/26/2024 3:37PM by Ramirez.Julia

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 103 Pub. Rec./County and City Attorneys

SPONSOR(S): Civil Justice Subcommittee, Arrington and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Leshko	Jones
2) Ethics, Elections & Open Government Subcommittee	14 Y, 0 N	Skinner	Toliver
3) Judiciary Committee		Leshko	Kramer

SUMMARY ANALYSIS

County and city attorneys provide legal counsel and representation to their respective elected and appointed officials, departments, authorities, boards, and committees. Both county and city attorneys handle sensitive matters such as eminent domain, land use and zoning, and labor and employment, and have reported receiving violent threats, including death threats, via phone calls and emails, based on the nature of their work. Currently, neither the personal identifying nor location information of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, or deputy city attorneys or such information of their spouses and children are exempt from Florida's public record requirements.

CS/HB 103 creates a public record exemption for current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and the spouses and children of such attorneys. The following personal identifying and location information is exempt from public record requirements under the bill:

- Home addresses, telephone numbers, dates of birth, and photographs of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of spouses and children of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys; and
- Names and locations of schools and day care facilities attended by the children of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys.

However, the exemption does not apply to a county attorney, assistant county attorney, deputy county attorney, city attorney, assistant city attorney, or deputy city attorney who qualifies as a candidate for election to public office. Additionally, pursuant to the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill also includes the constitutionally required public necessity statement.

The bill may have an insignificant negative fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2024.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record exemption. The bill creates a public record exemption for current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys, and their families; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law an exemption¹ from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

Section 119.01, F.S., also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review (OGSR) Act³ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁶

Furthermore, there is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute.⁷

County Attorneys

¹ A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

² Art. I, s. 24(c), FLA. CONST.

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ S. 119.15(3), F.S.

⁷ See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991); See Op. Att'y Gen. Fla. 04- 09 (2004).

County attorneys provide representation and legal counsel to the county's constitutionally-elected officers, the Board of County Commissioners, and various other county departments, agencies, officers, boards, and committees.⁸ County attorneys practice in a vast range of topic areas, including, but not limited to, real estate and commercial transactions, commercial and construction litigation, land use and zoning law, eminent domain, economic development, and employment and labor law.⁹ The duties of county attorneys vary by county, but generally their duties include:

- Litigating on behalf of various county entities and officials;
- Preparing and negotiating the terms and conditions of contracts;
- Preparing resolutions, ordinances, and proposed legislation;
- Explaining and interpreting ordinances;
- Reviewing various matters for compliance with applicable laws and ordinances;
- Investigating and negotiating on behalf of the county to resolve legal matters; and
- Conducting legal research and drafting legal opinions.

City Attorneys

City attorneys provide representation and legal counsel to the city's elected and appointed public officials and various city departments, authorities, boards, and committees.¹⁰ City attorneys provide legal counsel on many topics, including, but not limited to, civil rights, government contracting and procurement, land use, rezoning, easements, eminent domain, and labor and employment.¹¹ The duties of city attorneys vary by city, but generally their duties include:

- Contract drafting and negotiations;
- Drafting and reviewing development agreements, restrictive covenants, easements, and planning and zoning applications;
- Drafting ordinances and resolutions;
- Advising city staff and city council on all legal issues, including the city code; and
- Providing legal representation for all city departments, boards, and agencies.^{12,13}

Both county and city attorneys have reported receiving violent threats, including death threats, via phone calls and emails, relating to their handling of code enforcement matters and other litigation.¹⁴

Currently, neither the personal identifying nor location information of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, or deputy city attorneys or such information of their spouses or children are exempt from Florida's public record requirements.

Effect of the Bill

CS/HB 103 creates a public record exemption for current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and the spouses and children of such attorneys. The following personal identifying and location information is exempt from public record requirements under the bill:

⁸ Pinellas County, *County Attorney Quick Facts*, <https://pinellas.gov/department/county-attorney/> (last visited Jan. 25, 2024).

⁹ Miami-Dade County, *County Attorney's Office*, <https://www.miamidade.gov/attorney/> (last visited Jan. 25, 2024).

¹⁰ Miami, *Office of the City Attorney*, <https://www.miami.gov/My-Government/Departments/Office-of-the-City-Attorney> (last visited Jan. 25, 2024).

¹¹ *Id.*

¹² *Id.*

¹³ Clearwater, *City Attorney*, <https://www.myclearwater.com/My-Government/City-Departments/City-Attorney> (last visited Jan. 25, 2023).

¹⁴ See Email from Zoe Karabenick, Legislative Aide to Representative Arrington, RE: Resources Regarding HB 103 (Nov. 1, 2023) (on file with the House Civil Justice Subcommittee).

- Home addresses, telephone numbers, dates of birth, and photographs of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of spouses and children of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys; and
- Names and locations of schools and day care facilities attended by the children of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys.

However, the exemption does not apply to a county attorney, assistant county attorney, deputy county attorney, city attorney, assistant city attorney, or deputy city attorney who qualifies as a candidate for election to public office.

Pursuant to the OGSR Act, this exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill includes the constitutionally required public necessity statement.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant negative fiscal impact on agencies holding records that contain personal identifying and location information of current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and their spouses and children, because staff responsible for complying with public record requests may require training related to the public record exemption. Additionally, agencies could incur costs associated with

redacting the exempt information prior to releasing records. However, these additional costs will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that the Legislature finds that the responsibilities of county and city attorneys regularly involve legal enforcement proceedings related to violations of codes and ordinances, which have resulted in threats, including death threats, from defendants and other associated parties. Additionally, it states that there have also been reported incidents of stalking of such attorneys and their spouses and children. Within the public necessity statement, the Legislature finds that release of such personal identifying and location information may increase the danger of such attorneys and their spouses and children being stalked or otherwise physically and emotionally harmed by a defendant or associated party; and that the harm that may result from release of such information outweighs any public benefit that may be derived from the disclosure of such information.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specified information concerning current county attorneys, assistant county attorneys, deputy county attorneys, city attorneys, assistant city attorneys, and deputy city attorneys and their spouses and children, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 6, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment revised language in the public necessity statement and made a technical change.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for the personal identifying and
 5 location information of current county attorneys,
 6 assistant county attorneys, deputy county attorneys,
 7 city attorneys, assistant city attorneys, and deputy
 8 city attorneys and the names and personal identifying
 9 and location information of the spouses and children
 10 of such attorneys; providing an exception; providing
 11 for future legislative review and repeal of the
 12 exemption; providing a statement of public necessity;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraph (d) of subsection (4) of section
 18 119.071, Florida Statutes, is amended to read:

19 119.071 General exemptions from inspection or copying of
 20 public records.—

21 (4) AGENCY PERSONNEL INFORMATION.—

22 (d)1. For purposes of this paragraph, the term:

23 a. "Home addresses" means the dwelling location at which
 24 an individual resides and includes the physical address, mailing
 25 address, street address, parcel identification number, plot

26 identification number, legal property description, neighborhood
27 name and lot number, GPS coordinates, and any other descriptive
28 property information that may reveal the home address.

29 b. "Judicial assistant" means a court employee assigned to
30 the following class codes: 8140, 8150, 8310, and 8320.

31 c. "Telephone numbers" includes home telephone numbers,
32 personal cellular telephone numbers, personal pager telephone
33 numbers, and telephone numbers associated with personal
34 communications devices.

35 2.a. The home addresses, telephone numbers, dates of
36 birth, and photographs of active or former sworn law enforcement
37 personnel or of active or former civilian personnel employed by
38 a law enforcement agency, including correctional and
39 correctional probation officers, personnel of the Department of
40 Children and Families whose duties include the investigation of
41 abuse, neglect, exploitation, fraud, theft, or other criminal
42 activities, personnel of the Department of Health whose duties
43 are to support the investigation of child abuse or neglect, and
44 personnel of the Department of Revenue or local governments
45 whose responsibilities include revenue collection and
46 enforcement or child support enforcement; the names, home
47 addresses, telephone numbers, photographs, dates of birth, and
48 places of employment of the spouses and children of such
49 personnel; and the names and locations of schools and day care
50 facilities attended by the children of such personnel are exempt

51 from s. 119.07(1) and s. 24(a), Art. I of the State
52 Constitution.

53 b. The home addresses, telephone numbers, dates of birth,
54 and photographs of current or former nonsworn investigative
55 personnel of the Department of Financial Services whose duties
56 include the investigation of fraud, theft, workers' compensation
57 coverage requirements and compliance, other related criminal
58 activities, or state regulatory requirement violations; the
59 names, home addresses, telephone numbers, dates of birth, and
60 places of employment of the spouses and children of such
61 personnel; and the names and locations of schools and day care
62 facilities attended by the children of such personnel are exempt
63 from s. 119.07(1) and s. 24(a), Art. I of the State
64 Constitution.

65 c. The home addresses, telephone numbers, dates of birth,
66 and photographs of current or former nonsworn investigative
67 personnel of the Office of Financial Regulation's Bureau of
68 Financial Investigations whose duties include the investigation
69 of fraud, theft, other related criminal activities, or state
70 regulatory requirement violations; the names, home addresses,
71 telephone numbers, dates of birth, and places of employment of
72 the spouses and children of such personnel; and the names and
73 locations of schools and day care facilities attended by the
74 children of such personnel are exempt from s. 119.07(1) and s.
75 24(a), Art. I of the State Constitution.

76 d. The home addresses, telephone numbers, dates of birth,
 77 and photographs of current or former firefighters certified in
 78 compliance with s. 633.408; the names, home addresses, telephone
 79 numbers, photographs, dates of birth, and places of employment
 80 of the spouses and children of such firefighters; and the names
 81 and locations of schools and day care facilities attended by the
 82 children of such firefighters are exempt from s. 119.07(1) and
 83 s. 24(a), Art. I of the State Constitution.

84 e. The home addresses, dates of birth, and telephone
 85 numbers of current or former justices of the Supreme Court,
 86 district court of appeal judges, circuit court judges, and
 87 county court judges, and of current judicial assistants; the
 88 names, home addresses, telephone numbers, dates of birth, and
 89 places of employment of the spouses and children of current or
 90 former justices and judges and of current judicial assistants;
 91 and the names and locations of schools and day care facilities
 92 attended by the children of current or former justices and
 93 judges and of current judicial assistants are exempt from s.
 94 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 95 sub-subparagraph is subject to the Open Government Sunset Review
 96 Act in accordance with s. 119.15 and shall stand repealed on
 97 October 2, 2028, unless reviewed and saved from repeal through
 98 reenactment by the Legislature.

99 f. The home addresses, telephone numbers, dates of birth,
 100 and photographs of current or former state attorneys, assistant

101 state attorneys, statewide prosecutors, or assistant statewide
102 prosecutors; the names, home addresses, telephone numbers,
103 photographs, dates of birth, and places of employment of the
104 spouses and children of current or former state attorneys,
105 assistant state attorneys, statewide prosecutors, or assistant
106 statewide prosecutors; and the names and locations of schools
107 and day care facilities attended by the children of current or
108 former state attorneys, assistant state attorneys, statewide
109 prosecutors, or assistant statewide prosecutors are exempt from
110 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

111 g. The home addresses, dates of birth, and telephone
112 numbers of general magistrates, special magistrates, judges of
113 compensation claims, administrative law judges of the Division
114 of Administrative Hearings, and child support enforcement
115 hearing officers; the names, home addresses, telephone numbers,
116 dates of birth, and places of employment of the spouses and
117 children of general magistrates, special magistrates, judges of
118 compensation claims, administrative law judges of the Division
119 of Administrative Hearings, and child support enforcement
120 hearing officers; and the names and locations of schools and day
121 care facilities attended by the children of general magistrates,
122 special magistrates, judges of compensation claims,
123 administrative law judges of the Division of Administrative
124 Hearings, and child support enforcement hearing officers are
125 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

126 Constitution.

127 h. The home addresses, telephone numbers, dates of birth,
 128 and photographs of current or former human resource, labor
 129 relations, or employee relations directors, assistant directors,
 130 managers, or assistant managers of any local government agency
 131 or water management district whose duties include hiring and
 132 firing employees, labor contract negotiation, administration, or
 133 other personnel-related duties; the names, home addresses,
 134 telephone numbers, dates of birth, and places of employment of
 135 the spouses and children of such personnel; and the names and
 136 locations of schools and day care facilities attended by the
 137 children of such personnel are exempt from s. 119.07(1) and s.
 138 24(a), Art. I of the State Constitution.

139 i. The home addresses, telephone numbers, dates of birth,
 140 and photographs of current or former code enforcement officers;
 141 the names, home addresses, telephone numbers, dates of birth,
 142 and places of employment of the spouses and children of such
 143 personnel; and the names and locations of schools and day care
 144 facilities attended by the children of such personnel are exempt
 145 from s. 119.07(1) and s. 24(a), Art. I of the State
 146 Constitution.

147 j. The home addresses, telephone numbers, places of
 148 employment, dates of birth, and photographs of current or former
 149 guardians ad litem, as defined in s. 39.820; the names, home
 150 addresses, telephone numbers, dates of birth, and places of

151 employment of the spouses and children of such persons; and the
152 names and locations of schools and day care facilities attended
153 by the children of such persons are exempt from s. 119.07(1) and
154 s. 24(a), Art. I of the State Constitution.

155 k. The home addresses, telephone numbers, dates of birth,
156 and photographs of current or former juvenile probation
157 officers, juvenile probation supervisors, detention
158 superintendents, assistant detention superintendents, juvenile
159 justice detention officers I and II, juvenile justice detention
160 officer supervisors, juvenile justice residential officers,
161 juvenile justice residential officer supervisors I and II,
162 juvenile justice counselors, juvenile justice counselor
163 supervisors, human services counselor administrators, senior
164 human services counselor administrators, rehabilitation
165 therapists, and social services counselors of the Department of
166 Juvenile Justice; the names, home addresses, telephone numbers,
167 dates of birth, and places of employment of spouses and children
168 of such personnel; and the names and locations of schools and
169 day care facilities attended by the children of such personnel
170 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
171 Constitution.

172 l. The home addresses, telephone numbers, dates of birth,
173 and photographs of current or former public defenders, assistant
174 public defenders, criminal conflict and civil regional counsel,
175 and assistant criminal conflict and civil regional counsel; the

176 names, home addresses, telephone numbers, dates of birth, and
 177 places of employment of the spouses and children of current or
 178 former public defenders, assistant public defenders, criminal
 179 conflict and civil regional counsel, and assistant criminal
 180 conflict and civil regional counsel; and the names and locations
 181 of schools and day care facilities attended by the children of
 182 current or former public defenders, assistant public defenders,
 183 criminal conflict and civil regional counsel, and assistant
 184 criminal conflict and civil regional counsel are exempt from s.
 185 119.07(1) and s. 24(a), Art. I of the State Constitution.

186 m. The home addresses, telephone numbers, dates of birth,
 187 and photographs of current or former investigators or inspectors
 188 of the Department of Business and Professional Regulation; the
 189 names, home addresses, telephone numbers, dates of birth, and
 190 places of employment of the spouses and children of such current
 191 or former investigators and inspectors; and the names and
 192 locations of schools and day care facilities attended by the
 193 children of such current or former investigators and inspectors
 194 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 195 Constitution.

196 n. The home addresses, telephone numbers, and dates of
 197 birth of county tax collectors; the names, home addresses,
 198 telephone numbers, dates of birth, and places of employment of
 199 the spouses and children of such tax collectors; and the names
 200 and locations of schools and day care facilities attended by the

201 children of such tax collectors are exempt from s. 119.07(1) and
202 s. 24(a), Art. I of the State Constitution.

203 o. The home addresses, telephone numbers, dates of birth,
204 and photographs of current or former personnel of the Department
205 of Health whose duties include, or result in, the determination
206 or adjudication of eligibility for social security disability
207 benefits, the investigation or prosecution of complaints filed
208 against health care practitioners, or the inspection of health
209 care practitioners or health care facilities licensed by the
210 Department of Health; the names, home addresses, telephone
211 numbers, dates of birth, and places of employment of the spouses
212 and children of such personnel; and the names and locations of
213 schools and day care facilities attended by the children of such
214 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
215 the State Constitution.

216 p. The home addresses, telephone numbers, dates of birth,
217 and photographs of current or former impaired practitioner
218 consultants who are retained by an agency or current or former
219 employees of an impaired practitioner consultant whose duties
220 result in a determination of a person's skill and safety to
221 practice a licensed profession; the names, home addresses,
222 telephone numbers, dates of birth, and places of employment of
223 the spouses and children of such consultants or their employees;
224 and the names and locations of schools and day care facilities
225 attended by the children of such consultants or employees are

226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
227 Constitution.

228 q. The home addresses, telephone numbers, dates of birth,
229 and photographs of current or former emergency medical
230 technicians or paramedics certified under chapter 401; the
231 names, home addresses, telephone numbers, dates of birth, and
232 places of employment of the spouses and children of such
233 emergency medical technicians or paramedics; and the names and
234 locations of schools and day care facilities attended by the
235 children of such emergency medical technicians or paramedics are
236 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
237 Constitution.

238 r. The home addresses, telephone numbers, dates of birth,
239 and photographs of current or former personnel employed in an
240 agency's office of inspector general or internal audit
241 department whose duties include auditing or investigating waste,
242 fraud, abuse, theft, exploitation, or other activities that
243 could lead to criminal prosecution or administrative discipline;
244 the names, home addresses, telephone numbers, dates of birth,
245 and places of employment of spouses and children of such
246 personnel; and the names and locations of schools and day care
247 facilities attended by the children of such personnel are exempt
248 from s. 119.07(1) and s. 24(a), Art. I of the State
249 Constitution.

250 s. The home addresses, telephone numbers, dates of birth,

251 and photographs of current or former directors, managers,
252 supervisors, nurses, and clinical employees of an addiction
253 treatment facility; the home addresses, telephone numbers,
254 photographs, dates of birth, and places of employment of the
255 spouses and children of such personnel; and the names and
256 locations of schools and day care facilities attended by the
257 children of such personnel are exempt from s. 119.07(1) and s.
258 24(a), Art. I of the State Constitution. For purposes of this
259 sub-subparagraph, the term "addiction treatment facility" means
260 a county government, or agency thereof, that is licensed
261 pursuant to s. 397.401 and provides substance abuse prevention,
262 intervention, or clinical treatment, including any licensed
263 service component described in s. 397.311(26).

264 t. The home addresses, telephone numbers, dates of birth,
265 and photographs of current or former directors, managers,
266 supervisors, and clinical employees of a child advocacy center
267 that meets the standards of s. 39.3035(2) and fulfills the
268 screening requirement of s. 39.3035(3), and the members of a
269 Child Protection Team as described in s. 39.303 whose duties
270 include supporting the investigation of child abuse or sexual
271 abuse, child abandonment, child neglect, and child exploitation
272 or to provide services as part of a multidisciplinary case
273 review team; the names, home addresses, telephone numbers,
274 photographs, dates of birth, and places of employment of the
275 spouses and children of such personnel and members; and the

276 names and locations of schools and day care facilities attended
 277 by the children of such personnel and members are exempt from s.
 278 119.07(1) and s. 24(a), Art. I of the State Constitution.

279 u. The home addresses, telephone numbers, places of
 280 employment, dates of birth, and photographs of current or former
 281 staff and domestic violence advocates, as defined in s.
 282 90.5036(1)(b), of domestic violence centers certified by the
 283 Department of Children and Families under chapter 39; the names,
 284 home addresses, telephone numbers, places of employment, dates
 285 of birth, and photographs of the spouses and children of such
 286 personnel; and the names and locations of schools and day care
 287 facilities attended by the children of such personnel are exempt
 288 from s. 119.07(1) and s. 24(a), Art. I of the State
 289 Constitution.

290 v. The home addresses, telephone numbers, dates of birth,
 291 and photographs of current or former inspectors or investigators
 292 of the Department of Agriculture and Consumer Services; the
 293 names, home addresses, telephone numbers, dates of birth, and
 294 places of employment of the spouses and children of current or
 295 former inspectors or investigators; and the names and locations
 296 of schools and day care facilities attended by the children of
 297 current or former inspectors or investigators are exempt from s.
 298 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 299 sub-subparagraph is subject to the Open Government Sunset Review
 300 Act in accordance with s. 119.15 and shall stand repealed on

301 October 2, 2028, unless reviewed and saved from repeal through
302 reenactment by the Legislature.

303 w. The home addresses, telephone numbers, dates of birth,
304 and photographs of current county attorneys, assistant county
305 attorneys, deputy county attorneys, city attorneys, assistant
306 city attorneys, and deputy city attorneys; the names, home
307 addresses, telephone numbers, photographs, dates of birth, and
308 places of employment of the spouses and children of current
309 county attorneys, assistant county attorneys, deputy county
310 attorneys, city attorneys, assistant city attorneys, and deputy
311 city attorneys; and the names and locations of schools and day
312 care facilities attended by the children of current county
313 attorneys, assistant county attorneys, deputy county attorneys,
314 city attorneys, assistant city attorneys, and deputy city
315 attorneys are exempt from s. 119.07(1) and s. 24(a), Art. I of
316 the State Constitution. This exemption does not apply to a
317 county attorney, assistant county attorney, deputy county
318 attorney, city attorney, assistant city attorney, or deputy city
319 attorney who qualifies as a candidate for election to public
320 office. This sub-subparagraph is subject to the Open Government
321 Sunset Review Act in accordance with s. 119.15 and shall stand
322 repealed on October 2, 2029, unless reviewed and saved from
323 repeal through reenactment by the Legislature.

324 3. An agency that is the custodian of the information
325 specified in subparagraph 2. and that is not the employer of the

326 officer, employee, justice, judge, or other person specified in
327 subparagraph 2. must maintain the exempt status of that
328 information only if the officer, employee, justice, judge, other
329 person, or employing agency of the designated employee submits a
330 written and notarized request for maintenance of the exemption
331 to the custodial agency. The request must state under oath the
332 statutory basis for the individual's exemption request and
333 confirm the individual's status as a party eligible for exempt
334 status.

335 4.a. A county property appraiser, as defined in s.
336 192.001(3), or a county tax collector, as defined in s.
337 192.001(4), who receives a written and notarized request for
338 maintenance of the exemption pursuant to subparagraph 3. must
339 comply by removing the name of the individual with exempt status
340 and the instrument number or Official Records book and page
341 number identifying the property with the exempt status from all
342 publicly available records maintained by the property appraiser
343 or tax collector. For written requests received on or before
344 July 1, 2021, a county property appraiser or county tax
345 collector must comply with this sub-subparagraph by October 1,
346 2021. A county property appraiser or county tax collector may
347 not remove the street address, legal description, or other
348 information identifying real property within the agency's
349 records so long as a name or personal information otherwise
350 exempt from inspection and copying pursuant to this section is

351 not associated with the property or otherwise displayed in the
352 public records of the agency.

353 b. Any information restricted from public display,
354 inspection, or copying under sub-subparagraph a. must be
355 provided to the individual whose information was removed.

356 5. An officer, an employee, a justice, a judge, or other
357 person specified in subparagraph 2. may submit a written request
358 for the release of his or her exempt information to the
359 custodial agency. The written request must be notarized and must
360 specify the information to be released and the party authorized
361 to receive the information. Upon receipt of the written request,
362 the custodial agency must release the specified information to
363 the party authorized to receive such information.

364 6. The exemptions in this paragraph apply to information
365 held by an agency before, on, or after the effective date of the
366 exemption.

367 7. Information made exempt under this paragraph may be
368 disclosed pursuant to s. 28.2221 to a title insurer authorized
369 pursuant to s. 624.401 and its affiliates as defined in s.
370 624.10; a title insurance agent or title insurance agency as
371 defined in s. 626.841(1) or (2), respectively; or an attorney
372 duly admitted to practice law in this state and in good standing
373 with The Florida Bar.

374 8. The exempt status of a home address contained in the
375 Official Records is maintained only during the period when a

376 | protected party resides at the dwelling location. Upon
377 | conveyance of real property after October 1, 2021, and when such
378 | real property no longer constitutes a protected party's home
379 | address as defined in sub-subparagraph 1.a., the protected party
380 | must submit a written request to release the removed information
381 | to the county recorder. The written request to release the
382 | removed information must be notarized, must confirm that a
383 | protected party's request for release is pursuant to a
384 | conveyance of his or her dwelling location, and must specify the
385 | Official Records book and page, instrument number, or clerk's
386 | file number for each document containing the information to be
387 | released.

388 | 9. Upon the death of a protected party as verified by a
389 | certified copy of a death certificate or court order, any party
390 | can request the county recorder to release a protected
391 | decedent's removed information unless there is a related request
392 | on file with the county recorder for continued removal of the
393 | decedent's information or unless such removal is otherwise
394 | prohibited by statute or by court order. The written request to
395 | release the removed information upon the death of a protected
396 | party must attach the certified copy of a death certificate or
397 | court order and must be notarized, must confirm the request for
398 | release is due to the death of a protected party, and must
399 | specify the Official Records book and page number, instrument
400 | number, or clerk's file number for each document containing the

401 information to be released. A fee may not be charged for the
 402 release of any document pursuant to such request.

403 10. Except as otherwise expressly provided in this
 404 paragraph, this paragraph is subject to the Open Government
 405 Sunset Review Act in accordance with s. 119.15 and shall stand
 406 repealed on October 2, 2024, unless reviewed and saved from
 407 repeal through reenactment by the Legislature.

408 Section 2. The Legislature finds that it is a public
 409 necessity that the home addresses, telephone numbers, dates of
 410 birth, and photographs of current county attorneys, assistant
 411 county attorneys, deputy county attorneys, city attorneys,
 412 assistant city attorneys, and deputy city attorneys be made
 413 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 414 Article I of the State Constitution. The Legislature further
 415 finds that it is a public necessity that the names, home
 416 addresses, telephone numbers, photographs, dates of birth, and
 417 places of employment of the spouses and children of current
 418 county attorneys, assistant county attorneys, deputy county
 419 attorneys, city attorneys, assistant city attorneys, and deputy
 420 city attorneys, and the names and locations of schools and day
 421 care facilities attended by such children, be made exempt from
 422 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 423 State Constitution. The responsibilities of county attorneys,
 424 assistant county attorneys, deputy county attorneys, city
 425 attorneys, assistant city attorneys, and deputy city attorneys

426 regularly involve legal enforcement proceedings related to
427 violations of codes and ordinances. Legal enforcement
428 proceedings have led to retribution and threats by defendants
429 and other persons on numerous occasions. Such attorneys have
430 received death threats and e-mails from disgruntled persons
431 advocating the murder of other attorneys. Other incidents have
432 included the stalking of such attorneys and their spouses and
433 children. The Legislature finds that the release of such
434 personal identifying and location information could place such
435 attorneys and their spouses and children in danger of being
436 stalked or physically and emotionally harmed by a defendant or
437 other person. The Legislature finds that the harm that may
438 result from the release of such personal identifying and
439 location information outweighs any public benefit that may be
440 derived from the disclosure of the information, except in the
441 case of a current county attorney, assistant county attorney,
442 deputy county attorney, city attorney, assistant city attorney,
443 or deputy city attorney who qualifies as a candidate for
444 election to public office.

445 Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 231 Exposures of First Responders to Fentanyl and Fentanyl Analogs

SPONSOR(S): Criminal Justice Subcommittee, Baker

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 3 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	10 Y, 2 N	Saag	Keith
3) Judiciary Committee		Padgett	Kramer

SUMMARY ANALYSIS

Fentanyl is a synthetic opioid analgesic that is approximately 50 to 100 times more potent than morphine. When prescribed by a physician, fentanyl is typically used to treat patients with severe pain or to manage pain after surgery and is administered via injection, transdermal patch, or in lozenges. Although prescription fentanyl can be misused, most overdoses and related deaths have been linked to illicitly manufactured fentanyl, including fentanyl analogs.

With the increase in the illicit use of fentanyl, first responders such as law enforcement officers are increasingly coming into contact with fentanyl that is seized while making arrests and traffic stops. In recent years, there have been several reports of law enforcement officers suffering medical complications such as lightheadedness, heart palpitations, and nausea after being exposed to fentanyl. In some instances, the symptoms were severe enough to cause other officers on the scene to respond by administering an opioid antagonist, such as Narcan. Toxicologists and medical doctors, however, caution that fentanyl, although highly toxic, is relatively difficult to transmit through skin contact without a transdermal patch and likely would not remain airborne in sufficient quantities to cause a medical issue if inhaled.

CS/HB 231 creates s. 893.132, F.S., to provide a criminal penalty, punishable as a first degree felony, if a person 18 years or older who is unlawfully in possession of dangerous fentanyl or fentanyl analogues exposes a first responder, including a law enforcement officer, correctional officer, correctional probation officer, firefighter, emergency medical technician, or paramedic, to such fentanyl or fentanyl analogues and an overdose or serious bodily injury to the first responder results. Under the bill, "expose or exposure" means to cause any of the following, including, but not limited to, ingestion, inhalation, needlestick injury, or absorption through skin or mucous membranes. The bill defines "overdose or serious bodily injury" as drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

The bill provides an affirmative defense from prosecution if the first responder acted so far outside of the scope of ordinary care generally exercised by a member of his or her profession that he or she caused or substantially contributed to the exposure.

The bill may have an indeterminate positive jail and prison bed impact by creating a new first degree felony offense for exposing a first responder to dangerous fentanyl or fentanyl analogs and thereby causing them to overdose or suffer bodily harm, which may result in increased admissions or longer sentences to such facilities.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Controlled Substances

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, classifies controlled substances¹ into five categories, called schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed therein. The distinguishing factors between the different drug schedules are the “potential for abuse”² of the substance and whether there is a currently accepted medical use for the substance.³ The controlled substance schedules are as follows:

- Schedule I substances have a high potential for abuse and currently have no accepted medical use in the United States, including substances such as cannabis and heroin.⁴
- Schedule II substances have a high potential for abuse and have a currently accepted but severely restricted medical use in the United States, including substances such as raw opium, fentanyl, and codeine.⁵
- Schedule III substances have a potential for abuse less than the substances contained in Schedules I and II and have a currently accepted medical use in the United States, including substances such as stimulants and anabolic steroids.⁶
- Schedule IV substances have a low potential for abuse relative to substances in Schedule III and have a currently accepted medical use in the United States, including substances such as benzodiazepines and barbiturates.⁷
- Schedule V substances have a low potential for abuse relative to the substances in Schedule IV and have a currently accepted medical use in the United States, including substances such as mixtures that contain small quantities of opiates, narcotics, or stimulants.⁸

Fentanyl

Fentanyl is a synthetic opioid analgesic that is approximately 50 to 100 times more potent than morphine.⁹ When prescribed by a physician, fentanyl is typically used to treat patients with severe pain or to manage pain after surgery and is administered via injection, transdermal patch, or in lozenges.¹⁰ Although prescription fentanyl can be misused, most overdoses and related deaths have been linked to illicitly manufactured fentanyl, including fentanyl analogs.¹¹ Fentanyl and fentanyl-related substances are classified as Schedule II controlled substances.¹²

As the illicit use of fentanyl increases, first responders such as law enforcement officers are increasingly coming into contact with fentanyl that is seized while making arrests and traffic stops.¹³ In

¹ “Controlled substance” means any substance named or described in Schedules I-V of s. 893.03, F.S. S. 893.02(4), F.S.

² “Potential for abuse” means that a substance has properties as a central nervous system stimulant or depressant or a hallucinogen that create a substantial likelihood of its being: 1) used in amounts that create a hazard to the user’s health or safety of the community; 2) diverted from legal channels and distributed through illegal channels; or 3) taken on the user’s own initiative rather than on the basis of professional medical advice. S. 893.035(3)(a), F.S.

³ See s. 893.03, F.S.

⁴ S. 893.03(1), F.S.

⁵ S. 893.03(2), F.S.

⁶ S. 893.03(3), F.S.

⁷ S. 893.03(4), F.S.

⁸ S. 893.03(5), F.S.

⁹ National Institute on Drug Abuse, *What is Fentanyl?*, <https://nida.nih.gov/publications/drugfacts/fentanyl> (last visited Jan. 16, 2024).

¹⁰ *Id.*

¹¹ Centers for Disease Control and Prevention, *Fentanyl*, <https://www.cdc.gov/opioids/basics/fentanyl.html> (last visited Jan. 16, 2024).

¹² S. 893.03(2)(b)1., 6., 9., 29., 30., and 32., F.S.

¹³ FOX 10, *Florida Officer Accidentally Overdoses on Fentanyl, Body Cam Video Released*, <https://www.fox10tv.com/2022/12/16/florida-officer-accidentally-overdoses-fentanyl-body-cam-video-released/> (last visited Jan. 16, 2024). First Coast News, *Flagler Sheriff’s Deputy Exposed to Fentanyl During Traffic Stop*,

recent years, there have been several reports of law enforcement officers suffering medical complications such as lightheadedness, heart palpitations, and nausea after being exposed to fentanyl.¹⁴ In some instances, the symptoms were severe enough to cause other officers on the scene to respond by administering an opioid antagonist, such as Narcan.¹⁵ However, these incidents have been disputed by toxicologists and medical doctors who claim that fentanyl is relatively difficult to transmit through skin contact without a transdermal patch and would likely not remain airborne in sufficient quantities to cause a medical issue if inhaled.¹⁶

Unlawful Possession of Fentanyl

The penalty for unlawfully possessing a controlled substance depends on several factors, including the type and amount of the controlled substance possessed and whether a person possessed such substance with the intent to sell or deliver the substance to another person. Generally, the unlawful possession of less than four grams of fentanyl¹⁷ is a third degree felony.¹⁸ If a person unlawfully possesses less than four grams of fentanyl with the intent to sell, manufacture, or deliver such fentanyl, a person commits a second degree felony.¹⁹ If a person unlawfully possesses fentanyl, alfentanil, carfentanil, sufentanil, or other fentanyl derivatives or analogs and the weight is four grams or more, a person commits the offense of trafficking in dangerous fentanyl or fentanyl analogues, which is punishable as a first degree felony.²⁰

Unlawful Distribution of Fentanyl Resulting in Overdose or Serious Bodily Injury

In 2023, the Legislature enacted s. 893.131, F.S., which prohibits a person 18 years of age or older from distributing²¹ heroin, alfentanil, carfentanil, fentanyl, sufentanil, fentanyl derivatives, or an analog or mixture containing such substances, when such substances cause or are a substantial factor²² in causing an overdose or serious bodily injury²³ to the user. A person commits a violation regardless of whether the distribution is made directly or indirectly through another person to the person who overdosed or suffered serious bodily injury. A violation is punishable as a second degree felony. A second or subsequent conviction is punishable as a first degree felony.

Injury to First Responders from Fentanyl Exposure

Under current law, s. 893.13(10), F.S., provides that if a person violates *any* provision of ch. 893, F.S.,²⁴ and the violation results in a serious injury to a state or local law enforcement officer as defined

<https://www.firstcoastnews.com/article/news/local/flagler-county-sheriff-deputy-exposed-to-fentanyl/77-791dd3b7-0f1a-4bbb-bc82-8bcfcb5c4231> (last visited Jan. 16, 2024).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ NPR, *Are Cops Really Being Poisoned by Fentanyl Exposure?*, <https://www.npr.org/2023/05/16/1175726650/fentanyl-police-overdose-misinformation> (last visited Jan. 16, 2024).

¹⁷ The same penalties apply if a person unlawfully possesses a fentanyl derivative, controlled substance analog, or a mixture containing a fentanyl derivative or analog.

¹⁸ S. 893.13(6)(a), F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁹ S. 893.13(1)(a)1., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

²⁰ S. 893.135(1)(c)4.b., F.S. A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S. A person convicted of trafficking in dangerous fentanyl and fentanyl analogues is subject to specified mandatory minimum sentences and fines that vary depending on the amount of fentanyl possessed.

²¹ “Distribute” means to deliver, other than by administering or dispensing, a controlled substance, and includes the direct or indirect delivery of a controlled substance to a user. S. 893.131(1)(a), F.S.

²² “Substantial factor” means that the use of a substance or mixture alone is sufficient to cause an overdose or serious bodily injury, regardless of whether any other substance or mixture used is also sufficient to cause an overdose or serious bodily injury. S. 893.131(1)(e), F.S.

²³ “Overdose or serious bodily injury” means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ. S. 893.131(1)(d), F.S.

²⁴ Generally, a violation of ch. 893, F.S., is an offense related to the unlawful sale, manufacture, delivery, or possession of a controlled substance.

in s. 943.10, F.S.,²⁵ a firefighter as defined in s. 633.102, F.S.,²⁶ an emergency medical technician as defined in s. 401.23, F.S.,²⁷ a paramedic as defined in s. 401.23, F.S.,²⁸ an employee of a public utility or an electric utility as defined in s. 366.02, F.S., an animal control officer as defined in s. 828.27, F.S., a volunteer firefighter engaged by state or local government, a law enforcement officer employed by the Federal Government, or any other local, state, or Federal Government employee who is injured during the course and scope of his or her employment, the person commits a third degree felony. If the injury sustained results in death or great bodily harm, the person commits a second degree felony.²⁹

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code (CPC) are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.³⁰ If an offense is unranked, the CPC specifies a default level on the OSRC depending on the felony degree of the offense.³¹

Effect of Proposed Changes

CS/HB 231 creates s. 893.132, F.S., to provide a criminal penalty, punishable as a first degree felony, if a person 18 years or older who is unlawfully in possession of dangerous fentanyl or fentanyl analogues exposes a first responder to such fentanyl or fentanyl analogues and an overdose or serious bodily injury to the first responder results. The bill does not rank the offense on the OSRC. As such, the first degree felony defaults to a Level 7 offense on the OSRC.

The bill provides an affirmative defense from prosecution if the first responder acted so far outside of the scope of ordinary care generally exercised by a member of his or her profession that he or she caused or substantially contributed to the exposure.

The bill defines the following terms:

- "Dangerous fentanyl or fentanyl analogues" means any controlled substance described in s. 893.135(1)(c)4.a.(I)-(VII), F.S., which includes:
 - Alfentanil, as described in s. 893.03(2)(b)1., F.S.;
 - Carfentanil, as described in s. 893.03(2)(b)6., F.S.;
 - Fentanyl, as described in s. 893.03(2)(b)9., F.S.;
 - Sufentanil, as described as in s. 893.03(2)(b)30., F.S.;
 - A fentanyl derivative, as described in s. 893.03(1)(a)62., F.S.;

²⁵ "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S. S. 943.10(1), F.S.

²⁶ "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408, F.S. S. 633.102(9), F.S.

²⁷ "Emergency medical technician" means a person who is certified by the department to perform basic life support pursuant to this part. S. 401.23(12), F.S.

²⁸ "Paramedic" means a person who is certified by the department to perform basic and advanced life support pursuant to this part. S. 401.23(18), F.S.

²⁹ *Id.*

³⁰ S. 921.0022, F.S.

³¹ S. 921.0023, F.S.

- A controlled substance analog of such enumerated substances, as described in s. 893.0356, F.S.; or
- A mixture containing any such enumerated substances.
- "Expose or exposure" means to cause any of the following, including, but not limited to, ingestion, inhalation, needlestick injury, or absorption through skin or mucous membranes.
- "First responder" means a law enforcement officer as defined in s. 943.10(1), F.S., a correctional officer as defined in s. 943.10(2), F.S.,³² a correctional probation officer as defined in s. 943.10(3), F.S.,³³ a firefighter as defined in s. 633.102, F.S., an emergency medical technician as defined in s. 401.23, F.S., or a paramedic as defined in s. 401.203, F.S., who is acting in his or her official capacity.
- "Overdose or serious bodily injury" means drug toxicity or a physical condition that creates a substantial risk of death or substantial loss or impairment of the function of any bodily member or organ.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 893.132, F.S., relating to dangerous fentanyl exposure of first responder resulting in overdose or serious bodily injury.

Section 2: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

³² "Correctional officer" means any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. S. 943.10(2), F.S.

³³ "Correctional probation officer" means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training, and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level. S. 943.10(3), F.S.

The bill may have an indeterminate positive jail and prison bed impact by creating a new first degree felony offense, for exposing a first responder to dangerous fentanyl or fentanyl analogs and thereby causing them to overdose or suffer bodily harm, which may result in increased admissions or longer sentences to such facilities. To the extent that some offenders may be sentenced differently as a result of the new offense, the impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Included correctional officers and correctional probation officers in the definition of “first responder.”
- Defined the term “overdose or serious bodily injury.”
- Corrected a statutory cross-reference to the list of dangerous fentanyl and fentanyl analogs.
- Required a person to be 18 years of age or older for the criminal penalty in the bill to apply.
- Deleted a provision that created a second degree felony offense for exposing a first responder to fentanyl where such exposure results in serious injury.
- Deleted mandatory minimum sentencing requirements.
- Included an affirmative defense that can be raised by the defendant if the first responder caused or substantially contributed to his or her exposure to fentanyl.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled

2 An act relating to exposures of first responders to
3 fentanyl and fentanyl analogs; creating s. 893.132,
4 F.S.; providing definitions; providing criminal
5 penalties for adults who unlawfully possess specified
6 controlled substances and who expose a first responder
7 to such substances, if the exposure results in an
8 overdose or serious bodily injury; providing an
9 affirmative defense; providing an effective date.

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

12
13 Section 1. Section 893.132, Florida Statutes, is created
14 to read:

15 893.132 Dangerous fentanyl exposure of first responder
16 resulting in overdose or serious bodily injury.-

17 (1) For purposes of this section, the term:

18 (a) "Dangerous fentanyl or fentanyl analogues" means any
19 controlled substance described in s. 893.135(1) (c) 4.a. (I) - (VII).

20 (b) "Expose or exposure" means to cause any of the
21 following, including, but not limited to, ingestion, inhalation,
22 needlestick injury, or absorption through skin or mucous
23 membranes.

24 (c) "First responder" means a law enforcement officer as
25 defined in s. 943.10(1), a correctional officer as defined in s.

26 943.10(2), a correctional probation officer as defined in s.
27 943.10(3), a firefighter as defined in s. 633.102, an emergency
28 medical technician as defined in s. 401.23, or a paramedic as
29 defined in s. 401.23, who is acting in his or her official
30 capacity.

31 (d) "Overdose or serious bodily injury" means drug
32 toxicity or a physical condition that creates a substantial risk
33 of death or substantial loss or impairment of the function of
34 any bodily member or organ.

35 (2) A person 18 years of age or older who, in the course
36 of unlawfully possessing dangerous fentanyl or fentanyl
37 analogues, exposes a first responder to dangerous fentanyl or
38 fentanyl analogues and an overdose or serious bodily injury of
39 the first responder results, commits a felony of the first
40 degree, punishable as provided in s. 775.082, s. 775.083, or s.
41 775.084.

42 (3) It is a defense to a violation of this section that a
43 first responder acted so far outside the scope of ordinary care
44 generally exercised by a member of his or her profession that he
45 or she caused or substantially contributed to the exposure.

46 Section 2. This act shall take effect October 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Baker offered the following:

Amendment

Remove lines 20-45 and insert:

6 (b) "Expose or exposure" means to cause, either
 7 intentionally or unintentionally, any of the following,
 8 including, but not limited to, ingestion, inhalation,
 9 needlestick injury, or absorption through skin or mucous
 10 membranes.

11 (c) "First responder" means a law enforcement officer as
 12 defined in s. 943.10(1), a correctional officer as defined in s.
 13 943.10(2), a correctional probation officer as defined in s.
 14 943.10(3), a firefighter as defined in s. 633.102, an emergency
 15 medical technician as defined in s. 401.23, or a paramedic as
 16 defined in s. 401.23, who is acting in his or her official

Amendment No. 1

17 capacity.

18 (d) "Overdose or serious bodily injury" means drug
19 toxicity or a physical condition that creates a substantial risk
20 of death or substantial loss or impairment of the function of
21 any bodily member or organ.

22 (2) A person 18 years of age or older who, in the course
23 of unlawfully possessing dangerous fentanyl or fentanyl
24 analogues, exposes a first responder to dangerous fentanyl or
25 fentanyl analogues and an overdose or serious bodily injury of
26 the first responder results, commits a felony of the second
27 degree, punishable as provided in s. 775.082, s. 775.083, or s.
28 775.084.

29 (3) It is a defense to a violation of this section that a
30 first responder acted outside the scope of ordinary care
31 generally exercised by a member of his or her profession and, in
32 doing so, caused or substantially contributed to his or her
33 exposure.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 353 Alternative Headquarters for District Court Judges

SPONSOR(S): Maney

TIED BILLS: IDEN./SIM. BILLS: SB 570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	17 Y, 0 N	Mathews	Jones
2) Justice Appropriations Subcommittee	12 Y, 0 N	Smith	Keith
3) Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

Florida's court system consists of two trial-level courts and two appellate-level courts. The trial-level courts consist of 67 county courts and 20 circuit courts. The appellate-level courts consist of the Supreme Court and six district courts of appeal (DCAs).

The DCAs decide most appeals from circuit court cases and many administrative law appeals from actions by the executive branch. DCAs must also review county court decisions invalidating a provision of Florida's constitution or statutes, and may hear decisions of a county court that are certified by the county court to be of great public importance.

Each DCA has one main headquarters located within its jurisdictional district. Additionally, s. 35.05(2), F.S., provides that a DCA may designate other locations within the district as branch headquarters. Under s. 35.051, F.S., a DCA judge who lives more than 50 miles from his or her DCA courthouse or designated branch DCA location is eligible to have an alternate headquarters within his or her county of residence and to be reimbursed for trips between such alternate headquarters and the DCA location.

HB 353 amends s. 35.051, F.S., to authorize a DCA judge that would otherwise be eligible to establish an alternate headquarters to choose to establish an alternate headquarters in a county adjacent to his or her county of residence. Under the bill, reimbursement is limited to the lesser of:

- The amount for travel between the judge's alternate headquarters and the DCA, or
- The amount that would be authorized for travel between an alternate headquarters in the judge's county of residence and the DCA.

The bill may have an insignificant, yet indeterminate fiscal impact to state expenditures due to the expanded option for the location of an alternate headquarters.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Court System Structure

Florida's court system consists of two trial-level courts and two appellate-level courts. The trial-level courts consist of 67 county courts and 20 circuit courts.¹ The appellate-level courts consist of the Supreme Court and six district courts of appeal.² Each of Florida's 67 counties has at least one county court judge.³ County courts hear violations of municipal and county ordinances, traffic offenses, landlord-tenant disputes, misdemeanor criminal matters, simplified dissolution of marriage cases, and monetary disputes involving an amount in controversy up to and including \$50,000.⁴ Circuit courts hear all criminal and civil matters not within the jurisdiction of the county court, including family law, dependency, juvenile delinquency, mental health, probate, guardianship matters, and civil matters involving an amount in controversy exceeding \$50,000.⁵

The majority of trial court decisions that are appealed are reviewed by the district courts of appeal (DCAs). The DCAs also review many administrative law appeals from actions by the executive branch. DCAs must also review county court decisions invalidating a provision of Florida's constitution or statutes⁶ and may hear decisions of a county court that are certified by the county court to be of great public importance.⁷ The Supreme Court is the highest court in Florida and has mandatory jurisdiction over all death penalty cases, district court decisions declaring a state statute or provision of the state constitution invalid, bond validations, rules of court procedure, and statewide agency actions relating to public utilities.⁸

The current appellate districts are organized as follows:⁹

Appellate District	Circuits Within the DCA
First DCA	1, 2, 3, 8, 14
Second DCA	6, 12, 13
Third DCA	11, 16
Fourth DCA	15, 17, 19
Fifth DCA	4, 5, 7, 18
Sixth DCA	9, 10, 20

¹ Art. V, ss. 5 and 6, Fla. Const.

² The Supreme Court of Florida, *2020-2021 Florida State Courts Annual Report*, <https://www.flcourts.gov/Publications-Statistics/Publications/Annual-Reports/2020-21-Annual-Report> (last visited Jan. 16, 2024); Office of the State Court Administrator, District Courts of Appeal, <https://www.flcourts.gov/Florida-Courts/District-Courts-of-Appeal> (last visited Jan 16, 2024).

³ Art. V, s. 6(a), Fla. Const.

⁴ Art. V, s. 6(b), Fla. Const.; s. 34.01, F.S.

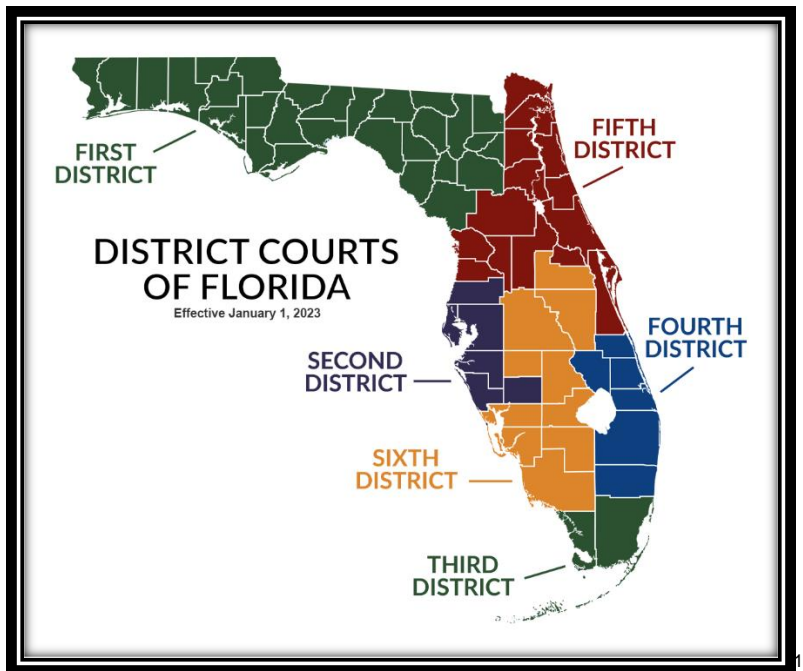
⁵ Art. V, s. 5(b), Fla. Const.; s. 26.012, F.S.

⁶ S. 35.065, F.S.

⁷ *Id.*

⁸ Art. V, s. 3(b), Fla. Const.

⁹ Ss. 35.01-35.044, F.S.



Supreme Court Headquarters

The Florida Supreme Court is located in Tallahassee, Leon County, Florida.¹¹ Pursuant to s. 25.025, F.S., a Supreme Court justice who permanently resides outside of Leon County is eligible for the designation of his or her alternate headquarters, which may only serve as the justice's private chambers.¹² The justice may designate a DCA courthouse, a county courthouse, or another appropriate facility in his or her district of residence as his or her alternate headquarters.¹³

A justice who chooses to designate an alternate headquarters in his or her district of residence is eligible for subsistence payment to be prescribed by the Chief Justice as well as reimbursement for travel expenses between the justice's alternate headquarters and the headquarters of the Supreme Court.¹⁴

DCA Headquarters

Section 35.05(1), F.S., designates the following official headquarters for the six DCAs:¹⁵

- First DCA: Second Judicial Circuit, Tallahassee, Leon County.
- Second DCA: Sixth Judicial Circuit, Pinellas County.
- Third DCA: Eleventh Judicial Circuit, Miami-Dade County.
- Fourth DCA: Fifteenth Judicial Circuit, Palm Beach County.
- Fifth DCA: Seventh Judicial Circuit, Daytona Beach, Volusia County.
- Sixth DCA: Tenth Judicial Circuit, Lakeland, Polk County.

¹⁰ Fla. 4th DCA, *District Court Boundary Changes Effective January 1, 2023* (Jan. 16, 2024), <https://4dca.flcourts.gov/About-the-Court/Court-News/District-Court-Boundary-Changes-Effective-January-1-2023> (last visited Jan. 16, 2024).

¹¹ Art. II, s. 2, Fla. Const.

¹² S. 25.025(1)(a), F.S.

¹³ *Id.*

¹⁴ S. 25.025(1)(b), F.S.

¹⁵ S. 35.05(1), F.S. Prior to the 2022 legislative session, Florida's DCAs were divided into five appellate districts and employed 64 appellate judges throughout the state. In 2022, in response to a certification of need by the Florida Supreme Court to the Legislature, the Florida Legislature passed HB 7027, which created a sixth DCA.

Additionally, s. 35.05(2), F.S., provides that a DCA may designate other locations within the district as branch headquarters. Under s. 35.051, F.S., a DCA judge who lives more than 50 miles from his or her DCA courthouse or designated branch DCA location is eligible to have an alternate headquarters and to be reimbursed for trips between such alternate headquarters and the DCA location in a manner similar to Supreme Court justices.¹⁶

The alternate headquarters, which may serve only as judicial chambers and must be used for official judicial business, may be in any appropriate facility, including a county courthouse.¹⁷ However, no county is required to provide space to a DCA judge for his or her alternate headquarters.¹⁸ The DCA may contract with a county regarding the use of courthouse space, but state funds may not be used to lease the space.¹⁹

Effect of Proposed Changes

HB 353 amends s. 35.051, F.S., to provide that a DCA judge has the additional option to designate an alternate headquarters in a county adjacent to the judge's county of residence within the district he or she serves. As such, a DCA judge would have the ability to designate as an alternate headquarters a county courthouse or other facility in his or her county of residence or within a county adjacent to his or her county of residence, within the district he or she serves.

The bill amends provisions relating to reimbursement for travel expenses to include travel to an alternate headquarters in a county adjacent to judge's county of residence and within the district the judge serves. The reimbursement for travel is limited to the lesser of:

- The amount for travel between the judge's alternate headquarters and the DCA headquarters or designated branch headquarters; or
- The amount that would otherwise be authorized for travel between an alternate headquarters maintained in the judge's county of residence and the DCA headquarters or designated branch headquarters.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 35.051(1), F.S., relating to subsistence and travel reimbursement for judges with alternate headquarters.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁶ S. 35.051(1), F.S.

¹⁷ S. 35.051(1)(a), F.S.

¹⁸ S. 35.051(3)(a), F.S.

¹⁹ S. 35.051(3)(b), F.S.

2. Expenditures:

The bill may have an insignificant, yet indeterminate fiscal impact on state expenditures. Depending on the location selected by the judge as his or her alternate headquarters, and the location of an alternate headquarters he or she would have selected within his or her county of residence pursuant to current law, travel costs and reimbursements may vary.

However, under the bill, travel reimbursements are limited to the lesser amount for travel between an alternate headquarters and the DCA location, or the amount for travel if an alternate headquarters had been designated in the judge's county of residence. This may result in cost savings if a shorter travel distance is achieved by designation of alternate headquarters in an adjacent county.²⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²⁰ Office of the State Courts Administrator, Agency Analysis of 2024 House Bill 353, p.2 (Dec. 13, 2023).

1 A bill to be entitled
 2 An act relating to alternative headquarters for
 3 district court judges; amending s. 35.051, F.S.;
 4 authorizing a district court judge to have an
 5 appropriate facility in an adjacent county to his or
 6 her county of residence as the judge's official
 7 headquarters; authorizing subsistence and travel
 8 reimbursement for such locations; providing an
 9 effective date.

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

12
 13 Section 1. Subsection (1) of section 35.051, Florida
 14 Statutes, is amended to read:

15 35.051 Subsistence and travel reimbursement for judges
 16 with alternate headquarters.—

17 (1)(a) A district court of appeal judge is eligible for
 18 the designation of a county courthouse or another appropriate
 19 facility in his or her county of residence, or an adjacent
 20 county within the district, as his or her official headquarters
 21 for purposes of s. 112.061 if the judge permanently resides more
 22 than 50 miles from:

23 1. The appellate district's headquarters as prescribed
 24 under s. 35.05(1), if the judge is assigned to such
 25 headquarters; or

26 2. The appellate district's branch headquarters
27 established under s. 35.05(2), if the judge is assigned to such
28 branch headquarters.

29
30 The official headquarters may serve only as the judge's private
31 chambers.

32 (b)1. A district court of appeal judge for whom an
33 official headquarters is designated under paragraph (a) ~~in his~~
34 ~~or her county of residence under this subsection~~ is eligible for
35 subsistence at a rate to be established by the Chief Justice for
36 each day or partial day that the judge is at the headquarters or
37 branch headquarters of his or her appellate district to conduct
38 court business, as authorized by the chief judge of that
39 district court of appeal. The Chief Justice may authorize a
40 judge to choose between subsistence based on lodging at a
41 single-occupancy rate and meal reimbursement as provided in s.
42 112.061 and subsistence at a fixed rate prescribed by the Chief
43 Justice.

44 2. In addition to subsistence, a district court of appeal
45 judge is eligible for reimbursement for travel expenses as
46 provided in s. 112.061(7) and (8) for travel between the judge's
47 official headquarters and the headquarters or branch
48 headquarters of the appellate district to conduct court
49 business. If the judge's official headquarters designated under
50 paragraph (a) is located in a county adjacent to the judge's

51 county of residence, such reimbursement is limited to the lesser
 52 of:

53 a. The amount for travel between the judge's official
 54 headquarters and the headquarters or branch headquarters of the
 55 appellate district; or

56 b. The amount that would be authorized for travel between
 57 an official headquarters maintained in the judge's county of
 58 residence and the headquarters or branch headquarters of the
 59 appellate district.

60 (c) Payment of subsistence and reimbursement for travel
 61 expenses between the judge's official headquarters and the
 62 headquarters or branch headquarters of his or her appellate
 63 district shall be made to the extent that appropriated funds are
 64 available, as determined by the Chief Justice.

65 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 429 Timeshare Properties

SPONSOR(S): Robinson, W.

TIED BILLS: **IDEN./SIM. BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Thompson	Anstead
2) Judiciary Committee		Mawn	Kramer
3) Commerce Committee			

SUMMARY ANALYSIS

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) within the Department of Business and Professional Regulation (DBPR), establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.

The Timeshare Act authorizes the board of administration of any owners' association that operates a timeshare condominium, or a timeshare cooperative, to make "material alterations" or "substantial additions" to accommodations or facilities without the approval of the owners' association. However, current law does not authorize the board of administration to "delete" accommodations or facilities without the owners' association's approval.

The Timeshare Act requires the managing entity of a timeshare plan to provide an "assessment certificate" within 30 days after receiving a written request from a timeshare interest owner, an agent designated in writing by the timeshare interest owner, or a person providing resale transfer services for a consumer timeshare reseller. The assessment certificate must be signed by an officer or agent of the managing entity, be provided to the person requesting the certificate, and state the amount of any assessment, transfer fee, or other moneys currently owed to the managing entity or approved by the managing entity that will be due within the next 90 days. However, condominium and cooperative association purchasers are authorized to request that the seller provide an "estoppel certificate," from the condominium or cooperative association, which must be provided within 10 days after receiving a written request. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date, and provides other information about recurring assessments and other monetary obligations.

Operators of public lodging establishments or public food service establishments are authorized to remove or refuse to accommodate persons for offenses such as drug use or intoxication. The Timeshare Act does not give the managing entity of a timeshare project these same rights.

HB 429 amends the Timeshare Act, as follows:

- Authorizes the board of administration for a condominium or cooperative association to "delete" accommodations or facilities without the approval of the members of the association.
- Grants the managing entity of a timeshare project all of the same rights and remedies to remove and refuse to accommodate that an operator of a public lodging establishment or public food service establishment has.
- Requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under the Timeshare Act in lieu of the estoppel certificate relating to condominium and cooperative associations.

The bill does not appear to have a fiscal impact on state or local governments. The effective date of the bill is July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0429b.JDC

DATE: 1/28/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida Vacation Plan and Timesharing Act

A timeshare interest is a form of ownership of real and personal property.¹ In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to use the property.

Chapter 721, F.S., the Florida Vacation Plan and Timesharing Act (Timeshare Act), administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (DFCT) within the Department of Business and Professional Regulation (DBPR), is the chapter of Florida law that governs vacation plans and timesharing in the state. The purpose of the Timeshare Act is to:

- Recognize real and personal property timeshare plans in the state;
- Establish procedures for the creation, sale, exchange, promotion and operation of timeshare plans;
- Provide full and fair disclosure to purchasers and prospective purchasers of timeshare plans;
- Require every timeshare plan in the state to be subjected to the provisions of the chapter;
- Require full and fair disclosure of terms, conditions, and services by resale service providers; and
- Recognize that a uniform and consistent method of regulation is necessary to safeguard Florida's tourism industry and the state's economic well-being.²

The Timeshare Act applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years when the accommodations and facilities are located or offered within this state.³ The Timeshare Act governs vacation plans and timesharing,⁴ and multisite vacation and timeshare plans that are also known as vacation clubs.⁵

The term “timeshare plan” means any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, where a purchaser, for consideration, receives ownership rights in or a right to use accommodations and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.⁶ The term includes both personal property timeshare and real property timeshare plans.⁷

A “timeshare unit” is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁸

A “timeshare estate” is a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof.⁹ The term also

¹ See s. 721.05(36), F.S.

² S. 721.02, F.S.

³ S. 721.03, F.S.

⁴ Ch. 721, part I, F.S.

⁵ Ch. 721, part II, F.S.

⁶ S. 721.05(39), F.S.

⁷ S. 721.05(39)(a), F.S., defines a “personal property timeshare plan,” as a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property. Section 721.05(39)(b), F.S., defines a “real property timeshare plan,” as a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

⁸ See ss. 721.05(41) and 718.103(26), F.S.

⁹ S. 721.05(34), F.S.

includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

A "timeshare license" is the right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.¹⁰

A "timeshare interest" is a timeshare estate, a personal property timeshare interest, or a timeshare license.¹¹

Board of Administration

Each condominium, cooperative, and homeowners' association is governed by a board of administration elected by the association's members or appointed by a developer prior to turnover of the association. The board has those duties described in statute and in the association's governing documents, including association administration, policy development, and property maintenance.¹² A board director also has a fiduciary responsibility to the association's members and must use the highest degree of good faith in placing the interests of the members above his or her own personal interests.¹³

To ensure that a director is able to faithfully and competently exercise his or her duties, within 90 days of being elected or appointed to the board, each newly elected or appointed director must:

- Certify in writing that he or she has read the association's governing documents; will work to uphold the governing documents to the best of his or her ability; and will faithfully discharge his or her fiduciary responsibility to the association's members; or
- Submit a certificate showing he or she satisfactorily completed the educational curriculum administered by a DFCT-approved¹⁴ education provider within one year before or 90 days after his or her election or appointment date.¹⁵

Application of the Condominium and Cooperative Acts

In addition to regulation under the Timeshare Act, a timeshare plan may also be subject to ch. 718, F.S. (the Condominium Act) or ch. 719, F.S. (the Cooperative Act); where this is the case, the timeshare plan must meet the requirements of all applicable chapters unless an exemption applies.¹⁶ Specifically, if a timeshare plan subject to either the Condominium Act or the Cooperative Act is fully compliant with the Timeshare Act, the timeshare plan is exempt from certain provisions of the Condominium Act or the Cooperative Act, including provisions relating to:

- Sales or reservation deposits prior to closing;
- Filing prior to sale or lease;
- Disclosures prior to sale;
- The prospectus or offering circular; and
- Conversions to the condominium or cooperative form of ownership.¹⁷

Timeshares Under the Condominium Act

¹⁰ S. 721.05(37), F.S.

¹¹ S. 721.05(36), F.S.

¹² See generally chs. 718, 719, and 720, F.S.; Florida DBPR, *FAQs*, <http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/faqs/#1492784365590-e9ec1083-2ca1> (last visited Jan. 24, 2024).

¹³ *Id.*

¹⁴ A DFCT-approved provider must cover specified topics in its education program, which may include budgets; reserves; elections; financial reporting; association operations; dispute resolution; and records maintenance. For a list of DFCT-approved education providers, see <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited Jan. 24, 2024). 61B-19.001 and 61B-75.0051, F.A.C.

¹⁵ This requirement does not apply to the board of directors for a commercial condominium. Ss. 718.112(2)(d), 719.106(1)(d), and 720.3033(1)(a)-(c), F.S.

¹⁶ S. 721.03(2), F.S.

¹⁷ S. 721.03(3), F.S.

Timeshare estates may not be created with respect to any condominium unit except pursuant to provisions in the declaration of condominium expressly permitting the creation of such estates.¹⁸ A declaration must, if timeshare estates will or may be created with respect to any condominium unit:

- Provide a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium; and
- Define and describe in detail the degree, quantity, nature, and extent of the timeshare estates that will or may be created.¹⁹

Unless otherwise provided in the declaration as originally recorded, an amendment to the declaration may not authorize a timeshare estate to be created in any condominium unit unless the record owner of each condominium unit and of liens on each condominium unit join in the amendment's execution.²⁰

Timeshares Under the Cooperative Act

Original cooperative documents²¹ must describe whether or not timeshare estates will or may be created with respect to any cooperative units and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession or occupancy that may be established with respect to any unit.²² Unless the creation of timeshare estates in any cooperative unit is authorized by the original cooperative documents, an amendment adding phases to a cooperative that authorizes the creation of timeshare estates in any unit of the additional phase requires the execution or consent by all unit owners other than the developer.²³

Public Offering Statement

Prior to offering any timeshare plan, a developer must submit a public offering statement,²⁴ which must include certain information and disclosures, to the DFCT.²⁵ Any amendment to an approved offering statement must be filed with the DFCT for approval prior to becoming effective.²⁶

Extension or Termination of Timeshare Plans

The Timeshare Act provides a statutory default provision for timeshare instruments that have been in existence for at least 25 years and are silent as to how the plan terminates or is extended. A vote or written consent of 60 percent of all the voting interests in the timeshare plan is required to extend or terminate the term of a timeshare plan.²⁷

If the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force. If a timeshare plan is terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument.²⁸

A termination, extension vote, or consent proposed for a component site of a multisite timeshare plan located in this state is effective only if the person authorized to make additions or substitutions approves.²⁹

¹⁸ The "declaration of condominium" is the instrument creating the condominium, as it is amended from time to time. Ss. 718.103(15) and 718.1045, F.S.

¹⁹ S. 718.104(4)(o), F.S.

²⁰ S. 718.110(8), F.S.

²¹ "Cooperative documents" means the documents: creating the cooperative; evidencing a unit owner's membership or share in the association; or recognizing a unit owner's title or right of possession to his or her unit. S. 719.103(13), F.S.

²² S. 719.403(2)(f), F.S.

²³ S. 719.403(6)(e), F.S.

²⁴ "Public offering statement" means the written materials describing a single-site timeshare plan or a multisite timeshare plan, including a text and any exhibits attached thereto as required by ss. 721.07, 721.55, and 721.551. S. 721.05(29), F.S.

²⁵ Ss. 721.07 and 721.55, F.S.

²⁶ S. 721.07(3)(a)1., F.S.

²⁷ S. 721.125, F.S.

²⁸ *Id.*

²⁹ *Id.*

After termination of a timeshare plan, the board serves as the termination trustee. In that fiduciary capacity, the board may bring a partition action on behalf of the tenants in common in each former timeshare property, or may sell the former timeshare property in any manner and to any person approved by a majority of all the tenants in common. The board also has all other powers reasonably necessary to accomplish the partition or sale, including the power to maintain the property while the partition action or sale is pending, and must adopt reasonable procedures to implement the partition or sale and comply with statutory requirements.³⁰ All reasonable expenses incurred by the board relating to the performance of its trustee duties, including reasonable fees of attorneys and other professionals, must be paid by the tenants in common, in proportion to their respective ownership interests.³¹

If a timeshare plan is terminated in a timeshare condominium or timeshare cooperative and the underlying condominium or cooperative is not simultaneously terminated, a majority of the tenants in common in each former timeshare unit present and voting in person or by proxy at a meeting of such tenants in common conducted by the termination trustee, or conducted by the board of administration of the condominium or cooperative association, if such association managed the former timeshare property, are required to:³²

- Designate a voting representative for the unit and file a voting certificate with the condominium or cooperative association.
- Allow the voting representative to vote on all matters at meetings of the condominium or cooperative association, including termination of the condominium or cooperative.

Management of a Timeshare Plan

Current law requires the developer to provide a managing entity for each timeshare plan, which entity may be the developer, a separate manager or management company, or an owners' association.³³ Any owner's association must be created before the first closing of the sale of a timeshare interest.³⁴ However, with respect to a timeshare plan which is also regulated under chs. 718 or 719, F.S., or which contains a mandatory owner's association, the board is the timeshare plan's managing entity.³⁵

The duties of a managing entity include:

- Management and maintenance of all accommodations and facilities constituting the timeshare plan;
- Collection of all assessments for common expenses;
- Providing an itemized annual budget to all purchasers;
- Maintaining all books and records concerning the timeshare plan and making such books and records reasonably available for inspection by any purchaser;
- Arranging for an annual audit of the timeshare plan's financial statement;
- Scheduling timeshare unit occupancy in certain circumstances;
- Performing any other functions and duties necessary to maintain the accommodations or facilities; and
- Entering into ad valorem tax escrow agreements before the receipt of any ad valorem tax escrow payments under certain conditions.

Managing Entity

³⁰ S. 721.125(3)(a)1., F.S.

³¹ S. 721.125(3)(a)2., F.S.

³² *Id.*

³³ "Owners' association" means an association made up of all owners of timeshare interests in a timeshare plan, including developers and timeshare plan purchasers. Ss. 721.05(27) and 721.13, F.S.

³⁴ S. 721.13(1)(a), F.S.

³⁵ S. 721.13(1)(b), F.S.

The Timeshare Act requires the developer to provide a managing entity for each timeshare plan. The managing entity operates or maintains the timeshare plan.³⁶ The managing entity may be the developer, a separate manager or management firm, or an owners' association.³⁷

The duties of the managing entity include, but are not limited to:³⁸

- Management and maintenance of all accommodations and facilities constituting the timeshare plan.
- Collection of all assessments for common expenses.
- Providing annually to all purchasers an itemized annual budget that includes estimated revenues and expenses.
- Maintenance of books and records concerning the timeshare plan so that all such books and records are reasonably available for inspection by any purchaser or their authorized agent.
- Arranging for an annual audit of the financial statements of the timeshare plan by a certified public accountant licensed by the Board of Accountancy of DBPR, in accordance with generally accepted auditing standards as defined by the rules of the Board of Accountancy of DBPR.
- Making available for inspection by the DFCT any books and records of the timeshare plan upon the request of the DFCT.
- Scheduling occupancy of the timeshare units, when purchasers are not entitled to use specific timeshare periods, so that all purchasers will be provided the use and possession of the accommodations and facilities of the timeshare plan which they have purchased.
- Performing any other functions and duties which are necessary and proper to maintain the accommodations or facilities, as provided in the contract and as advertised.
- Entering into an ad valorem tax escrow agreement prior to the receipt of any ad valorem tax escrow payments into the ad valorem tax escrow account, as long as an independent escrow agent is required by s. 192.037, F.S., and submitting to the DFCT the statement of receipts and disbursements regarding the ad valorem tax escrow account.

Managing Entity Emergency Powers

Florida law provides for the exercise of specified emergency powers by the boards of condominium, cooperative, and homeowners' associations in response to damage or injury caused by or anticipated in connection with a declared state of emergency.³⁹ Such emergency powers include, unless prohibited by other law or the association's governing documents, the power to:

- Conduct board meetings, elections, and membership meetings by telephone, real-time videoconferencing, or similar real-time electronic or video communication with notice given as practicable;
- Cancel and reschedule any association meeting;
- Name as assistant officers person who are not board directors;
- Relocate the association's principal office or designate alternative principal offices;
- Enter into agreements with local governments to assist with debris removal;
- Implement a disaster or emergency plan that may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners;
- Determine any portion of the association property is unavailable for entry or occupancy in certain circumstances;
- Require the evacuation of association property in certain circumstances;
- Determine that association property can be safely inhabited, accessed, or occupied, in certain circumstances;
- Mitigate further damage, injury, or contagion;
- Contract for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further injury, contagion, or damage, and obtain reimbursement;
- Levy special assessments without an owner vote; and

³⁶ See s. 721.05(22), F.S., defining the term "managing entity."

³⁷ S. 721.13(1)(a), F.S.

³⁸ S. 721.13(3), F.S.

³⁹ Ss. 718.1265, 719.128, and 720.316, F.S.

- Borrow money or pledge association assets as collateral to fund emergency repairs and carry out association duties when operating funds are insufficient.⁴⁰

However, the Act does not provide comparable emergency powers for a timeshare plan's managing entity.

Material Alterations or Substantial Additions to Accommodations or Facilities

Notwithstanding anything to the contrary in s. 718.110, F.S.,⁴¹ s. 718.113, F.S.,⁴² s. 718.114, F.S.,⁴³ or s. 719.1055, F.S.,⁴⁴ the board of administration of any owners' association that operates a timeshare condominium pursuant to s. 718.111, F.S., or a timeshare cooperative pursuant to s. 719.104, F.S., has the power to make material alterations or substantial additions to the accommodations⁴⁵ or facilities⁴⁶ of such timeshare condominium or timeshare cooperative without the approval of the owners' association. However, current law does not give the board of administration the authority to "delete" accommodations or facilities without the approval of the owners' association.⁴⁷

If the timeshare condominium or timeshare cooperative contains any residential units that are not subject to the timeshare plan, the board of administration for the condominium or cooperative must obtain the approval of a majority of the owners of such residential units before it can make any material alterations or substantial additions to the accommodations or facilities of such timeshare condominium or timeshare cooperative. However, unless otherwise provided in the timeshare instrument as originally recorded, an amendment may not change the configuration or size of any accommodation in any material fashion, or change the proportion or percentage by which a member of the owners' association shares the common expenses, unless the record owners of the affected units or timeshare interests and all record owners of liens on the affected units or timeshare interests join in the execution of the amendment.⁴⁸

Assessment Certificates

Condominiums and Cooperatives

⁴⁰ The powers to require association property evacuation and to contract for items or services for which the owners are otherwise individually responsible are only held by condominium and cooperative associations.

⁴¹ S. 718.110, F.S., provides for the amending of a declaration of condominium and, in part, prohibits any amendment that materially alters or substantially adds to the condominium property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.

⁴² Section 718.113, F.S., sets forth the responsibility of a condominium association to maintain the common elements of the condominium and, in relevant part, prohibits any material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided in the declaration. However, if the declaration as originally recorded or as amended does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced.

⁴³ Section 718.114, F.S., authorizes condominium associations, with specified conditions, to "enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners."

⁴⁴ Section 719.1055, F.S., provides for the amendment of cooperative documents and, in part, prohibits any amendment that materially alters or substantially adds to the cooperative property, unless all recorded unit owners and all record owners of liens join in and approve the execution of the amendment.

⁴⁵ "Accommodation" means any apartment, condominium or cooperative unit, cabin, lodge, hotel or motel room, campground, cruise ship cabin, houseboat or other vessel, recreational or other motor vehicle, or any private or commercial structure which is real or personal property and designed for overnight occupancy by one or more individuals. The term does not include an incidental benefit as defined in this section. S. 721.05(1), F.S.

⁴⁶ "Facility" means any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan. The term does not include an incidental benefit as defined in this section. S. 721.05(17), F.S.

⁴⁷ S. 721.13(8), F.S.

⁴⁸ *Id.*

“Common expenses” are all expenses and assessments properly incurred by a condominium or cooperative association.⁴⁹

An assessment is a unit or parcel owner’s share of the funds required for the payment of the association’s common expenses.⁵⁰ A special assessment is any assessment levied against a unit or parcel owner other than the assessment adopted in the annual budget.⁵¹

Assessments that are unpaid may become a lien on the unit or parcel.⁵² An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.⁵³ This liability is without prejudice to an owner’s right to recover from the previous owner the amounts paid that were assessed during the time that the previous owner owned the property.⁵⁴

To protect against undisclosed financial obligations and to obtain title to the property free of any lien or encumbrance in favor of the association, purchasers may request that the seller provide an estoppel certificate, also known as an assessment certificate, from the condominium or cooperative association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.⁵⁵

Within 10 days after receiving a written request for an estoppel certificate, the association is required to provide an estoppel certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel. In addition to specifying the amount of any debt owed to the association, an estoppel certificate must also include specific information about the association and the property to be purchased, including the amount of any regular periodic assessments or other fees.⁵⁶

Timeshares

A purchaser of a timeshare estate or timeshare license is personally liable for all assessments for common expenses which come due while the purchaser is the owner of such interest.⁵⁷ A successor in interest of a timeshare estate or timeshare license is jointly and severally liable with her or his predecessor in interest for all unpaid assessments against such predecessor up to the time of transfer of the timeshare interest to such successor, without prejudice to any right a successor in interest may have to recover from her or his predecessor in interest any amounts assessed against such predecessor and paid by such successor.⁵⁸

The managing entity of a timeshare plan must provide an assessment certificate within 30 days after receiving a written request from:

- A timeshare interest owner;
- An agent designated in writing by the timeshare interest owner; or
- A person providing resale transfer services for a consumer timeshare reseller.

The assessment certificate must, with respect to the designated consumer resale timeshare interest:

- Be signed by an officer or agent of the managing entity;
- Be provided to the person requesting the certificate;
- State the amount of any assessment, transfer fee, or other moneys:
 - Currently owed to the managing entity; and

⁴⁹ Ss. 718.103(10) and 719.103(9), F.S., relating to condominium and cooperative associations, respectively.

⁵⁰ Ss. 718.103(1) and 719.103(1), F.S., relating to condominium and cooperative associations, respectively.

⁵¹ Ss. 718.103(24) and 719.103(23), F.S., relating to condominium and cooperative associations, respectively.

⁵² Ss. 718.116(5) and 719.108(4), F.S., relating to condominium and cooperative associations, respectively.

⁵³ Ss. 718.116(1)(a) and 719.108(1), F.S., relating to condominium and cooperative associations, respectively.

⁵⁴ *Id.* The term “without prejudice” means “without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party.” BLACK’S LAW DICTIONARY 770 (10th ed. 2014).

⁵⁵ Ss. 718.116(8) and 719.108(6), F.S., relating to condominium and cooperative associations, respectively.

⁵⁶ *Id.*

⁵⁷ S. 721.15(7), F.S.

⁵⁸ *Id.*

- Approved by the managing entity that will be due within the next 90 days; and
- Include any information contained in the books and records of the timeshare plan regarding the legal description and use plan related to the designated consumer resale timeshare interest.⁵⁹

The managing entity may charge a fee not to exceed \$150 for the preparation and delivery of the certificate, and the amount of the fee must be included on the certificate.⁶⁰

Public Lodging Establishments and Public Food Service Establishments

The Division of Hotels and Restaurants (DHR) within DBPR is charged with enforcing the provisions of ch. 509, F.S., relating to the regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare.⁶¹

Public lodging establishments are classified as a hotel, motel, non-transient apartment, transient apartment, bed and breakfast inn, timeshare project, or vacation rental.⁶² A “timeshare project” is defined as “a timeshare property, as defined in ch. 721, F.S., that is located in this state and that is also a transient public lodging establishment.”⁶³

The term “public lodging establishments” includes transient and non-transient public lodging establishments.⁶⁴ The principal differences between transient and non-transient public lodging establishments are the number of times that the establishments are rented in a calendar year and the duration of the rentals.

Specifically, a “transient public lodging establishment” is defined as:⁶⁵

...any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.* (emphasis added)

A “non-transient public lodging establishment” is defined as:⁶⁶

...any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings *which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.* (emphasis added)

Removal or Refusal to Accommodate

Operators of public lodging establishments or public food service establishments are authorized to remove persons from their establishments, and to have a law enforcement officer remove persons from their establishments, as follows:

- **Operators may remove or cause to be removed** a person, including any guest of the establishment who, while on the premises of the establishment:⁶⁷
 - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.;

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ S. 509.032(1), F.S.

⁶² *See* s. 509.013(4)(b), F.S., which exempts the several types of establishments from the definition of “public lodging establishment.” S. 509.242(1), F.S.

⁶³ S. 509.242(1)(g), F.S.

⁶⁴ S. 509.013(4)(a), F.S.

⁶⁵ S. 509.013(4)(a)1., F.S.

⁶⁶ S. 509.013(4)(a)2., F.S.

⁶⁷ S. 509.141, F.S.

- Is intoxicated, profane, lewd, or brawling;
- Indulges in any language or conduct which disturbs the peace and comfort of other guests or which injures the reputation, dignity, or standing of the establishment;
- Fails to check out by the time agreed upon in writing by the guest and public lodging establishment at check-in unless an extension of time is agreed to by the public lodging establishment and guest prior to checkout;
- Fails to make payment for food, beverages, or services; or
- In the opinion of the operator, is a person the continued entertainment of whom would be detrimental to the establishment.
- **Operators may refuse accommodations or service** to any person who:⁶⁸
 - Displays intoxication, profanity, lewdness, or brawling;
 - Indulges in language or conduct such as to disturb the peace or comfort of other guests;
 - Engages in illegal or disorderly conduct;
 - Illegally possesses or deals in controlled substances as defined in ch. 893, F.S.; or
 - Constitutes a nuisance.
- **Operators may take into custody and detain** a person in a reasonable manner and for a reasonable time if:
 - The operator has probable cause to believe that the person was engaging in disorderly conduct in violation of s. 877.03, F.S.,⁶⁹ on the premises of the licensed establishment; and
 - Such conduct was creating a threat to the life or safety of the person or others.⁷⁰
- **Law enforcement officers or operators may take a person into custody** on the premises and detain such person in a reasonable manner and for a reasonable period of time if:
 - They have probable cause to believe that theft of personal property belonging to such establishment has been committed by a person; and
 - The officer or operator can recover such property or the reasonable value thereof by taking the person into custody for the purpose of attempting to affect such recovery or for prosecution.⁷¹

⁶⁸ S. 509.142, F.S.

⁶⁹ Section 877.03, F.S., provides that a person is guilty of a misdemeanor of the second degree if they commit “such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct.”

⁷⁰ S. 509.143, F.S.

⁷¹ S. 509.162, F.S.

Effect of Proposed Changes

Material Alterations, Additions, and Deletions to Accommodations or Facilities

HB 429 expands the scope of 721.13, F.S., from applying to the board of administration for a timeshare condominium or timeshare cooperative to the board of administration for any timeshare plan, thus allowing the board of any other form of timeshare to make material alterations or substantial additions to the timeshare's accommodations or facilities without the owners' association's approval.

The bill also authorizes the board of administration for any timeshare plan to "delete" accommodations or facilities without the approval of the owners' association's members.

Removal and Refusal to Accommodate

The bill gives the managing entity or manager of a timeshare project the same rights and remedies of an operator of any public lodging establishment or public food service establishment, as set forth in ss. 509.141, 509.142, 509.143, and 509.162, F.S., including the right to remove and the right to refuse to accommodate. The bill also entitles such persons to have a law enforcement officer take any action, including arrest or removal from the timeshare property, against any purchaser, including a deeded owner, or a guest or invitee thereof, who engages in conduct described in those sections or conduct that violates the timeshare instrument.⁷²

Assessment Certificates

The bill requires the managing entity of a timeshare condominium or timeshare cooperative to provide the assessment certificate required under s. 721.15, F.S., in lieu of the estoppel certificate required by s. 718.116(8), F.S., or s. 719.108(6), F.S., relating to condominium and cooperative associations, respectively.

B. SECTION DIRECTORY:

Section 1: Amends s. 721.13, F.S., relating to management.

Section 2: Amends s. 721.15, F.S., relating to assessments for common expenses.

Section 3: Provides an effective date of July 1, 2024.

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.

⁷² Section 721.05(35), F.S., defines the term "timeshare instrument" to mean one or more of the documents, by whatever name denominated, creating or governing the operation of a timeshare plan.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Authorizing the board of administration for a timeshare plan to “delete” accommodations or facilities without the approval of the members of the owners’ association may help alleviate costs to the association and its members, such as costs for labor and insurance associated with maintaining old or underutilized facilities. However, this may have a negative fiscal impact on the private sector to the extent that the deletion of any accommodations or facilities decreases the value of a timeshare interest.

Authorizing the managing entity of a timeshare project to have the same rights and remedies, regarding removal and refusal to accommodate, of an operator of a public lodging establishment or public food service establishment may have a positive economic impact on the private sector to the extent that the exercise of such authority reduces undesirable or illegal behavior or increases the public health and safety of the area, which in turn increases the value of a timeshare interest. However, the exercise of such authority may have a negative fiscal impact on the private sector to the extent it deprives the owner of a timeshare interest the right to fully utilize his or her interest and, therefore, receive a return on his or her investment.

FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Article I, section 10, of the Florida Constitution provides, in relevant part, that “[n]o . . . law impairing the obligation of contracts shall be passed.” This provision empowers the courts to strike down laws that retroactively burden or alter contractual relations.⁷³ Not all contractual impairments warrant overturning an otherwise valid law; thus, state statutes that impair contractual obligations are measured on a sliding scale of scrutiny, where the degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced.⁷⁴ The court, in *Pomponio v. Claridge of Pompano Condo., Inc.*,⁷⁵ enumerated several factors it might weigh when making such determinations:

- a. Whether the law was enacted to deal with a broad economic or social problem;
- b. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- c. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

The bill may modify the terms of or rights under existing contracts entered into by timeshare interest owners. To the extent that any such modifications impair the existing contracts, a court might find the offending provision inapplicable as to that contract.

⁷³ *In re Advisory Op. to the Governor*, 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities Dist. v. Volusia Cnty.*, 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto Owners Ins. Co.*, 363 So.2d 1077 (Fla. 1978).

⁷⁴ *Yellow Cab Co. of Dade Cnty. v. Dade Cnty.*, 412 So.2d 395 (Fla. 3d DCA 1982).

⁷⁵ 378 So.2d 774 (Fla. 1980).

B. RULE-MAKING AUTHORITY:

The bill does not appear to create the need for additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to timeshare properties; amending s.
 721.13, F.S.; broadening the powers of certain boards
 of administration with respect to timeshare plans;
 providing that managers and managing entities of
 certain timeshare projects have the same rights and
 remedies as operators of certain establishments and
 may have law enforcement take certain actions against
 individuals who engage in certain conduct; amending s.
 721.15, F.S.; requiring a managing entity of a
 timeshare condominium or timeshare cooperative to
 provide a specified certificate to certain interested
 parties in lieu of an estoppel certificate; providing
 an effective date.

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

Section 1. Subsection (8) of section 721.13, Florida
 Statutes, is amended, and subsection (14) is added to that
 section, to read:

721.13 Management.—

(8) Notwithstanding anything to the contrary in s.
 718.110, s. 718.113, s. 718.114, or s. 719.1055, the board of
 administration of any owners' association that operates a
 timeshare plan including a timeshare condominium pursuant to s.

26 | 718.111, or a timeshare cooperative pursuant to s. 719.104,
 27 | shall have the power to make material alterations or substantial
 28 | additions, or any deletion, to the accommodations or facilities
 29 | of such timeshare plan ~~condominium or timeshare cooperative~~
 30 | without the approval of the members of the owners' association.
 31 | However, if the timeshare condominium or timeshare cooperative
 32 | contains any residential units that are not subject to the
 33 | timeshare plan, such action by the board of administration must
 34 | be approved by a majority of the owners of such residential
 35 | units. Unless otherwise provided in the timeshare instrument as
 36 | originally recorded, no such amendment may change the
 37 | configuration or size of any accommodation in any material
 38 | fashion, or change the proportion or percentage by which a
 39 | member of the owners' association shares the common expenses,
 40 | unless the record owners of the affected units or timeshare
 41 | interests and all record owners of liens on the affected units
 42 | or timeshare interests join in the execution of the amendment.

43 | (14) With regard to any timeshare project as defined in s.
 44 | 509.242(1)(g), the managing entity or manager has all of the
 45 | rights and remedies of an operator of any public lodging
 46 | establishment or public food service establishment as set forth
 47 | in ss. 509.141, 509.142, 509.143, and 509.162 and is entitled to
 48 | have a law enforcement officer take any action, including arrest
 49 | or removal from the timeshare property, against any purchaser,
 50 | including a deeded owner, or guest or invitee of such purchaser

51 or owner who engages in conduct described in s. 509.141, s.
52 509.142, s. 509.143, or s. 509.162 or conduct in violation of
53 the timeshare instrument.

54 Section 2. Paragraph (b) of subsection (7) of section
55 721.15, Florida Statutes, is amended to read:

56 721.15 Assessments for common expenses.—

57 (7)

58 (b) Within 30 days after receiving a written request from
59 a timeshare interest owner, an agent designated in writing by
60 the timeshare interest owner, or a person providing resale
61 transfer services for a consumer timeshare reseller pursuant to
62 s. 721.17(3), a managing entity must provide a certificate,
63 signed by an officer or agent of the managing entity, to the
64 person requesting the certificate, that states the amount of any
65 assessment, transfer fee, or other moneys currently owed to the
66 managing entity, and of any assessment, transfer fee, or other
67 moneys approved by the managing entity that will be due within
68 the next 90 days, with respect to the designated consumer resale
69 timeshare interest, as well as any information contained in the
70 books and records of the timeshare plan regarding the legal
71 description and use plan related to the designated consumer
72 resale timeshare interest. The managing entity of a timeshare
73 condominium or timeshare cooperative must provide this
74 certificate in lieu of the estoppel certificate required by s.
75 718.116(8) or s. 719.108(6).

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76 | 1. A person who relies upon such certificate shall be
77 | protected thereby.

78 | 2. A summary proceeding pursuant to s. 51.011 may be
79 | brought to compel compliance with this paragraph, and in such an
80 | action the prevailing party may recover reasonable attorney fees
81 | and court costs.

82 | 3. The managing entity may charge a fee not to exceed \$150
83 | for the preparation and delivery of the certificate. The amount
84 | of the fee must be included on the certificate.

85 | Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 481 Building Construction Regulations and System Warranties

SPONSOR(S): Civil Justice Subcommittee, Maggard

TIED BILLS: IDEN./SIM. **BILLS:** SB 612

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mawn	Jones
2) Commerce Committee	19 Y, 0 N	Wright	Hamon
3) Judiciary Committee		Mawn	Kramer

SUMMARY ANALYSIS

The Florida Building Codes Act ("Building Code"), set out in part IV of ch. 553, F.S., sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of structures in the state. The Building Code also incorporates all state laws and rules pertaining to such standards.

An electrical disconnect switch is a switch that isolates all wiring in a structure, or the wiring in a dedicated electrical circuit, from its power source. Each component of an electrical circuit, including the disconnect switch, is rated for a maximum flow of electric current, measured in amperes. Under Florida law, an HVAC unit must have a dedicated electrical disconnect switch; electricity runs from the power source to the switch through the switch's "line side," and from the switch's "load side" to the HVAC unit. Installation of an HVAC unit or components thereof must be done in compliance with the unit's or component's amperage requirements. However, only a licensed electrical contractor may perform "line side" work on a dedicated HVAC electrical disconnect switch. Thus, where components of a structure's existing electrical circuit cannot handle the amperage requirements of a new or repaired HVAC unit, a licensed electrical contractor is generally needed to upgrade the insufficient components before the HVAC system contractor may turn on the new or repaired HVAC unit.

A warranty is, in essence, a contract making assurances about the condition of a product, which contract requires the product's manufacturer, distributor, or retailer to replace, repair, or issue a refund for the product under the circumstances specified in the warranty agreement. Under current law, an HVAC system warranty runs with the property on which the system is fixed and thus transfers to a subsequent purchaser thereof automatically. An HVAC system warranty is also considered registered if it was installed by a licensed contractor who then provides specified documentation to the warrantor and the consumer; however, a warrantor can still refuse to honor a warranty's terms if the warranty is unregistered.

CS/HB 481:

- Expands the scope of work for specified HVAC system contractors to include specified line-side repairs or replacements and the repair or replacement of specified components for dedicated HVAC circuits under specified conditions.
- Prohibits the conditioning of an HVAC system warranty on product registration and specifies that the full length of such a warranty's coverage term begins on the date a licensed contractor installs the system.

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

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Building Code

The Florida Building Codes Act (“Building Code”), established in part IV of ch. 553, F.S., provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single state building code that must be applied, administered, and enforced uniformly and consistently across the state.¹ The Building Code is adopted by the Commission and enforced by local governments.²

The Building Code’s primary purpose is the regulation of new construction and existing structure modifications to achieve the highest safety level and the fewest construction defects.³ To accomplish this, the Building Code sets minimum standards for the design, construction, erection, alteration, modification, repair, and demolition of structures in the state, and incorporates all state laws and rules pertaining to such standards.⁴

Plan Review and Building Permits

Each local government must issue building permits for construction projects within its jurisdiction.⁵ However, the building official may not issue a building permit before first reviewing the plans and specifications and finding that such plans and specifications comply with the Building Code.⁶ No person, firm, or corporation may construct, erect, alter, repair, secure, or demolish any structure without first obtaining a building permit, if required, from the building official.⁷

Inspections and Violations

For any construction requiring a building permit, the building official⁸ must inspect the work to ensure that it complies with the Building Code.⁹ Where a local government determines that an engineer, architect, or contractor has committed a “material violation” of the Building Code and has failed to correct the violation within a reasonable time, the local government must impose a fine on such licensee of no less than \$500 and no more than \$5,000 per violation.¹⁰ A “material violation,” as the term is used here, is a violation existing within a completed building, structure, or facility which may result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems.¹¹

¹ S. 553.72(1), F.S.

² Ss. 125.56, 553.72, 553.73, and 553.74, F.S.

³ Fla. Bldg. Comm., *Advanced Florida Building Code Principals*, http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf (last visited Jan. 24, 2024).

⁴ S. 553.73(1), F.S. The civil rights portions of the AccessibilityCode are not incorporated.

⁵ A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific construction activity. Ss. 125.01(1)(bb), 125.56(1), 468.603(2), and 553.80(1), F.S.

⁶ Ss. 125.56 and 553.79, F.S.

⁷ Building permits are generally not required for cosmetic improvements, such as painting or flooring replacement. S. 553.79, F.S.

⁸ A building official is a local government employee or a person contracted with a government entity who supervises building code activities. *Id.*

⁹ *Id.*

¹⁰ S. 553.781, F.S.

¹¹ *Id.*

Certificates of Completion or Occupancy

The building official issues a certificate of completion when an existing building or structure is renovated or remodeled without a change in its occupancy or use, or when a shell building¹² is newly constructed, and such work passes its final building inspection.¹³ When a new structure to be occupied¹⁴ passes its final building inspection, the building official issues a certificate of occupancy.¹⁵ A building or structure requiring a certificate of completion or occupancy generally may not be used or occupied until the appropriate certificate is issued; however, the building official may issue a temporary certificate of completion or occupancy before the project's close if a portion of the building or structure may be safely used or occupied.¹⁶ The temporary certificate grants the applicant the same rights as a certificate of completion or occupancy but expires after a set time period unless the building official grants an extension.¹⁷ A building official may also suspend or revoke a temporary or final certificate of occupancy or completion if the certificate was issued in error or on the basis of incorrect information or where it is determined that the building or structure is in violation of any ordinance, regulation, or Building Code provision.¹⁸

HVAC System Contractors

Job Scopes

Chapter 489, F.S., regulates the profession of contracting in the state. Generally speaking, a contractor is the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, and whose job scope is substantially similar to the job scopes described in s. 489.105, F.S.¹⁹ Such job scopes include a:

- “Class A air-conditioning contractor,” meaning a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design central air-conditioning, heating, and ventilation (“HVAC”) systems and to perform other related tasks, including replacing, disconnecting, or reconnecting power wiring on the load side²⁰ of the dedicated existing electrical disconnect switch.²¹
- “Class B air-conditioning contractor,” meaning a contractor whose services are limited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design HVAC systems and to perform other related tasks, including replacing, disconnecting, or reconnecting power wiring on the load side of the dedicated existing electrical disconnect switch.²²
- “Mechanical contractor,” meaning a contractor whose services are unlimited in the execution of contracts requiring the experience, knowledge, and skill to install, maintain, repair, fabricate, alter, extend, or design HVAC systems and to perform other tasks,²³ including replacing,

¹² A shell building separates a structure's interior space from its exterior and generally consists of the foundation, outer walls, roofing, windows, and exterior doors. When a shell building is constructed, the developer leaves the structure's interior unfinished so that the purchaser or tenant may contract with other construction professionals to customize its elements (including flooring, ceilings, interior walls, interior doors, and electrical fittings). Nassau County Building/Code Enforcement Department, *Guidelines for Shell Building and Tenant Build-Out Permits*, <https://www.nassaucountyfl.com/DocumentCenter/View/13984/Guidelines-for-Shell-Building-and-Tenant-Build-Out-Permits?bidId> (last visited Jan. 24, 2024).

¹³ Passage of a final building inspection includes obtaining approvals for all permits issued for the project (such as building and fire permits and sub-permits such as electrical, mechanical, elevator, plumbing, and roof permits). S. 553.79(17)(a), F.S.; S. 110, Fla. Bldg. Code, 7th Ed. (2020).

¹⁴ This includes an existing building or structure for which the occupancy classification is changing.

¹⁵ S. 111, Fla. Bldg. Code, 7th Ed. (2020).

¹⁶ Typically, the building official also requires that any outstanding work be nearing completion before issuing a temporary certificate. See City of Tampa, *Apply for a Temporary Certificate of Occupancy*, <https://www.tampa.gov/document/apply-temporary-certificate-occupancy-tco-35571> (last visited Jan. 24, 2024) (requiring an applicant for a temporary certificate of occupancy to affirm that construction will be complete within 90 days); *id.*

¹⁷ S. 111, Fla. Bldg. Code, 7th Ed. (2020).

¹⁸ *Id.*

¹⁹ S. 489.105(3), F.S.

²⁰ The electrical wiring to the disconnect feed is fed from the “load side,” or outgoing side.

²¹ S. 489.105(3), F.S.

²² *Id.*

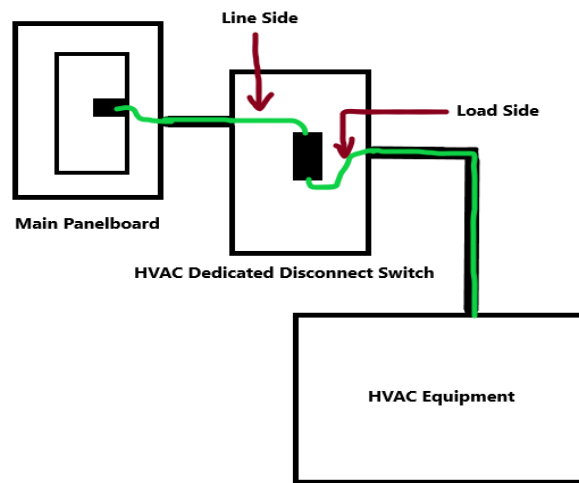
²³ In addition to the tasks a class A contractor may perform, a mechanical contractor may work on medical and fuel gas lines.

disconnecting, or reconnecting power wiring on the load side of the dedicated existing electrical disconnect switch.²⁴

HVAC System Contractor Limitations

An electrical disconnect switch is a switch that isolates all wiring in a home or other structure, or the wiring in a dedicated electrical circuit,²⁵ from its power source.²⁶ Electricity to a disconnect switch is fed from the “load side,” or outgoing side, of the power source to the “line side,” or incoming side, of the switch; electricity is then fed from the “load side” of the disconnect switch to the “line side” of the device to be powered.²⁷ The components of an electrical circuit, including an electrical disconnect switch, are rated for a maximum flow of electrical current, measured in amperes; the higher the ampere rating, the more continuous electrical current an electrical circuit can handle without the risk of component deterioration or overheating.²⁸

Under Florida law, an HVAC unit must have a dedicated electrical disconnect switch, which switch must be located within sight of and be readily accessible from the HVAC unit.²⁹ Electricity runs from the power source to the dedicated HVAC electrical disconnect switch through the switch’s “line side,” and from the switch’s “load side” to the HVAC unit, as indicated in the diagram below:



Under Florida law, only a licensed electrical contractor may perform “line side” work on the dedicated HVAC electrical disconnect switch.³⁰ Thus, HVAC system contractors, whether they are class A, class B, or mechanical, are currently prohibited from replacing, disconnecting, or reconnecting power wiring on the line side of the dedicated HVAC disconnect switch or from repairing or replacing power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits. However, the Building Code requires that HVAC units and components thereof be installed in compliance with the amperage requirements of the unit or component.³¹ Thus, where components of a home or structure’s existing electrical circuit cannot handle the ampere requirements of the new or repaired HVAC unit, a licensed electrical contractor is

²⁴ *Id.*

²⁵ A “dedicated electrical circuit” has its own circuit breaker and supports a single outlet; thus, only one electrically powered device can draw power from that circuit at any given time. Harrison Electric, Inc. *Dedicated Circuits: What They Are & How to Determine If You Need Them*, Aug. 16, 2021, <https://harrison-electric.com/Blog/entryid/243/dedicated-circuits-what-they-are-how-to-determine-if-you-need-them> (last visited Jan. 24, 2024).

²⁶ Power will flow to the breaker so long as the power source is operational, but power will only flow from the breaker through the structure if the disconnect switch is flipped to the “on” position. This is what is meant by “isolate.” American Electrical, Inc., *Switching to Safety: Exploring the Importance of Disconnect Switches in Electrical Systems*, Jun 20, 2023, <https://www.linkedin.com/pulse/switching-safety-exploring-importance-disconnect/> (last visited Jan. 24, 2024).

²⁷ Barbara Bellesi Zito, *Line vs. Load Wire: What’s the Difference*, May 5, 2023, <https://www.angi.com/articles/line-vs-load-wire.htm> (last visited Jan. 24, 2024).

²⁸ Dave Robbs, *What are Amps, Watts, Volts, and Ohms, How Stuff Works*, Oct. 3, 2022, <https://science.howstuffworks.com/environmental/energy/question501.htm> (last visited Jan. 24, 2024).

²⁹ S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

³⁰ S. 489.505(12), F.S.

³¹ S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

generally needed to upgrade the insufficient components before the HVAC contractor may safely turn on the new or repaired HVAC unit.

HVAC System Warranties

General Background

A warranty is, in essence, a contract making assurances about the condition of a product, which contract requires the product's manufacturer or seller to replace, repair, or issue a refund for the product under the circumstances specified in the warranty agreement.³² A warranty can be either express or implied.³³ An express warranty is a verbal or written assurance for a product, which warranty is created by an affirmation of fact or promise made by the seller to the buyer that relates to the goods, by any description of the goods that is made part of the basis of the bargain, or by any sample or model that is made part of the basis of the bargain.³⁴ Conversely, an implied warranty is an unstated assurance that the product is made for its intended purpose, which warranty exists in addition to any express warranty.³⁵ However, there is no implied warranty where a seller states that the product is sold "as is," "with all faults," or where the seller uses similar language.³⁶

Manufacturer's, Distributor's, and Retailer's Warranties

A manufacturer's, distributor's, or retailer's warranty protects a consumer from defects in a faulty product and generally attaches to a product at the time of its sale.³⁷ Such warranties are considered limited warranties because their coverage period generally lasts only for a certain time period after the product's sale, which time period is specified in the warranty agreement.³⁸

Once the coverage period expires, the consumer may have the option to purchase an extended warranty under different coverage terms from the original warranty provider or a third-party provider to extend the product's protection period.³⁹ Such a warranty may also be purchased at any time to protect the consumer from common issues not typically covered by a standard manufacturer's, distributor's, or retailer's warranty, such as installation error or cosmetic defects.

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act ("Act")⁴⁰ governs consumer product warranties at the federal level. Passed in 1975, the Act requires the manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.⁴¹ The Act defines three types of consumers:

- The buyer of a consumer product;
- Any person to whom such product is transferred during the duration of an applicable warranty; and
- Any other person who is entitled by the terms of such warranty or under applicable State law to enforce the warranty's obligations.⁴²

³² Will Kenton, *Warranty Definition, How it Works, Types, and Example*, Investopedia, Oct. 6, 2023, <https://www.investopedia.com/terms/w/warranty.asp> (last visited Jan. 24, 2024).

³³ 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

³⁴ S. 672.313, F.S.

³⁵ S. 672.314, F.S.

³⁶ S. 672.316, F.S.

³⁷ Kenton, *supra* note 32.

³⁸ *Id.*

³⁹ Tom Scott, *Extended Warranties vs. Manufacturer Warranties: What's the Difference?*, Fortegra, July 9, 2019, <https://blog.fortegra.com/extended-warranties-vs.-manufacturer-warranties-whats-the-difference> (last visited Jan. 24, 2024).

⁴⁰ 15 U.S.C. ss. 2301-2312 (1975).

⁴¹ The Act does not apply if a seller or manufacturer does not provide a warranty on the product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited Jan. 24, 2024).

⁴² *O'Connor v. BMW of North America, LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); see also, s. 2310(d) of the Act (providing that "a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages...").

HVAC System Warranties

Before July 1, 2023, if a residential property that included an HVAC system was conveyed to a new owner, a manufacturer's warranty in effect on that system or a component thereof would not necessarily pass to the new owner, and if it did, the coverage period might be shortened or additional conditions might be imposed. Whether or not a warranty would pass to the new owner, and what consequences would attach, depended on the warranty agreement's terms and conditions.

However, in 2023, the Florida Legislature passed CS/HB 1203, which, in pertinent part, provided that an HVAC manufacturer's warranty runs with the property on which the HVAC system is a fixture, not with the original purchaser; thus, in the sale of a residential property as described above, the manufacturer's warranty automatically passes to the new owner. Further, the bill specified that:

- The warranty continues in effect as if the new owner were the original purchaser of the covered system or component;
- A warrantor continues to be obligated under the terms of a manufacturer's warranty agreement for a warranty so transferred and may not charge a fee for such transfer; and
- Such a transfer does not extend the remaining time of the warranty's coverage period.

Further, before July 1, 2023, it was possible for an HVAC system manufacturer to refuse to honor the terms of an HVAC system warranty if the purchaser of the HVAC system or a component covered by the warranty did not register the warranty with the manufacturer. However, under 2023 CS/HB 1203, a manufacturer's HVAC warranty is deemed registered with the manufacturer if a contractor licensed under Part I of ch. 489, F.S.:

- Installs the new HVAC system; and
- Provides the manufacturer with the date of issuance of the certificate of occupancy for installations relating to new construction, or the serial number of the HVAC system for installations relating to existing construction, as applicable.

Such a contractor must document the installation through an invoice or a receipt and give the invoice or receipt to the customer.

Effect of Proposed Changes

HVAC Contractors

CS/HB 481 amends s. 489.105, F.S., to broaden the definitions of "class A air-conditioning contractor," "class B air-conditioning contractor," and "mechanical contractor" to include a contractor whose services may, with proper use of a circuit breaker lock,⁴³ extend to the execution of contracts requiring the skill, knowledge, and experience to:

- Replace, disconnect, and reconnect power wiring on the line side of the dedicated existing electrical disconnect switch on a single-phase electrical system; and
- Repair or replace power wiring, disconnects, breakers, or fuses for dedicated HVAC circuits.

Practically speaking, this would allow class A air-conditioning, class B air-conditioning, and mechanical contractors to complete an HVAC system repair or replacement without having to wait for a licensed electrical contractor to complete the line-side work or to repair or replace dedicated HVAC circuit components.

HVAC System or System Component Warranties

The bill amends s. 559.956, F.S., to remove language:

⁴³ Generally speaking, a circuit breaker lock is a device which keeps a breaker in an "off" position and prevents unexpected electricity reenergization during equipment repair. Grainger, *Circuit Breaker Lockout Devices*, <https://www.grainger.com/category/safety/lockout-tagout/electrical-lockout-devices/circuit-breaker-lockout-devices> (last visited Jan. 24, 2024).

- Indicating that an HVAC system manufacturer's warranty is deemed registered if a licensed contractor installs the new HVAC system and provides the manufacturer with the date of issuance of the certificate of occupancy for installations relating to new construction or the serial number of the HVAC system for installations relating to existing construction.
- Requiring a licensed contractor who installs a new HVAC system to document the installation through an invoice or receipt and provide the invoice or receipt to the customer.

Instead, the bill creates s. 559.957, F.S., to specify that the full length of a manufacturer's, distributor's, or retailer's HVAC system or system component warranty is effective in Florida on the date of installation if installed by a contractor licensed under Part I of Ch. 48, F.S. Under this new section created by the bill, if an HVAC system or system component manufacturer, distributor, or retailer provides a warranty or product registration card form, or an electronic, online warrant or product registration form, the card or form must contain the following information, which information must be displayed in a clear and conspicuous manner:

- The card or form is for the product registration.
- Failure to complete and return the card or form does not diminish any warranty rights or decrease the warranty length.
- Any offered manufacturer's, distributor's, or retailer's HVAC system or system component warranty may not be in any way conditioned upon the product registration.

Similarly, the bill amends s. 559.956, F.S., to specify that an HVAC system manufacturer's warranty may not be in any way conditioned upon product registration. Under the bill, s. 559.956, F.S., applies if:

- A sale of a residential property that includes an HVAC system as a fixture occurs on or after July 1, 2024; and
- A manufacturer's warranty is still in effect on the HVAC system or a system component.

Practically speaking, this means that if the purchaser of an HVAC system or system component for which a manufacturer's, distributor's, or retailer's warranty is provided fails to register the product, the warranty continues in full force and effect as though it had been registered. Further, on or after July 1, 2024, the new owner of a residential property sold with an HVAC system for which a manufacturer's warranty is still in place would not have to register the product with the manufacturer for the warranty to transfer and continue in full effect.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 489.105, F.S., relating to definitions.

Section 2: Amends s. 559.956, F.S., relating to registration and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; required contractor documentation.

Section 3: Creates s. 559.957, F.S., relating to registration of heating, ventilation, and air-conditioning systems; prohibition against warranty conditioned upon registration.

Section 4: Provides an effective date of July 1, 2024.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it:

- Preserves an HVAC system or system component warranty where the original consumer, or a subsequent purchaser, does not register the product.
- Allows a class A air-conditioning, class B air-conditioning, or mechanical contractor to complete the line-side procedures of an HVAC system or system component repair or replacement in a manner that reduces costs for a consumer.

Further, the bill may have a negative economic impact on HVAC manufacturers, distributors, and retailers to the extent that such persons must honor warranties they would not have otherwise had to honor.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 11, 2024, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute, as follows:

- The first amendment removed a provision authorizing an attorney fee award to the prevailing party in a Building Code or Accessibility Code interpretation challenge.
- The second amendment clarified that an HVAC contractor authorized by the bill to perform specified work on the line side of the dedicated existing electrical disconnect switch on a single-phase electrical system, and to repair or replace specified components for dedicated HVAC circuits, may do so only with proper use of a circuit breaker lock.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to building construction regulations
 3 and system warranties; amending s. 489.105, F.S.;
 4 revising definitions; amending s. 559.956, F.S.;
 5 providing a specified effective date for provisions
 6 relating to HVAC manufacturer's warranty transfers;
 7 prohibiting HVAC manufacturer's warranties from being
 8 conditioned upon the product registration; providing
 9 applicability; removing provisions relating to HVAC
 10 manufacturer's warranty registration; creating s.
 11 559.957, F.S.; providing the effective date for
 12 certain HVAC systems and components warranties under a
 13 specified circumstance; providing required information
 14 for warranty and product registration cards and forms;
 15 prohibiting HVAC systems and components warranties
 16 from being conditioned upon the product registration;
 17 providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Paragraphs (f), (g), and (i) of subsection (3)
 22 of section 489.105, Florida Statutes, are amended to read:

23 489.105 Definitions.—As used in this part:

24 (3) "Contractor" means the person who is qualified for,
 25 and is only responsible for, the project contracted for and

26 | means, except as exempted in this part, the person who, for
27 | compensation, undertakes to, submits a bid to, or does himself
28 | or herself or by others construct, repair, alter, remodel, add
29 | to, demolish, subtract from, or improve any building or
30 | structure, including related improvements to real estate, for
31 | others or for resale to others; and whose job scope is
32 | substantially similar to the job scope described in one of the
33 | paragraphs of this subsection. For the purposes of regulation
34 | under this part, the term "demolish" applies only to demolition
35 | of steel tanks more than 50 feet in height; towers more than 50
36 | feet in height; other structures more than 50 feet in height;
37 | and all buildings or residences. Contractors are subdivided into
38 | two divisions, Division I, consisting of those contractors
39 | defined in paragraphs (a)-(c), and Division II, consisting of
40 | those contractors defined in paragraphs (d)-(q):

41 | (f) "Class A air-conditioning contractor" means a
42 | contractor whose services are unlimited in the execution of
43 | contracts requiring the experience, knowledge, and skill to
44 | install, maintain, repair, fabricate, alter, extend, or design,
45 | if not prohibited by law, central air-conditioning,
46 | refrigeration, heating, and ventilating systems, including duct
47 | work in connection with a complete system if such duct work is
48 | performed by the contractor as necessary to complete an air-
49 | distribution system, boiler and unfired pressure vessel systems,
50 | and all appurtenances, apparatus, or equipment used in

51 connection therewith, and any duct cleaning and equipment
52 sanitizing that requires at least a partial disassembling of the
53 system; to install, maintain, repair, fabricate, alter, extend,
54 or design, if not prohibited by law, piping, insulation of
55 pipes, vessels and ducts, pressure and process piping, and
56 pneumatic control piping; to replace, disconnect, or reconnect
57 power wiring on the line or load side of the dedicated existing
58 electrical disconnect switch on single phase electrical systems;
59 to repair or replace power wiring, disconnects, breakers, or
60 fuses for dedicated HVAC circuits with proper use of a circuit
61 breaker lock; to install, disconnect, and reconnect low voltage
62 heating, ventilating, and air-conditioning control wiring; and
63 to install a condensate drain from an air-conditioning unit to
64 an existing safe waste or other approved disposal other than a
65 direct connection to a sanitary system. The scope of work for
66 such contractor also includes any excavation work incidental
67 thereto, but does not include any work such as liquefied
68 petroleum or natural gas fuel lines within buildings, except for
69 disconnecting or reconnecting changeouts of liquefied petroleum
70 or natural gas appliances within buildings; potable water lines
71 or connections thereto; sanitary sewer lines; swimming pool
72 piping and filters; or electrical power wiring. A Class A air-
73 conditioning contractor may test and evaluate central air-
74 conditioning, refrigeration, heating, and ventilating systems,
75 including duct work; however, a mandatory licensing requirement

76 | is not established for the performance of these specific
77 | services.

78 | (g) "Class B air-conditioning contractor" means a
79 | contractor whose services are limited to 25 tons of cooling and
80 | 500,000 Btu of heating in any one system in the execution of
81 | contracts requiring the experience, knowledge, and skill to
82 | install, maintain, repair, fabricate, alter, extend, or design,
83 | if not prohibited by law, central air-conditioning,
84 | refrigeration, heating, and ventilating systems, including duct
85 | work in connection with a complete system only to the extent
86 | such duct work is performed by the contractor as necessary to
87 | complete an air-distribution system being installed under this
88 | classification, and any duct cleaning and equipment sanitizing
89 | that requires at least a partial disassembling of the system; to
90 | install, maintain, repair, fabricate, alter, extend, or design,
91 | if not prohibited by law, piping and insulation of pipes,
92 | vessels, and ducts; to replace, disconnect, or reconnect power
93 | wiring on the line or load side of the dedicated existing
94 | electrical disconnect switch on single phase electrical systems;
95 | to repair or replace power wiring, disconnects, breakers, or
96 | fuses for dedicated HVAC circuits with proper use of a circuit
97 | breaker lock; to install, disconnect, and reconnect low voltage
98 | heating, ventilating, and air-conditioning control wiring; and
99 | to install a condensate drain from an air-conditioning unit to
100 | an existing safe waste or other approved disposal other than a

101 direct connection to a sanitary system. The scope of work for
102 such contractor also includes any excavation work incidental
103 thereto, but does not include any work such as liquefied
104 petroleum or natural gas fuel lines within buildings, except for
105 disconnecting or reconnecting changeouts of liquefied petroleum
106 or natural gas appliances within buildings; potable water lines
107 or connections thereto; sanitary sewer lines; swimming pool
108 piping and filters; or electrical power wiring. A Class B air-
109 conditioning contractor may test and evaluate central air-
110 conditioning, refrigeration, heating, and ventilating systems,
111 including duct work; however, a mandatory licensing requirement
112 is not established for the performance of these specific
113 services.

114 (i) "Mechanical contractor" means a contractor whose
115 services are unlimited in the execution of contracts requiring
116 the experience, knowledge, and skill to install, maintain,
117 repair, fabricate, alter, extend, or design, if not prohibited
118 by law, central air-conditioning, refrigeration, heating, and
119 ventilating systems, including duct work in connection with a
120 complete system if such duct work is performed by the contractor
121 as necessary to complete an air-distribution system, boiler and
122 unfired pressure vessel systems, lift station equipment and
123 piping, and all appurtenances, apparatus, or equipment used in
124 connection therewith, and any duct cleaning and equipment
125 sanitizing that requires at least a partial disassembling of the

126 system; to install, maintain, repair, fabricate, alter, extend,
127 or design, if not prohibited by law, piping, insulation of
128 pipes, vessels and ducts, pressure and process piping, pneumatic
129 control piping, gasoline tanks and pump installations and piping
130 for same, standpipes, air piping, vacuum line piping, oxygen
131 lines, nitrous oxide piping, ink and chemical lines, fuel
132 transmission lines, liquefied petroleum gas lines within
133 buildings, and natural gas fuel lines within buildings; to
134 replace, disconnect, or reconnect power wiring on the line or
135 load side of the dedicated existing electrical disconnect switch
136 on single phase electrical systems; to repair or replace power
137 wiring, disconnects, breakers, or fuses for dedicated HVAC
138 circuits with proper use of a circuit breaker lock; to install,
139 disconnect, and reconnect low voltage heating, ventilating, and
140 air-conditioning control wiring; and to install a condensate
141 drain from an air-conditioning unit to an existing safe waste or
142 other approved disposal other than a direct connection to a
143 sanitary system. The scope of work for such contractor also
144 includes any excavation work incidental thereto, but does not
145 include any work such as potable water lines or connections
146 thereto, sanitary sewer lines, swimming pool piping and filters,
147 or electrical power wiring. A mechanical contractor may test and
148 evaluate central air-conditioning, refrigeration, heating, and
149 ventilating systems, including duct work; however, a mandatory
150 licensing requirement is not established for the performance of

151 | these specific services.

152 | Section 2. Section 559.956, Florida Statutes, is amended
153 | to read:

154 | 559.956 ~~Registrations and~~ Transfers of heating,
155 | ventilation, and air-conditioning system manufacturer
156 | warranties; ~~required contractor documentation.~~

157 | (1) If a residential real property that includes a
158 | heating, ventilation, and air-conditioning (HVAC) system as a
159 | fixture to the property is conveyed to a new owner on or after
160 | July 1, 2024, a manufacturer's warranty in effect on that system
161 | or a component of that system:

162 | (a) Is automatically transferred to the new owner; and

163 | (b) Continues in effect as if the new owner was the
164 | original purchaser of such system or component, as applicable.

165 | (2) A warrantor continues to be obligated under the terms
166 | of a manufacturer's warranty agreement for a warranty
167 | transferred under this section and may not charge a fee for the
168 | transfer of the warranty.

169 | (3) The transfer of a manufacturer's warranty under this
170 | section does not extend the remaining term of the warranty.

171 | (4) A manufacturer's warranty of a HVAC system or a
172 | component of the system may not be in any way conditioned upon
173 | the product registration.

174 | (5) This section applies if:

175 | (a) A sale of a residential property that includes an HVAC

176 system as a fixture to the property occurs on or after July 1,
177 2024.

178 (b) A manufacturer's warranty is still in effect on the
179 HVAC system or a component of the system.

180 ~~(4) A manufacturer's warranty for an HVAC system is deemed~~
181 ~~registered with the manufacturer if a contractor licensed under~~
182 ~~part I of chapter 489:~~

183 ~~(a) Installs the new HVAC system; and~~

184 ~~(b) Provides the manufacturer of the HVAC system with the~~
185 ~~date of the issuance of the certificate of occupancy for~~
186 ~~installations relating to new construction, or the serial number~~
187 ~~of the HVAC system for installations relating to existing~~
188 ~~construction, as applicable.~~

189 ~~(5) A contractor licensed under part I of chapter 489 who~~
190 ~~installs a new HVAC system must document the installation~~
191 ~~through an invoice or a receipt and provide the invoice or~~
192 ~~receipt to the customer.~~

193 Section 3. Section 559.957, Florida Statutes, is created
194 to read:

195 559.957 Registration of heating, ventilation, and air-
196 conditioning systems; prohibition against warranty conditioned
197 upon registration.—

198 (1) The full length of a manufacturer's, distributor's, or
199 retailer's warranty of a heating, ventilation, and air-
200 conditioning (HVAC) system or any component of the system is

201 effective in this state on the date of installation if installed
202 by a contractor licensed under part I of chapter 489.

203 (2) If a manufacturer, distributor, or retailer of a HVAC
204 system or any component of the system provides a warranty or
205 product registration card or form, or an electronic, online
206 warranty or product registration form, the card or form must
207 contain the following information, displayed in a clear and
208 conspicuous manner:

209 (a) The card or form is for the product registration.

210 (b) Failure to complete and return the card or form does
211 not diminish any warranty rights or decrease the warranty
212 length.

213 (3) Any offered manufacturer's, distributor's, or
214 retailer's warranty of a HVAC system or a component of the
215 system may not be in any way conditioned upon the product
216 registration.

217 Section 4. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 521 Equitable Distribution of Marital Assets and Liabilities

SPONSOR(S): Koster

TIED BILLS: IDEN./SIM. BILLS: SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N	Mathews	Jones
2) Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

In a proceeding for dissolution of marriage, the court must determine an equitable distribution of assets and liabilities between the parties. The court first evaluates the assets and liabilities of the parties and determines which are “marital” and which are “non-marital.” Under s. 61.075(6)(a)1, F.S., marital assets include:

- Assets and liabilities acquired and incurred during the marriage by either spouse or together as a marital couple;
- The enhancement of value and appreciation of non-marital assets due to the efforts of either spouse or the contribution of marital funds or other marital assets;
- Interspousal gifts during the marriage;
- All vested and non-vested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, and other similar funds;
- All real property held as tenants by the entirety; and
- All personal property titled jointly by the parties as tenants by the entireties, regardless of whether it was acquired prior to the marriage.

After establishing the list of assets and liabilities, the court must identify each non-marital asset and liability and set those apart to the respective owner spouse; non-marital assets and liabilities are not included in the equitable distribution process. The court must begin with the premise that the distribution of marital assets and liabilities should be equal, unless there is justification for an unequal distribution based on the factors provided by law.

HB 521 amends s. 61.075, F.S. to clarify various aspects of the equitable distribution process. The bill clarifies what sort of circumstances justify an interim partial distribution and provides a list of factors for the court to use in making a determination on whether good cause exists to make an interim partial distribution.

The bill requires any interspousal gift of real property to be made in writing in accordance with s. 689.01, F.S., similar to any other transfer of real property made outside of a marriage. The bill amends the definitions of “marital” and “nonmarital” property to reflect the requirement of a written instrument for an interspousal gift of real property. Lastly, the bill amends the list of marital assets to recognize the enterprise goodwill in a closely held business as a marital asset which should be distributed between the parties.

The bill may have an indeterminate fiscal impact on the private sector due to the changes made to the classification of marital property to be divided subject to a dissolution.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Equitable Distribution

During a dissolution of marriage proceeding, the court must evaluate the assets and liabilities of the parties and distribute the marital assets between the parties. The court must first identify all assets that are “non-marital” and set those aside to the respective owner spouse.¹ Next, the court must distribute the marital assets and liabilities between the parties.² In distributing the marital assets, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on relevant factors.³ Generally, equitable distribution is one of the first components the court must address in a dissolution matter as the distribution of assets may impact future earning potential and income which, in turn, may impact the amount of alimony, child support, or attorney fees assessed against each party.

Pursuant to s. 61.075(7), F.S., the cut-off date for determining assets and liabilities to be classified as marital is either the date the parties entered into a valid separation agreement⁴ or the date of the filing of the petition for dissolution, whichever is earlier. The assets and liabilities incurred by either spouse following the date of the marriage and not specifically identified as non-marital (such as property identified in a valid prenuptial agreement as being non-marital) are presumed to be marital assets and liabilities.⁵ Further, to do equity between the parties, in lieu of or to supplement, facilitate, or effectuate the equitable distribution, the court may order a lump sum monetary payment or installment payments to the other spouse over a fixed period of time.⁶

Marital Assets

Pursuant to s. 61.075(6)(a)1, F.S. marital assets and liabilities include:

- Assets and liabilities acquired and incurred during the marriage by either spouse or together as a marital couple;
- The enhancement of value and appreciation of non-marital assets due to the efforts of either spouse or the contribution of marital funds or other marital assets;⁷
- Interspousal gifts during the marriage;⁸
- All vested and non-vested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, and other similar funds;
- All real property held as tenants by the entirety; and
- All personal property titled jointly by the parties as tenants by the entireties, regardless of whether it was acquired prior to the marriage.

Non-Marital Assets

On the other hand, s. 61.075(6)(b) identifies non-marital assets and liabilities as including:

- Assets acquired and liabilities incurred by either party prior to the marriage;

¹ S. 61.075(1), F.S.

² *Id.*

³ *Id.*

⁴ A valid written or oral agreement to separate is necessary; mere physical separation may not be sufficient to establish a separation date. *Broadway v. Broadway*, 132 So. 3d 953 (Fla. 1st DCA 2014).

⁵ S. 61.075(8), F.S.

⁶ S. 61.075(10)(a), F.S.

⁷ See *Jordan v. Jordan*, 127 So. 3d 794 (Fla. 4th DCA 2013) (husband's pre-marital real property was classified as marital property subject to equitable distribution based on the wife's integral role in managing vast improvements to the property during the marriage).

⁸ An interspousal gift is a gift between spouses during a marriage and is established by showing donative intent, delivery or possession of the gift, and surrender of control of the gift. *Hooker v. Hooker*, 220 So. 3d 397 (Fla. 2017).

- Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and all assets acquired in exchange for such;
- All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset;
- Assets and liabilities specifically excluded from marital classification by valid written agreement of the parties; and
- Any liability incurred by forgery or unauthorized signature of one spouse signing the name of the other spouse.

Unequal Distribution

After the allocation of non-marital assets to each respective party, the court makes a distribution of the marital assets and liabilities between the parties. The court must begin with the premise that such distribution is to be equal. However, upon finding justification for an unequal distribution, the court may unequally distribute such marital assets and liabilities. The court must consider all relevant factors when making a determination as to the justification for unequal distribution, including:⁹

- The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.
- The economic circumstances of the parties.
- The duration of the marriage.
- Any interruption of personal careers or educational opportunities of either party.
- The contribution of one spouse to the personal career or educational opportunity of the other spouse.
- The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
- The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the non-marital assets of the parties.
- The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court must first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.
- The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of the petition.
- Any other factors necessary to do equity and justice between the parties.

Interim Partial Distribution

The court may make an interim partial distribution of assets during the pendency of a dissolution proceeding. Upon a party's sworn motion¹⁰ presenting the factual basis for an interim distribution and a finding by the court that "good cause" exists for such, the court may award an interim distribution.¹¹ "Good cause" means extraordinary circumstances that require an interim partial distribution;¹² however, the court has broad discretion in what it deems to be an extraordinary circumstance. In awarding interim distribution, the court must make specific findings that any partial distribution will not cause inequity or prejudice to either party as to either party's claims for support or attorney fees.¹³

⁹ S. 61.075(1)(a)-(j), F.S.

¹⁰ An interim partial distribution may not be ordered in the absence of a verified motion requesting such a distribution. *Kemp v. Kemp*, 171 So. 3d 243 (Fla. 1st DCA 2015).

¹¹ S. 61.075(5), F.S.

¹² S. 61.075(5)(d), F.S.

¹³ S. 61.075(5)(b), F.S.

Business Interests

A business interest in a closely held business acquired by a spouse during the marriage is a marital asset that must be valued and distributed in accordance with s. 61.075, F.S.

The value of a business in excess of the value of its property and capital is called “goodwill.”¹⁴ Goodwill may also be thought of as the tendency of clients or customers to return to the business and recommend the business to others.¹⁵ One kind of goodwill, called “enterprise goodwill,” is the value that exists separate and apart from the reputation or continued presence of the owner spouse. As such, enterprise goodwill is a marital asset subject to equitable distribution in a dissolution proceeding. On the other hand, “personal goodwill” is the goodwill attributable to a person, not to the business, and is therefore considered a non-marital asset.¹⁶ However, when determining the existence of enterprise goodwill versus personal goodwill, the court in *Schmidt v. Schmidt* held that when the valuation of a business requires a covenant not to compete or non-solicitation agreement, it signals the existence of personal goodwill and no further analysis of the value of enterprise goodwill is required.¹⁷ As such, under *Schmidt*, when the valuation of a business requires a non-compete contract or a similar agreement to conduct the sale, the goodwill is considered personal goodwill and is not included in determining the value of said business for the purposes of equitable distribution.

Under current law, a court has broad discretion in how to value the goodwill associated with a closely held business. Further, although it has been well established in case law, chapter 61 does not expressly provide for the separate consideration of different types of goodwill in the valuation of a business during equitable distribution.

Transfer of Real Property

As noted above, gifts from one spouse to another made during the marriage are generally considered marital property that is subject to equitable distribution. Under section 689.01, F.S., all conveyances of real property must be made in writing and signed in the presence of two witnesses.¹⁸ However, in *Hooker v. Hooker*, 220 So. 3d 397 (Fla. 2017), the Florida Supreme Court affirmed a lower court ruling that had held a property owner spouse had effectively gifted formerly non-marital property to the other spouse, even though there was no written instrument validly conveying such property under s. 689.01. The result of the case was that the non-marital property was transformed into marital property, thus causing the property to be subject to equitable distribution between the spouses in a dissolution of marriage proceeding.

Effect of Proposed Changes

HB 521 amends s. 61.075, F.S. to clarify various components of the equitable distribution process. The bill clarifies the meaning of “good cause” for purposes of whether the court may order interim partial distribution pending a dissolution proceeding. More specifically, the bill establishes a list of factors the court must consider when determining whether extraordinary circumstances exist for such interim partial distribution, including the following:

- Whether there is a need for funds in order to avoid or prevent the loss of an asset through repossession or foreclosure, the loss of a house, the default by either party of a marital debt, or the levy of a tax lien.
- Whether there is a need for funds to pay an expense for a dependent child if nonpayment of the expense would be detrimental to the child.
- Whether one of both parties have a need to access funds to pay a reasonable amount of the attorney fees, court costs, or other suit money for maintaining or defending a dissolution proceeding.
- Any other circumstances that justify granting an interim partial equitable distribution.

¹⁴ *Thompson v. Thompson*, 576 So. 2d 267 (Fla. 1991) (citing *Swann v. Mitchell*, 435 So. 2d 797 (Fla. 1983)).

¹⁵ See *Thompson*, 576 So. 2d at 269.

¹⁶ See *id.* at 270.

¹⁷ *Schmidt v. Schmidt*, 120 So. 3d 31, 33 (Fla. 4th DCA 2013).

¹⁸ S. 689.01(1), F.S.

The bill also amends s. 61.075(6)(a)1, F.S., to provide that the term “marital assets and liabilities” includes all of the listed items offered under that subparagraph. Further, the bill prohibits an interspousal gift of real property from being made without written documentation that complies with the provisions for conveyance of real property under s. 689.01, F.S. As such, under the bill, the mere inference of a gift of real property, as occurred in *Hooker*, without written documentation for the conveyance of such real property, would not meet the threshold required for an interspousal gift and would be assessed as any other acquisition of real property purchased within a marriage.

The bill further provides that the joinder of a spouse in the execution of a deed with the sole purpose of the conveyance of homestead real property to any person or entity other than the other spouse or both spouses jointly does not change the character of the real property being conveyed, or any proceeds from the sale thereof, to marital property. The bill amends s. 61.075(6)(b), F.S. to add a sixth asset to the prescribed list of non-marital assets and liabilities offered in statute. Under the bill, real property acquired separately by either party through noninterspousal gift, bequest, devise, or descent for which legal title has not been transferred to the parties as tenants in the entirety remains non-marital property for the purposes of equitable distribution.

The bill adds to the list of marital assets the marital interest in a closely held business. Further, the bill specifies the manner by which the court conducts a valuation of the marital interest in a closely held business. Under the bill, the court is directed to use the fair market value¹⁹ in determining the value of the closely held business. Additionally, the bill recognizes enterprise goodwill as a marital asset and distinguishes it from personal goodwill, which is a non-marital asset. As such, any enterprise goodwill in the business is a marital asset that must be valued by the court for distribution. In making a valuation of the closely held business, the bill requires the court to consider evidence that a non-compete clause or similar restrictive covenant may be required upon the sale of the business. However, contrary to the court in *Schmidt*, the bill clarifies that the mere existence of a non-compete provision subject to a sale of the business is not dispositive as to whether the goodwill is considered enterprise goodwill, and thus a marital asset subject to equitable distribution; or personal goodwill, and thus a non-marital asset that is not subject to equitable distribution. As such, even if the valuation of a business is based on the requirement for a non-compete contract, the court may still conduct an analysis as to whether the goodwill is enterprise or personal and, thus, subject to equitable distribution.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 61.075, F.S., relating to equitable distribution of marital assets and liabilities.

Section 2: Provides an effect date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁹ The bill defines the “fair market value” as the price at which property would change hands between a willing and able buyer and a willing and able seller, with neither party under the compulsion to buy or sell, and when both parties possess reasonable knowledge of the relevant facts.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate impact on parties going through the dissolution process. The bill revises what constitutes a marital asset for the distribution of assets and liabilities and may alter the manner by which a court classifies certain property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

26 shall identify and value the marital and nonmarital assets and
27 liabilities made the subject of the sworn motion, set apart
28 those nonmarital assets and liabilities, and provide for a
29 partial distribution of those marital assets and liabilities. An
30 interim order may be entered at any time after the date the
31 dissolution of marriage is filed and served and before the final
32 distribution of marital and nonmarital assets and marital and
33 nonmarital liabilities.

34 (d) As used in this subsection, the term "good cause"
35 means extraordinary circumstances that justify ~~require~~ an
36 interim partial distribution. In determining if extraordinary
37 circumstances exist for purposes of this subsection, the court
38 must consider the following:

39 1. Whether there is a need for funds in order to avoid or
40 prevent the loss of an asset through repossession or
41 foreclosure, the loss of housing, the default by either party of
42 a marital debt, or the levy of a tax lien.

43 2. Whether there is a need for funds to pay an expense for
44 a dependent child if nonpayment of the expense would be
45 detrimental to the child.

46 3. Whether one or both parties have a need to access funds
47 in order to pay a reasonable amount of the attorney fees, court
48 costs, or other suit money for maintaining or defending a
49 proceeding under this chapter.

50 4. Any other circumstances that justify the entry of an

51 order granting an interim partial equitable distribution.

52 (6) As used in this section:

53 (a)1. "Marital assets and liabilities" include all of the
54 following:

55 a. Assets acquired and liabilities incurred during the
56 marriage, individually by either spouse or jointly by them.

57 b. The enhancement in value and appreciation of nonmarital
58 assets resulting from the efforts of either party during the
59 marriage or from the contribution to or expenditure thereon of
60 marital funds or other forms of marital assets, or both.

61 c. The paydown of principal of a note and mortgage secured
62 by nonmarital real property and a portion of any passive
63 appreciation in the property, if the note and mortgage secured
64 by the property are paid down from marital funds during the
65 marriage. The portion of passive appreciation in the property
66 characterized as marital and subject to equitable distribution
67 is determined by multiplying a coverture fraction by the passive
68 appreciation in the property during the marriage.

69 (I) The passive appreciation is determined by subtracting
70 the value of the property on the date of the marriage or the
71 date of acquisition of the property, whichever is later, from
72 the value of the property on the valuation date in the
73 dissolution action, less any active appreciation of the property
74 during the marriage as described in sub-subparagraph b., and
75 less any additional encumbrances secured by the property during

76 | the marriage in excess of the first note and mortgage on which
77 | principal is paid from marital funds.

78 | (II) The coverture fraction must consist of a numerator,
79 | defined as the total payment of principal from marital funds of
80 | all notes and mortgages secured by the property during the
81 | marriage, and a denominator, defined as the value of the subject
82 | real property on the date of the marriage, the date of
83 | acquisition of the property, or the date the property was
84 | encumbered by the first note and mortgage on which principal was
85 | paid from marital funds, whichever is later.

86 | (III) The passive appreciation must be multiplied by the
87 | coverture fraction to determine the marital portion of the
88 | passive appreciation of the property.

89 | (IV) The total marital portion of the property consists of
90 | the marital portion of the passive appreciation, the mortgage
91 | principal paid during the marriage from marital funds, and any
92 | active appreciation of the property during the marriage as
93 | described in sub-subparagraph b., not to exceed the total net
94 | equity in the property at the date of valuation.

95 | (V) The court shall apply the formula specified in this
96 | subparagraph unless a party shows circumstances sufficient to
97 | establish that application of the formula would be inequitable
98 | under the facts presented.

99 | d. Interspousal gifts during the marriage. An interspousal
100 | gift of real property may not be made in the absence of a

101 writing that complies with the requirements of s. 689.01. The
102 joinder of a spouse in the execution of a deed with the sole
103 purpose of the conveyance of homestead real property to any
104 person or entity other than the other spouse or both spouses
105 jointly does not change the character of the real property being
106 conveyed, or any proceeds from the sale thereof, to marital
107 property.

108 e. All vested and nonvested benefits, rights, and funds
109 accrued during the marriage in retirement, pension, profit-
110 sharing, annuity, deferred compensation, and insurance plans and
111 programs.

112 f. The marital interests in a closely held business. The
113 court shall determine the value of the marital interests in a
114 closely held business as follows:

115 (I) The standard of value of a closely held business is
116 fair market value. For purposes of this sub-subparagraph, the
117 term "fair market value" means the price at which property would
118 change hands between a willing and able buyer and a willing and
119 able seller, with neither party under compulsion to buy or sell,
120 and when both parties have reasonable knowledge of the relevant
121 facts.

122 (II) If there is goodwill separate and distinct from the
123 continued presence and reputation of the owner spouse, it is
124 considered enterprise goodwill, which is a marital asset that
125 must be valued by the court.

126 (III) The court must consider evidence that a covenant not
 127 to compete or a similar restrictive covenant may be required
 128 upon the sale of the closely held business, but such evidence
 129 alone does not preclude the court from finding enterprise
 130 goodwill.

131 2. All real property held by the parties as tenants by the
 132 entirety, whether acquired before ~~prior to~~ or during the
 133 marriage, ~~is shall be~~ presumed to be a marital asset. If, in any
 134 case, a party makes a claim to the contrary, the burden of proof
 135 ~~is shall be~~ on the party asserting the claim that the subject
 136 property, or some portion thereof, is nonmarital.

137 3. All personal property titled jointly by the parties as
 138 tenants by the entirety, whether acquired before ~~prior to~~ or
 139 during the marriage, ~~is shall be~~ presumed to be a marital asset.
 140 In the event a party makes a claim to the contrary, the burden
 141 of proof ~~is shall be~~ on the party asserting the claim that the
 142 subject property, or some portion thereof, is nonmarital.

143 4. The burden of proof to overcome the gift presumption is
 144 ~~shall be~~ by clear and convincing evidence.

145 (b) "Nonmarital assets and liabilities" include all of the
 146 following:

147 1. Assets acquired and liabilities incurred by either
 148 party prior to the marriage, and assets acquired and liabilities
 149 incurred in exchange for such assets and liabilities. ~~‡~~

150 2. Assets acquired separately by either party by

151 noninterspousal gift, bequest, devise, or descent, and assets
 152 acquired in exchange for such assets.~~†~~

153 3. All income derived from nonmarital assets during the
 154 marriage unless the income was treated, used, or relied upon by
 155 the parties as a marital asset.~~†~~

156 4. Assets and liabilities excluded from marital assets and
 157 liabilities by valid written agreement of the parties, and
 158 assets acquired and liabilities incurred in exchange for such
 159 assets and liabilities.~~†~~ and

160 5. Any liability incurred by forgery or unauthorized
 161 signature of one spouse signing the name of the other spouse.
 162 Any such liability is ~~shall be~~ a nonmarital liability only of
 163 the party having committed the forgery or having affixed the
 164 unauthorized signature. In determining an award of attorney
 165 ~~attorney's~~ fees and costs pursuant to s. 61.16, the court may
 166 consider forgery or an unauthorized signature by a party and may
 167 make a separate award for attorney ~~attorney's~~ fees and costs
 168 occasioned by the forgery or unauthorized signature. This
 169 subparagraph does not apply to any forged or unauthorized
 170 signature that was subsequently ratified by the other spouse.

171 6. Real property acquired separately by either party by
 172 noninterspousal gift, bequest, devise, or descent for which
 173 legal title has not been transferred to the parties as tenants
 174 by the entireties in accordance with this section.

175 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 533 DNA Samples from Inmates

SPONSOR(S): Fabricio

TIED BILLS: IDEN./SIM. BILLS: SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N	Leshko	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Smith	Keith
3) Judiciary Committee		Leshko	Kramer

SUMMARY ANALYSIS

Florida's statewide DNA database assists law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. The Florida Department of Law Enforcement (FDLE) administers the statewide DNA database, which is capable of classifying, matching, and storing analyses of such DNA samples and related data.

Multiple agencies share the responsibility of collecting DNA samples from qualifying offenders, including the Florida Department of Corrections (DOC), the Florida Department of Juvenile Justice (DJJ), sheriffs' offices, and county correctional facilities.

Under s. 943.325, F.S., qualifying offenders include both juveniles and adults who are:

- Committed to a county jail;
- Committed to or under the supervision of DOC or DJJ;
- Convicted of specified misdemeanor offenses; or
- Convicted of or arrested for any felony offense or attempted felony offense.

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested or incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. An incarcerated person and a juvenile in the custody of DJJ must submit a DNA sample at least 45 days before his or her presumptive release date.

HB 533 creates an unnumbered section of law, requiring each inmate in the custody of DOC to submit a DNA sample to DOC no later than September 30, 2024, if he or she has not previously provided a DNA sample pursuant to s. 943.325, F.S., relating to the Florida's statewide DNA database. The bill directs DOC to collect and process such samples in accordance with s. 943.325, F.S.

The bill is not anticipated to have a fiscal impact on DOC or FDLE. See Fiscal Analysis.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Statewide DNA Database

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells. Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile. DNA evidence may be collected from any biological material, such as hair, teeth, bones, skin cells, blood, semen, saliva, urine, feces, and other bodily substances.¹

Florida's statewide DNA database was established in 1989² to assist law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. The Florida Department of Law Enforcement (FDLE) administers the statewide DNA database, which is capable of classifying, matching, and storing analyses of DNA and other biological molecules and related data.³

DNA Sample Collection and Analysis

Multiple agencies share the responsibility of collecting DNA samples⁴ from qualifying offenders, including the Florida Department of Corrections (DOC), the Florida Department of Juvenile Justice (DJJ), sheriffs' offices, and county correctional facilities.⁵

Under s. 943.325, F.S., qualifying offenders include both juveniles and adults who are:

- Committed to a county jail;
- Committed to or under the supervision of DOC or DJJ;
- Convicted of specified misdemeanor offenses; or
- Convicted of or arrested for any felony offense or attempted felony offense.⁶

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested or incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.⁷

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility.⁸ When an offender is received into DOC's custody, reception center staff reviews the statewide database to determine if a DNA sample is already on file for that offender. If no sample is currently on file, a DNA sample is taken and forwarded to FDLE. If FDLE notifies DOC that a submitted DNA sample was rejected, a new DNA sample is taken and re-submitted to FDLE.⁹

¹ FindLaw, *How DNA Evidence Works*, <https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html> (last visited Jan. 25, 2024).

² Ch. 89-335, Laws of Fla.

³ S. 943.325(4), F.S.

⁴ "DNA sample" means a buccal or other approved biological specimen capable of undergoing DNA analysis. S. 943.325(2)(f), F.S.

⁵ FDLE, *DNA Database*, <https://www.fdle.state.fl.us/Forensics/Disciplines/DNA-Database> (last visited Jan. 25, 2024).

⁶ S. 943.325(2)(g), F.S.

⁷ S. 943.325(7), F.S.

⁸ S. 943.325(7)(b), F.S.

⁹ DOC, Agency Analysis of 2024 Senate Bill 524, p. 2 (Jan. 19, 2023)(on file with the House Judiciary Committee).

DNA reviews are also conducted when an incarcerated person leaves DOC's custody to attend a court hearing or is transferred to a private correctional facility.¹⁰ Additionally, an incarcerated person and a juvenile in the custody of DJJ must submit a DNA sample at least 45 days before his or her presumptive release date.¹¹

If an offender is released from custody to supervision, another DNA review is conducted. Moreover, within the first 60 days of supervision, a case management review is conducted to ensure that a DNA sample has been collected and forwarded to FDLE for processing.¹²

The statewide database may contain DNA data obtained from the following types of biological samples:

- Crime scene samples.
- Samples required by law to be obtained from qualifying offenders.
- Samples lawfully obtained during the course of a criminal investigation, including those from deceased victims or deceased suspects.
- Samples from unidentified human remains.
- Samples from persons reported missing.
- Samples voluntarily contributed by relatives of missing persons.
- Other samples approved by FDLE.¹³

The collection of DNA samples may be performed by any person using a collection kit approved by FDLE as directed in the kit or pursuant to other procedures approved by or acceptable to FDLE.¹⁴ After collection, the DNA samples are forwarded to FDLE for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person from whom the sample was taken.¹⁵

When an analysis is complete it is entered into the statewide DNA database.¹⁶ The analysis results allow for the comparison of DNA from unresolved cases to the DNA of both known offenders and that from other unresolved cases in an attempt to identify the perpetrator.¹⁷ All accredited local government crime laboratories in Florida have access to the statewide DNA database in accordance with rules and agreements established by FDLE.¹⁸

FDLE specifies database procedures to maintain compliance with national quality assurance standards to ensure that DNA records will be accepted into the National DNA Index System. Results of any DNA analysis may only be released to criminal justice agencies.¹⁹ Otherwise, the information is confidential and exempt from s. 119.07(1), F.S., and art. I, s. 24(a), of the Florida Constitution.²⁰

FBI's Combined DNA Index System (CODIS)

The most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats or satellite tandem repeats (STRs).²¹ In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index

¹⁰ DOC, *supra* at note 9.

¹¹ S. 943.325(7)(c), F.S.

¹² DOC, *supra* at note 9.

¹³ S. 943.325(6), F.S.

¹⁴ Fla. Admin. Code R. 11D-6.001 and 11D-6.003.

¹⁵ S. 943.325(10-11), F.S.

¹⁶ S. 943.325(13)(c), F.S.

¹⁷ FDLE, *Submission FAQ DNA Database*, <https://www.fdle.state.fl.us/Forensics/Submission-FAQ/DNA-Database> (last visited Jan. 25, 2024).

¹⁸ S. 943.325(4), F.S.

¹⁹ Criminal justice agencies include the court, FDLE, DJJ, components of the Department of Children and Families, components of the Department of Financial Services, and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

²⁰ S. 943.325(14), F.S.

²¹ Kelly Lowenberg, *Applying the Fourth Amendment when DNA Collected for One Purpose is Tested for Another*, 79 U. Cin. L. Rev. 1289, 1293 (2011), <https://law.stanford.edu/wp-content/uploads/2011/11/APPLYING-THE-FOURTH-AMENDMENT-WHEN-DNA-COLLECTED-FOR-ONE-PURPOSE.pdf> (last visited Jan. 25, 2024).

System (CODIS).²² CODIS is now the general term used to describe the FBI's program of support for local, state, and national criminal justice DNA databases, as well as the software used to run these databases.²³

National DNA Index System (NDIS)

The DNA Identification Act of 1994 (DNA Act)²⁴ authorized the government to establish a National DNA Index, and in 1998 the National DNA Index System (NDIS) was established. NDIS is the national level component of CODIS and contains DNA profiles contributed by federal, state, and local participating forensic laboratories,²⁵ enabling law enforcement to exchange and compare DNA profiles electronically in an attempt to link a crime or a series of crimes to each other or to a known offender. If a match is identified, the laboratories involved exchange information to verify the match and establish coordination between the two agencies. This match can provide probable cause for law enforcement to obtain a warrant to collect a biological reference sample from an offender. A laboratory can then perform DNA analysis on the known biological sample and present the analysis as evidence in court.²⁶

A state seeking to participate in NDIS must sign a memorandum of understanding with the FBI agreeing to the DNA Act's requirements, including record-keeping requirements and other procedures. To submit a DNA record to NDIS, a participating laboratory must adhere to federal law regarding expungement²⁷ procedures, and the DNA sample must:

- Be generated in compliance with the FBI Director's Quality Assurance Standards;
- Be generated by an accredited and approved laboratory;
- Be generated by a laboratory that undergoes an external audit every two years to demonstrate compliance with the FBI Director's Quality Assurance Standards;
- Be from an acceptable data category, such as:
 - Convicted offender;
 - Arrestee;
 - Detainee;
 - Forensic case;
 - Unidentified human remains;
 - Missing person; or
 - Relative of a missing person.
- Meet minimum CODIS requirements for the specimen category; and
- Be generated using an approved kit.²⁸

Effect of Proposed Changes

HB 533 creates an unnumbered section of law, requiring each inmate in the custody of the Florida Department of Corrections (DOC) to submit a DNA sample to DOC no later than September 30, 2024, if he or she has not previously provided a DNA sample pursuant to s. 943.325, F.S. The bill directs DOC to collect and process such samples in accordance with s. 943.325, F.S.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law.

Section 2: Provides an effective date of upon becoming a law.

²² *Id.*

²³ FBI, *Frequently Asked Questions on CODIS and NDIS*, <https://www.fbi.gov/how-we-can-help-you/dna-fingerprint-act-of-2005-expungement-policy/codis-and-ndis-fact-sheet> (last visited Jan. 25, 2024).

²⁴ 34 U.S.C. § 12592.

²⁵ All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Laboratory, and Puerto Rico participate in NDIS. *Supra* note 23.

²⁶ *Supra* note 23.

²⁷ See 34 U.S.C. § 12592(d)(2)(A)(i-ii) (requiring states to expunge a DNA record when a conviction is overturned or a charge is dismissed, results in an acquittal, or when no charge is filed).

²⁸ *Supra* note 23.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill is not anticipated to have a fiscal impact on DOC or FDLE.²⁹ DOC reported that as of November 20, 2023 there were 48 inmates in Florida from which DNA samples had not been collected. Additionally, FDLE reported that there is no expected fiscal impact to FDLE's lab due to the collection of DNA samples as required by the bill.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²⁹ DOC, *supra* at note 9.

³⁰ FDLE, Agency Analysis of 2024 House Bill 533, p. 2 (Nov. 27, 2023)(on file with the House Criminal Justice Subcommittee).

HB 533

2024

1 A bill to be entitled
2 An act relating to DNA samples from inmates; requiring
3 certain inmates to submit DNA samples; providing an
4 effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Each inmate in the custody of the Department of
9 Corrections who has not previously provided a DNA sample
10 pursuant to s. 943.325, Florida Statutes, is required to submit
11 a sample to the department no later than September 30, 2024. The
12 department shall collect and process such samples pursuant to s.
13 943.325, Florida Statutes.

14 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 761 Interpersonal Violence Injunction Petitions

SPONSOR(S): Civil Justice Subcommittee, Garcia

TIED BILLS: IDEN./SIM. BILLS: SB 852

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mathews	Jones
2) Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

Pursuant to s. 741.28, F.S., domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, aggravated sexual assault, stalking, aggravated stalking, kidnapping, false imprisonment, or any other criminal offense resulting in physical injury or death of one family or household member by another family or household member. To protect himself or herself from abuse or threats of abuse, a domestic violence victim may petition for a protective injunction.

In certain matters, a court may grant civil “injunctive relief” to prohibit a person from committing certain actions. For example, a victim of domestic violence may petition the court for protection against domestic violence enjoining the respondent from being near the petitioner. A protective injunction may include other stipulations such as staying 500 feet away from the petitioner’s workplace, prohibiting the respondent from possessing weapons or ammunition, and even modifying an existing custody schedule of a child the respondent shares with the petitioner.

Chapter 741, F.S., provides a process for an alleged victim to seek protection from domestic violence. Generally, a petitioner files a sworn notarized petition with the circuit court seeking a protective order or injunction for protection against domestic violence. Upon review of the petition and any supporting documents by a judge, one of three ex parte actions generally occurs:

- The petition for injunction is denied, and the judge must provide written findings detailing the reasons for the denial;
- A temporary injunction is issued and a return hearing is set to be held within 15 days; or
- The injunction is denied but a return hearing is set for the matter to be heard in court with both parties having the opportunity to be present.

Following a hearing, the court may either issue a final injunction or deny the petition and close the case. A final injunction may be issued for a set period of time or may remain in place indefinitely. The terms of an injunction remain in effect until it expires, is modified, or is dissolved by court order. Separate and apart from the criminal actions established relating to domestic violence, Florida recognizes repeat violence, sexual violence, and dating violence, as well as stalking, as offenses for which a victim may also seek civil injunctive protection. Under current law, a petition for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking must be sworn to and signed in the presence of a notary.

CS/HB 761 eliminates the requirement that a petition for protection against the above-mentioned offenses be sworn to and witnessed by a notary. Under the bill, such petitions need only be verified, meaning that the petitioner must acknowledge that the statements made in the petition are true and sign the petition under penalty of perjury. The bill also requires each of the above-mentioned petitions to include a specific statement in all capital letters and bold font informing the petitioner that by signing the petition he or she is acknowledging that the statements in the petition are true and are made under penalty of perjury.

The bill is unlikely to have a fiscal impact on state or local governments. The bill has an effective date of July 1, 2024.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0761b.JDC

DATE: 1/28/2024

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member¹ by another family or household member,² including:

- Assault;³
- Aggravated assault;⁴
- Battery;⁵
- Aggravated battery;⁶
- Sexual assault;⁷
- Sexual battery;⁸
- Stalking;⁹
- Aggravated stalking;¹⁰
- Kidnapping;¹¹ and
- False imprisonment.¹²

In 2020,¹³ Florida law enforcement agencies received 106,615 domestic violence reports,¹⁴ resulting in 63,345 arrests.¹⁵ During fiscal year 2021-2022, Florida's 41 certified domestic violence shelters¹⁶ admitted 11,811 victims to a residential services program and 38,630 victims to a non-residential outreach services program.¹⁷ During the same year, the domestic violence centers answered 81,357

¹ "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. S. 741.28(3), F.S.

² S. 741.28(2), F.S.

³ "Assault" means an intentional, unlawful threat by word or act to do violence to another, coupled with an apparent ability to do so, creating a well-founded fear in such other person that violence is imminent. S. 784.011, F.S.

⁴ "Aggravated assault" means an assault with a deadly weapon without intent to kill, or an assault with intent to commit a felony. S. 784.021, F.S.

⁵ "Battery" means the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another. S. 784.03, F.S.

⁶ "Aggravated battery" means a battery in which the offender intentionally or knowingly caused great bodily harm, permanent disability, or permanent disfigurement; used a deadly weapon; or victimized a person the offender knew or should have known was pregnant. S. 784.045, F.S.

⁷ "Sexual assault" has the same meaning as sexual battery.

⁸ "Sexual battery" means oral, anal, or vaginal penetration by, or in union with, the sexual organ of another or the anal or vaginal penetration of another by any object, but does not include an act done for a bona fide medical purpose. S. 794.011(1)(h), F.S.

⁹ "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

¹⁰ "Aggravated stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person. S. 784.048(3), F.S.

¹¹ "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority with the intent to hold for ransom or reward or as a shield or hostage; commit or facilitate a felony; inflict bodily harm upon or terrorize another; or interfere with the performance of any governmental or political function. S. 787.01(1), F.S.

¹² "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. S. 787.02(1), F.S.

¹³ The Florida Department of Law Enforcement has not issued a report with updated statistics after 2020.

¹⁴ *Statewide Reported Domestic Violence Offenses in Florida, 1992-2020*, Florida Department of Law Enforcement, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx (last visited Jan. 4, 2024).

¹⁵ *Florida's County and Jurisdictional Domestic Violence Related Arrests, 2020*, Florida Department of Law Enforcement, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV_Jurisdiction_Arrests_2020.aspx (last visited Jan. 4, 2024).

¹⁶ "Domestic violence shelter" means an agency providing services to domestic violence victims as its primary mission. The Florida Department of Children and Families operates the statewide Domestic Violence Program, responsible for certifying domestic violence centers. Section 39.905, F.S., and ch. 65H-1, F.A.C., set forth the minimum domestic violence center certification standards.

¹⁷ *2022 Domestic Violence Annual Report*, Florida Department of Children and Families, https://www.myflfamilies.com/sites/default/files/2023-02/Domestic_Violence_Annual_Report_2021-22.pdf (last visited Jan. 4, 2024).

crisis hotline calls, completed 171,008 safety plans with survivors, and provided 380,040 direct service information and referrals to survivors, family members, and individuals seeking services.¹⁸

Repeat Violence, Sexual Violence, and Dating Violence

Pursuant to s. 784.046, F.S., “sexual violence” means any one of the following incidents, regardless of whether criminal charges were filed, reduced, or dismissed:

- Sexual battery, as defined under ch. 794;
- A lewd or lascivious act committed upon or in the presence of a person under 16 years of age;
- Luring or enticing a child;
- Sexual performance by a child; or
- Any other forcible felony wherein a sexual act is committed or attempted.

“Dating violence” is violence between two people who have had or continue to have a significant relationship of a romantic or intimate nature.¹⁹ Unlike with domestic violence, there is no requirement that the alleged victim and aggressor reside together in the same home. Further, the existence of dating violence is proven based on a consideration of the following factors:²⁰

- A dating relationship must have existed within the past 6 months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

“Repeat violence” means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed at the petitioner, or the petitioner’s immediate family member.²¹

Injunctions for Protection

Domestic Violence Injunctions

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo some wrong or injury.²² An injunction for protection against domestic violence (“domestic violence injunction”) may be sought by a family or household member.²³ The parties do not need to be married before a person can seek relief from domestic violence, and a party’s right to seek relief is not affected by leaving the residence or household to avoid domestic violence.²⁴

Under current law, every petition for injunction against domestic violence must be sworn to and signed in the presence of a notary.²⁵ Every petition must contain a statement directly above the signature line stating:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.²⁶

Once a petition for an injunction has been filed with the court, one of three events takes place:

- The court determines the petition has no merit and denies the petition, providing written findings for the denial;

¹⁸ *Id.*

¹⁹ S. 784.046(1)(d), F.S.

²⁰ *Id.*

²¹ S. 784.046(1)(b), F.S.

²² Black’s Law Dictionary 540 (6th ed. 1995).

²³ S. 741.30(1)(e), F.S.

²⁴ S. 741.30(1)(d) and (e), F.S.

²⁵ S. 741.30(3), F.S.

²⁶ S. 741.30(3)(c), F.S.

- The court grants an ex parte temporary injunction and simultaneously sets a return hearing within 15 days; or
- The injunction is denied but a return hearing is scheduled so that both parties have the opportunity to present their issues and evidence before the court for further evaluation.

If, upon the initial review of the contents of the petition for an injunction, the court finds the petitioner is in immediate and present danger of domestic violence, it may grant a temporary injunction in an ex parte proceeding,²⁷ pending a full hearing, and grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence; and
- Providing to the petitioner a temporary parenting plan,²⁸ including a timesharing schedule,²⁹ which may award the petitioner up to 100 percent of the timesharing.³⁰

A temporary injunction is effective only for up to 15 days, and a full hearing must be set for a date prior to the injunction's expiration.³¹

Following a hearing, if the court determines that the petitioner is either a domestic violence victim or has reasonable cause to believe he or she is in imminent danger of becoming a domestic violence victim, it may issue a permanent domestic violence injunction.³² However, if, after hearing evidence and testimony from the parties, the court finds no merit in the petitioner's case, the court may deny the injunction and dismiss the case.

A court issuing a permanent domestic violence injunction may grant relief including:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence;
- Providing the petitioner with 100 percent of the timesharing in a parenting plan;
- Establishing temporary support for a minor child or for the petitioner;
- Ordering the respondent to participate in treatment, intervention, or counseling services;
- Referring a petitioner to a certified domestic violence center; and
- Ordering relief it deems necessary to protect a domestic violence victim.³³

The terms of a permanent domestic violence injunction remain in effect until the defined period of the injunction expires, or the injunction is modified or dissolved, and either party may move at any time for modification or dissolution.³⁴

Injunction for Protection from Repeat Violence, Sexual Violence, or Dating Violence

Separate and apart from the criminal actions established relating to domestic violence, Florida recognizes repeat violence, sexual violence, and dating violence as offenses for which a victim may seek civil injunctive protection. Pursuant to s. 784.046(2), F.S., there is a separate cause of action for an injunction for protection in cases of repeat violence,³⁵ sexual violence, and dating violence. Under s. 784.046, F.S., any person who is the victim of repeat violence, sexual violence, or dating violence, as

²⁷ "Ex parte," Latin for "from one party," refers to motions for orders that can be granted without waiting for a response from the other side. These are generally orders that are in place only until further hearings can be held. Legal Information Institute, *Ex Parte*, https://www.law.cornell.edu/wex/ex_parte (last visited Nov. 28, 2023).

²⁸ A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S.

²⁹ "Timesharing schedule" means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

³⁰ S. 741.30(5)(a), F.S.

³¹ S. 741.30(5)(a), F.S.

³² *Id.*

³³ S. 741.30(6)(a), F.S.

³⁴ S. 741.30(6)(c), F.S.

³⁵ "Repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed at the petitioner, or the petitioner's immediate family member. S. 784.046(1)(b), F.S.

well as the parent or guardian of a minor who is living at home and is the victim of such violence, may file a sworn petition for an injunction for protection with the circuit court.³⁶

Under current law, every petition for injunction against repeat violence, sexual violence, or dating violence must be sworn to and signed in the presence of a notary.³⁷ Once a petition has been filed, the court must set a hearing to be held as soon as possible.³⁸ If, after reviewing the petition, the court believes that an immediate and present danger of violence exists, the court may grant a temporary ex parte injunction. The temporary injunction is only valid for 15 days unless it is continued by the court.

Similar to an injunction for protection against domestic violence, a court may grant an ex parte temporary injunction in response to a petitioner's petition for injunction for protection against repeat violence, sexual violence, or dating violence. Upon proper notice and a full hearing, the court may grant such relief as it deems appropriate, including the issuance of an injunction.³⁹

Injunction for Protection from Stalking

In addition to the criminal actions covered by an injunction for protection against domestic violence, Florida recognizes stalking as an offense for which a victim may seek civil injunctive protection. Pursuant to s. 784.0485(1), F.S., civil injunctive protection against stalking includes protection against offenses of cyberstalking as defined under s. 784.048(1)(d), F.S. A protective injunction against stalking under s. 784.0485, F.S., is available to a broader group of victims than the traditional domestic violence injunction, which, generally, is limited in its availability to members of the same household or family. Any person who is the victim of stalking or the parent or legal guardian of a minor child who is living at home who seeks an injunction for protection against stalking on behalf of the minor child has standing to file a sworn petition for such an injunction.⁴⁰

Under current law, every petition for injunction for protection against stalking must be sworn to and signed in the presence of a notary.⁴¹ Every petition must contain a statement directly above the signature line that states:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.⁴²

Similar to an injunction for protection against domestic violence, a court may:

- Deny the petition and provide written findings explaining the denial; or
- Grant an ex parte temporary injunction in response to a petitioner's petition for injunction for protection against stalking.

Upon proper notice and a full hearing, the court may grant such relief as it deems appropriate, including the issuance of an injunction.⁴³

Temporary Suspension of Notary Requirement for Family Law Forms

In response to the Covid-19 pandemic, the Florida Supreme Court issued Administrative Order AOSC20-17 ("Administrative Order"). The Administrative Order suspended the requirement that certain family law forms be notarized, including petitions for protection against domestic violence, stalking,

³⁶ S. 784.064(2), F.S.

³⁷ S. 784.046(4)(a), F.S.

³⁸ S. 784.064(5), F.S.

³⁹ *Id.*

⁴⁰ S. 784.0845(1), F.S.

⁴¹ S. 784.0845(3), F.S.

⁴² S. 784.0845(3)(f), F.S.

⁴³ S. 784.0845(6)(a), F.S.

repeat violence, dating violence, and sexual violence.⁴⁴ The Administrative Order provided that applicable forms must include a statement providing that, “Under penalties of perjury, I declare that I have read this document and the facts stated in it are true.” The required statement had to be on the form directly before the petitioner’s signature line.

The Florida Supreme Court subsequently terminated the suspension of the notary requirement for family law forms on April 27, 2023.⁴⁵

Effect of Proposed Changes

CS/HB 761 removes the requirement that a petition for injunction for protection be sworn to in the presence of a notary in certain types of cases. For matters of domestic violence, stalking, repeat violence, sexual violence, or dating violence, the petition will only need to be verified and signed by the petitioner under penalty of perjury; the petitioner will not need to have it notarized.

Under the bill, each applicable type of injunctive petition must contain the following statement above the signature line, in all capital letters and bold font:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 92.525, FLORIDA STATUTES.

The bill has an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 2: Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence, for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 3: Amends s. 784.0845, F.S., relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 4: Provides an effective date of July 1, 2024.

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:

⁴⁴ Fla. S. Ct., AOSC20-17: *Covid-19 Emergency Measures for the Florida State Courts* (March 18, 2020), <https://supremecourt.flcourts.gov/content/download/632431/file/AOSC20-17.pdf> (last visited Jan. 27, 2024).

⁴⁵ Fla. S. Ct., AOSC23-25: *Covid-19 Administrative Orders* (April 27, 2023), <https://supremecourt.flcourts.gov/content/download/867149/file/AOSC23-25.pdf> (last visited Jan. 27, 2024).

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removing the requirement for the specified petitions to be notarized may increase access to the courts for victims seeking protection through a civil injunction. Eliminating the notarization requirement may make it easier for a petitioner to complete and timely file his or her petition and may also save him or her the cost that may be associated with obtaining a notary.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute made technical changes to ensure the required disclosure statement mirrors the verbiage provided under s. 92.525, F.S.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to interpersonal violence injunction
 3 petitions; amending ss. 741.30, 784.046, and 784.0485,
 4 F.S.; revising verification requirements for specified
 5 interpersonal violence injunction petitions; providing
 6 an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraph (a) of subsection (1) and subsection
 11 (3) of section 741.30, Florida Statutes, are amended to read:

12 741.30 Domestic violence; injunction; powers and duties of
 13 court and clerk; petition; notice and hearing; temporary
 14 injunction; issuance of injunction; statewide verification
 15 system; enforcement; public records exemption.—

16 (1) There is created a cause of action for an injunction
 17 for protection against domestic violence.

18 (a) Any person described in paragraph (e), who is either
 19 the victim of domestic violence as defined in s. 741.28 or has
 20 reasonable cause to believe he or she is in imminent danger of
 21 becoming the victim of any act of domestic violence, has
 22 standing in the circuit court to file a verified ~~sworn~~ petition
 23 for an injunction for protection against domestic violence.

24 (3)(a) The verified ~~sworn~~ petition must allege the
 25 existence of such domestic violence and must include the

26 | specific facts and circumstances upon the basis of which relief
27 | is sought.

28 | (b) The verified ~~sworn~~ petition shall be in substantially
29 | the following form:

30 | PETITION FOR
31 | INJUNCTION FOR PROTECTION
32 | AGAINST DOMESTIC VIOLENCE

33 | ~~Before me,~~ The undersigned ~~authority,~~ personally appeared
34 | petitioner ... (name) ... declares under penalties of perjury, ~~who~~
35 | ~~has been sworn and says~~ that the following statements are true:

36 | (a) Petitioner resides at: ... (address) ...

37 | (Petitioner may furnish address to the court in a separate
38 | confidential filing if, for safety reasons, the petitioner
39 | requires the location of the current residence to be
40 | confidential.)

41 | (b) Respondent resides at: ... (last known address) ...

42 | (c) Respondent's last known place of employment: ... (name
43 | of business and address) ...

44 | (d) Physical description of respondent:

45 | Race.....

46 | Sex.....

47 | Date of birth.....

48 | Height.....

49 | Weight.....

50 | Eye color.....

51 Hair color.....

52 Distinguishing marks or scars.....

53 (e) Aliases of respondent:

54 (f) Respondent is the spouse or former spouse of the
55 petitioner or is any other person related by blood or marriage
56 to the petitioner or is any other person who is or was residing
57 within a single dwelling unit with the petitioner, as if a
58 family, or is a person with whom the petitioner has a child in
59 common, regardless of whether the petitioner and respondent are
60 or were married or residing together, as if a family.

61 (g) The following describes any other cause of action
62 currently pending between the petitioner and respondent:

63
64 The petitioner should also describe any previous or pending
65 attempts by the petitioner to obtain an injunction for
66 protection against domestic violence in this or any other
67 circuit, and the results of that attempt:.....

68
69 Case numbers should be included if available.

70 (h) Petitioner is either a victim of domestic violence or
71 has reasonable cause to believe he or she is in imminent danger
72 of becoming a victim of domestic violence because respondent
73 has: ...(mark all sections that apply and describe in the spaces
74 below the incidents of violence or threats of violence,
75 specifying when and where they occurred, including, but not

76 | limited to, locations such as a home, school, place of
77 | employment, or visitation exchange)...

78 |
79 |

80 |committed or threatened to commit domestic violence
81 | defined in s. 741.28, Florida Statutes, as any assault,
82 | aggravated assault, battery, aggravated battery, sexual assault,
83 | sexual battery, stalking, aggravated stalking, kidnapping, false
84 | imprisonment, or any criminal offense resulting in physical
85 | injury or death of one family or household member by another.
86 | With the exception of persons who are parents of a child in
87 | common, the family or household members must be currently
88 | residing or have in the past resided together in the same single
89 | dwelling unit.

90 |previously threatened, harassed, stalked, or physically
91 | abused the petitioner.

92 |attempted to harm the petitioner or family members or
93 | individuals closely associated with the petitioner.

94 |threatened to conceal, kidnap, or harm the petitioner's
95 | child or children.

96 |intentionally injured or killed a family pet.

97 |used, or has threatened to use, against the petitioner
98 | any weapons such as guns or knives.

99 |physically restrained the petitioner from leaving the
100 | home or calling law enforcement.

101 a criminal history involving violence or the threat of
102 violence (if known).

103 another order of protection issued against him or her
104 previously or from another jurisdiction (if known).

105 destroyed personal property, including, but not limited
106 to, telephones or other communication equipment, clothing, or
107 other items belonging to the petitioner.

108 engaged in a pattern of abusive, threatening,
109 intimidating, or controlling behavior composed of a series of
110 acts over a period of time, however short.

111 engaged in any other behavior or conduct that leads the
112 petitioner to have reasonable cause to believe he or she is in
113 imminent danger of becoming a victim of domestic violence.

114 (i) Petitioner alleges the following additional specific
115 facts: ...(mark appropriate sections)...

116 A minor child or minor children reside with the
117 petitioner whose names and ages are as follows:.....

118
119 Petitioner needs the exclusive use and possession of
120 the dwelling that the parties share.

121 Petitioner is unable to obtain safe alternative housing
122 because:

123
124 Petitioner genuinely fears that respondent imminently
125 will abuse, remove, or hide the minor child or children from

126 petitioner because:.....

127

128 (j) Petitioner genuinely fears imminent domestic violence

129 by respondent.

130 (k) Petitioner seeks an injunction: ... (mark appropriate

131 section or sections)...

132Immediately restraining the respondent from committing

133 any acts of domestic violence.

134Restraining the respondent from committing any acts of

135 domestic violence.

136Awarding to the petitioner the temporary exclusive use

137 and possession of the dwelling that the parties share or

138 excluding the respondent from the residence of the petitioner.

139Providing a temporary parenting plan, including a

140 temporary time-sharing schedule, with regard to the minor child

141 or children of the parties which might involve prohibiting or

142 limiting time-sharing or requiring that it be supervised by a

143 third party.

144Establishing temporary support for the minor child or

145 children or the petitioner.

146Directing the respondent to participate in a batterers'

147 intervention program.

148Providing any terms the court deems necessary for the

149 protection of a victim of domestic violence, or any minor

150 children of the victim, including any injunctions or directives

151 to law enforcement agencies.

152 (c) Every petition for an injunction against domestic
 153 violence must contain, directly above the signature line, a
 154 statement in all capital letters and bold type not smaller than
 155 the surrounding text, as follows:

156
 157 UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE
 158 FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE. I
 159 UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING
 160 MADE UNDER PENALTIES ~~PENALTY~~ OF PERJURY, PUNISHABLE AS PROVIDED
 161 IN SECTION 92.525 ~~837.02~~, FLORIDA STATUTES.

162 ...(initials)...

163 (d) If the verified ~~sworn~~ petition seeks to determine a
 164 parenting plan and time-sharing schedule with regard to the
 165 minor child or children of the parties, the verified ~~sworn~~
 166 petition must be accompanied by or must incorporate the
 167 allegations required by s. 61.522 of the Uniform Child Custody
 168 Jurisdiction and Enforcement Act.

169 Section 2. Subsections (2) and (4) of section 784.046,
 170 Florida Statutes, are amended to read:

171 784.046 Action by victim of repeat violence, sexual
 172 violence, or dating violence for protective injunction; dating
 173 violence investigations, notice to victims, and reporting;
 174 pretrial release violations; public records exemption.—

175 (2) There is created a cause of action for an injunction

176 for protection in cases of repeat violence, there is created a
177 separate cause of action for an injunction for protection in
178 cases of dating violence, and there is created a separate cause
179 of action for an injunction for protection in cases of sexual
180 violence.

181 (a) Any person who is the victim of repeat violence or the
182 parent or legal guardian of any minor child who is living at
183 home and who seeks an injunction for protection against repeat
184 violence on behalf of the minor child has standing in the
185 circuit court to file a verified ~~sworn~~ petition for an
186 injunction for protection against repeat violence.

187 (b) Any person who is the victim of dating violence and
188 has reasonable cause to believe he or she is in imminent danger
189 of becoming the victim of another act of dating violence, or any
190 person who has reasonable cause to believe he or she is in
191 imminent danger of becoming the victim of an act of dating
192 violence, or the parent or legal guardian of any minor child who
193 is living at home and who seeks an injunction for protection
194 against dating violence on behalf of that minor child, has
195 standing in the circuit court to file a verified ~~sworn~~ petition
196 for an injunction for protection against dating violence.

197 (c) A person who is the victim of sexual violence or the
198 parent or legal guardian of a minor child who is living at home
199 who is the victim of sexual violence has standing in the circuit
200 court to file a verified ~~sworn~~ petition for an injunction for

201 protection against sexual violence on his or her own behalf or
 202 on behalf of the minor child if:

203 1. The person has reported the sexual violence to a law
 204 enforcement agency and is cooperating in any criminal proceeding
 205 against the respondent, regardless of whether criminal charges
 206 based on the sexual violence have been filed, reduced, or
 207 dismissed by the state attorney; or

208 2. The respondent who committed the sexual violence
 209 against the victim or minor child was sentenced to a term of
 210 imprisonment in state prison for the sexual violence and the
 211 respondent's term of imprisonment has expired or is due to
 212 expire within 90 days following the date the petition is filed.

213 (d) A cause of action for an injunction may be sought
 214 whether or not any other petition, complaint, or cause of action
 215 is currently available or pending between the parties.

216 (e) A cause of action for an injunction does not require
 217 that the petitioner be represented by an attorney.

218 (4) (a) The verified ~~sworn~~ petition shall allege the
 219 incidents of repeat violence, sexual violence, or dating
 220 violence and shall include the specific facts and circumstances
 221 that form the basis upon which relief is sought. With respect to
 222 a minor child who is living at home, the parent or legal
 223 guardian seeking the protective injunction on behalf of the
 224 minor child must:

225 1. Have been an eyewitness to, or have direct physical

226 | evidence or affidavits from eyewitnesses of, the specific facts
 227 | and circumstances that form the basis upon which relief is
 228 | sought, if the party against whom the protective injunction is
 229 | sought is also a parent, stepparent, or legal guardian of the
 230 | minor child; or

231 | 2. Have reasonable cause to believe that the minor child
 232 | is a victim of repeat violence, sexual violence, or dating
 233 | violence to form the basis upon which relief is sought, if the
 234 | party against whom the protective injunction is sought is a
 235 | person other than a parent, stepparent, or legal guardian of the
 236 | minor child.

237 | (b) The verified ~~sworn~~ petition must be in substantially
 238 | the following form:

239 | PETITION FOR INJUNCTION FOR PROTECTION
 240 | AGAINST REPEAT VIOLENCE, SEXUAL
 241 | VIOLENCE, OR DATING VIOLENCE

242 | ~~Before me,~~ The undersigned ~~authority,~~ personally appeared
 243 | petitioner ... (name) ... declares under penalties of perjury, ~~who~~
 244 | ~~has been sworn and says~~ that the following statements are true:

245 | 1. Petitioner resides at ... (address) ... (A petitioner for
 246 | an injunction for protection against sexual violence may furnish
 247 | an address to the court in a separate confidential filing if,
 248 | for safety reasons, the petitioner requires the location of his
 249 | or her current residence to be confidential pursuant to s.
 250 | 119.071(2)(j), Florida Statutes.)

251 2. Respondent resides at ...(address)....

252 3.a. Petitioner has suffered repeat violence as
253 demonstrated by the fact that the respondent has:

254 ...(enumerate incidents of violence)...

255

256

257

258 b. Petitioner has suffered sexual violence as demonstrated
259 by the fact that the respondent has: ...(enumerate incident of
260 violence and include incident report number from law enforcement
261 agency or attach notice of inmate release)...

262

263

264

265 c. Petitioner is a victim of dating violence and has
266 reasonable cause to believe that he or she is in imminent danger
267 of becoming the victim of another act of dating violence or has
268 reasonable cause to believe that he or she is in imminent danger
269 of becoming a victim of dating violence, as demonstrated by the
270 fact that the respondent has: ...(list the specific incident or
271 incidents of violence and describe the length of time of the
272 relationship, whether it has been in existence during the last 6
273 months, the nature of the relationship of a romantic or intimate
274 nature, the frequency and type of interaction, and any other
275 facts that characterize the relationship)...

276
 277
 278

279 4. Petitioner genuinely fears repeat violence by the
 280 respondent.

281 5. Petitioner seeks: an immediate injunction against the
 282 respondent, enjoining him or her from committing any further
 283 acts of violence; an injunction enjoining the respondent from
 284 committing any further acts of violence; and an injunction
 285 providing any terms the court deems necessary for the protection
 286 of the petitioner and the petitioner's immediate family,
 287 including any injunctions or directives to law enforcement
 288 agencies.

289 (c) Every petition for an injunction against sexual
 290 violence, dating violence, or repeat violence must contain,
 291 directly above the signature line, a statement in all capital
 292 letters and bold type not smaller than the surrounding text, as
 293 follows:

294
 295 UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE
 296 FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE
 297 TRUE. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS
 298 PETITION ARE BEING MADE UNDER PENALTIES OF PERJURY,
 299 PUNISHABLE AS PROVIDED IN SECTION 92.525, FLORIDA STATUTES.

300

301 (initials)

302

303 Section 3. Paragraph (a) of subsection (1) and paragraphs
304 (a), (b), and (f) of subsection (3) of section 784.0485, Florida
305 Statutes, are amended to read:

306 784.0485 Stalking; injunction; powers and duties of court
307 and clerk; petition; notice and hearing; temporary injunction;
308 issuance of injunction; statewide verification system;
309 enforcement.—

310 (1) There is created a cause of action for an injunction
311 for protection against stalking. For the purposes of injunctions
312 for protection against stalking under this section, the offense
313 of stalking shall include the offense of cyberstalking.

314 (a) A person who is the victim of stalking or the parent
315 or legal guardian of a minor child who is living at home who
316 seeks an injunction for protection against stalking on behalf of
317 the minor child has standing in the circuit court to file a
318 verified ~~sworn~~ petition for an injunction for protection against
319 stalking.

320 (3) (a) The verified ~~sworn~~ petition shall allege the
321 existence of such stalking and shall include the specific facts
322 and circumstances for which relief is sought.

323 (b) The verified ~~sworn~~ petition shall be in substantially
324 the following form:

325

PETITION FOR INJUNCTION

FOR PROTECTION AGAINST STALKING

~~Before me,~~ The undersigned ~~authority,~~ personally appeared
 petitioner ... (name) ... declares under penalties of perjury, ~~who~~
~~has been sworn and says~~ that the following statements are true:

1. Petitioner resides at: ... (address) ...
 (Petitioner may furnish the address to the court in a separate
 confidential filing if, for safety reasons, the petitioner
 requires the location of the current residence to be
 confidential.)
2. Respondent resides at: ... (last known address) ...
3. Respondent's last known place of employment: ... (name of
 business and address) ...
4. Physical description of respondent:
5. Race:
6. Sex:
7. Date of birth:
8. Height:
9. Weight:
10. Eye color:
11. Hair color:
12. Distinguishing marks or scars:
13. Aliases of respondent:

(f) Every petition for an injunction against stalking must
 contain, directly above the signature line, a statement in all
 capital letters and bold type not smaller than the surrounding

CS/HB 761

2024

351 | text, as follows:

352

353 | UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE
 354 | FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE ±
 355 | ~~HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH~~
 356 | ~~STATEMENT IS TRUE AND CORRECT.~~ I UNDERSTAND THAT THE STATEMENTS
 357 | MADE IN THIS PETITION ARE BEING MADE UNDER PENALTIES ~~PENALTY~~ OF
 358 | PERJURY, PUNISHABLE AS PROVIDED IN SECTION 92.525 ~~837.02~~,
 359 | FLORIDA STATUTES.

360 | ...(initials)...

361 | Section 4. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 923 Wills and Estates
SPONSOR(S): Civil Justice Subcommittee, Fabricio
TIED BILLS: IDEN./SIM. BILLS: SB 1064

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Mawn	Jones
2) Judiciary Committee		Mawn	Kramer

SUMMARY ANALYSIS

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (“decedent”), paying the decedent’s debts in an orderly fashion, and distributing the decedent’s assets (“probate estate”) to his or her beneficiaries, whether such beneficiaries are determined according to a will (“testate succession”) or are heirs at law determined by default rules of succession where the decedent did not leave a will (“intestate succession”). Probate proceedings are governed by The Florida Probate Code, codified in chs. 731 – 735, F.S., and the Florida Probate Rules of Court.

Section 28.223, F.S., requires the clerk of the circuit court to record all wills admitted to probate, orders revoking the probate of any wills, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk’s office. This section also prohibits the clerks from recording any other probate documents except upon the court’s written direction.

Each state establishes rules for the disposition of marital property upon the death of one spouse where the spouses were domiciled in that state. There are currently two marital property disposition systems utilized in the United States: the “community property” system and the “common law property” system. Nine states are “community property” states, in which each spouse is entitled to a one-half share of most property acquired during the marriage; in such states, a decedent’s probate estate consists of only his or her one-half share of the community property. In contrast, 41 states, including Florida, are “common law property” states, which system looks to how an asset is titled to determine whether the property is marital property or separate property; in such states, a decedent’s separate property may generally be disposed of however he or she wishes upon his or her death.

Though Florida is a common law property state, Florida courts have long recognized that married couples relocating to Florida from community property jurisdictions maintain their community property rights in property that was community property before their relocation. In 1992, Florida adopted the Florida Uniform Disposition of Community Property Rights at Death Act (“Act”), codified in ss. 732.216-732.228, F.S., to provide guidance for preserving the rights of a surviving spouse in any such community property upon a spouse’s death where probate is opened in Florida. Nothing in the Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, in 2018, the Fourth District Court of Appeal held that probate creditor claim procedures apply to title disputes arising under the Act, including the statute of limitations period and the two-year statute of repose applicable to such claims.

CS/HB 923:

- Amends s. 28.223, F.S., to expand the types of probate records which the clerk must file.
- Exempts title disputes under the Act from the definition of creditor claims, provides a new dispute resolution mechanism and two-year statute of repose for such disputes, and makes certain revisions to the Act to improve clarity and reduce the risk of unintended forfeitures of community property rights.

The bill may have an indeterminate fiscal impact on local government but does not appear to have a fiscal impact on state government. The bill provides an effective date of upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0923b.JDC

DATE: 1/27/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Probate Code

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (“decedent”), paying the decedent’s debts in an orderly fashion, and distributing the decedent’s assets (“probate estate”) to his or her beneficiaries, whether such beneficiaries are determined according to a will (“testate succession”) or are heirs at law determined by default rules of succession where the decedent did not leave a will (“intestate succession”).¹ Probate proceedings are governed by The Florida Probate Code, codified in chs. 731 – 735, F.S., and the Florida Probate Rules of Court.²

Venue

Under the Probate Code, venue for the probate of wills and granting of letters is proper:

- In the county in Florida where the decedent was domiciled.
- If the decedent had no domicile in Florida, in any county where the decedent’s property lies.
- If the decedent had no domicile and possessed no property in Florida, then in the county where any of the decedent’s debtors reside.³

Effect of Probate

Until admitted to probate in Florida or in the state where the decedent was domiciled, a will is ineffective to prove title to, or the right to possession of, the testator’s property.⁴ The probate of a will in Florida is conclusive of the will’s due execution; that it was executed by a competent testator, free of fraud, duress, mistake, and undue influence; and that the will was unrevoked on the testator’s death.⁵

However, any property not effectively disposed of by will passes to the decedent’s heirs as specified in Chapter 732, F.S., pertaining to the disposition of intestate estates.⁶ In such situations, it is the decedent’s death that vests the heirs’ right to the decedent’s intestate property.⁷

Determination of Beneficiaries

When property passes by intestate succession or the will is unclear and there is doubt about either who is entitled to receive any part of the property, or the shares and amounts that any person is entitled to, any interested person⁸ may petition the court to determine beneficiaries or their shares.⁹ Any personal representative who makes distribution or takes any other action pursuant to an order determining beneficiaries is fully protected, and a separate civil action to determine beneficiaries may be brought when an estate has not been administered.¹⁰

¹ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Jan. 25, 2024); s. 731.201(2) and (20), F.S.

² The Florida Probate Rules of Court are available at <https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf> (last visited Jan. 25, 2024). S. 731.005, F.S.

³ S. 733.101, F.S.

⁴ S. 733.103(1), F.S.

⁵ S. 733.103(2), F.S.

⁶ S. 732.101, F.S.

⁷ *Id.*

⁸ An “interested person” is any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. S. 731.201(23), F.S.

⁹ S. 733.105, F.S.

¹⁰ *Id.*

Personal Representatives

Generally, any person who has full legal capacity to act on his or her own behalf and is a Florida resident at the time of the death of the person whose estate is to be administered may act as the estate's personal representative.¹¹ However, a person may not serve in such capacity if the person:

- Has been convicted of a felony;
- Is mentally or physically unable to perform the duties; or
- Is a minor.¹²

Furthermore, a person who is not a Florida resident may serve in such capacity if the person is:

- The legally adopted child or adoptive parent of the decedent;
- Related to the decedent by lineal consanguinity;
- A spouse or a brother, sister, uncle, aunt, nephew, or niece of the decedent, or someone related by lineal consanguinity to any such person; or
- The spouse of a person otherwise so qualified.¹³

Regardless of who is filling the role, a personal representative's duties and powers begin upon appointment.¹⁴ Generally, a personal representative is a fiduciary¹⁵ who:

- Must observe the standards of care applicable to trustees;
- Has a duty to settle and distribute the estate in accordance with the terms of the decedent's will and the Probate Code in an expeditious and efficient manner; and
- Must use the authority conferred by the Probate Code, under the will, and by court order for the best interests of interested persons, including creditors.¹⁶

Recording of Probate Records

Section 28.223, F.S., requires the clerk of the circuit court to record all wills and codicils admitted to probate, orders revoking the probate of any wills and codicils, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk's office. This section also prohibits the clerks from recording any other petitions, pleadings, papers, or other orders relating to probate matters except upon written direction by the court, which direction may be by incorporation using the words "to be recorded," or words with similar effect.

Sometimes, a need arises to determine the true beneficiaries of an estate after probate closes. In such instances, it could be helpful to refer to the official records of the county in which probate was opened; however, many of the probate documents which Florida law requires the clerk to record do not list heirs in an estate.¹⁷ In the case of an intestate estate, there is no will to record and, thus, there is often no indication in the public records of the identities of the decedent's beneficiaries.¹⁸ Even where a will is recorded, the beneficiaries named in the will may differ from the beneficiaries listed in the probate petition.¹⁹ In such instances, the only way to determine an estate's beneficiaries may be to physically appear at the clerk's office and inspect the court docket, where such a docket has not already been destroyed by the clerks due to the passage of time.²⁰

¹¹ Florida law also authorizes certain entities to serve as a personal representative. Ss. 733.302 and 733.305(1), F.S.

¹² S. 733.303(1), F.S.

¹³ S. 733.304, F.S.

¹⁴ S. 733.601, F.S.

¹⁵ "Fiduciary" means a person having duty, created by his or her undertaking, to act primarily for another's benefit in matters connected with such undertaking. The duties of a fiduciary involve good faith, trust, special confidence, and candor. Black's Law Dictionary 431 (6th ed. 1991).

¹⁶ S. 733.602, F.S.

¹⁷ Real Property, Probate, and Trust Law Section of the Florida Bar ("RPPTLS"), *White Paper: Proposal to Amend §28.223, Fla. Stat. (Probate Records; recordation)*.

¹⁸ *Id.*

¹⁹ Examples include a beneficiary's death, an invalid exercise of homestead property, disclaimers, or a non-existent beneficiary (such as an incorrectly-named charity). *Id.*

²⁰ *Id.*

Probate Creditor Claims

Florida law authorizes any person to file a claim against a decedent's probate estate if the decedent owed such person money at the time of his or her death ("probate creditor claim"). Generally, the personal representative must promptly publish a notice to creditors, which notice must contain the name of the decedent; the file number of the estate; the designation and address of the court in which the proceedings are pending; the name and address of the personal representative; the name and address of the personal representative's attorney; and the date of first publication.²¹ Publication must be once a week for 2 consecutive weeks, in a newspaper published in the county where the estate is administered or, if there is no newspaper published in the county, in a newspaper of general circulation in that county.²² The personal representative must also promptly make a diligent search to determine the names and addresses of the decedent's creditors who are reasonably ascertainable, and promptly serve a copy of the notice on those creditors; however, service is not required on any creditor who has filed a claim as provided in this part, whose claim has been paid in full, or whose claim is listed in a personal representative's timely filed proof of claim.²³

Florida law establishes a statute of limitations for bringing a probate creditor claim, which is triggered by the publication or service of the notice to creditors. Specifically, s. 733.702(1), F.S., provides that no claim or demand against the decedent's estate that arose before the decedent's death is binding on the estate, on the personal representative, or on any beneficiary unless filed in the probate proceeding on or before the later of the date that is three months after the time of the first publication of the notice to creditors or, as to any creditor required to be served with a copy of the notice to creditors, 30 days after the date of service on the creditor, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. Further, s. 733.710(1), F.S., provides a two-year statute of repose applicable to such claims, running from the date of the decedent's death. Creditor claims not filed within these time periods are forever barred.²⁴

Disposition of Marital Property Upon Spouse's Death

Each state establishes rules for the disposition of marital property upon the death of one spouse where the spouses were domiciled in that state. There are currently two marital property disposition systems utilized in the United States: the "community property" system and the "common law property" system.

Community Property States

Nine states are "community property" states.²⁵ The federal Fifth Circuit Court of Appeals summarized the origins and attributes of this system, which gives each spouse to a marriage an equal one-half share of all property acquired during the marriage (with the exception of gifts, inheritances, and certain damages awards),²⁶ as follows:

The community property system comes from the custom of the women of the Visigoths and other Germanic tribes sharing the fighting and the spoils of war with their men; it owes its strength to the civilized view that marriage is a full partnership. Husband and wife are equal partners. Each has a present, vested half interest in all community property. All property accumulated during marriage is community property, unless it is received by gift, devise, or inheritance... Thus, on death... the community [property] is divided equally. Neither spouse has testamentary disposition over the other's half of the community [property].²⁷

²¹ S. 733.2121, F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ These states are Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington, and Wisconsin. Guam and Puerto Rico also utilize the community property system. RPPTLS, *supra* note 17.

²⁶ Property acquired before the marriage, along with gifts, inheritances, and certain damages awards, is considered separate property, which may be owned solely by one spouse.

²⁷ *Commissioner v. Chase Manhattan Bank*, 259 F. 2d 231 239 (5th Cir. 1958).

In other words, one spouse in a community property state can dispose of his or her one-half share of the community property in any manner he or she chooses upon his or her death; however, a spouse is unable to dispose of his or her surviving spouse's one-half share. Thus, the probate estate of a deceased spouse in a community property state would consist only of his or her one-half share.

Common Law Property States

Forty-one states, including Florida, are "common law property" states.²⁸ Generally speaking, this system looks to how an asset is titled to determine whether the property is marital property or separate property.²⁹ Where an asset is titled in the name of only one spouse, such asset is presumed to be separate property; thus, the spouse in whose name it is titled may generally dispose of the asset in any manner he or she chooses upon his or her death.³⁰ However, where an asset is held jointly, a decedent spouse is limited to disposing of only that property interest which he or she owns. In Florida, property may be held jointly as tenants in common,³¹ as joint tenants with right of survivorship,³² or as tenants by the entirety,³³ and a spouse may have a life estate in the property without an ownership interest.³⁴

Florida Uniform Disposition of Community Property Rights at Death Act

Though Florida is a common law property state, Florida courts have long recognized that married couples relocating to Florida from community property jurisdictions maintain their community property rights in property that was community property before their relocation.³⁵ In 1992, Florida adopted the Florida Uniform Disposition of Community Property Rights at Death Act ("Act"), codified in ss. 732.216-732.228, F.S., to provide guidance for preserving the rights of a surviving spouse in any such community property upon a spouse's death where probate is opened in Florida.³⁶

Application

²⁸ RPPTLS, *supra* note 17.

²⁹ Joseph M. Percopo, *Understanding the New Florida Community Property Trust, Part I*, 96 Fla. Bar Journal No. 4, <https://www.floridabar.org/the-florida-bar-journal/understanding-the-new-florida-community-property-trust-part-i/> (last visited Jan. 25, 2024).

³⁰ Exceptions may apply, such as when the surviving spouse has homestead rights in a parcel of real property under Florida law. Homestead rights give the surviving spouse an interest in the property; such interest is a life estate or a tenancy in common where the decedent is survived by both a spouse and children, and a full ownership interest where the decedent is not survived by children. Title to the homestead property will pass in such manner automatically upon the spouse's death, even if a will or trust directs otherwise. Further, Florida law recognizes the right of a surviving spouse to elect up to a 1/3 share of the decedent spouse's probate estate, regardless of the terms of the decedent's will. This prevents one spouse from disinheritting the other, and possibly leaving the surviving spouse destitute. Ss. 732.201-732.2155, F.S.

³¹ A tenancy in common is a method of joint property ownership in which two or more persons concurrently own a share of a property, which share is not required to be equal. Each co-tenant has an equal right to possess, use, and enjoy the property (although this right may be modified by agreement of the parties), and may freely sell his or her ownership share; similarly, when a co-tenant dies, his or her ownership share becomes part of his or her probate estate. Oni Harton, *Differences Between Joint Tenants with Survivorship and Tenants in Common*, <https://www.findlaw.com/estate/planning-an-estate/whats-the-difference-between-joint-tenants-with-survivorship-and.html> (last visited Jan. 25, 2024).

³² A joint tenancy with rights of survivorship is a method of joint property ownership in which two or more persons concurrently own an equal share of a property. Each joint tenant has an equal right to possess, use, and enjoy the property (which right cannot be modified even by agreement of the parties) but cannot sell or otherwise transfer his or her ownership interest; when one joint tenant dies, his or her ownership interest automatically passes to the other joint tenants. *Id.*

³³ A tenancy by the entirety is a form of joint ownership only available to married couples. Under such an ownership structure, the spouses are considered one person and, thus, each spouse owns a 100 percent share of the property. Neither spouse may transfer the property without joinder of the other spouse, but upon a spouse's death, the surviving spouse automatically receives full title to the property. Anne Buzby-Walt, *Are Florida Laws on Tenancy by the Entireties in Personalty as Clear as We Think?*, 85 Fla. Bar Journal No. 8 (Sept./Oct. 2011), <https://www.floridabar.org/the-florida-bar-journal/are-florida-laws-on-tenancy-by-the-entireties-in-personalty-as-clear-as-we-think/> (last visited Jan. 25, 2024).

³⁴ A life estate gives the holder thereof a right to exclusive use and possession of a property during his or her lifetime but not the right to sell the property without joinder of the remainder beneficiaries. Aisha Success, *The Differences Between Life Estates and Trusts*, (June 30, 2022), <https://www.findlaw.com/estate/trusts/the-differences-between-life-estates-and-trusts.html> (last visited Jan. 25, 2024); Percopo, *supra* note 29.

³⁵ See, e.g., *Quintana v. Ordone*, 195 So. 2d 577, 579-580 (Fla. 3d DCA 1967).

³⁶ RPPTLS, *supra* note 17.

Under the Act, when one spouse dies, one-half of the couple's community property is the property of the surviving spouse, while the other one-half of that property is the property of the decedent.³⁷ The Act applies to the disposition at death of the following property acquired by a married person:

- Personal property, wherever located, which:
 - Was acquired as, or became and remained, community property under the laws of another jurisdiction;
 - Was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or
 - Is traceable to that community property.³⁸
- Real property, except real property held as tenants by the entirety, which is located in Florida, and which:
 - Was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction; or
 - Is traceable to that community property.³⁹

In determining whether the Act applies to specific property, the following rebuttable presumptions apply:

- Property acquired during marriage by a spouse of that marriage while domiciled in a community property state is presumed to have been acquired as, or to have become and remained, community property.⁴⁰
- Real property located in Florida, other than homestead and real property held as tenants by the entirety, and personal property wherever located acquired by a married person while domiciled in a common law property state and title to which was taken in a form which created rights of survivorship are presumed to not be community property.⁴¹

Further, the reinvestment of any property to which the Act applies in real property located in Florida which is or becomes homestead property creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.⁴²

Title Disputes

Because community property rights generally apply regardless of how property acquired during a marriage is titled, it may be necessary to perfect title to certain property in either the surviving spouse or a beneficiary of the decedent spouse to fairly distribute each spouse's one-half share. Under the Act, if the title to any property to which the Act applies is held by the surviving spouse at the time of the decedent's death, the decedent's personal representative or beneficiary may bring an action to perfect title to the property.⁴³ However, the personal representative has no duty to discover whether any property held by the surviving spouse is community property to which the Act applies, unless a written demand is made by a beneficiary within three months after service of a copy of the notice of administration on the beneficiary or by a creditor within three months after the first publication of the notice to creditors.⁴⁴

Further, if title to any property to which the Act applies was held by the decedent at the time of the decedent's death, title of the surviving spouse may be perfected by a probate court's order or by execution of an instrument by the decedent's personal representative or beneficiaries with the probate court's approval.⁴⁵ However, the probate court in which the decedent's estate is being administered has no duty to discover whether property held by the decedent is community property, and the personal representative has no duty to discover whether property held by the decedent is community property

³⁷ S. 732.219, F.S.

³⁸ S. 732.217, F.S.

³⁹ *Id.*

⁴⁰ S. 732.218, F.S.

⁴¹ *Id.*

⁴² S. 732.225, F.S.

⁴³ S. 732.221, F.S.

⁴⁴ *Id.*

⁴⁵ S. 732.223, F.S.

unless a written demand is made by the surviving spouse within three months after service of a copy of the notice of administration on the surviving spouse.⁴⁶

Probate Creditor Claims

Nothing in the Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, in 2018, the Fourth District Court of Appeal held that probate creditor claim procedures apply to title disputes arising under the Act.⁴⁷ In other words, the court held that a surviving spouse's attempt to confirm his or her community property rights is a probate creditor claim, and, thus, subject to the statute of limitations period and the two-year statute of repose applicable to such claims.⁴⁸ This has the potential to result in the unintended forfeiture of a surviving spouse's community property rights where the surviving spouse fails to bring a timely creditor claim and is thus forever barred from asserting his or her rights.⁴⁹

Effect of Proposed Changes

Probate Records

CS/HB 923 amends s. 28.223, F.S., to expand the types of probate records which the clerk must file. Specifically, the bill provides that the clerks must file, in addition to those documents already required under current law, orders admitting a will to probate and orders determining beneficiaries. Practically speaking, this should ensure that evidence of heirship will be forever preserved in a county's official records and, thus, be easily and publicly accessible. Where such evidence reflects real property ownership passing through probate, this change may help to avoid economic loss for true heirs and their descendants.

Florida Uniform Disposition of Community Property Rights at Death Act

Application

The bill amends s. 732.217, F.S., to clarify the types of property to which the Act does not apply. Specifically, the bill clarifies that the Act does not apply to personal property held as tenants by the entirety or to homestead property. The bill also:

- Amends s. 732.218, F.S., to remove unnecessary language indicating that property held as tenants by the entirety or as homestead property acquired by a married person while domiciled in a common law property state is not community property.
- Amends s. 732.225, F.S., to provide that the reinvestment of any community property in real property located in Florida which is or becomes real or personal property held by tenants by the entirety creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

⁴⁶ *Id.*

⁴⁷ *Johnson v. Townsend*, 259 So. 3d 851 (Fla. 4th DCA 2018).

⁴⁸ *Id.*

⁴⁹ RPPTLS, *supra* note 17.

Disposition Upon Death

The bill amends s. 732.219, F.S., to expressly state that, upon the death of a married person, the surviving spouse's one-half share of the community property is not property of the decedent's probate estate, but the other one-half share of the community property is part of the decedent's probate estate. Further, the bill amends this section to:

- Define "probate estate" for the purposes of this section to mean all property, wherever located, that is subject to estate administration in any state or in the District of Columbia.
- Expressly authorize a surviving spouse to waive any right, title, or interest in community property, wholly or partly, by written contract, agreement, or waiver, signed by the surviving spouse or any person acting on behalf of the surviving spouse, where such written contract, agreement, or waiver includes statutorily-required language.

Similarly, the bill amends s. 732.702, F.S., to include the right to assert a claim under the Act as a right of a surviving spouse which may be waived.

Title Disputes

The bill repeals s. 732.221, F.S., relating to perfection of title of personal representative or beneficiary, and s. 732.223, F.S., relating to perfection of title of surviving spouse, and replaces these sections with newly-created s. 732.2211, F.S., which section expressly exempts title disputes from the definition of creditor claim and specifies that such disputes are not subject to the statutes of limitations or of repose applicable to such claims.

Instead, the bill creates a new dispute resolution mechanism in this section for title disputes arising under the Act and provides a two-year statute of repose for such disputes. Under the bill, any demand or dispute arising under the Act regarding any right, title, or interest in any property held by the decedent or surviving spouse when the decedent died must be determined in an action for declaratory relief governed by the Florida Rules of Civil Procedure. Such an action must be filed within two years after the decedent's death or is forever barred, and the rights of any interested person who fails to timely file an action for declaratory relief under this section are forfeited. The decedent's surviving spouse, personal representative, or any other person or entity that at any time possesses any property to which the Act applies, or may apply, is not subject to liability for any such forfeit rights, and the decedent's personal representative may distribute the assets without liability for any such forfeit rights.

Further, the bill provides that the personal representative has no duty to discover whether property held by the decedent or surviving spouse when the decedent died is community property, unless a written demand is made by:

- The surviving spouse or a beneficiary within six months after service of a copy of the notice of administration on such person.
- A creditor, except as otherwise provided, within three months after the time of the first publication of the notice to creditors.
- A creditor required to be served with a copy of the notice to creditors, within the later of 30 days after the date of service on the creditor or three months after the time of the first publication of the notice.

The bill amends ss. 733.212 and 733.2121, F.S., to require the notice of administration and the notice to creditors to specify as such. However, the bill also amends s. 733.607, F.S., to specify that the personal representative has no right to, and shall not knowingly take possession or control of, a surviving spouse's one-half share of community property.

Protection of Payors and Other Third Parties

The bill creates s. 732.2231, F.S., to provide that a property interest is subject to community property rights, but that a payor or other third party is not liable for paying, distributing, or transferring such property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument. Under the bill:

- “Governing instrument” means a deed; will; trust; insurance or annuity policy; account with payable-on-death designation; security registered in a beneficiary form; pension, profit-sharing, retirement, or similar benefit plan; an instrument creating or exercising a power of appointment or a power of attorney; or a dispositive, appointive, or nominative instrument of any similar type.
- “Payor” means the decedent’s personal representative, a trustee of a trust created by the decedent, an insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

Effective Date

The bill provides an effective date of upon becoming a law, except as otherwise expressly provided in the Act.

B. SECTION DIRECTORY:

Section 1: Amending s. 28.223, F.S., relating to probate records; recordation.

Section 2: Amending s. 732.217, F.S., relating to application.

Section 3: Amending s. 732.218, F.S., relating to rebuttable presumptions.

Section 4: Amending s. 732.219, F.S., relating to disposition upon death.

Section 5: Repealing s. 732.221, F.S., relating to perfection of title of personal representatives or beneficiary.

Section 6: Creating s. 732.2211, F.S., relating to demands or disputes; statute of repose.

Section 7: Repealing s. 732.223, F.S., relating to perfection of title of surviving spouse.

Section 8: Creating s. 732.2231, F.S., relating to protection of payors and other third parties.

Section 9: Amending s. 732.225, F.S., relating to acts of married persons.

Section 10: Amending s. 732.702, F.S., relating to waiver of spousal rights.

Section 11: Amending s. 733.212, F.S., relating to notice of administration; filing of objections.

Section 12: Amending s. 733.2121, F.S., relating to notice to creditors, filing of claims.

Section 13: Amending s. 733.607, F.S., relating to possession of estate.

Section 14: Providing an effective date of upon becoming a law.

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:

The bill may have an indeterminate fiscal impact on the clerks of the court due to the requirement that the clerks record additional probate documents. To the extent that the clerks can assume the recording of such additional documents within existing resources, the bill’s fiscal impact will be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent it leads to the preservation of:

- Records identifying a decedent's beneficiaries, which may help true heirs avoid economic loss where real property ownership passes through probate by intestacy succession.
- A surviving spouse's community property rights.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed petitions affecting or describing real property from the list of probate records the bill would have required the clerks to record in addition to those records already required by current law.

This analysis is drafted to the PCS as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
2 An act relating to wills and estates; amending s.
3 28.223, F.S.; expanding the types of probate documents
4 that must be recorded; revising a provision for
5 incorporating a certain direction by reference;
6 amending s. 732.217, F.S.; revising the types of
7 property subject to the provisions of a certain act;
8 amending s. 732.218, F.S.; revising the types of
9 property for which there is a rebuttable presumption
10 under a specified act; amending s. 732.219, F.S.;
11 specifying that certain property is either included or
12 excluded from the probate estate at the time of death;
13 defining the term "probate estate"; authorizing
14 specified parties to waive certain property rights;
15 specifying how such rights may be waived; requiring
16 such waiver include specified language; repealing s.
17 732.221, F.S., relating to perfection of title of
18 personal representative or beneficiary; creating s.
19 732.2211, F.S.; providing that demands and disputes
20 arising under a certain act must be determined using a
21 specified action; requiring such action be governed by
22 specified rules; requiring such action be filed within
23 a certain period of time; providing construction;
24 providing that certain parties have no duty to
25 discover if property is subject to a specified act;

26 providing exceptions; providing that certain rights
27 are forfeit if specified actions are not taken;
28 prohibiting certain parties from being held liable in
29 specified circumstances; providing construction;
30 repealing s. 732.223, F.S., relating to perfection of
31 title of surviving spouses; creating s. 732.2231,
32 F.S.; providing definitions; providing that certain
33 parties are not liable for specified actions taken
34 regarding property subject to a certain act; amending
35 s. 732.225, F.S.; expanding the types of property for
36 which there is a certain conclusive presumption;
37 amending s. 732.702, F.S.; expanding the types of
38 rights which may be waived by a surviving spouse;
39 expanding the types of rights considered to be "all
40 rights" within a waiver; amending s. 733.212, F.S.;
41 requiring a notice of administration state that
42 specified parties have no duty to discover if property
43 is subject to a certain act; providing an exception;
44 amending s. 733.2121, F.S.; requiring a notice to
45 creditors state that specified parties have no duty to
46 discover if property is subject to a certain act;
47 providing an exception; amending s. 733.607, F.S.;
48 specifying that specified parties have no rights to,
49 and may not take possession of, certain property;
50 providing an exception; providing effective dates.

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

Section 1. Effective January 1, 2025, subsection (1) of section 28.223, Florida Statutes, is amended to read:

28.223 Probate records; recordation.—

(1) The clerk of the circuit shall record all wills and codicils admitted to probate, orders admitting the will to probate, orders determining beneficiaries, orders revoking the probate of any wills and codicils, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk's office. No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except on the written direction of the court. The direction may be in the order by incorporation in the order of the words "To be recorded," or words to that effect. Failure to record an order or a judgment shall not affect its validity.

Section 2. Section 732.217, Florida Statutes, is amended to read:

732.217 Application.—Sections 732.216–732.228 apply to the disposition at death of the following property acquired by a married person:

(1) Personal property, except personal property held as tenants by the entirety, wherever located, which:

76 (a) Was acquired as, or became and remained, community
 77 property under the laws of another jurisdiction;

78 (b) Was acquired with the rents, issues, or income of, or
 79 the proceeds from, or in exchange for, community property; or

80 (c) Is traceable to that community property.

81 (2) Real property, except real property held as tenants by
 82 the entirety and homestead property, which is located in this
 83 state, and which:

84 (a) Was acquired with the rents, issues, or income of, the
 85 proceeds from, or in exchange for, property acquired as, or
 86 which became and remained, community property under the laws of
 87 another jurisdiction; or

88 (b) Is traceable to that community property.

89 Section 3. Subsection (2) of section 732.218, Florida
 90 Statutes, is amended to read:

91 732.218 Rebuttable presumptions.—In determining whether
 92 ss. 732.216–732.228 apply to specific property, the following
 93 rebuttable presumptions apply:

94 (2) Real property located in this state, ~~other than~~
 95 ~~homestead and real property held as tenants by the entirety,~~ and
 96 personal property wherever located acquired by a married person
 97 while domiciled in a jurisdiction under whose laws property
 98 could not then be acquired as community property and title to
 99 which was taken in a form which created rights of survivorship
 100 are presumed to be property to which these sections do not

101 apply.

102 Section 4. Section 732.219, Florida Statutes, is amended
 103 to read:

104 732.219 Disposition upon death; waiver.—

105 (1) Upon the death of a married person, one-half of the
 106 property to which ss. 732.216-732.228 apply is the property of
 107 the surviving spouse, is not property of the decedent's probate
 108 estate, and is not subject to testamentary disposition by the
 109 decedent or distribution under the laws of succession of this
 110 state. One-half of that property is the property of the
 111 decedent's probate estate ~~decedent~~ and is subject to
 112 testamentary disposition or distribution under the laws of
 113 succession of this state. The decedent's one-half of that
 114 property is not in the elective estate. For purposes of this
 115 section, the term "probate estate" means all property wherever
 116 located, that is subject to estate administration in any state
 117 of the United States or in the District of Columbia.

118 (2) If not previously waived pursuant to s. 732.702, the
 119 right of a surviving spouse to assert a claim arising under ss.
 120 732.216-732.228, to any right, title, or interest in any
 121 property held by the decedent at the time of his or her death
 122 may be waived, wholly or partly, by a written contract,
 123 agreement, or waiver, signed by the surviving spouse, or any
 124 person acting on behalf of a surviving spouse, including, but
 125 not limited to, an attorney in fact; agent; guardian of the

126 property; or personal representative, if the written contract,
 127 agreement, or waiver includes the following or substantially
 128 similar language:

129 "By executing this contract, agreement, or waiver, I intend
 130 to waive my right as a surviving spouse to assert a claim
 131 to any right, title or interest in property held by the
 132 decedent at the time of the decedent's death arising under
 133 the Florida Uniform Disposition of Community Property
 134 Rights at Death Act (ss. 732.216-732.228, Florida
 135 Statutes), wholly or partly, as provided herein."

136 Section 5. Section 732.221, Florida Statutes, is repealed.

137 Section 6. Section 732.2211, Florida Statutes, is created
 138 to read:

139 732.2211 Demands or disputes; statute of repose.-

140 (1) (a) Any demand or dispute arising, wholly or partly,
 141 under ss. 732.216-732.228, regarding any right, title, or
 142 interest in any property held by the decedent or surviving
 143 spouse at the time of the decedent's death shall be determined
 144 in an action for declaratory relief governed by the rules of
 145 civil procedure. Notwithstanding any other law, a complaint for
 146 such action must be filed within 2 years after the decedent's
 147 death or be forever barred.

148 (b) A action for declaratory relief instituted pursuant to
 149 this section is not a claim, as defined in s. 731.201, and is
 150 not subject to the provisions of s. 733.702(1) or s. 733.710.

151 (2) The personal representative or curator has no duty to
152 discover whether property held by the decedent or surviving
153 spouse at the time of the decedent's death is property to which
154 ss. 732.216-732.228 apply, or may apply, unless a written demand
155 is made by:

156 (a) The surviving spouse or a beneficiary within 6 months
157 after service of a copy of the notice of administration on the
158 surviving spouse or beneficiary.

159 (b) A creditor, except as provided in paragraph (c),
160 within 3 months after the time of the first publication of the
161 notice to creditors.

162 (c) A creditor required to be served with a copy of the
163 notice to creditors, within the later of 30 days after the date
164 of service on the creditor or the time under paragraph (b).

165 (3) The rights of any interested person who fails to
166 timely file an action for declaratory relief pursuant to this
167 section are forfeited. The decedent's surviving spouse, personal
168 representative or curator, or any other person or entity that at
169 any time is in possession of any property to which ss. 732.216-
170 732.228 apply, or may apply, shall not be subject to liability
171 for any such forfeit rights. The decedent's personal
172 representative or curator may distribute the assets of the
173 decedent's estate without liability for any such forfeit rights.

174 (4) This section does not affect any issue or matter not
175 arising, wholly or partly, under ss. 732.216-732.228.

176 Section 7. Section 732.223, Florida Statutes, is repealed.

177 Section 8. Section 732.2231, Florida Statutes, is created
 178 to read:

179 732.2231 Protection of payors and other third parties.—

180 (1) As used in this section the terms:

181 (a) "Governing instrument" has the same meaning as in s.
 182 732.2025.

183 (b) "Payor" means the decedent's personal representative,
 184 a trustee of a trust created by the decedent, an insurer,
 185 business entity, employer, government, governmental agency or
 186 subdivision, or any other person authorized or obligated by law
 187 or a governing instrument to make payments.

188 (c) "Person" has the same meaning as in s. 732.2025.

189 (2) A property interest is subject to property rights
 190 under ss. 732.216-732.228, however a payor or other third party
 191 is not liable for paying, distributing, or transferring such
 192 property to a beneficiary designated in a governing instrument,
 193 or for taking any other action in good faith reliance on the
 194 validity of a governing instrument.

195 Section 9. Section 732.225, Florida Statutes, is amended
 196 to read:

197 732.225 Acts of married persons.—Sections 732.216-732.228
 198 do not prevent married persons from severing or altering their
 199 interests in property to which these sections apply. The
 200 reinvestment of any property to which these sections apply in

201 real property located in this state which is or becomes real or
 202 personal property held by tenants by the entirety or homestead
 203 property creates a conclusive presumption that the spouses have
 204 agreed to terminate the community property attribute of the
 205 property reinvested.

206 Section 10. Subsection (1) of section 732.702, Florida
 207 Statutes, is amended to read:

208 732.702 Waiver of spousal rights.—

209 (1) The rights of a surviving spouse to an elective share,
 210 intestate share, pretermitted share, homestead, exempt property,
 211 family allowance, or to assert a claim under the Florida Uniform
 212 Disposition of Community Property Rights at Death Act as
 213 described in ss. 732.216-732.228, and preference in appointment
 214 as personal representative of an intestate estate or any of
 215 those rights, may be waived, wholly or partly, before or after
 216 marriage, by a written contract, agreement, or waiver, signed by
 217 the waiving party in the presence of two subscribing witnesses.
 218 The requirement of witnesses shall be applicable only to
 219 contracts, agreements, or waivers signed by Florida residents
 220 after the effective date of this law. Any contract, agreement,
 221 or waiver executed by a nonresident of Florida, either before or
 222 after this law takes effect, is valid in this state if valid
 223 when executed under the laws of the state or country where it
 224 was executed, whether or not he or she is a Florida resident at
 225 the time of death. Unless the waiver provides to the contrary, a

226 waiver of "all rights," or equivalent language, in the property
 227 or estate of a present or prospective spouse, or a complete
 228 property settlement entered into after, or in anticipation of,
 229 separation, dissolution of marriage, or divorce, is a waiver of
 230 all rights to elective share, intestate share, pretermitted
 231 share, homestead, exempt property, family allowance, or to
 232 assert a claim under the Florida Uniform Disposition of
 233 Community Property Rights at Death Act as described in ss.
 234 732.216-732.228, and preference in appointment as personal
 235 representative of an intestate estate, by the waiving party in
 236 the property of the other and a renunciation by the waiving
 237 party of all benefits that would otherwise pass to the waiving
 238 party from the other by intestate succession or by the
 239 provisions of any will executed before the written contract,
 240 agreement, or waiver.

241 Section 11. Paragraph (g) is added to subsection (2) of
 242 section 733.212, Florida Statutes, to read:

243 733.212 Notice of administration; filing of objections.-

244 (2) The notice shall state:

245 (g) That the personal representative or curator has no
 246 duty to discover whether any property held at the time of the
 247 decedent's death by the decedent or the decedent's surviving
 248 spouse is property to which the Florida Uniform Disposition of
 249 Community Property Rights at Death Act as described in ss.
 250 732.216-732.228 applies, or may apply, unless a written demand

251 is made by the surviving spouse or a beneficiary as specified
 252 under s. 732.2211.

253 Section 12. Subsection (1) of section 733.2121, Florida
 254 Statutes, is amended to read:

255 733.2121 Notice to creditors; filing of claims.—

256 (1) Unless creditors' claims are otherwise barred by s.
 257 733.710, the personal representative shall promptly publish a
 258 notice to creditors. The notice shall contain the name of the
 259 decedent, the file number of the estate, the designation and
 260 address of the court in which the proceedings are pending, the
 261 name and address of the personal representative, the name and
 262 address of the personal representative's attorney, and the date
 263 of first publication. The notice shall state that creditors must
 264 file claims against the estate with the court during the time
 265 periods set forth in s. 733.702, or be forever barred. The
 266 notice shall state that a personal representative or curator has
 267 no duty to discover whether any property held at the time of the
 268 decedent's death by the decedent or the decedent's surviving
 269 spouse is property to which the Florida Uniform Disposition of
 270 Community Property Rights at Death Act as described in ss.
 271 732.216-732.228, applies, or may apply, unless a written demand
 272 is made by a creditor as specified under s. 732.2211.

273 Section 13. Subsection (1) of section 733.607, Florida
 274 Statutes, is amended to read:

275 733.607 Possession of estate.—

276 (1) Except as otherwise provided by a decedent's will,
277 every personal representative has a right to, and shall take
278 possession or control of, the decedent's property, except the
279 protected homestead, but any real property or tangible personal
280 property may be left with, or surrendered to, the person
281 presumptively entitled to it unless possession of the property
282 by the personal representative will be necessary for purposes of
283 administration. The request by a personal representative for
284 delivery of any property possessed by a beneficiary is
285 conclusive evidence that the possession of the property by the
286 personal representative is necessary for the purposes of
287 administration, in any action against the beneficiary for
288 possession of it. The personal representative shall take all
289 steps reasonably necessary for the management, protection, and
290 preservation of the estate until distribution and may maintain
291 an action to recover possession of property or to determine the
292 title to it. Notwithstanding anything in this section, the
293 personal representative has no right to, and shall not knowingly
294 take possession or control of, a surviving spouse's one-half
295 share of property to which the Florida Uniform Disposition of
296 Community Property Rights at Death Act as described in ss.
297 732.216-732.228, applies.

298 Section 14. Except as otherwise expressly provided in this
299 act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 937 Purple Alert

SPONSOR(S): Casello

TIED BILLS: IDEN./SIM. BILLS: SB 640

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N	Yeager	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Saag	Keith
3) Judiciary Committee		Yeager	Kramer

SUMMARY ANALYSIS

Florida's Purple Alert may be used to assist in locating missing adults suffering from a mental or cognitive disability. Under a Purple Alert, a local law enforcement agency may broadcast to the media, on lottery terminals, and to persons who subscribe to receive alert notifications information concerning a missing adult:

- Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or developmental disability as defined in s. 393.063, F.S.; a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm;
- Who cannot be returned to safety without law enforcement intervention; and
- Who does not meet the criteria for activation of a Silver Alert.

HB 937 amends s. 937.0205, F.S., to create two levels of activation under the Purple Alert: local and statewide. For cases involving an unidentifiable vehicle or a missing adult on foot, the bill limits dissemination of a Purple Alert to local distribution within the area where the person may reasonably be located. The bill requires local law enforcement agencies to develop their own policies for the activation of a local Purple Alert. Under the bill, when activating a local Purple Alert, local law enforcement agencies must:

- Contact media outlets in the affected area and surrounding jurisdictions;
- Inform all on-duty law enforcement officers of the missing adult report; and
- Communicate the report to any other law enforcement agency in the county of jurisdiction.

Under the bill, a law enforcement agency may only request the issuance of a statewide Purple Alert when the investigation indicates that there is an identifiable vehicle involved. In such cases, the Florida Department of Law Enforcement's (FDLE) Missing Endangered Person Information Clearinghouse must coordinate with the Florida Department of Transportation, the Florida Department of Highway Safety and Motor Vehicles, and the Department of the Lottery for the:

- Activation of dynamic message signs on state highways and immediate distribution of critical information to the public about the missing adult;
- Notification on lottery terminals, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets; and
- Notification to subscribers of the Purple Alert.

The bill may have an indeterminate positive fiscal impact on FDLE by limiting the activation of a statewide Purple Alert, and may have an indeterminate, but likely insignificant negative fiscal impact on local law enforcement agencies by requiring them to adopt policies to implement a local Purple Alert.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Missing Person Investigations

Every state, county, or municipal law enforcement agency is required to submit information concerning missing endangered persons to the Florida Department of Law Enforcement's (FDLE) Missing Endangered Person Information Clearinghouse (MEPIC).¹ Located in the Enforcement and Investigative Support Bureau as part of the Investigations and Forensic Science Program of FDLE, MEPIC serves as the central repository of information regarding missing endangered persons.² MEPIC acts as a liaison between citizens, private organizations, and law enforcement officials regarding missing endangered persons information.³ Upon receiving information about a missing endangered person, MEPIC disseminates the information to the appropriate local, regional, and statewide agencies in an effort to locate the missing person.⁴ Section 937.0201, F.S., defines a "missing endangered person" to include:

- A missing child;
- A missing adult younger than 26 years of age;
- A missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity;
- A missing adult who meets the criteria for activation of the Silver Alert;⁵ and
- A missing adult who meets the criteria for activation of the Purple Alert.⁶

Section 937.021, F.S., requires a law enforcement agency that receives a credible report that an adult is missing to transmit the report for inclusion within the Florida Crime Information Center (FCIC), the National Crime Information Center (NCIC), and the National Missing and Unidentified Persons System (NamUs) databases within two hours.⁷ A law enforcement agency that receives a report that a child is missing must immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency within the affected jurisdiction, and transmit the report to the FCIC, NCIC, and the NamUs database within two hours.⁸

Purple Alert

¹ S. 937.022(3)(b)1., F.S.

² S. 937.022(1), F.S.

³ Florida Department of Law Enforcement: Missing Endangered Persons Information Clearinghouse, *About Us*, <https://www.fdle.state.fl.us/MCICSearch/AboutUs.asp> (last visited Jan. 20, 2024).

⁴ *Id.*

⁵ S. 937.0201(4)(d), F.S. The Silver Alert may be used to locate a person who is 60 years of age or older and suffers from an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia). In rare instances, a Silver Alert may also be activated when a person is 18 to 59 years old, has an irreversible deterioration of intellectual faculties, law enforcement has determined the individual lacks the capacity to consent, and the use of dynamic message signs along major highways may be the only means to rescue the missing person. Florida Department of Law Enforcement, *Silver Activation Steps*, <https://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps> (last visited Jan. 20, 2024).

⁶ S. 937.0201(4), F.S.

⁷ S. 937.021(4)(b), F.S. The FCIC consists of online databases that provide criminal justice agencies in Florida with information on wanted persons, missing persons, stolen vehicles and license plates, stolen guns and other personal property, and complete criminal records. It serves as Florida's point of contact with the NCIC in Washington, D.C., which provides information on wanted and missing persons, stolen property, and an index of criminal offenders nationwide. NamUs is a national centralized repository and resource center for missing, unidentified, and unclaimed person cases across the United States. Florida Department of Law Enforcement, *1989 Florida Directory of Automated Criminal Justice Information Systems*, <https://www.ojp.gov/pdffiles1/Digitization/116893NCJRS.pdf> (last visited Jan. 20, 2024); National Missing and Unidentified Persons System, *What is NamUs?*, <https://namus.nij.ojp.gov/> (last visited Jan. 20, 2024).

⁸ S. 937.021(4)(a), F.S.

Section 937.0205, F.S., establishes Florida's Purple Alert, which may be used to assist in locating missing adults suffering from a mental or cognitive disability.⁹ FDLE, the Florida Department of Transportation (FDOT), the Florida Department of Highway Safety and Motor Vehicles (FLHSMV), the Florida Department of the Lottery, and local law enforcement agencies implement the Purple Alert.¹⁰

Under a Purple Alert, a local law enforcement agency may broadcast to the media, on lottery terminals within the geographic regions where the missing adult may reasonably be located, and to persons who subscribe to receive alert notifications information concerning a missing adult:

- Who has a mental or cognitive disability that is not Alzheimer's disease or a dementia-related disorder; an intellectual disability or developmental disability as defined in s. 393.063, F.S.;¹¹ a brain injury; another physical, mental, or emotional disability that is not related to substance abuse; or a combination of any of these;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm;
- Who cannot be returned to safety without law enforcement intervention; and
- Who does not meet the criteria for activation of a Silver Alert.¹²

The local law enforcement agency having jurisdiction may also request that a case be opened with FDLE's MEPIC.¹³ If the law enforcement investigation determines that the missing person is in an identifiable vehicle, MEPIC must coordinate with FDOT and FLHSMV for the activation of message signs on state highways and for the immediate distribution of critical information to the public regarding the missing adult in accordance with the alert.¹⁴ If a Purple Alert is activated and the person is missing in an identified vehicle, FDOT road signs will be activated and remain active for a maximum of six hours displaying information relevant to the missing person.¹⁵

The local law enforcement agency to which the missing adult is reported determines whether the case meets the criteria to activate a Purple Alert.¹⁶ Currently, a Purple Alert is activated only when there is sufficient descriptive information about the missing adult and the circumstances surrounding his or her disappearance indicate that activation of the Purple Alert is likely to help locate the missing adult.¹⁷ The dissemination of a Purple Alert and related information is limited to the geographic area where the missing adult could reasonably be located.¹⁸ The local law enforcement agency determines the status of the Purple Alert, but the Purple Alert generally stays active until the missing person is recovered.¹⁹

Since the Purple Alert began July 1, 2022, and as of November 30, 2023, 331 Purple Alerts have been issued.²⁰ Of those, 100 (30 percent) involved persons who went missing in a vehicle, and 231 (70 percent) involved persons who went missing on foot.²¹ Although s. 937.0205, F.S., appears to authorize local law enforcement agencies to issue their own Purple Alerts, all Purple Alerts are currently processed and issued by FDLE, regardless of whether a person is missing on foot or in an identifiable

⁹ Florida Department of Law Enforcement, *Florida's Purple Alert Plan*, <https://www.fdle.state.fl.us/PurpleAlerts/Purple-Alert-Plan.aspx#:~:text=The%20Florida%20Purple%20Alert%20is,or%20emotional%20disabilities%20that%20are> (last visited Jan. 20, 2024); s. 937.0205(4)(a)1., F.S.; s. 937.0205(4)(a)2., F.S.

¹⁰ S. 937.0205(3), F.S.

¹¹ Section 393.063(11), F.S., defines a developmental disability as a disorder or syndrome attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome that manifests before the age of 18 and is reasonably expected to continue indefinitely. Section 393.063(23), F.S., defines an intellectual disability as significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior, manifests before the age of 18, and can be reasonably expected to continue indefinitely.

¹² S. 937.0205(4)(a), F.S.

¹³ S. 937.0205(4)(c), F.S.

¹⁴ *Id.*

¹⁵ Florida Department of Law Enforcement, *Purple Alert Frequently Asked Questions*, <https://www.fdle.state.fl.us/PurpleAlerts/Frequently-Asked-Questions#how> (last visited Jan. 20, 2024).

¹⁶ *Id.*

¹⁷ S. 937.0205(3)(d), F.S.

¹⁸ S. 937.0205(3)(c), F.S.

¹⁹ Florida Department of Law Enforcement, *supra* note 15.

²⁰ Florida Department of Law Enforcement, *2024 Florida Department of Law Enforcement Legislative Bill Analysis HB 937*, December 19, 2023 (on file with the House Criminal Justice Subcommittee).

²¹ *Id.*

vehicle.²² Under s. 937.0205(4)(b), F.S., local law enforcement agencies must notify subscribers to the Purple Alert of a missing person in their jurisdictions and may request the activation of lottery terminals and message signs on state highways to assist in locating a missing person. To receive a list of subscribers to the Purple Alert and to activate the lottery terminals and message signs on state highways, local law enforcement agencies must contact FDLE.²³ However, FDLE may only activate lottery terminals and message signs on state highways for a Purple Alert if an identifiable vehicle is involved.²⁴ In a case where a person is missing and an identifiable vehicle is not involved, FDLE may issue a “Be on the Lookout” (BOLO) message statewide.²⁵

According to FDLE, when a person is missing on foot, public safety may be better served if the agency of jurisdiction develops and follows its own policies and issues a local Purple Alert. Increasing the number and frequency of alerts issued statewide for those not in a vehicle may likely have a desensitizing effect on the public and significantly decrease the effectiveness and gravity of the Purple Alert.

Effect of Proposed Changes

HB 937 amends s. 937.0205, F.S., to create two levels of activation under the Purple Alert: local and statewide. The bill clarifies that any Purple Alert involving a person who is missing on foot or in an unidentifiable vehicle must be processed and issued through policies developed by the local law enforcement agency of jurisdiction, rather than by FDLE.

For cases involving an unidentifiable vehicle or a missing adult on foot, the bill limits dissemination of a Purple Alert to local distribution to the area where the person may reasonably be located. The bill requires local law enforcement agencies to develop their own policies for the activation of a local Purple Alert that meets the requirements set forth in s. 937.021, F.S. Under the bill, when activating a local Purple Alert, local law enforcement agencies must:

- Contact media outlets in the affected area and surrounding jurisdictions;
- Inform all on-duty law enforcement officers of the missing adult report; and
- Communicate the report to any other law enforcement agency in the county of jurisdiction.

Under the bill, a law enforcement agency may only request the issuance of a statewide Purple Alert from FDLE’s MEPIC when the investigation indicates that there is a motor vehicle with an identified license plate or other vehicle information involved. In such cases, the clearinghouse must coordinate with FDOT, FLHSMV, and the Department of the Lottery for the:

- Activation of dynamic message signs on state highways and immediate distribution of critical information to the public about the missing adult;
- Notification on lottery terminals, including, but not limited to, lottery terminals in gas stations, convenience stores, and supermarkets; and
- Notification to subscribers of the Purple Alert.

The bill authorizes the local law enforcement agency having jurisdiction of the missing adult case to request MEPIC to open a case if the agency determines either a local or statewide Purple Alert is necessary and appropriate. Additionally, the bill limits the current requirements for the Purple Alert process to include procedures to monitor the use, activation, and results of alerts and to develop information and education strategies to the statewide Purple Alert.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 937.0205, F.S., relating to Purple Alert.

²² Email from Bobbie Smith, Director of Legislative Affairs, Florida Department of Law Enforcement, Re: Purple Alert (Jan. 16, 2024) (on file with the House Criminal Justice Subcommittee).

²³ *Id.*; S. 937.0205(4)(a-b), F.S.

²⁴ S. 937.0205(4)(b), F.S.

²⁵ Email from Bobbie Smith, *supra* note 22.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate positive impact on state expenditures associated with workload. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate, but likely insignificant, impact on local government expenditures associated with workload. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

By limiting the activation of a statewide Purple Alert to when an identifiable vehicle is involved, the bill may reduce FDLE workload and expenditures related to managing Purple Alerts. To the extent that the Purple Alert is a relatively new alert, and the majority of alerts to date have not involved vehicles, any potential cost savings are indeterminate.

The bill may also increase workload and expenditures for local law enforcement agencies by requiring such agencies to adopt policies to implement a local Purple Alert if an identified vehicle is not involved. To the extent that the bill still allows local law enforcement agencies to request a statewide alert, and that essential functions of local alerts are already utilized by local agencies under current law, any such impacts are indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Currently, s. 937.0205(6), F.S., authorizes FDLE to adopt rules to implement and administer the Purple Alert. The bill does not affect that authorization.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Purple Alert; amending s.
 3 937.0205, F.S.; requiring local law enforcement
 4 agencies to develop policies for a local activation of
 5 a Purple Alert for certain missing adults; specifying
 6 requirements for such policies; specifying duties of
 7 the Department of Law Enforcement's Missing Endangered
 8 Persons Information Clearinghouse in the event of a
 9 state Purple Alert; specifying conditions under which
 10 a local law enforcement agency may request the
 11 clearinghouse to open a case; conforming provisions to
 12 changes made by the act; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 937.0205, Florida Statutes, is amended
 17 to read:

18 937.0205 Purple Alert.—

19 (1) The Legislature finds that a standardized state system
 20 is necessary to aid in the search for a missing adult identified
 21 in subsection (4) ~~paragraph (4)(a)~~. The Legislature also finds
 22 that a coordinated local law enforcement and state agency
 23 response with prompt and widespread sharing of information will
 24 improve the chances of finding the person.

25 (2) It is the intent of the Legislature to establish the

26 Purple Alert, to be implemented in a manner that, to the extent
27 practicable, safeguards the privacy rights and related health
28 and diagnostic information of such missing adults.

29 (3) The Department of Law Enforcement, in cooperation with
30 the Department of Transportation, the Department of Highway
31 Safety and Motor Vehicles, the Department of the Lottery, and
32 local law enforcement agencies, shall establish and implement
33 the Purple Alert. At a minimum, the Purple Alert must:

34 (a) Be the only viable means by which the missing adult is
35 likely to be returned to safety;

36 (b) Provide, to the greatest extent possible, for the
37 protection of the privacy, dignity, and independence of the
38 missing adult by including standards aimed at safeguarding these
39 civil liberties by preventing the inadvertent or unnecessary
40 broadcasting or dissemination of sensitive health and diagnostic
41 information;

42 (c) Limit the broadcasting and dissemination of alerts and
43 related information to the geographic areas where the missing
44 adult could reasonably be, considering his or her circumstances
45 and physical and mental condition, the potential modes of
46 transportation available to him or her or suspected to be
47 involved, and the known or suspected circumstances of his or her
48 disappearance; and

49 (d) Be activated only when there is sufficient descriptive
50 information about the missing adult and the circumstances

51 surrounding his or her disappearance to indicate that activating
 52 the alert is likely to help locate the missing adult.

53 ~~(4)(a) Under a Purple Alert, a local law enforcement~~
 54 ~~agency may broadcast to the media and to persons who subscribe~~
 55 ~~to receive alert notifications under this section information~~
 56 ~~concerning~~ a missing adult is deemed to be an adult:

57 (a)1. Who has a mental or cognitive disability that is not
 58 Alzheimer's disease or a dementia-related disorder; an
 59 intellectual disability or a developmental disability, as those
 60 terms are defined in s. 393.063; a brain injury; another
 61 physical, mental, or emotional disability that is not related to
 62 substance abuse; or a combination of any of these;

63 (b)2. Whose disappearance indicates a credible threat of
 64 immediate danger or serious bodily harm to himself or herself,
 65 as determined by the local law enforcement agency;

66 (c)3. Who cannot be returned to safety without law
 67 enforcement intervention; and

68 (d)4. Who does not meet the criteria for activation of a
 69 local Silver Alert or the Silver Alert Plan of the Department of
 70 Law Enforcement.

71 (5) For a missing adult on foot or in an unidentified
 72 vehicle, local law enforcement agencies shall develop their own
 73 policies for activation of a local Purple Alert that meets the
 74 requirements set forth in s. 937.021 and shall:

75 (a) Contact media outlets in the affected area or

76 surrounding jurisdictions;

77 (b) Inform all on-duty law enforcement officers of the
78 missing adult report; and

79 (c) Communicate the report to any other law enforcement
80 agency in the county of jurisdiction.

81 (6) A state Purple Alert may be requested from the
82 Department of Law Enforcement's Missing Endangered Persons
83 Information Clearinghouse when the investigation indicates that
84 there is a motor vehicle with an identified license plate or
85 other vehicle information. The clearinghouse shall:

86 (a) Coordinate with the Department of Transportation and
87 the Department of Highway Safety and Motor Vehicles for the
88 activation of dynamic message signs on state highways and the
89 immediate distribution of critical information to the public
90 regarding the missing adult in accordance with the alert;

91 (b) Coordinate with the Department of the Lottery to have
92 the state Purple Alert broadcast on lottery terminals,
93 including, but not limited to, lottery terminals in gas
94 stations, convenience stores, and supermarkets; and

95 (c) Notify subscribers.

96 (7) If a local or state Purple Alert is determined to be
97 necessary and appropriate, the local law enforcement agency
98 having jurisdiction may also request that a case be opened with
99 the Department of Law Enforcement's Missing Endangered Persons
100 Information Clearinghouse.

101 ~~(b) If a Purple Alert is determined to be necessary and~~
 102 ~~appropriate, the local law enforcement agency having~~
 103 ~~jurisdiction must notify the media and subscribers in the~~
 104 ~~jurisdiction or jurisdictions where the missing adult is~~
 105 ~~believed to or may be located. The local law enforcement agency~~
 106 ~~having jurisdiction may also request that the Purple Alert~~
 107 ~~notification be broadcast on lottery terminals within the~~
 108 ~~geographic regions where the missing adult may reasonably be,~~
 109 ~~including, but not limited to, lottery terminals in gas~~
 110 ~~stations, convenience stores, and supermarkets.~~

111 ~~(c) Under the Purple Alert, the local law enforcement~~
 112 ~~agency having jurisdiction may also request that a case be~~
 113 ~~opened with the Department of Law Enforcement's Missing~~
 114 ~~Endangered Persons Information Clearinghouse. To enhance local~~
 115 ~~or regional efforts when the investigation indicates that an~~
 116 ~~identifiable vehicle is involved, the clearinghouse must~~
 117 ~~coordinate with the Department of Transportation and the~~
 118 ~~Department of Highway Safety and Motor Vehicles for the~~
 119 ~~activation of dynamic message signs on state highways and the~~
 120 ~~immediate distribution of critical information to the public~~
 121 ~~regarding the missing adult in accordance with the alert.~~

122 (8)(5) The state Purple Alert process must include
 123 procedures to monitor the use, activation, and results of alerts
 124 and a strategy for informing and educating law enforcement, the
 125 media, and other stakeholders concerning the alert.

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126 (9)~~(6)~~ The Department of Law Enforcement may adopt rules
127 to implement and administer this section.

128 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 983 Pub. Rec./Clerks of the Circuit Court, Deputy Clerks, and Clerk Personnel

SPONSOR(S): Civil Justice Subcommittee, Daley, and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Leshko	Jones
2) Ethics, Elections & Open Government Subcommittee	14 Y, 0 N	Rando	Toliver
3) Judiciary Committee		Leshko	Kramer

SUMMARY ANALYSIS

The circuit court clerks are elected constitutional officers. Circuit court clerks, deputy clerks, and their personnel provide essential administrative and clerical support functions to the Florida circuit courts, including tracking and reviewing cases, working with pro se litigants, auditing child support payments, and processing and assisting with paperwork for protective injunctions.

Currently, neither the personal identifying nor location information of current clerks of the circuit courts, deputy clerks of the circuit courts, or the clerks' personnel is exempt from Florida's public record requirements.

CS/HB 983 amends s. 119.071, F.S., to create a public record exemption for current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, telephone numbers, dates of birth, and photographs of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel; and
- Names and locations of schools and day care facilities attended by the children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel.

Pursuant to the Open Government Sunset Review Act, the exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill includes the constitutionally required public necessity statement.

The bill provides an effective date of July 1, 2024.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption for current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law an exemption¹ from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

Section 119.01, F.S., also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review (OGSR) Act³ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.⁵

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁶

Furthermore, there is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute.⁷

Circuit Court Clerks and Clerk Personnel

¹ A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

² Art. I, s. 24(c), Fla. Const.

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ S. 119.15(3), F.S.

⁷ See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991); See Op. Att'y Gen. Fla. 04- 09 (2004).

The circuit court clerks are elected constitutional officers.⁸ Circuit court clerks perform a wide range of record keeping, information management, and financial administration services for Florida's judicial system and county government.

In addition to serving as clerks of the circuit courts, most also as serve as the county treasurer, recorder, auditor, finance officer, and ex-officio clerk to the county commission. Florida's clerks of court have hundreds of statutory responsibilities and provide critical public services to their communities.⁹

The clerks' responsibilities include:

- Facilitating the jury process;
- Maintaining court records;
- Providing forms and resources for legal actions;
- Maintaining court finances;
- Managing court appearances;
- Providing resources for pro se litigants;
- Auditing child support payments;
- Handling public record requests, which frequently requires redacting certain personal information of protected parties;
- Processing and assisting with paperwork for protective injunctions, including domestic violence injunctions and injunctions for vulnerable adults;
- Maintaining court evidence; and
- Other administrative functions.¹⁰

Circuit court clerks may appoint a deputy or deputies who may exercise the same powers as the clerk may exercise, except for the power to appoint deputies.¹¹

Currently, neither the personal identifying nor location information of current clerks of the circuit courts, deputy clerks of the circuit courts, or clerk personnel is exempt from Florida's public record requirements.

Effect of Proposed Changes

CS/HB 983 amends s. 119.071, F.S., to create a public record exemption for current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, telephone numbers, dates of birth, and photographs of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel; and
- Names and locations of schools and day care facilities attended by the children of current clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel.

Pursuant to the OGSR Act, the exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill includes the constitutionally required public necessity statement.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of

⁸ Art. VIII, s. 1(d), Fla. Const.

⁹ Florida Court Clerks & Comptrollers, *Role of the Clerk and Comptroller*, <https://www.flclerks.com/page/RoleoftheClerk> (last visited Jan. 25, 2024).

¹⁰ *Id.*

¹¹ S. 28.06, F.S.

public records.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant negative fiscal impact on agencies holding records that contain personal identifying and location information of current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families because staff responsible for complying with public record requests may require training related to the public record exemption. Additionally, agencies could incur costs associated with redacting the exempt information prior to releasing records. However, these additional costs will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that the Legislature finds that the responsibilities of clerks of the circuit courts, deputy clerks of the circuit courts, and clerk personnel regularly involve legal enforcement of divorce and child support proceedings, which have resulted in threats, including death threats, and harassing telephone calls and emails from disgruntled individuals. Within the public necessity statement, the Legislature finds that release of such personal identifying and location information may increase the danger of such clerks and clerk personnel and their spouses and children being physically or emotionally harmed or stalked; and that the harm that may result from release of such information outweighs any public benefit that may be derived from the disclosure of such information.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specified information concerning current clerks of the circuit courts, deputy clerks of the circuit courts, clerk personnel, and their families, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 18, 2024, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed former clerks of the circuit court, deputy clerks of the circuit court, and clerk personnel from the newly-created public record exemption.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for the personal identifying and
 5 location information of current clerks of the circuit
 6 court, deputy clerks of the circuit court, and clerk
 7 of the circuit court personnel and the names and
 8 personal identifying and location information of the
 9 spouses and children of such clerks, deputy clerks,
 10 and clerk personnel; providing for future legislative
 11 review and repeal of the exemption; providing for
 12 retroactive application; providing a statement of
 13 public necessity; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraph (d) of subsection (4) of section
 18 119.071, Florida Statutes, is amended to read:

19 119.071 General exemptions from inspection or copying of
 20 public records.—

21 (4) AGENCY PERSONNEL INFORMATION.—

22 (d)1. For purposes of this paragraph, the term:

23 a. "Home addresses" means the dwelling location at which
 24 an individual resides and includes the physical address, mailing
 25 address, street address, parcel identification number, plot

26 identification number, legal property description, neighborhood
27 name and lot number, GPS coordinates, and any other descriptive
28 property information that may reveal the home address.

29 b. "Judicial assistant" means a court employee assigned to
30 the following class codes: 8140, 8150, 8310, and 8320.

31 c. "Telephone numbers" includes home telephone numbers,
32 personal cellular telephone numbers, personal pager telephone
33 numbers, and telephone numbers associated with personal
34 communications devices.

35 2.a. The home addresses, telephone numbers, dates of
36 birth, and photographs of active or former sworn law enforcement
37 personnel or of active or former civilian personnel employed by
38 a law enforcement agency, including correctional and
39 correctional probation officers, personnel of the Department of
40 Children and Families whose duties include the investigation of
41 abuse, neglect, exploitation, fraud, theft, or other criminal
42 activities, personnel of the Department of Health whose duties
43 are to support the investigation of child abuse or neglect, and
44 personnel of the Department of Revenue or local governments
45 whose responsibilities include revenue collection and
46 enforcement or child support enforcement; the names, home
47 addresses, telephone numbers, photographs, dates of birth, and
48 places of employment of the spouses and children of such
49 personnel; and the names and locations of schools and day care
50 facilities attended by the children of such personnel are exempt

51 from s. 119.07(1) and s. 24(a), Art. I of the State
52 Constitution.

53 b. The home addresses, telephone numbers, dates of birth,
54 and photographs of current or former nonsworn investigative
55 personnel of the Department of Financial Services whose duties
56 include the investigation of fraud, theft, workers' compensation
57 coverage requirements and compliance, other related criminal
58 activities, or state regulatory requirement violations; the
59 names, home addresses, telephone numbers, dates of birth, and
60 places of employment of the spouses and children of such
61 personnel; and the names and locations of schools and day care
62 facilities attended by the children of such personnel are exempt
63 from s. 119.07(1) and s. 24(a), Art. I of the State
64 Constitution.

65 c. The home addresses, telephone numbers, dates of birth,
66 and photographs of current or former nonsworn investigative
67 personnel of the Office of Financial Regulation's Bureau of
68 Financial Investigations whose duties include the investigation
69 of fraud, theft, other related criminal activities, or state
70 regulatory requirement violations; the names, home addresses,
71 telephone numbers, dates of birth, and places of employment of
72 the spouses and children of such personnel; and the names and
73 locations of schools and day care facilities attended by the
74 children of such personnel are exempt from s. 119.07(1) and s.
75 24(a), Art. I of the State Constitution.

76 d. The home addresses, telephone numbers, dates of birth,
 77 and photographs of current or former firefighters certified in
 78 compliance with s. 633.408; the names, home addresses, telephone
 79 numbers, photographs, dates of birth, and places of employment
 80 of the spouses and children of such firefighters; and the names
 81 and locations of schools and day care facilities attended by the
 82 children of such firefighters are exempt from s. 119.07(1) and
 83 s. 24(a), Art. I of the State Constitution.

84 e. The home addresses, dates of birth, and telephone
 85 numbers of current or former justices of the Supreme Court,
 86 district court of appeal judges, circuit court judges, and
 87 county court judges, and of current judicial assistants; the
 88 names, home addresses, telephone numbers, dates of birth, and
 89 places of employment of the spouses and children of current or
 90 former justices and judges and of current judicial assistants;
 91 and the names and locations of schools and day care facilities
 92 attended by the children of current or former justices and
 93 judges and of current judicial assistants are exempt from s.
 94 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 95 sub-subparagraph is subject to the Open Government Sunset Review
 96 Act in accordance with s. 119.15 and shall stand repealed on
 97 October 2, 2028, unless reviewed and saved from repeal through
 98 reenactment by the Legislature.

99 f. The home addresses, telephone numbers, dates of birth,
 100 and photographs of current or former state attorneys, assistant

101 state attorneys, statewide prosecutors, or assistant statewide
 102 prosecutors; the names, home addresses, telephone numbers,
 103 photographs, dates of birth, and places of employment of the
 104 spouses and children of current or former state attorneys,
 105 assistant state attorneys, statewide prosecutors, or assistant
 106 statewide prosecutors; and the names and locations of schools
 107 and day care facilities attended by the children of current or
 108 former state attorneys, assistant state attorneys, statewide
 109 prosecutors, or assistant statewide prosecutors are exempt from
 110 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

111 g. The home addresses, dates of birth, and telephone
 112 numbers of general magistrates, special magistrates, judges of
 113 compensation claims, administrative law judges of the Division
 114 of Administrative Hearings, and child support enforcement
 115 hearing officers; the names, home addresses, telephone numbers,
 116 dates of birth, and places of employment of the spouses and
 117 children of general magistrates, special magistrates, judges of
 118 compensation claims, administrative law judges of the Division
 119 of Administrative Hearings, and child support enforcement
 120 hearing officers; and the names and locations of schools and day
 121 care facilities attended by the children of general magistrates,
 122 special magistrates, judges of compensation claims,
 123 administrative law judges of the Division of Administrative
 124 Hearings, and child support enforcement hearing officers are
 125 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

126 Constitution.

127 h. The home addresses, telephone numbers, dates of birth,
 128 and photographs of current or former human resource, labor
 129 relations, or employee relations directors, assistant directors,
 130 managers, or assistant managers of any local government agency
 131 or water management district whose duties include hiring and
 132 firing employees, labor contract negotiation, administration, or
 133 other personnel-related duties; the names, home addresses,
 134 telephone numbers, dates of birth, and places of employment of
 135 the spouses and children of such personnel; and the names and
 136 locations of schools and day care facilities attended by the
 137 children of such personnel are exempt from s. 119.07(1) and s.
 138 24(a), Art. I of the State Constitution.

139 i. The home addresses, telephone numbers, dates of birth,
 140 and photographs of current or former code enforcement officers;
 141 the names, home addresses, telephone numbers, dates of birth,
 142 and places of employment of the spouses and children of such
 143 personnel; and the names and locations of schools and day care
 144 facilities attended by the children of such personnel are exempt
 145 from s. 119.07(1) and s. 24(a), Art. I of the State
 146 Constitution.

147 j. The home addresses, telephone numbers, places of
 148 employment, dates of birth, and photographs of current or former
 149 guardians ad litem, as defined in s. 39.820; the names, home
 150 addresses, telephone numbers, dates of birth, and places of

151 employment of the spouses and children of such persons; and the
152 names and locations of schools and day care facilities attended
153 by the children of such persons are exempt from s. 119.07(1) and
154 s. 24(a), Art. I of the State Constitution.

155 k. The home addresses, telephone numbers, dates of birth,
156 and photographs of current or former juvenile probation
157 officers, juvenile probation supervisors, detention
158 superintendents, assistant detention superintendents, juvenile
159 justice detention officers I and II, juvenile justice detention
160 officer supervisors, juvenile justice residential officers,
161 juvenile justice residential officer supervisors I and II,
162 juvenile justice counselors, juvenile justice counselor
163 supervisors, human services counselor administrators, senior
164 human services counselor administrators, rehabilitation
165 therapists, and social services counselors of the Department of
166 Juvenile Justice; the names, home addresses, telephone numbers,
167 dates of birth, and places of employment of spouses and children
168 of such personnel; and the names and locations of schools and
169 day care facilities attended by the children of such personnel
170 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
171 Constitution.

172 l. The home addresses, telephone numbers, dates of birth,
173 and photographs of current or former public defenders, assistant
174 public defenders, criminal conflict and civil regional counsel,
175 and assistant criminal conflict and civil regional counsel; the

176 names, home addresses, telephone numbers, dates of birth, and
177 places of employment of the spouses and children of current or
178 former public defenders, assistant public defenders, criminal
179 conflict and civil regional counsel, and assistant criminal
180 conflict and civil regional counsel; and the names and locations
181 of schools and day care facilities attended by the children of
182 current or former public defenders, assistant public defenders,
183 criminal conflict and civil regional counsel, and assistant
184 criminal conflict and civil regional counsel are exempt from s.
185 119.07(1) and s. 24(a), Art. I of the State Constitution.

186 m. The home addresses, telephone numbers, dates of birth,
187 and photographs of current or former investigators or inspectors
188 of the Department of Business and Professional Regulation; the
189 names, home addresses, telephone numbers, dates of birth, and
190 places of employment of the spouses and children of such current
191 or former investigators and inspectors; and the names and
192 locations of schools and day care facilities attended by the
193 children of such current or former investigators and inspectors
194 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
195 Constitution.

196 n. The home addresses, telephone numbers, and dates of
197 birth of county tax collectors; the names, home addresses,
198 telephone numbers, dates of birth, and places of employment of
199 the spouses and children of such tax collectors; and the names
200 and locations of schools and day care facilities attended by the

201 children of such tax collectors are exempt from s. 119.07(1) and
 202 s. 24(a), Art. I of the State Constitution.

203 o. The home addresses, telephone numbers, dates of birth,
 204 and photographs of current or former personnel of the Department
 205 of Health whose duties include, or result in, the determination
 206 or adjudication of eligibility for social security disability
 207 benefits, the investigation or prosecution of complaints filed
 208 against health care practitioners, or the inspection of health
 209 care practitioners or health care facilities licensed by the
 210 Department of Health; the names, home addresses, telephone
 211 numbers, dates of birth, and places of employment of the spouses
 212 and children of such personnel; and the names and locations of
 213 schools and day care facilities attended by the children of such
 214 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 215 the State Constitution.

216 p. The home addresses, telephone numbers, dates of birth,
 217 and photographs of current or former impaired practitioner
 218 consultants who are retained by an agency or current or former
 219 employees of an impaired practitioner consultant whose duties
 220 result in a determination of a person's skill and safety to
 221 practice a licensed profession; the names, home addresses,
 222 telephone numbers, dates of birth, and places of employment of
 223 the spouses and children of such consultants or their employees;
 224 and the names and locations of schools and day care facilities
 225 attended by the children of such consultants or employees are

226 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
227 Constitution.

228 q. The home addresses, telephone numbers, dates of birth,
229 and photographs of current or former emergency medical
230 technicians or paramedics certified under chapter 401; the
231 names, home addresses, telephone numbers, dates of birth, and
232 places of employment of the spouses and children of such
233 emergency medical technicians or paramedics; and the names and
234 locations of schools and day care facilities attended by the
235 children of such emergency medical technicians or paramedics are
236 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
237 Constitution.

238 r. The home addresses, telephone numbers, dates of birth,
239 and photographs of current or former personnel employed in an
240 agency's office of inspector general or internal audit
241 department whose duties include auditing or investigating waste,
242 fraud, abuse, theft, exploitation, or other activities that
243 could lead to criminal prosecution or administrative discipline;
244 the names, home addresses, telephone numbers, dates of birth,
245 and places of employment of spouses and children of such
246 personnel; and the names and locations of schools and day care
247 facilities attended by the children of such personnel are exempt
248 from s. 119.07(1) and s. 24(a), Art. I of the State
249 Constitution.

250 s. The home addresses, telephone numbers, dates of birth,

251 and photographs of current or former directors, managers,
252 supervisors, nurses, and clinical employees of an addiction
253 treatment facility; the home addresses, telephone numbers,
254 photographs, dates of birth, and places of employment of the
255 spouses and children of such personnel; and the names and
256 locations of schools and day care facilities attended by the
257 children of such personnel are exempt from s. 119.07(1) and s.
258 24(a), Art. I of the State Constitution. For purposes of this
259 sub-subparagraph, the term "addiction treatment facility" means
260 a county government, or agency thereof, that is licensed
261 pursuant to s. 397.401 and provides substance abuse prevention,
262 intervention, or clinical treatment, including any licensed
263 service component described in s. 397.311(26).

264 t. The home addresses, telephone numbers, dates of birth,
265 and photographs of current or former directors, managers,
266 supervisors, and clinical employees of a child advocacy center
267 that meets the standards of s. 39.3035(2) and fulfills the
268 screening requirement of s. 39.3035(3), and the members of a
269 Child Protection Team as described in s. 39.303 whose duties
270 include supporting the investigation of child abuse or sexual
271 abuse, child abandonment, child neglect, and child exploitation
272 or to provide services as part of a multidisciplinary case
273 review team; the names, home addresses, telephone numbers,
274 photographs, dates of birth, and places of employment of the
275 spouses and children of such personnel and members; and the

276 names and locations of schools and day care facilities attended
 277 by the children of such personnel and members are exempt from s.
 278 119.07(1) and s. 24(a), Art. I of the State Constitution.

279 u. The home addresses, telephone numbers, places of
 280 employment, dates of birth, and photographs of current or former
 281 staff and domestic violence advocates, as defined in s.
 282 90.5036(1)(b), of domestic violence centers certified by the
 283 Department of Children and Families under chapter 39; the names,
 284 home addresses, telephone numbers, places of employment, dates
 285 of birth, and photographs of the spouses and children of such
 286 personnel; and the names and locations of schools and day care
 287 facilities attended by the children of such personnel are exempt
 288 from s. 119.07(1) and s. 24(a), Art. I of the State
 289 Constitution.

290 v. The home addresses, telephone numbers, dates of birth,
 291 and photographs of current or former inspectors or investigators
 292 of the Department of Agriculture and Consumer Services; the
 293 names, home addresses, telephone numbers, dates of birth, and
 294 places of employment of the spouses and children of current or
 295 former inspectors or investigators; and the names and locations
 296 of schools and day care facilities attended by the children of
 297 current or former inspectors or investigators are exempt from s.
 298 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 299 sub-subparagraph is subject to the Open Government Sunset Review
 300 Act in accordance with s. 119.15 and shall stand repealed on

301 October 2, 2028, unless reviewed and saved from repeal through
302 reenactment by the Legislature.

303 w. The home addresses, telephone numbers, dates of birth,
304 and photographs of current clerks of the circuit court, deputy
305 clerks of the circuit court, and clerk of the circuit court
306 personnel; the names, home addresses, telephone numbers, dates
307 of birth, and places of employment of the spouses and children
308 of current clerks of the circuit court, deputy clerks of the
309 circuit court, and clerk of the circuit court personnel; and the
310 names and locations of schools and day care facilities attended
311 by the children of current clerks of the circuit court, deputy
312 clerks of the circuit court, and clerk of the circuit court
313 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
314 the State Constitution. This sub-subparagraph is subject to the
315 Open Government Sunset Review Act in accordance with s. 119.15
316 and shall stand repealed on October 2, 2029, unless reviewed and
317 saved from repeal through reenactment by the Legislature.

318 3. An agency that is the custodian of the information
319 specified in subparagraph 2. and that is not the employer of the
320 officer, employee, justice, judge, or other person specified in
321 subparagraph 2. must maintain the exempt status of that
322 information only if the officer, employee, justice, judge, other
323 person, or employing agency of the designated employee submits a
324 written and notarized request for maintenance of the exemption
325 to the custodial agency. The request must state under oath the

326 statutory basis for the individual's exemption request and
327 confirm the individual's status as a party eligible for exempt
328 status.

329 4.a. A county property appraiser, as defined in s.
330 192.001(3), or a county tax collector, as defined in s.
331 192.001(4), who receives a written and notarized request for
332 maintenance of the exemption pursuant to subparagraph 3. must
333 comply by removing the name of the individual with exempt status
334 and the instrument number or Official Records book and page
335 number identifying the property with the exempt status from all
336 publicly available records maintained by the property appraiser
337 or tax collector. For written requests received on or before
338 July 1, 2021, a county property appraiser or county tax
339 collector must comply with this sub-subparagraph by October 1,
340 2021. A county property appraiser or county tax collector may
341 not remove the street address, legal description, or other
342 information identifying real property within the agency's
343 records so long as a name or personal information otherwise
344 exempt from inspection and copying pursuant to this section is
345 not associated with the property or otherwise displayed in the
346 public records of the agency.

347 b. Any information restricted from public display,
348 inspection, or copying under sub-subparagraph a. must be
349 provided to the individual whose information was removed.

350 5. An officer, an employee, a justice, a judge, or other

351 person specified in subparagraph 2. may submit a written request
352 for the release of his or her exempt information to the
353 custodial agency. The written request must be notarized and must
354 specify the information to be released and the party authorized
355 to receive the information. Upon receipt of the written request,
356 the custodial agency must release the specified information to
357 the party authorized to receive such information.

358 6. The exemptions in this paragraph apply to information
359 held by an agency before, on, or after the effective date of the
360 exemption.

361 7. Information made exempt under this paragraph may be
362 disclosed pursuant to s. 28.2221 to a title insurer authorized
363 pursuant to s. 624.401 and its affiliates as defined in s.
364 624.10; a title insurance agent or title insurance agency as
365 defined in s. 626.841(1) or (2), respectively; or an attorney
366 duly admitted to practice law in this state and in good standing
367 with The Florida Bar.

368 8. The exempt status of a home address contained in the
369 Official Records is maintained only during the period when a
370 protected party resides at the dwelling location. Upon
371 conveyance of real property after October 1, 2021, and when such
372 real property no longer constitutes a protected party's home
373 address as defined in sub-subparagraph 1.a., the protected party
374 must submit a written request to release the removed information
375 to the county recorder. The written request to release the

376 removed information must be notarized, must confirm that a
377 protected party's request for release is pursuant to a
378 conveyance of his or her dwelling location, and must specify the
379 Official Records book and page, instrument number, or clerk's
380 file number for each document containing the information to be
381 released.

382 9. Upon the death of a protected party as verified by a
383 certified copy of a death certificate or court order, any party
384 can request the county recorder to release a protected
385 decedent's removed information unless there is a related request
386 on file with the county recorder for continued removal of the
387 decedent's information or unless such removal is otherwise
388 prohibited by statute or by court order. The written request to
389 release the removed information upon the death of a protected
390 party must attach the certified copy of a death certificate or
391 court order and must be notarized, must confirm the request for
392 release is due to the death of a protected party, and must
393 specify the Official Records book and page number, instrument
394 number, or clerk's file number for each document containing the
395 information to be released. A fee may not be charged for the
396 release of any document pursuant to such request.

397 10. Except as otherwise expressly provided in this
398 paragraph, this paragraph is subject to the Open Government
399 Sunset Review Act in accordance with s. 119.15 and shall stand
400 repealed on October 2, 2024, unless reviewed and saved from

401 repeal through reenactment by the Legislature.

402 Section 2. The Legislature finds that it is a public
403 necessity that the home addresses, telephone numbers, dates of
404 birth, and photographs of current clerks of the circuit court,
405 deputy clerks of the circuit court, and clerk of the circuit
406 court personnel; the names, home addresses, telephone numbers,
407 dates of birth, and places of employment of the spouses and
408 children of current clerks of the circuit court, deputy clerks
409 of the circuit court, and clerk of the circuit court personnel;
410 and the names and locations of schools and day care facilities
411 attended by the children of current clerks of the circuit court,
412 deputy clerks of the circuit court, and clerk of the circuit
413 court personnel be made exempt from s. 119.07(1), Florida
414 Statutes, and s. 24(a), Article I of the State Constitution. The
415 responsibilities of clerks of the circuit court, deputy clerks
416 of the circuit court, and clerk of the circuit court personnel
417 regularly include involvement in legal enforcement, divorce, and
418 child support proceedings and, as a result, clerks of the
419 circuit court, deputy clerks of the circuit court, and clerk of
420 the circuit court personnel have received death threats,
421 harassing telephone calls and e-mails, and threats of physical
422 violence from disgruntled individuals. The Legislature finds
423 that the release of such personal identifying and location
424 information may place clerks of the circuit court, deputy clerks
425 of the circuit court, and clerk of the circuit court personnel

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426 | in danger of being physically or emotionally harmed or stalked.
427 | The Legislature finds that the harm that may result from the
428 | release of such personal identifying and location information
429 | outweighs any public benefit that may be derived from the
430 | disclosure of the information.

431 | Section 3. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1109 Security for Jewish Day Schools and Preschools

SPONSOR(S): Fine and others

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee		Wolff	Kramer
2) Appropriations Committee			
3) Education & Employment Committee			

SUMMARY ANALYSIS

Since 2018, the state has provided public schools with more than \$1 billion for school safety measures but has provided minimal support for private school safety measures. However, in 2023, during Regular Session, \$5,000,000 dollars in nonrecurring appropriations were made for security funding at Jewish day schools. During special session in November 2023, the Legislature appropriated an additional \$25,000,000 for security measures at Jewish day schools and \$20,000,000 for the Nonprofit Security Grant Program while amending such program to include nonprofit schools.

HB 1109 requires the Department of Education, subject to appropriation in the General Appropriations Act, to establish a program to provide funds to make full-time Jewish day schools and preschools in the state secure with professional security hardening, as needed, to better secure facilities of such schools and preschools and to protect their students.

Based on a risk assessment by law enforcement or a private security company, the bill requires funds to be used for the following:

- The purchase and installation of security cameras, perimeter lighting, perimeter fencing, and shatter-resistant glass for windows.
- Hiring or contracting with security personnel who are licensed and regulated by the state and insured.
- Expenses relating to transportation to minimize security exposure of staff, parents, and students.
- Other nonhardening security measures, including, but not limited to providing professional detection, prevention, and security services to such schools and preschools.

The bill authorizes the State Board of Education to adopt rules to implement the provisions of the bill.

The bill specifies that any security funding for Jewish day school and preschools is subject to appropriation. As such, the bill itself does not have a fiscal impact.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS.

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

School Safety Funding

A safe school allocation provides funding to assist school districts in their compliance with ss. 1006.07-1006.12, F.S., with priority given to safe-school officers.¹ For the 2023-2024 school year, \$250,000,000 was appropriated for safe schools funding. Each district received a minimum of \$250,000 and the remaining funds are allocated by a formula based one-third on the recent Florida Crime Index and two-thirds based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.²

The distribution of safe schools funds provided to a school district is contingent upon the district's compliance with all reporting procedures related to the prevention of bullying and harassment.³

Another program related to school safety is the School Hardening Grant program, which was designed to improve the physical security of school buildings based on a required security risk assessment. Funds could only be used for capital purchases and are allocated based on each school district's capital outlay Full-Time Equivalent (FTE) and charter school FTE. Funds must be provided based on district application.⁴ In 2023, all school safety funding for public schools was rolled into the safe schools allocation in order to provide school districts the most flexibility in the use of funds to fulfill the needs of the school district.

The Safe Schools Allocation and the school physical security improvement,⁵ or school hardening, grant program represent the most significant investments in school safety since the shooting at Marjory Stoneman Douglas High School. Below is a summary of the appropriations associated with these programs:

<u>Safe Schools Allocation</u>	
<u>Fiscal Year</u>	<u>Funding Amount</u>
2018-2019 ⁶	\$ 161,956,019
2019-2020 ⁷	\$ 180,000,000
2020-2021 ⁸	\$ 180,000,000
2021-2022 ⁹	\$ 180,000,000
2022-2023 ¹⁰	\$ 210,000,000
2023-2024 ¹¹	\$250,000,000
Total	\$ 1,161,956,019

<u>School Physical Security Improvement Grant</u>	
<u>Fiscal Year</u>	<u>Funding Amount</u>

¹ S. 1011.62(12), F.S.

² Specific Appropriations 5 and 86, s. 2, ch. 2022-156, L.O.F. See S. 1011.62(12), F.S.

³ S. 1006.147(7), F.S.

⁴ See, e.g., Specific Appropriation 108, s. 2, ch. 2022-156, L.O.F.; see, a/so, specific appropriation 113A, s. 2, ch 2021-36, specific appropriation 117A, s. 2, ch. 2020-111, and specific appropriation 116A, s. 2, ch 2019-115, L.O.F.

⁵ Section 44, ch. 2018-3, L.O.F.

⁶ Section 42, ch. 2018-3, L.O.F. (\$97,500,000); Specific Appropriations 6 and 92, s. 2, ch. 2018-9, L.O.F. (\$64,456,019)

⁷ Specific Appropriations 6 and 93, s. 2, ch. 2019-115, L.O.F.

⁸ Specific Appropriations 8 and 92, s. 2, ch. 2020-111, L.O.F.

⁹ Specific Appropriations 7 and 90, s. 2, ch. 2021-36, L.O.F.

¹⁰ Specific Appropriations 5 and 86, s. 2, ch. 2022-156, L.O.F.

¹¹ Specific Appropriations 5 and 80, s. 2, ch. 2023-239, L.O.F.

2018-2019 ¹²	\$98,962,286
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School Hardening Grant	
Fiscal Year	Funding Amount
2019-2020 ¹³	\$ 50,000,000
2020-2021 ¹⁴	\$ 42,000,000
2021-2022 ¹⁵	\$ 42,000,000
2022-2023 ¹⁶	\$ 20,000,000
Total	\$ 154,000,000

In 2023, during Regular Session, \$5,000,000 dollars in nonrecurring appropriations were made for security funding at Jewish day schools.¹⁷ During special session in November 2023, the Legislature appropriated an additional \$25,000,000 for security measures at Jewish day schools and preschools¹⁸ and \$20,000,000 for the Nonprofit Security Grant Program¹⁹ while amending such program to include nonprofit schools.²⁰ Other than these programs, the law does not currently provide security funding for private schools generally.

Effect of Proposed Changes

HB 1109 creates s. 1001.2921, F.S., to provide, subject to appropriation in the General Appropriations Act, security funding for Jewish day schools and preschools. The bill requires the Department of Education to establish a program to provide funds to make full-time Jewish day schools and preschools in the state secure with professional security hardening, as needed, to better secure facilities of such schools and preschools and to protect their students.

Based on a risk assessment by law enforcement or a private security company, the bill requires funds to be used for the following:

- The purchase and installation of security cameras, perimeter lighting, perimeter fencing, and shatter-resistant glass for windows.
- Hiring or contracting with security personnel who are licensed and regulated by the state and insured.
- Expenses relating to transportation to minimize security exposure of staff, parents, and students.
- Other nonhardening security measures, including, but not limited to providing professional detection, prevention, and security services to such schools and preschools.

The bill authorizes the State Board of Education to adopt rules to implement the provisions of the bill.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 1001.2921, F.S.; relating to Security funding for Jewish day schools and preschools.

Section 2: Provides an effective date of July 1, 2024.

¹² Section 44, ch. 2018-3, L.O.F.

¹³ Specific Appropriation 116A, s. 2, ch 2019-115, L.O.F.

¹⁴ Specific Appropriation 117A, s. 2, ch. 2020-111, L.O.F.

¹⁵ Specific Appropriation 113A, s. 2, ch 2021-36, L.O.F.

¹⁶ Specific Appropriation 108, s. 2, ch. 2022-156, L.O.F.

¹⁷ Specific Appropriations 100 and 105, s. 2, ch. 2023-239, L.O.F

¹⁸ Section 4 and 5, ch. 2023-352, L.O.F.

¹⁹ Established in 2023, the Nonprofit Security Grant Program allows Florida nonprofit organizations, including houses of worship and community centers, that are at high risk of violent attacks or hate crimes to apply for program grants to increase safety and security. S. 252.3712, F.S.

²⁰ Section 1 and 2, ch. 2023-352, L.O.F.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Under the bill, security funding for Jewish day schools and preschools is expressly made subject to appropriation. As such, the bill itself does not have a fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the State Board of Education to adopt rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to security for Jewish day schools and
 3 preschools; creating s. 1001.2921, F.S.; subject to
 4 and consistent with funds appropriated from the
 5 General Appropriations Act, requiring the Department
 6 of Education to establish a program to provide funds
 7 to full-time Jewish day schools and preschools for
 8 specified security purposes; providing authorized uses
 9 for such funds; authorizing the State Board of
 10 Education to adopt rules to administer this section;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 1001.2921, Florida Statutes, is created
 16 to read:

17 1001.2921 Security funding for Jewish day schools and
 18 preschools.-

19 (1) As authorized by and consistent with funds
 20 appropriated in the General Appropriations Act, the Department
 21 of Education shall establish a program to provide funds to make
 22 full-time Jewish day schools and preschools in the state secure
 23 with professional security hardening, as needed, to better
 24 secure facilities of such schools and preschools and to protect
 25 their students. Based on a risk assessment by law enforcement or

26 | a private security company, recurring funds shall be used
 27 | towards:

28 | (a) The purchase and installation of security cameras,
 29 | perimeter lighting, perimeter fencing, and shatter-resistant
 30 | glass for windows.

31 | (b) Hiring or contracting with security personnel who are
 32 | licensed and regulated by the state and insured.

33 | (c) Expenses relating to transportation to minimize
 34 | security exposure of staff, parents, and students.

35 | (d) Other nonhardening security measures, including, but
 36 | not limited to providing professional detection, prevention, and
 37 | security services to such schools and preschools.

38 | (2) The State Board of Education may adopt rules to
 39 | administer this section.

40 | Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1131 Online Sting Operations Grant Program

SPONSOR(S): Temple

TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N	Butcher	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Saag	Keith
3) Judiciary Committee		Butcher	Kramer

SUMMARY ANALYSIS

Section 943.041, F.S., creates the Crimes Against Children Criminal Profiling Program (CACP) within the Florida Department of Law Enforcement (FDLE). CACP provides investigative, training, and intelligence assistance to local law enforcement agencies while taking a proactive approach to investigating and preventing child sexual exploitation. Special Agents are qualified to investigate multi-jurisdictional operations and organized crimes against children in conjunction with local law enforcement agencies.

Local law enforcement agencies in Florida routinely conduct sting operations targeting online predators who may intend to commit crimes against children. A “sting operation” generally consists of an opportunity to commit a crime, a likely offender or group of offenders targeted by law enforcement, an undercover or hidden law enforcement officer or surrogate, and the eventual arrest of the likely offender or group of offenders.

Sting operations relating to online child sexual exploitation frequently involve an undercover law enforcement officer who poses as a child online for the purpose of identifying suspects who are communicating with or attempting to communicate with a child for the purpose of soliciting unlawful sexual activity. Such sting operations are generally localized efforts, and their utilization and effectiveness depend on how local officials allocate resources and personnel.

HB 1131 creates s. 943.0411, F.S., establishing the Online Sting Operations Grant Program within FDLE to award grants to local law enforcement agencies to support the creation of sting operations to target individuals online preying upon children or attempting to prey upon children.

The bill requires FDLE to annually award any funds specifically appropriated to the grant program to local law enforcement agencies to cover expenses related to computers, electronics, software, and other related necessary supplies. The bill specifies that grants must be provided to local law enforcement agencies if funds are appropriated for that purpose, and that the total amount of grants awarded may not exceed funding appropriated for the grant program.

The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The grant program established in the bill is subject to legislative appropriation. If an appropriation is provided by the legislature, the bill may have an indeterminate fiscal impact on state and local governments to the extent that local law enforcement agencies may apply for and receive funding from FDLE under the grant program.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Sting Operations

Section 943.041, F.S., creates the Crimes Against Children Criminal Profiling Program (CACPP) within the Florida Department of Law Enforcement (FDLE). CACPP provides investigative, training, and intelligence assistance to local law enforcement agencies while taking a proactive approach to investigating and preventing child sexual exploitation.¹ Special Agents are qualified to investigate multi-jurisdictional operations and organized crimes against children in conjunction with local law enforcement agencies.²

A “sting operation” generally consists of an opportunity to commit a crime, a likely offender or group of offenders targeted by law enforcement, an undercover or hidden law enforcement officer or surrogate, and the eventual arrest of the likely offender or group of offenders.³ Sting operations have the potential to result in large scale arrests and require planning and coordination from law enforcement to investigate, reduce, and prevent crimes.⁴

Sting operations relating to online child sexual exploitation frequently involve an undercover law enforcement officer who poses as a child online for the purpose of identifying suspects who are communicating with or attempting to communicate with a child for the purpose of soliciting unlawful sexual activity. Such sting operations are generally localized efforts, and their utilization and effectiveness depend on how local officials allocate resources and personnel.⁵

Local law enforcement agencies in Florida routinely conduct sting operations targeting online predators who may intend to commit crimes against children. In Leon County, the Capital City Human Trafficking Taskforce has arrested 16 people since its formation in late 2023.⁶ The taskforce’s undercover operations targeted individuals engaging in internet crimes against children, prostitution, and human trafficking.

On January 11, 2024, the Hillsborough County Sheriff’s Office (HCSO) announced the arrest of 123 people over the course of three months, including online predators who thought they were communicating with children and young teens but were actually communicating with HCSO detectives.⁷

On October 10, 2023, the Polk County Sheriff’s Office announced that its fourth undercover sting operation resulted in the arrest of six people alleged to have communicated online with persons they thought were children or guardians for the purpose of soliciting unlawful sexual activity with minors.⁸

¹ FDLE, *Missing Children Information Clearinghouse*, <https://www.fdle.state.fl.us/mcicsearch/crimesagainstchildren.asp> (last visited Jan. 24, 2024).

² *Id.*

³ Graeme R. Newman, *Sting Operations*, Center for Problem-Oriented Policing, (2007), <https://cops.usdoj.gov/RIC/Publications/cops-p134-pub.pdf> (last visited Jan. 24, 2024).

⁴ *Id.*

⁵ In 2023, the Florida Legislature allocated \$427,250 from the General Revenue Fund to the South Florida Internet Crimes Against Children Task Force Program. See SB 2500 (2023).

⁶ Elena Barrera, *Human trafficking taskforce arrests over a dozen individuals during undercover operation* (Jan. 11, 2024), Tallahassee Democrat, <https://news.yahoo.com/human-trafficking-taskforce-arrests-over-020052310.html> (last visited Jan. 24, 2024). The taskforce includes members from the Department of Homeland Security, the United States Attorney’s Office for the Northern District of Florida, the State Attorney’s Office for the Second Judicial Circuit, the Leon County Sheriff’s Office, FDLE, the Tallahassee Police Department, the Federal Bureau of Investigations, the Internal Revenue Service, and the United States Marshals Service.

⁷ HCSO, *Operation Renewed Hope*, <https://teamhcsos.com/News/PressRelease/69dfc87b-5961-4432-b0a4-b123d01d11cf/en-US> (last visited Jan. 24, 2024).

⁸ Polk County Sheriff’s Office, *Six suspects arrested during “Operation Child Protector IV” focusing on online solicitation of minors* (Oct. 10, 2023), <https://www.polksheriff.org/news-investigations/2023/10/10/six-suspects-arrested-during-operation-child-protector-iv-focusing-on-online-solicitation-of-minors> (last visited Jan. 24, 2024). See also “Takedown with Chris Hansen,” an investigative

Criminal Charges Frequently Resulting from Sting Operations

Sting operations targeting child predators online may frequently result in criminal charges for the offenses described below.

Certain Uses of Computer Services or Devices Prohibited

Under s. 847.0135(3), F.S., it is a third degree felony⁹ for a person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child *or another person believed by the person to be a child*, to commit any illegal act described in chapter 794 (sexual battery), chapter 800 (lewd or lascivious offenses), or chapter 827 (child sexual performance), F.S., or to otherwise engage in any unlawful sexual conduct with a child *or with another person believed by the person to be a child*; or
- Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in any sexual conduct.¹⁰

Traveling to Meet a Minor

Under s. 847.0135(4), F.S., it is a second degree felony¹¹ for a person who travels any distance either within Florida, to Florida, or from Florida by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child *or with another person believed by the person to be a child* after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child *or another person believed by the person to be a child*, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in other unlawful sexual conduct with a child; or
- Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, F.S., or to otherwise engage in any sexual conduct.

Effect of Proposed Changes

HB 1131 creates s. 943.0411, F.S., establishing the Online Sting Operations Grant Program within FDLE to award grants to local law enforcement agencies to support the creation of sting operations to target individuals online preying upon children or attempting to prey upon children.

The bill requires FDLE to annually award any funds specifically appropriated to the grant program to local law enforcement agencies to cover expenses related to computers, electronics, software, and other related necessary supplies. The bill specifies that grants must be provided to local law

docuseries in which journalist Chris Hansen coordinates with law enforcement, including the Polk County Sheriff's Office, to conduct undercover sting operations that "catch" persons accused of soliciting unlawful sexual activity with minors.

<https://www.imdb.com/takedown-with-chris-hansen> (last visited Jan. 24, 2024).

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ A person who misrepresents his or her age in violating this subsection commits a second degree felony. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

¹¹ A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

STORAGE NAME: h1131d.JDC

DATE: 1/26/2024

enforcement agencies if funds are appropriated for that purpose, and that the total amount of grants awarded may not exceed funding appropriated for the grant program.

The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 943.0411, F.S., relating to Online Sting Operations Grant Program for local law enforcement agencies to protect children.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate impact on state expenditures to the extent the bill authorizes FDLE to distribute funds specifically appropriated for the grant program. Any such impact is subject to legislative appropriation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an indeterminate positive impact on local government revenues to the extent that some local law enforcement agencies may receive future grant funding.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds under the new grant program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Online Sting Operations Grant
 3 Program; creating s. 943.0411, F.S.; creating the
 4 Online Sting Operations Grant Program within the
 5 Department of Law Enforcement to support local law
 6 enforcement agencies in creating certain sting
 7 operations to protect children; requiring the
 8 department to annually award grant funds to local law
 9 enforcement agencies; providing funding requirements;
 10 authorizing the department to establish criteria and
 11 set specific time periods for the acceptance of
 12 applications and the selection process for awarding
 13 grant funds; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 943.0411, Florida Statutes, is created
 18 to read:

19 943.0411 Online Sting Operations Grant Program for local
 20 law enforcement agencies to protect children.-

21 (1) There is created within the department the Online
 22 Sting Operations Grant Program to award grants to local law
 23 enforcement agencies to support their creation of sting
 24 operations to target individuals online preying upon children or
 25 attempting to do so.

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26 (2) The department shall annually award to local law
27 enforcement agencies any funds specifically appropriated for the
28 grant program to cover expenses related to computers,
29 electronics, software, and other related necessary supplies.
30 Grants must be provided to local law enforcement agencies if
31 funds are appropriated for that purpose by law. The total amount
32 of grants awarded may not exceed funding appropriated for the
33 grant program.

34 (3) The department may establish criteria and set specific
35 time periods for the acceptance of applications and for the
36 selection process for awarding grant funds.

37 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1473 School Safety

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Wolff	Kramer

SUMMARY ANALYSIS

Each year since the tragedy at Marjory Stoneman Douglas High School on Valentine’s Day 2018, the Legislature has passed measures designed to improve the safety and security of Florida’s public schools. The bill continues to support school safety improvements by strengthening the role of the Office of Safe Schools (OSS) in the state oversight process and creating new programs for both public and private schools.

PCS for HB 1473 amends s. 30.15, F.S., to clarify that private schools seeking to participate in the guardian program are responsible for costs associated with background screening in addition to costs associated with training, however, the bill authorizes the sheriff providing training for the participating private school to waive costs related to training and background screening. Additionally, the bill provides that an individual certified by the Criminal Justice Standards and Training Commission is exempt from the required school guardian training. The bill implements new reporting requirements related to individuals certified as school guardians and serving as school guardians in school districts, charter schools, and private schools. The Florida Department of Law Enforcement (FDLE) shall serve as the central repository of information regarding certified and appointed guardians.

The bill amends s. 1006.07, F.S., to establish new perimeter and door safety requirements that school districts and charter school governing boards must comply with by August 1, 2024. These requirements include keeping routes of ingress and egress securely closed and locked when students are on campus, requiring that these routes be actively staffed when open or unlocked, requiring that violations of such perimeter and safety requirements be reported to applicable school official or governing board, and providing disciplinary measures for a school administrator who knowingly violates such requirements.

The bill amends s. 1001.212, F.S., to require the OSS, by August 1, 2024, to develop and adopt a Florida school safety compliance inspection report to document compliance with Florida school safety requirements. The bill requires that the OSS triennially conduct unannounced inspections of all public schools, using the safety compliance inspection report. The bill provides for a bonus program for school principals and charter school administrators whose schools are found to be in full compliance with school safety requirements. The bill requires the OSS, by December 1, 2024, to recommend a methodology to distribute the safe schools allocation based upon the number and severity of incidents in school district School Environmental Safety Incident Reporting (SESIR) and each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.

The bill creates, subject to appropriation, a grant program to support private schools’ school safety efforts. Under the program, the FDLE shall provide competitive grants to sheriff's offices and law enforcement agencies to conduct physical site security assessments for and provide reports to private schools with recommendations on improving such schools' infrastructure safety and security.

The bill may have an indeterminate negative fiscal impact on state government expenditures by requiring OSS to conduct a triennial inspection of all public schools, which may require OSS to hire additional staff, and, to the extent the Legislature appropriates funding for the grant program created by the bill, by providing such funding to provide security inspections for private schools.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In February 2018, a 19-year old gunman killed 14 students and three staff members at Marjory Stoneman Douglas High School in Parkland, Florida.¹ The staff members killed were athletic director Chris Hixon, assistant football coach Aaron Feis, and teacher and cross-country coach Scott Beigel.² The incident of mass violence was preceded by multiple, repeated interactions between the shooter and law enforcement agencies, social services agencies, and schools, over many years. This history was characterized by a lack of communication and coordination, preventing these many entities from understanding the whole problem and acting to prevent the mass violence incident.

In response, the Legislature created the Marjory Stoneman Douglas High School Public Safety Commission (Commission) within FDLE.³ The Commission is composed of 16 voting members and four nonvoting members. The Governor appointed five voting members to the Commission, including the chair, and the President of the Senate and Speaker of the House of Representatives each appointed five voting members to the Commission. The Secretary of the Department of Children and Families, the Secretary of the Department of Juvenile Justice, the Secretary of the Agency for Health Care Administration, and the Commissioner of Education serve as ex officio, non-voting members of the Commission.⁴ The Commission meets, as necessary, to conduct its work at the call of the chair and at designated times and locations throughout the state.

The Commission published an initial report on its findings and recommendations on January 2, 2019. Many of the recommendations were adopted during the 2019 Legislative Session. The Commission issued its second report on November 1, 2019, and may issue reports annually until it sunsets.⁵

In 2022, the Legislature extended the sunset of the Commission until July 1, 2026, and substantially amended the responsibilities of the Commission.⁶ The Commission must monitor the implementation of school safety legislation by:

- Evaluating the activities of the Office of Safe Schools (OSS) to provide guidance to school districts, identifying areas of noncompliance and mechanisms used to achieve compliance.
- Reviewing the findings of the Auditor General regarding school district school safety policies and procedures needing improvement to ensure and demonstrate compliance with state law.
- Reviewing school hardening grant expenditures and evaluating such expenditures based on the report of the School Hardening and Harm Mitigation Workgroup, recommendations of law enforcement agencies based on school campus tours and the required return on investment analysis component of the Florida Safe Schools Assessment Tool (FSSAT).
- Evaluating the utilization of the centralized integrated data repository by schools and its effectiveness in conducting threat assessments.
- Assessing efforts by local governments to improve communication and coordination among regional emergency communications systems.
- Investigating any failures in incident responses by local law enforcement agencies and school resource officers.
- Investigating any failures in interactions with perpetrators preceding incidents of violence.⁷

School Safety Oversight and Compliance

¹ Tonya Alanez, David Fleshler, Stephen Hobbs, Lisa J. Huriash, Paula McMahon, Megan O'Matz and Scott Travis, *Unprepared and Overwhelmed*, South Florida Sun-Sentinel (Dec 28, 2018), <https://projects.sun-sentinel.com/2018/sfl-parkland-school-shooting-critical-moments/> (last visited Jan. 27, 2024).

² Eric Levenson, *These are the victims of the Florida school shooting*, CNN (Oct. 13, 2022) <https://www.cnn.com/2018/02/15/us/florida-shooting-victims-school/index.html> (last visited Jan. 27, 2024).

³ S. 943.687, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Background

Florida's Commissioner of Education (commissioner) oversees compliance with school safety and security requirements by school districts, district school superintendents, and public schools, including charter schools.⁸ The commissioner must facilitate compliance to the maximum extent provided under law, identify incidents of noncompliance, and impose or recommend enforcement and sanctioning actions to the State Board of Education (SBE), the Governor, or the Legislature.⁹

The OSS is fully accountable to the commissioner and serves as a central repository for best practices, training standards, and compliance oversight in all matters regarding school safety and security, including prevention efforts, intervention efforts, and emergency preparedness planning.¹⁰ The OSS responsibilities include, among other duties, collecting School Environmental Safety Incident Reporting (SESIR) data, providing a School Safety Specialist Training Program, evaluating usage of the standardized, statewide behavioral threat assessment instrument, monitoring compliance with requirements relating to school safety, and reporting incidents of noncompliance to the commissioner and the SBE.¹¹

District school boards and superintendents each have responsibilities related to school safety and security. District school superintendents must designate a school safety specialist who is responsible for the supervision and oversight for all school safety and security personnel, policies, and procedures in the school district, including conducting and reporting the recommendations from the annual school security risk assessment at each public school using the FSSAT.¹² District school boards must adopt policies that guide many aspects of school safety including the establishment of threat management teams (TMT) and emergency procedures and emergency preparation drills. TMTs assess and provide intervention recommendations for individuals whose behavior may pose a threat to the safety of school staff or students.¹³ TMT members must include individuals with expertise in counseling, instruction, school administration, and law enforcement.¹⁴ To conduct its work, a TMT must use the standardized, statewide behavioral threat assessment instrument developed by the OSS¹⁵ and may use the Florida Schools Safety Portal (FSSP) until the OSS operationalizes the statewide threat management portal, which must be in place by August 1, 2025.¹⁶

Emergency drills and procedures are guided by district school boards' policies and procedures, which are formulated in consultation with the appropriate public safety agencies. These policies apply to all students and faculty at all K-12 public schools. Emergencies include fires, natural disasters, active shooter and hostage situations, and bomb threats.¹⁷ Drills for active shooter and hostage situations must be conducted in accordance with developmentally appropriate and age-appropriate procedures at least as often as other emergency drills.¹⁸ The active shooter situation training for each school must engage the participation of the district school safety specialist, the TMT members, faculty, staff, and students, and must be conducted by the law enforcement agency or agencies designated as first responders to the school's campus.¹⁹

In 2020, the Legislature passed HB 23, requiring all public and charter schools to have a mobile panic alert system.²⁰ Known as Alyssa's Law, the bill is named for Alyssa Alhadeff, a Marjory Stoneman Douglas High School student who was one of the 17 people killed during the shooting. The legislation required the DOE to procure a statewide, mobile panic alert system for school districts to facilitate an

⁸ S. 1001.11(9), F.S.

⁹ *Id.*

¹⁰ S. 1001.212, F.S.

¹¹ *Id.*

¹² *Id.*

¹³ S. 1006.07(7), F.S.

¹⁴ S. 1006.07(7)(a), F.S.

¹⁵ *Id.*

¹⁶ S. 1006.07(7)(f), F.S.; S. 1001.212(12)(c), F.S.

¹⁷ S. 1006.07(4)(a), F.S.

¹⁸ *Id.*

¹⁹ S. 1006.07(4)(b)1., F.S.

²⁰ Ch. 2020-145, Laws of Fla.

integrated Enhanced 911 transmission or mobile activation during emergencies on public school campuses. The DOE completed the procurement and selected 11 vendors from which school districts may choose to satisfy this requirement.²¹

In 2021, the Legislature clarified that school districts were required to conduct active assailant drills but may provide accommodations for emergency drills conducted by exceptional student education centers.²²

In 2022, to provide more statewide uniformity in emergency drills at Florida's schools, the Legislature required the SBE to adopt rules governing emergency drills by August 1, 2023, and required such rules be based on recommendations from the Commission and in consultation with state and local constituencies. The rules must require all types of emergency drills be conducted at least once per school year. Additionally, the rules must define "emergency drill," "active threat," and "after-action report" and provide minimum requirements for school district emergency drill policies and procedures by incident type, school level, school type, and student and school characteristics, including timing, frequency, participation, training, notification, accommodations, and response to threat situations.²³

Additionally, law enforcement responsible for responding to schools in the event of an active assailant emergency must be physically present and participate in active assailant emergency drills. School districts must provide notice to the law enforcement officers required to be present at such drills at least 24 hours before the drill.²⁴

Effect of Proposed Changes – School Safety Oversight and Compliance

Perimeter and Door Security Measures

PCS for HB 1473 amends s. 1006.07, F.S., to establish new perimeter and door safety requirements that school districts and charter school governing boards must comply with by August 1, 2024. The bill requires compliance with the following:

- All gates or other access points that restrict ingress to or egress from a school campus shall remain closed and locked when students are on campus. The school safety specialist may determine in writing and notify the OSS that the open and unlocked gate or other access point is not a threat to school safety based upon other school safety measures. The OSS may conduct a compliance visit to review if such determination is appropriate.
- All school classrooms and other instructional spaces must be locked to prevent ingress when occupied by students, except between class periods when students are moving between classrooms or other instructional spaces.
- All campus access doors, gates, and other access points that allow ingress to or egress from a school building shall remain closed and locked at all times to prevent ingress, unless a person is actively entering or exiting the door, gate, or other access point. The school safety specialist may determine in writing and notify the OSS that the open and unlocked gate or other access point is not a threat to school safety based upon other school safety measures. The OSS may conduct a compliance visit to review if such determination is appropriate. All campus access doors, gates, and other access points may be electronically or manually controlled by school personnel to allow access by authorized visitors, students, and school personnel.

In relation to the locking of doors and access points, the bill requires that any time a door or access point is left open or unlocked it must be actively staffed by a person standing or seated at the door.

Additionally, the bill requires that all school classrooms and other instructional spaces must clearly and conspicuously mark the safest areas in each classroom or other instructional space where students must shelter in place during an emergency. Students must be notified of these safe areas within the first 5 days of the school year. If it is not feasible to clearly and conspicuously mark the safest areas in

²¹ Florida Department of Education, *Alyssa's Alert*, <https://www.fldoe.org/safe-schools/alyssas-alert.stm> (last visited Jan. 27, 2024).

²² Ch. 2021-176, Laws of Fla.

²³ S. 1006.07(4), F.S.

²⁴ *Id.*

a classroom or other instructional space, the school safety specialist or his or her designee must document such determination in writing, identify where affected students must shelter in place, and notify the OSS. The OSS shall conduct a compliance inspection of this requirement.

The bill requires any person who becomes aware of a violation of these requirements to report the violation to the school principal. The school principal must report the violation to the school safety specialist no later than the next business day after receiving such report. If the school principal or charter school administrator allegedly violated these requirements, then the report must be made directly to the district school superintendent or charter school governing board, as applicable.

The bill requires that the OSS refer any instructional personnel that knowingly violated the perimeter and door safety requirements to the district school superintendent or charter school administrator for disciplinary action. The superintendent or charter school administrator must notify the OSS of the outcome of the disciplinary proceeding within 3 school days of the conclusion of the proceedings.

The bill requires that the OSS refer any administrative personnel that knowingly permitted a violation of the perimeter and door safety requirements to the Education Practices Commission. The bill amends s. 1012.795, F.S., to authorize the Education Practices Commission to discipline an administrative certificate holder for a knowing violation of the perimeter and door safety requirements.

The OSS is required to maintain a record of any instructional or administrative personnel that unknowingly violated the perimeter and door safety requirements, and may use such information to inform any future investigation of the individual for a violation of the requirements.

The bill requires that the OSS annually notify all administrative and instructional personnel by electronic mail of the perimeter and door safety requirements.

Unannounced School Inspections

The bill amends s. 1001.212, F.S., to require the OSS, by August 1, 2024, to develop and adopt a Florida school safety compliance inspection report to document compliance with Florida school safety requirements. The OSS must provide school district superintendents and charter school administrators with a blank copy of the adopted report.

The bill requires that the OSS triennially conduct unannounced inspections of all public schools, including charter schools, using the safety compliance inspection report. Within 3 school days of the inspection, the OSS must provide a copy of the completed report to the school safety specialist and the school principal or charter school administrator. The school principal or charter school administrator must acknowledge receipt of the report within 1 school day. If the OSS finds any instance of noncompliance with Florida's school safety laws, the bill requires that a reinspection of the school occur within 6 months.

Upon a finding of noncompliance with the perimeter and door safety requirements in the bill, a school principal or charter school administrator must notify the OSS within 3 school days of receipt of the report how the noncompliance will be remedied.

In addition to the unannounced inspections, the OSS must provide quarterly reports to each district superintendent and school safety specialist identifying the number and percentage of school inspected or reinspected during the quarter and the number and percentage of schools that had no safety deficiencies.

The bill requires the school safety specialist to present the quarterly OSS report to the district school board in a public meeting. Additionally, during the first quarter of every school year, the school safety specialist shall report to the district school board the number of schools inspected during the preceding calendar year and the number and percentage of schools in compliance with school safety laws during the initial inspection and reinspection.

The bill amends s. 1006.07, F.S., to require the school safety specialist to conduct annual unannounced inspections of all public schools while school is in session and investigate reports of noncompliance with school safety requirements.

The bill creates a bonus program for school principals and charter school administrators that provides a bonus, as set forth in the General Appropriations Act, if, after the initial unannounced inspection during each triennial period, the OSS report reflects full compliance with Florida's school safety laws.

Emergency Drills

The bill amends s. 1006.07, F.S., to require each public school to maintain a record that is accessible on each campus or by request of the OSS of all emergency drills conducted, including the names of law enforcement personnel present on campus for each active assailant emergency drill.

School Safety Specialist Duties

The bill also amends s. 1006.07, F.S., to improve the communication between the school safety specialist and the district superintendent by requiring the school safety specialist to report to the district school superintendent and school board, at least on a quarterly basis, any noncompliance by the school district with laws or rules relating to school safety. In addition, the bill requires the school safety specialist to report any violations of the perimeter and door safety requirements by administrative personnel or instructional personnel to the district school superintendent or charter school administrator, and to the OSS.

Safe-school Officers

Background

District school boards and school district superintendents are required to partner with law enforcement or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. To assist charter schools with fulfilling this requirement, a district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options.²⁵

A safe-school officer may be a school resource officer, school safety officer, school guardian, or a school security guard. A school district may implement any combination of the following options based upon the needs of the school district and may.²⁶

- **School Resource Officer:** Establish a school resource officer program through a cooperative agreement with law enforcement agencies. A school resource officer is a certified law enforcement officer²⁷ who is employed by a law enforcement agency and is required to undergo criminal background checks, drug testing, and a psychological evaluation.²⁸ School resource officers abide by school board policies and consult with and coordinate activities through the school principal. They are responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a school board and a law enforcement agency. Activities conducted by the school resource officer, which are part of the regular instructional program of the school, are under the principal's direction.²⁹
- **School Safety Officer:** Commission one or more school safety officers as recommended by the district school superintendent and appointed by the district school board. A school safety officer is a certified law enforcement officer who may be employed by a district school board or law enforcement agency and is required to undergo criminal background checks, drug testing, and a psychological evaluation. A school safety officer has and must exercise the power to make arrests for violations of law on school board property or on property owned or leased by a

²⁵ S. 1006.12, F.S.

²⁶ S. 1006.12(1)-(4), F.S.

²⁷ See s. 943.10(1), F.S.

²⁸ S. 1006.12(1)(a), F.S.

²⁹ S. 1006.12(1)(b), F.S.

charter school under a charter contract. The officer may also make arrests off school board property if the law violation occurred on such property and may carry weapons when performing his or her official duties. A school safety officer's salary may be paid jointly by the school board and the law enforcement agency, as mutually agreed.³⁰

- School Guardian: Appoint a school guardian under the Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program who is certified by the sheriff after completing a psychological evaluation, drug testing, and specified training, which includes firearm instruction. A guardian may be a school district employee or charter school employee who volunteers to serve as a guardian, in support of school sanctioned activities, in addition to his or her official job duties. A qualifying individual may also be employed specifically as a guardian.³¹ Guardians do not have arrest powers.³²
- School Security Guard: Contract with a security agency to employ a school security guard. A school security guard is an individual who is employed by a security agency and serves on a school facility as a safe-school officer in support of school sanctioned activities. Security guards are required to hold a concealed carry weapon permit and undergo drug testing and a psychological evaluation. An individual serving in this capacity must complete guardian program training, including 144 training hours.³³ A security guard must aid in the prevention or abatement of active assailant incidents on school premises,³⁴ but does not have arrest powers.³⁵

A school district contract with a security agency must define the entity or entities responsible for training and the responsibilities for maintaining records relating to training, inspection, and firearm qualification.³⁶

All safe-school officers are required to receive mental health training. Safe-school officers who are sworn law enforcement officers must complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in the topic. The training must improve the safe-school officers' knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, to include de-escalation skills. Safe-school officers who are not sworn law enforcement officers are required to receive training to improve their knowledge and skills related to incident response and de-escalation.³⁷

A district school superintendent or charter school administrator, or their designee, is required to notify its county sheriff and the OSS within 72 hours after a safe-school officer being dismissed for misconduct, being disciplined, or discharging a firearm in the exercise of duties during a non-training incident.³⁸

The OSS must annually publish certain information about safe-school officers including the total number of officers, officers disciplined or relieved of duty due to misconduct, disciplinary incidents, and incidents in which a safe-school officer discharged his or her firearm outside of a training situation or in the course of duty.³⁹

Florida law exempts from disclosure any information held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a safe-school officer.⁴⁰

³⁰ S. 1006.12(2), F.S.

³¹ S. 1006.12(3), F.S.

³² S. 30.15(1)(k), F.S.

³³ S. 1006.12(4), F.S.

³⁴ S. 1006.12(4)(c), F.S.

³⁵ S. 30.15(1)(k), F.S.

³⁶ S. 1006.12(4)(b), F.S.

³⁷ S. 1006.12(6), F.S.

³⁸ S. 1006.12(5), F.S.

³⁹ S. 1001.212(16), F.S.

⁴⁰ S. 1006.12(8), F.S.

Florida law prohibits a person from falsely impersonating a school guardian and a violation of the prohibition is a third degree felony. In addition, the law prohibits a person from impersonating a law enforcement officer or licensed security officer acting in the capacity of a safe-school officer.⁴¹

Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program

The Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program (Guardian Program) authorizes qualified school personnel to serve as an armed guard to aid in the prevention or abatement of active assailant incidents on school premises.⁴²

A school district or charter school employee may serve as a guardian if the individual is appointed by the district school superintendent or charter school principal and is certified by a sheriff. The individual must satisfy the following requirements:

- Hold a concealed weapons or concealed firearms License;
- Pass a psychological evaluation administered by a licensed psychologist;
- Pass an initial drug test and subsequent random drug tests;
- Successfully complete a 144-hour training program that includes at least 12 hours of a certified, nationally recognized diversity training program and 132 total hours of specified, comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, and ongoing training, weapon inspection, and firearm qualification on at least an annual basis.⁴³

An individual must satisfy the background screening, psychological evaluation, and drug testing requirements prior to participating in the required guardian training. All training for the guardian program must be conducted by a sheriff.⁴⁴

A county sheriff must establish a program if the district school board elects to participate. The sheriff may contract with another county sheriff who has already established a program to provide training. Charter school governing boards may directly request guardian training from the county sheriff even if the school district decides not to participate. Should the sheriff deny the request, the charter school may contract with a county sheriff who is willing to provide the training.⁴⁵

A sheriff who establishes a program may consult with the FDLE on programmatic guiding principles, practices, and resources.⁴⁶

A school guardian has no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident on school premises.⁴⁷ The sheriff who conducts the guardian training must issue a school guardian certificate to individuals who meet these requirements and maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian certified by the sheriff.⁴⁸

The guardian training specified in statute is the statewide standard that must be used, however, sheriffs are authorized to supplement such training. A guardian that has received the required training cannot be required to attend the training again unless there has been at least a one-year break in her or his employment as a guardian.⁴⁹

⁴¹ S. 843.08, F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁴² S. 30.15(1)(k), F.S.

⁴³ *Id.*

⁴⁴ S. 1006.12(7), F.S.

⁴⁵ S. 30.15(1)(k), F.S.

⁴⁶ S. 943.03(16), F.S.

⁴⁷ S. 30.15(1)(k), F.S.

⁴⁸ *Id.*

⁴⁹ S. 30.15(1)(k)1.d., F.S.

Safe-school Officers in Private Schools

In 2023, the Legislature expanded the Guardian Program by authorizing private schools to partner with a law enforcement or security agency to establish or assign a safe-school officer to their schools.⁵⁰ The private school is responsible for any costs associated with implementing a safe-school officer, including training under the Guardian Program.⁵¹ A private school electing to implement a safe-school officer must comply with the same statutory requirements for such officers as school districts and charter schools.⁵²

If the county in which a private school operates does not currently participate in the Guardian Program, the private school may request the sheriff to initiate a Guardian Program for the purpose of training private school employees.⁵³ If the local sheriff declines, the private school may contract with a sheriff of a county that has implemented a Guardian Program to provide the necessary training.⁵⁴ The private school is responsible for notifying the local sheriff prior to entering into such a contract and is responsible for all costs associated with the training of private school employees to serve as guardians.⁵⁵ The sheriff providing guardian training to private school employees is prohibited from comingling funds received for such training with funds received from the state for the purposes of training school district or charter school employees to serve as guardians.⁵⁶

Effect of Proposed Changes – Safe-School Officers

The bill amends s. 30.15, F.S., to clarify that private schools seeking to participate in the guardian program are responsible for costs associated with background screening in addition to costs associated with training. However, the bill authorizes a sheriff to waive training and background screening costs for a private school participating in the school guardian program. Funds provided to the sheriff by the DOE for the school guardian program may not be used to subsidize any costs that have been waived by the sheriff.

The bill clarifies that the one-time guardian stipend only applies to employees of the school district or charter school serving as guardians.

The bill provides that an individual certified under the Florida Criminal Justice Standards and Training Commission, and who is otherwise qualified to serve as a guardian, is exempt from the 144-hour training requirement prior to certification as a guardian. The bill authorizes a sheriff to issue a school guardian certificate to such individuals.

The bill amends s. 1006.12, F.S., to require that agreements between a school district and a law enforcement agency for the provision of school resource officers (SRO) in district schools must identify the entity responsible for maintain records relating to SRO training.

The bill requires that a school notify the local sheriff and the OSS within 72 hours when a safe-school officer separates from employment or appointment with the district.

Required Reporting of Certified and Appointed School Guardians

The bill implements new reporting requirements related to individuals certified as school guardians and serving as school guardians in school districts, charter schools, and private schools. Under the bill, the Florida Department of Law Enforcement (FDLE) shall serve as the central repository of information regarding certified and appointed school guardians.

⁵⁰ S. 2, ch. 2023-18, L.O.F.

⁵¹ S. 30.15(1)(k)1.c., F.S.

⁵² S. 1002.42(18), F.S.

⁵³ S. 30.15(1)(k)1.c., F.S.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

The bill amends s. 30.15, F.S., to require that each sheriff report to FDLE, within 30 days of such certification, each individual certified as a school guardian. Each sheriff must also make a one-time report, by September 1, 2024, of every individual previously certified as a school guardian by the sheriff. The required reports must include the name, date of birth, and certification date of the guardian.

Additionally, the bill requires each school district, charter school, and private school participating in the guardian program to report to FDLE, each February 1 and September 1, the name, date of birth, and appointment date of each individual appointed as a school guardian. The schools must also report the end date of any appointment as a school guardian within 30 days of the end of the appointment. Each participating school must make a one-time report to FDLE, by September 1, 2024, providing a current list of appointed school guardians that includes, name, date of birth, and appointment date of each guardian.

Using the information from these reports, the FDLE must maintain a list of all individuals appointed as school guardians that includes name, certification date, date of appointment, including the name of the school, information reported by the DOE related to a school guardian discharging their firearms or being subject to discipline, and end date of appointment, if applicable. FDLE must remove anyone from the list whose required guardian training has expired.

The bill requires that each sheriff report to the FDLE, on a quarterly basis, the schedule for upcoming guardian trainings, including the dates, locations, contact person for registration, and class capacity. The FDLE is required to publish, and update quarterly, the information related to such trainings on its website.

For any sheriff that fails to comply with the above reporting requirements, the bill prohibits the sheriff from receiving reimbursements from the DOE for costs associated with the school guardian program. For any school district, charter school, or private school that fails to comply with the above reporting requirements, the bill prohibits the entity from operating a school guardian program the following school year. Such prohibition is lifted as soon as the sheriff, school district, charter school, or private school complies with reporting requirements. In order for the DOE to be able to enforce these prohibitions, the bill requires the FDLE to report any non-compliance to the DOE by March 1 and October 1, each year.

The bill requires that each school district, charter school, or private school, before employing an individual as a school guardian, must contact the FLDE and review all information maintained by the FDLE related to the individual's school guardian certification and employment as a school guardian. Additionally, the DOE must provide the FDLE with any information relating to a school guardian discharging their firearms or being disciplined.

Incident Reporting and School Safety Funding

Background

Incident Reporting

With respect to school safety, there are a number of tracking and reporting tools managed by the DOE to which school districts are required to report incident information. The OSS monitors school district compliance with SESIR requirements and TMT utilization of the standardized behavioral assessment tool, i.e., the FSSP. The FSSP is available to individual TMT members with specific permissions and the OSS tracks the number of queries.⁵⁷ The FSSP provides a centralized repository to access student records across multiple disciplines including law enforcement and behavioral health care.⁵⁸

⁵⁷ Florida Department of Education, *Department of Education Announces the Florida Schools Safety Portal*, <http://www.fldoe.org/newsroom/latest-news/department-of-education-announces-the-florida-schools-safety-portal.stm> (last visited Jan. 27, 2024).

⁵⁸ S. 1001.212(12), F.S.

SESIR data is collated by a DOE electronic database to which school districts report on 26 incidents of crime, violence, and disruptive behaviors that occur on school grounds.⁵⁹ SESIR reporting is required for all public schools.⁶⁰ Each district school board must adopt policies to ensure the accurate and timely reporting of incidents related to school safety and discipline and the district school superintendent is responsible for reporting such incidents in SESIR.⁶¹ The DOE revised the reporting rule in 2020 to direct how incidents are reported at regular intervals throughout the school year.⁶² Superintendents must annually certify that the school district is in compliance with state board rule. Failure to report SESIR data by the survey deadlines can result in forfeiture of the superintendent's salary until the reporting is completed.⁶³ The DOE makes the data available annually through publication of summary excel files on its website,⁶⁴ which are separate from other DOE databases that provide public visibility into school accountability and performance metrics.⁶⁵

School districts must provide emergency notifications for a limited list of life-threatening emergencies that take place on a K-12 public school campus.⁶⁶ Incidents include weapon-use, hostage, and active shooter situations, hazardous materials or toxic chemical spills, weather emergencies, and exposure as a result of manmade emergencies.⁶⁷ For colleges and universities, the Clery Act prescribes a broader list of violent incidents or criminal acts for which notification is required to the "campus community."⁶⁸ Acts that must be reported include criminal offenses,⁶⁹ hate crimes,⁷⁰ Violence Against Women Act offenses,⁷¹ and arrests and referrals for discipline for weapons, drug, or liquor law violations.⁷²

In 2021,⁷³ the Legislature established the parental right to timely notification of school safety and emergency incidents, including certain threats, unlawful acts, and significant emergencies, and the right to access SESIR data as reported by school districts to the DOE.⁷⁴ The DOE must annually publish the most recently available SESIR data, along with other school accountability and performance data, in a uniform, statewide format that is easy to read and understand.⁷⁵

In response to concerns the SESIR reporting requirements were unclear and not aligned with Florida's criminal statutes regarding criminal offenses being reported by schools, the DOE substantially amended the SESIR reporting rule in January 2023.⁷⁶ The amendment updated a number of definitions, clarified the process for determining when incidents must be referred to law enforcement, and bolstered the annual school district reporting requirements to improve overall data quality.⁷⁷ To address under-reporting of serious crimes due to school district discretion, in 2023, the Legislature authorized the SBE to adopt emergency rules to establish which SESIR incidents must be reported to law enforcement. The SBE must adopt final rules no later than July 1, 2024.⁷⁸

⁵⁹ Florida Department of Education, *Discipline Data*, <http://www.fldoe.org/safe-schools/discipline-data.stml> (last visited Jan. 27, 2024).

⁶⁰ Ss. 1001.212(8) and 1006.07(6), F.S.

⁶¹ S. 1006.07(9), F.S.

⁶² R. 6A-1.0017, F.A.C. The survey periods for submission of data by school districts to the DOE are established in *Full-time Equivalent (FTE) General Instructions 2022-2023*, <https://www.fldoe.org/core/fileparse.php/7508/urlt/2223FTEGenInstruct.pdf> (last visited Jan. 27, 2024).

⁶³ R. 6A-1.0017, F.A.C.

⁶⁴ Florida Department of Education, *Discipline Data*, <http://www.fldoe.org/safe-schools/discipline-data.stml> (last visited Jan. 27, 2024).

⁶⁵ See Florida Department of Education, *Know Your Schools*, <https://edudata.fldoe.org/> (last visited Jan. 27, 2024).

⁶⁶ S. 1006.07(4), F.S.

⁶⁷ *Id.*

⁶⁸ Pub. L. No. 101-152, 104 Stat. 2381 (Nov. 8, 1990).

⁶⁹ *Id.* Criminal offenses include criminal homicide, sexual assault, robbery, burglary, motor vehicle theft, and arson.

⁷⁰ *Id.* Hate crimes can include any of the covered criminal offenses and larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property.

⁷¹ *Id.* Violence Against Women Act offenses include domestic violence, dating violence, and stalking.

⁷² *Id.*

⁷³ Ch. 2021-176, Laws of Fla.

⁷⁴ Ss. 1002.20(25) and 1002.33(9)(r), F.S.

⁷⁵ S. 1006.07(9), F.S.

⁷⁶ R. 6A-1.0017, F.A.C.

⁷⁷ *Id.*

⁷⁸ S. 24, ch. 2023-18, L.O.F.

Additionally, school districts must provide timely notice to parents of the following unlawful acts and significant emergency situations on school grounds, school transportation, or school-sponsored activities:

- Weapons possession or use or hostage and active assailant situations.
- Murder, homicide, or manslaughter.
- Sex offenses, including rape, sexual assault, or sexual misconduct with a student by school personnel.
- Aggravated assault or battery.
- Natural emergencies, including hurricanes, tornadoes, and severe weather.
- Exposure as a result of a manmade emergency.⁷⁹

When a child is taken into custody by a law enforcement officer for an offense that would have been a felony if committed by an adult, or a crime of violence, the law enforcement agency must notify the superintendent of schools that the child is alleged to have committed the delinquent act.⁸⁰

School Safety Funding

A safe school allocation provides funding to assist school districts in their compliance with ss. 1006.07-1006.12, F.S., with priority given to safe-school officers.⁸¹ For the 2023-2024 school year, \$250,000,000 was appropriated for safe schools funding. Each district received a minimum of \$250,000 and the remaining funds are allocated by a formula based on one-third of the recent Florida Crime Index and two-thirds allocated based on each school district's proportionate share of the state's total unweighted full-time equivalent student enrollment.⁸²

The distribution of safe schools funds provided to a school district is contingent upon the district's compliance with all reporting procedures related to the prevention of bullying and harassment.⁸³

Another program related to school safety is the School Hardening Grant program, which was designed to improve the physical security of school buildings based on the required security risk assessment. Funds could only be used for capital purchases and are allocated based on each school district's capital outlay Full-Time Equivalent (FTE) and charter school FTE. Funds must be provided based on district application.⁸⁴ In 2023, all school safety funding for public schools was rolled into the safe schools allocation in order provide school districts the most flexibility in the use of funds to fulfill the needs of the school district.

The Safe Schools Allocation and the school physical security improvement,⁸⁵ or school hardening, grant program represent the most significant investments in school safety since the shooting at Marjory Stoneman Douglas High School. Below is a summary of the appropriations associated with these programs:

Safe Schools Allocation	
Fiscal Year	Funding Amount
2018-2019 ⁸⁶	\$ 161,956,019
2019-2020 ⁸⁷	\$ 180,000,000
2020-2021 ⁸⁸	\$ 180,000,000
2021-2022 ⁸⁹	\$ 180,000,000

⁷⁹ S. 1006.07(4)(b), F.S.

⁸⁰ S. 985.04(4)(a), F.S.

⁸¹ S. 1011.62(12), F.S.

⁸² Specific Appropriations 5 and 86, s. 2, ch. 2022-156, L.O.F. See S. 1011.62(12), F.S.

⁸³ S. 1006.147(7), F.S.

⁸⁴ See, e.g., Specific Appropriation 108, s. 2, ch. 2022-156, L.O.F.; see, also, specific appropriation 113A, s. 2, ch 2021-36, specific appropriation 117A, s. 2, ch. 2020-111, and specific appropriation 116A, s. 2, ch 2019-115, L.O.F.

⁸⁵ S. 44, ch. 2018-3, L.O.F.

⁸⁶ S. 42, ch. 2018-3, L.O.F. (\$97,500,000); Specific Appropriations 6 and 92, s. 2, ch. 2018-9, L.O.F. (\$64,456,019)

⁸⁷ Specific Appropriations 6 and 93, s. 2, ch. 2019-115, L.O.F.

⁸⁸ Specific Appropriations 8 and 92, s. 2, ch. 2020-111, L.O.F.

⁸⁹ Specific Appropriations 7 and 90, s. 2, ch. 2021-36, L.O.F.

2022-2023 ⁹⁰	\$ 210,000,000
2023-2024 ⁹¹	\$250,000,000
Total	\$ 1,161,956,019

School Physical Security Improvement Grant	
Fiscal Year	Funding Amount
2018-2019 ⁹²	\$98,962,286

School Hardening Grant	
Fiscal Year	Funding Amount
2019-2020 ⁹³	\$ 50,000,000
2020-2021 ⁹⁴	\$ 42,000,000
2021-2022 ⁹⁵	\$ 42,000,000
2022-2023 ⁹⁶	\$ 20,000,000
Total	\$ 154,000,000

In 2023, during Regular Session, \$5,000,000 dollars in nonrecurring appropriations were made for security funding at Jewish Day Schools.⁹⁷ During special session in November 2023, the Legislature appropriated an additional \$25,000,000 for security measures at Jewish Day Schools⁹⁸ and \$20,000,000 for the Nonprofit Security Grant Program⁹⁹ while amending such program to include nonprofit schools.¹⁰⁰ Other than these programs, the law does not currently provide security funding for private schools generally.

Effect of Proposed Changes – Incident Reporting and School Safety Funding

The bill creates, subject to appropriation, a grant program to support private schools' school safety efforts. Under the program, the FDLE shall provide grants to sheriff's offices and law enforcement agencies to:

- Conduct physical site security assessments for and provide reports to private schools with recommendations on improving such schools' infrastructure safety and security;
- Assist private schools in developing active assailant response protocols and develop and implement training relating to active assailant responses, including active assailant response drills; and
- Consult with or provide guidance to private schools in implementing a threat management program similar to the program required for public schools.

The FDLE must develop a site security assessment form for use by sheriff's offices and law enforcement agencies and provide the form, including any subsequent revisions, to the recipient of funds in conducting the duties outlined in the bill. Grants awarded under this program may be used by sheriff's offices and law enforcement agencies for personnel costs and to purchase software and other items necessary to assist private schools. The FDLE must establish the requirements for awarding such grants through an open, competitive process and must award grants no later than October 1, 2024.

⁹⁰ Specific Appropriations 5 and 86, s. 2, ch. 2022-156, L.O.F.

⁹¹ Specific Appropriations 5 and 80, s. 2, ch. 2023-239, L.O.F.

⁹² S. 44, ch. 2018-3, L.O.F.

⁹³ Specific Appropriation 116A, s. 2, ch 2019-115, L.O.F.

⁹⁴ Specific Appropriation 117A, s. 2, ch. 2020-111, L.O.F.

⁹⁵ Specific Appropriation 113A, s. 2, ch 2021-36, L.O.F.

⁹⁶ Specific Appropriation 108, s. 2, ch. 2022-156, L.O.F.

⁹⁷ Specific Appropriations 100 and 105, s. 2, ch.2023-239, L.O.F

⁹⁸ Ss. 4 and 5, ch. 2023-352, L.O.F.

⁹⁹ Established in 2023, the Nonprofit Security Grant Program allows Florida nonprofit organizations, including houses of worship and community centers, that are at high risk of violent attacks or hate crimes to apply for program grants to increase safety and security. Section 252.3712, F.S.

¹⁰⁰ Ss. 1 and 2, ch. 2023-352, L.O.F.

The bill amends 1001.212, F.S., to require the OSS, by December 1, 2024, to recommend a methodology to distribute the safe schools allocation based upon the number and severity of incidents in school district SESIR reporting and each school district's proportionate share of the state's total unweighted FTE student enrollment.

The bill also requires the superintendent, if the student in question was taking dual enrollment courses, to inform the postsecondary institution where the dual enrollment courses were being taken of the alleged delinquent act within 24 hours of receiving such notification.

FortifyFL

Background

The School Safety Awareness Program is a mobile suspicious activity reporting tool known as FortifyFL, which is based upon a recommendation by the students of Marjory Stoneman Douglas High School. The tool allows students and the community to share information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of criminal activities, to the appropriate public safety agencies and school officials.¹⁰¹ The information reported using FortifyFL must be promptly forwarded to the appropriate law enforcement agency or school official.¹⁰² The tool will notify the person reporting the suspicious activity that information may be provided anonymously, but if, following an investigation, it is determined that an individual knowingly submitted a false tip, the Internet Protocol (IP) address of the device from which the tip was submitted will be provided to law enforcement and the individual may be subject to criminal penalties.¹⁰³ If the person chooses to identify him or herself, then the identity will be shared with the law enforcement agency and school officials. However, those entities must keep the identify information confidential.¹⁰⁴

The FDLE must collaborate with the Division of Victims Services within the Office of the Attorney General and the OSS to develop and provide a comprehensive training and awareness program on the use of FortifyFL.¹⁰⁵ Each district school board must promote the use of FortifyFL by advertising it on the school district website, in publications, and on school campuses. FortifyFL must be installed on all mobile devices issued to students and bookmarked in web browsers on all computer devices issued to students.¹⁰⁶

Effect of Proposed Changes – FortifyFL

The bill amends s. 943.082, F.S., to require each school principal to incorporate use of FortifyFL into the school curriculum at least once per school year. Instruction on FortifyFL must be age and developmentally appropriate and include the consequences for inappropriate use of the system.

B. SECTION DIRECTORY:

Section 1: Amends s. 30.15, F.S., relating to powers, duties, and obligations.

Section 2: Amends s. 943.082, F.S., relating to School Safety Awareness Program.

Section 3: Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 4: Amends s. 1001.212, F.S., relating to Office of Safe Schools.

Section 5: Amends s. 1006.07, F.S., relating to district school board duties relating to student discipline and school safety.

Section 6: Amends s. 1006.12, F.S., relating to safe-school officers at each public school.

Section 7: Amends s. 1012.795, F.S.; relating to Education Practices Commission; authority to discipline.

Section 8: Establishes a grant program.

Section 9: Provides an effective date of July 1, 2024.

¹⁰¹ S. 943.082(1), F.S.

¹⁰² S. 943.082(3), F.S.

¹⁰³ S. 943.082(2), F.S.

¹⁰⁴ *Id.*

¹⁰⁵ S. 943.082(5), F.S.

¹⁰⁶ S. 943.082(4)(b), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on state government expenditures by requiring OSS to conduct a triennial inspection of all public schools, which may require OSS to hire additional staff, and, to the extent the Legislature appropriates funding for the grant program created by the bill, by providing such funding to provide security inspections for private schools.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not give the SBE any additional rulemaking authority, however, existing rules may need to be amended to incorporate the changes to statute in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to school safety; amending s. 30.15,
3 F.S.; providing that private schools are responsible
4 for specified costs relating to school guardian
5 programs; authorizing sheriffs to waive specified
6 costs for private schools; prohibiting specified funds
7 from being used to subsidize certain costs;
8 authorizing certain persons to be certified as school
9 guardians without completing certain training
10 requirements; requiring school districts, charter
11 schools, private schools, and sheriffs to report
12 specified information relating to school guardians and
13 school guardian programs to the Department of Law
14 Enforcement within specified timeframes; requiring the
15 Department of Law Enforcement to maintain a list of
16 school guardians and school guardian trainings;
17 providing for the removal of specified persons from
18 such list; providing requirements for such list;
19 prohibiting sheriffs who fail to report specified
20 information from receiving certain reimbursement;
21 prohibiting school districts, charter schools, and
22 private schools that fail to report specified
23 information from operating school guardian programs
24 for the following school year; requiring the
25 Department of Law Enforcement to report certain

26 information to the Department of Education by
 27 specified dates of each school year; amending s.
 28 943.082, F.S.; requiring the mobile suspicious
 29 activity reporting tool to be integrated into schools'
 30 curriculum at least once per academic year; providing
 31 requirements for such instruction; amending s. 985.04,
 32 F.S.; requiring the superintendent of schools to
 33 notify specified chiefs of police or public safety
 34 directors of certain postsecondary institutions of
 35 specified alleged acts by children dual enrolled at
 36 such institutions; amending s. 1001.212, F.S.;
 37 requiring the Office of Safe Schools to develop and
 38 adopt a specified report relating to compliance and
 39 noncompliance with school safety requirements by a
 40 specified date; requiring the office to provide such
 41 report to specified persons; requiring the office to
 42 conduct specified inspections triennially and
 43 investigate certain noncompliance; providing
 44 requirements for the provision of specified
 45 information from such inspections and investigations;
 46 requiring the office to provide certain quarterly
 47 reports to specified persons; requiring the office to
 48 provide bonuses to certain persons who comply with
 49 specified requirements; requiring the office to refer
 50 certain personnel to specified persons or the

51 Department of Education; requiring the office to
52 notify specified personnel electronically of certain
53 requirements; requiring the office to recommend a
54 methodology to distribute the safe schools allocation
55 by a specified date; providing requirements for such
56 recommendation; amending s. 1006.07, F.S.; requiring
57 schools, including charter schools, to maintain a
58 specified record relating to certain drills; providing
59 that certain school safety specialist duties are in
60 conjunction with the district school superintendent;
61 requiring school safety specialists to conduct
62 specified annual inspections, investigate specified
63 reports of noncompliance, and report certain
64 noncompliance and violations to specified individuals,
65 the district school board, and the office; requiring
66 school districts and charter school governing boards
67 to comply with certain school safety requirements by a
68 specified date; providing that certain personnel are
69 subject to specified disciplinary measures for certain
70 violations; providing reporting requirements for
71 violations of certain school safety requirements;
72 amending s. 1006.12, F.S.; requiring specified
73 agreements relating to school resource officers to
74 identify the entity responsible for maintaining
75 specified records; providing requirements before the

76 | appointment of a school guardian; requiring the
 77 | Department of Education to provide certain information
 78 | to the Department of Law Enforcement; requiring county
 79 | sheriffs and the office to be notified when a safe-
 80 | school officer separates from his or her appointment;
 81 | amending s. 1012.795, F.S.; providing that school
 82 | administrators are subject to disciplinary measures by
 83 | the Education Practices Commission for certain
 84 | violations; subject to legislative appropriation,
 85 | requiring the Department of Law Enforcement to provide
 86 | grants to sheriffs' offices and law enforcement
 87 | agencies for specified purposes relating to school
 88 | safety in private schools; providing requirements for
 89 | such grants; requiring the Department of Law
 90 | Enforcement to develop a specified form and provide
 91 | such form to grant recipients; providing an effective
 92 | date.

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

96 | Section 1. Paragraph (k) of subsection (1) of section
 97 | 30.15, Florida Statutes, is amended to read:

98 | 30.15 Powers, duties, and obligations.—

99 | (1) Sheriffs, in their respective counties, in person or
 100 | by deputy, shall:

101 (k) Assist district school boards and charter school
 102 governing boards in complying with, or private schools in
 103 exercising options in, s. 1006.12. A sheriff must, at a minimum,
 104 provide access to a Chris Hixon, Coach Aaron Feis, and Coach
 105 Scott Beigel Guardian Program to aid in the prevention or
 106 abatement of active assailant incidents on school premises, as
 107 required under this paragraph. Persons certified as school
 108 guardians pursuant to this paragraph have no authority to act in
 109 any law enforcement capacity except to the extent necessary to
 110 prevent or abate an active assailant incident.

111 1.a. If a local school board has voted by a majority to
 112 implement a guardian program, the sheriff in that county shall
 113 establish a guardian program to provide training, pursuant to
 114 subparagraph 2., to school district, charter school, or private
 115 school employees, either directly or through a contract with
 116 another sheriff's office that has established a guardian
 117 program.

118 b. A charter school governing board in a school district
 119 that has not voted, or has declined, to implement a guardian
 120 program may request the sheriff in the county to establish a
 121 guardian program for the purpose of training the charter school
 122 employees. If the county sheriff denies the request, the charter
 123 school governing board may contract with a sheriff that has
 124 established a guardian program to provide such training. The
 125 charter school governing board must notify the superintendent

126 and the sheriff in the charter school's county of the contract
127 prior to its execution.

128 c. A private school in a school district that has not
129 voted, or has declined, to implement a guardian program may
130 request that the sheriff in the county of the private school
131 establish a guardian program for the purpose of training private
132 school employees. If the county sheriff denies the request, the
133 private school may contract with a sheriff from another county
134 who has established a guardian program to provide such training.
135 The private school must notify the sheriff in the private
136 school's county of the contract with a sheriff from another
137 county before its execution. The private school is responsible
138 for all training and screening-related costs for a school
139 guardian program. The sheriff providing such training must
140 ensure that any moneys paid by a private school are not
141 commingled with any funds provided by the state to the sheriff
142 as reimbursement for screening-related and training-related
143 costs of any school district or charter school employee.

144 d. The training program required in sub-subparagraph 2.b.
145 is a standardized statewide curriculum, and each sheriff
146 providing such training shall adhere to the course of
147 instruction specified in that sub-subparagraph. This
148 subparagraph does not prohibit a sheriff from providing
149 additional training. A school guardian who has completed the
150 training program required in sub-subparagraph 2.b. may not be

151 required to attend another sheriff's training program pursuant
 152 to that sub-subparagraph unless there has been at least a 1-year
 153 break in his or her appointment ~~employment~~ as a guardian.

154 e. The sheriff conducting the training pursuant to
 155 subparagraph 2. for school district and charter school employees
 156 will be reimbursed for screening-related and training-related
 157 costs and for providing a one-time stipend of \$500 to each
 158 school guardian who participates in the school guardian program.

159 f. The sheriff may waive the training and screening-
 160 related costs for a private school for a school guardian
 161 program. Funds provided pursuant to sub-subparagraph e. may not
 162 be used to subsidize any costs that have been waived by the
 163 sheriff.

164 g. A person who is certified under the Florida Criminal
 165 Justice Standards and Training Commission, who meets the
 166 qualifications established in s. 943.13, and who is otherwise
 167 qualified for the position of a school guardian may be certified
 168 as a school guardian by the sheriff without completing the
 169 training requirements of sub-subparagraph 2.b. However, a person
 170 certified as a school guardian under this sub-subparagraph must
 171 meet the requirements of sub-subparagraphs 2.c.-e.

172 2. A sheriff who establishes a program shall consult with
 173 the Department of Law Enforcement on programmatic guiding
 174 principles, practices, and resources, and shall certify as
 175 school guardians, without the power of arrest, school employees,

176 as specified in s. 1006.12(3), who:

177 a. Hold a valid license issued under s. 790.06.

178 b. Complete a 144-hour training program, consisting of 12

179 hours of certified nationally recognized diversity training and

180 132 total hours of comprehensive firearm safety and proficiency

181 training conducted by Criminal Justice Standards and Training

182 Commission-certified instructors, which must include:

183 (I) Eighty hours of firearms instruction based on the

184 Criminal Justice Standards and Training Commission's Law

185 Enforcement Academy training model, which must include at least

186 10 percent but no more than 20 percent more rounds fired than

187 associated with academy training. Program participants must

188 achieve an 85 percent pass rate on the firearms training.

189 (II) Sixteen hours of instruction in precision pistol.

190 (III) Eight hours of discretionary shooting instruction

191 using state-of-the-art simulator exercises.

192 (IV) Sixteen hours of instruction in active shooter or

193 assailant scenarios.

194 (V) Eight hours of instruction in defensive tactics.

195 (VI) Four hours of instruction in legal issues.

196 c. Pass a psychological evaluation administered by a

197 psychologist licensed under chapter 490 and designated by the

198 Department of Law Enforcement and submit the results of the

199 evaluation to the sheriff's office. The Department of Law

200 Enforcement is authorized to provide the sheriff's office with

201 mental health and substance abuse data for compliance with this
 202 paragraph.

203 d. Submit to and pass an initial drug test and subsequent
 204 random drug tests in accordance with the requirements of s.
 205 112.0455 and the sheriff's office.

206 e. Successfully complete ongoing training, weapon
 207 inspection, and firearm qualification on at least an annual
 208 basis.

209
 210 The sheriff who conducts the guardian training or waives the
 211 training requirements for a person under sub-subparagraph 1.g.
 212 shall issue a school guardian certificate to persons ~~individuals~~
 213 who meet the requirements of this section to the satisfaction of
 214 the sheriff, and shall maintain documentation of weapon and
 215 equipment inspections, as well as the training, certification,
 216 inspection, and qualification records of each school guardian
 217 certified by the sheriff. A person ~~An individual~~ who is
 218 certified under this paragraph may serve as a school guardian
 219 under s. 1006.12(3) only if he or she is appointed by the
 220 applicable school district superintendent, charter school
 221 principal, or private school head of school.

222 3.a.(I) Within 30 days after issuing a school guardian
 223 certificate, the sheriff who issued the certificate must report
 224 to the Department of Law Enforcement the name, date of birth,
 225 and certification date of the school guardian.

226 (II) By September 1, 2024, each sheriff who issued a
 227 school guardian certificate must report to the Department of Law
 228 Enforcement the name, date of birth, and certification date of
 229 each school guardian who received a certificate from the
 230 sheriff.

231 b.(I) By February 1 and September 1 of each school year,
 232 each school district, charter school, and private school must
 233 report to the Department of Law Enforcement the name, date of
 234 birth, and appointment date of each person appointed as a school
 235 guardian. The school district, charter school, and private
 236 school must also report to the Department of Law Enforcement the
 237 date such person separates from his or her appointment as a
 238 school guardian.

239 (II) By September 1, 2024, each school district, charter
 240 school, and private school must report to the Department of Law
 241 Enforcement the name, date of birth, and appointment date of
 242 each person appointed as a school guardian. Within 30 days after
 243 a school guardian separates from his or her appointment, the
 244 school district, charter school, and private school must report
 245 to the Department of Law Enforcement the date such person
 246 separated from his or her appointment as a school guardian.

247 c. The Department of Law Enforcement shall maintain a list
 248 of each person appointed as a school guardian in the state. The
 249 list must include the name and certification date of each school
 250 guardian and the date the person was appointed as a school

251 guardian, including the name of the school district, charter
 252 school, or private school in which the school guardian is
 253 appointed, any information provided pursuant to s. 1006.12(5),
 254 and, if applicable, the date such person separated from his or
 255 her appointment as a school guardian. The Department of Law
 256 Enforcement shall remove from the list any person whose training
 257 has expired pursuant to sub-subparagraph 1.d.

258 d. Each sheriff must report on a quarterly basis to the
 259 Department of Law Enforcement the schedule for upcoming school
 260 guardian trainings, including the dates of the training, the
 261 training locations, a contact person to register for the
 262 training, and the class capacity. The Department of Law
 263 Enforcement shall publish on its website a list of the upcoming
 264 school guardian trainings. The Department of Law Enforcement
 265 must update such list quarterly.

266 e. A sheriff who fails to report the information required
 267 by this subparagraph may not receive reimbursement from the
 268 Department of Education for school guardian trainings. Upon the
 269 submission of the required information, a sheriff is deemed
 270 eligible for such funding and is authorized to continue to
 271 receive reimbursement for school guardian training.

272 f. A school district, charter school, or private school
 273 that fails to report the information required by this
 274 subparagraph may not operate a school guardian program for the
 275 following school year. Upon the submission of the required

276 information, the school district, charter school, or private
 277 school is authorized to resume operation of the school guardian
 278 program.

279 g. By March 1 and October 1 of each school year, the
 280 Department of Law Enforcement shall notify the Department of
 281 Education of any sheriff, school district, charter school, or
 282 private school that has not complied with the reporting
 283 requirements of this subparagraph.

284 Section 2. Paragraph (b) of subsection (4) of section
 285 943.082, Florida Statutes, is amended to read:

286 943.082 School Safety Awareness Program.—

287 (4)

288 (b) The district school board shall promote the use of the
 289 mobile suspicious activity reporting tool by advertising it on
 290 the school district website, in newsletters, on school campuses,
 291 and in school publications, by installing it on all mobile
 292 devices issued to students, and by bookmarking the website on
 293 all computer devices issued to students. Each school principal
 294 must integrate the use of the mobile suspicious activity
 295 reporting tool within the school's curriculum a minimum of once
 296 per academic year. The instruction must be age and
 297 developmentally appropriate and include the consequences for
 298 making a threat or false report, as described in ss. 790.162 and
 299 790.163, respectively, involving school or school personnel's
 300 property, school transportation, or a school-sponsored activity.

301 Section 3. Paragraph (a) of subsection (4) of section
 302 985.04, Florida Statutes, is amended to read:

303 985.04 Oaths; records; confidential information.—

304 (4)(a) Notwithstanding any other provision of this
 305 section, when a child of any age is taken into custody by a law
 306 enforcement officer for an offense that would have been a felony
 307 if committed by an adult, or a crime of violence, the law
 308 enforcement agency must notify the superintendent of schools
 309 that the child is alleged to have committed the delinquent act.
 310 If the child is a dual enrolled student at a postsecondary
 311 institution, the superintendent of schools must notify the chief
 312 of police or the public safety director of the postsecondary
 313 institution at which the student is dual enrolled within 24
 314 hours after receiving such notification.

315 Section 4. Subsection (14) of section 1001.212, Florida
 316 Statutes, is amended, and subsections (17) and (18) are added to
 317 that section, to read:

318 1001.212 Office of Safe Schools.—There is created in the
 319 Department of Education the Office of Safe Schools. The office
 320 is fully accountable to the Commissioner of Education. The
 321 office shall serve as a central repository for best practices,
 322 training standards, and compliance oversight in all matters
 323 regarding school safety and security, including prevention
 324 efforts, intervention efforts, and emergency preparedness
 325 planning. The office shall:

326 (14) (a) By August 1, 2024, develop and adopt a Florida
327 school safety compliance inspection report to document
328 compliance or noncompliance with school safety requirements
329 mandated by law or rule and adherence to established school
330 safety best practices to evaluate the safety, security, and
331 emergency response of the school. Upon the adoption of the
332 report and upon any revisions to the report, the office shall
333 provide a blank copy of the report to each district school
334 superintendent and charter school administrator.

335 (b) Monitor compliance with requirements relating to
336 school safety by school districts and public schools, including
337 charter schools. The office shall conduct unannounced
338 inspections of all public schools, including charter schools,
339 while school is in session, triennially and investigate reports
340 of noncompliance with school safety requirements. Within 3
341 school days after the unannounced inspection, the office shall
342 provide a copy of the completed Florida school safety compliance
343 inspection report, including any photographs or other evidence
344 of noncompliance, to the school safety specialist and the school
345 principal or charter school administrator, as appropriate. The
346 school principal or charter school administrator shall
347 acknowledge receipt of the report in writing within 1 school day
348 after receipt. The school safety specialist shall inform the
349 district school superintendent of any schools in the district,
350 including charter schools, with documented noncompliance. The

351 office shall reinspect any school with documented deficiencies
 352 within 6 months. The school principal or charter school
 353 administrator, or his or her designee, must provide the office
 354 with written notice of how the noncompliance with s.
 355 1006.07(6)(f) has been remediated within 3 school days after
 356 receipt of the report.

357 (c) Provide quarterly reports to each district school
 358 superintendent and school safety specialist identifying the
 359 number and percentage of schools, including charter schools,
 360 inspected or reinspected during that quarter and the number and
 361 percentage of inspected schools that had no school safety
 362 requirement deficiencies. The school safety specialist shall
 363 present each quarterly report to the district school board in a
 364 public meeting. Annually, during the first quarter of every
 365 school year, the school safety specialist shall report to the
 366 district school board in a public meeting the number of schools
 367 inspected during the preceding calendar year and the number and
 368 percentage of schools in compliance during the initial
 369 inspection and reinspection.

370 (d) Provide a bonus in an amount determined in the General
 371 Appropriations Act, at the conclusion of the initial unannounced
 372 inspection conducted during the triennial period, to the school
 373 principal or charter school administrator of each school that
 374 complies with all school safety requirements.

375 (e)1. Refer any instructional personnel as defined in s.

376 | 1012.01(2) who knowingly violate s. 1006.07(6)(f) to the
 377 | district school superintendent or charter school administrator,
 378 | as applicable, for disciplinary action if such action has not
 379 | already been commenced by the district school superintendent or
 380 | charter school administrator upon receipt of the Florida school
 381 | safety compliance inspection report. The district school
 382 | superintendent or charter school administrator must notify the
 383 | office of the outcome of the disciplinary proceedings within 3
 384 | school days after the conclusion of the proceedings.

385 | 2. Refer any administrative personnel as defined in s.
 386 | 1012.01(3) who knowingly permitted a violation of s.
 387 | 1006.07(6)(f) to the department pursuant to s. 1012.796.

388 | 3. Maintain a record of any administrative personnel or
 389 | instructional personnel who unknowingly violated s.
 390 | 1006.07(6)(f), and may use such information when making any
 391 | subsequent determinations of an alleged violation by the same
 392 | person.

393 | (17) Annually, at the beginning of the school year, notify
 394 | all administrative and instructional personnel by electronic
 395 | mail of the requirements of s. 1006.07(6)(f).

396 | (18) By December 1, 2024, recommend a methodology to
 397 | distribute the safe schools allocation under s. 1011.62(12)
 398 | based upon the number and severity of incidents reported
 399 | pursuant to s. 1006.07(9) and each school district's
 400 | proportionate share of the state's total unweighted full-time

401 equivalent student enrollment ~~report incidents of noncompliance~~
 402 ~~to the commissioner pursuant to s. 1001.11(9) and the state~~
 403 ~~board pursuant to s. 1008.32 and other requirements of law, as~~
 404 ~~appropriate.~~

405 Section 5. Paragraph (a) of subsection (4) and paragraph
 406 (a) of subsection (6) of section 1006.07, Florida Statutes, are
 407 amended, and paragraph (f) is added to subsection (6) of that
 408 section, to read:

409 1006.07 District school board duties relating to student
 410 discipline and school safety.—The district school board shall
 411 provide for the proper accounting for all students, for the
 412 attendance and control of students at school, and for proper
 413 attention to health, safety, and other matters relating to the
 414 welfare of students, including:

415 (4) EMERGENCY DRILLS; EMERGENCY PROCEDURES.—

416 (a) Formulate and prescribe policies and procedures, in
 417 consultation with the appropriate public safety agencies, for
 418 emergency drills and for actual emergencies, including, but not
 419 limited to, fires, natural disasters, active assailant and
 420 hostage situations, and bomb threats, for all students and
 421 faculty at all public schools of the district composed of grades
 422 K-12, pursuant to State Board of Education rules. Drills for
 423 active assailant and hostage situations must be conducted in
 424 accordance with developmentally appropriate and age-appropriate
 425 procedures, as specified in State Board of Education rules. Law

426 enforcement officers responsible for responding to the school in
 427 the event of an active assailant emergency, as determined
 428 necessary by the sheriff in coordination with the district's
 429 school safety specialist, must be physically present on campus
 430 and directly involved in the execution of active assailant
 431 emergency drills. School districts must notify law enforcement
 432 officers at least 24 hours before conducting an active assailant
 433 emergency drill at which such law enforcement officers are
 434 expected to attend. Each school, including charter schools, must
 435 maintain a record that is accessible on each campus or by
 436 request of the Office of Safe Schools of all current school year
 437 and prior school year drills conducted pursuant to this
 438 subsection, including the names of law enforcement personnel
 439 present on campus for each active assailant emergency drill.
 440 District school board policies must include commonly used alarm
 441 system responses for specific types of emergencies and
 442 verification by each school that drills have been provided as
 443 required by law, State Board of Education rules, and fire
 444 protection codes and may provide accommodations for drills
 445 conducted by exceptional student education centers. District
 446 school boards shall establish emergency response and emergency
 447 preparedness policies and procedures that include, but are not
 448 limited to, identifying the individuals responsible for
 449 contacting the primary emergency response agency and the
 450 emergency response agency responsible for notifying the school

451 district for each type of emergency. The State Board of
452 Education shall refer to recommendations provided in reports
453 published pursuant to s. 943.687 for guidance and, by August 1,
454 2023, consult with state and local constituencies to adopt rules
455 applicable to the requirements of this subsection which, at a
456 minimum, define the terms "emergency drill," "active threat,"
457 and "after-action report" and establish minimum emergency drill
458 policies and procedures related to the timing, frequency,
459 participation, training, notification, accommodations, and
460 responses to threat situations by incident type, school level,
461 school type, and student and school characteristics. The rules
462 must require all types of emergency drills to be conducted no
463 less frequently than on an annual school year basis.

464 (6) SAFETY AND SECURITY BEST PRACTICES.—Each district
465 school superintendent shall establish policies and procedures
466 for the prevention of violence on school grounds, including the
467 assessment of and intervention with individuals whose behavior
468 poses a threat to the safety of the school community.

469 (a) School safety specialist.—Each district school
470 superintendent shall designate a school safety specialist for
471 the district. The school safety specialist must be a school
472 administrator employed by the school district or a law
473 enforcement officer employed by the sheriff's office located in
474 the school district. Any school safety specialist designated
475 from the sheriff's office must first be authorized and approved

476 by the sheriff employing the law enforcement officer. Any school
477 safety specialist designated from the sheriff's office remains
478 the employee of the office for purposes of compensation,
479 insurance, workers' compensation, and other benefits authorized
480 by law for a law enforcement officer employed by the sheriff's
481 office. The sheriff and the school superintendent may determine
482 by agreement the reimbursement for such costs, or may share the
483 costs, associated with employment of the law enforcement officer
484 as a school safety specialist. The school safety specialist must
485 earn a certificate of completion of the school safety specialist
486 training provided by the Office of Safe Schools within 1 year
487 after appointment and is responsible for the supervision and
488 oversight for all school safety and security personnel,
489 policies, and procedures in the school district. The school
490 safety specialist shall:

491 1. In conjunction with the district school superintendent,
492 annually review school district policies and procedures for
493 compliance with state law and rules, including the district's
494 timely and accurate submission of school environmental safety
495 incident reports to the department pursuant to s. 1001.212(8).
496 At least quarterly, the school safety specialist must report to
497 the district school superintendent and the district school board
498 any noncompliance by the school district with laws or rules
499 regarding school safety.

500 2. Provide the necessary training and resources to

501 students and school district staff in matters relating to youth
502 mental health awareness and assistance; emergency procedures,
503 including active shooter training; and school safety and
504 security.

505 3. Serve as the school district liaison with local public
506 safety agencies and national, state, and community agencies and
507 organizations in matters of school safety and security.

508 4. In collaboration with the appropriate public safety
509 agencies, as that term is defined in s. 365.171, by October 1 of
510 each year, conduct a school security risk assessment at each
511 public school using the Florida Safe Schools Assessment Tool
512 developed by the Office of Safe Schools pursuant to s.
513 1006.1493. Based on the assessment findings, the district's
514 school safety specialist shall provide recommendations to the
515 district school superintendent and the district school board
516 which identify strategies and activities that the district
517 school board should implement in order to address the findings
518 and improve school safety and security. Each district school
519 board must receive such findings and the school safety
520 specialist's recommendations at a publicly noticed district
521 school board meeting to provide the public an opportunity to
522 hear the district school board members discuss and take action
523 on the findings and recommendations. Each school safety
524 specialist, through the district school superintendent, shall
525 report such findings and school board action to the Office of

526 Safe Schools within 30 days after the district school board
 527 meeting.

528 5. Conduct annual unannounced inspections of all public
 529 schools while school is in session and investigate reports of
 530 noncompliance with school safety requirements.

531 6. Report violations of paragraph (f) by administrative
 532 personnel and instructional personnel to the district school
 533 superintendent or charter school administrator, as applicable,
 534 and the Office of Safe Schools.

535 (f) School safety requirements.-

536 1. By August 1, 2024, each school district and charter
 537 school governing board shall comply with the following school
 538 safety requirements:

539 a. All gates or other access points that restrict ingress
 540 to or egress from a school campus shall remain closed and locked
 541 when students are on campus. A gate or other campus access point
 542 may not be open or unlocked, unless attended or actively staffed
 543 by a person when students are on campus, regardless of whether
 544 it is during normal school hours, or the school safety
 545 specialist has determined in writing and notified the Office of
 546 Safe Schools that the open and unlocked gate or other access
 547 point is not a threat to school safety based upon other school
 548 safety measures. The office may conduct a compliance visit
 549 pursuant to s. 1001.212(14) to review if such determination is
 550 appropriate.

551 b. All school classrooms and other instructional spaces
552 must be locked to prevent ingress when occupied by students,
553 except between class periods when students are moving between
554 classrooms or other instructional spaces. If a classroom or
555 other instructional space door must be left unlocked or open for
556 any reason other than between class periods when students are
557 moving between classrooms or other instructional spaces, the
558 door must be actively staffed by a person standing or seated at
559 the door.

560 c. All campus access doors, gates, and other access points
561 that allow ingress to or egress from a school building shall
562 remain closed and locked at all times to prevent ingress, unless
563 a person is actively entering or exiting the door, gate, or
564 other access point or the school safety specialist has
565 determined in writing and notified the Office of Safe Schools
566 that the open and unlocked door, gate, or other access point is
567 not a threat to school safety based upon other school safety
568 measures. The office may conduct a compliance visit pursuant to
569 s. 1001.212(14) to review if such determination is appropriate.
570 All campus access doors, gates, and other access points may be
571 electronically or manually controlled by school personnel to
572 allow access by authorized visitors, students, and school
573 personnel.

574 d. All school classrooms and other instructional spaces
575 must clearly and conspicuously mark the safest areas in each

576 classroom or other instructional space where students must
 577 shelter in place during an emergency. Students must be notified
 578 of these safe areas within the first 5 days of the school year.
 579 If it is not feasible to clearly and conspicuously mark the
 580 safest areas in a classroom or other instructional space, the
 581 school safety specialist or his or her designee must document
 582 such determination in writing, identify where affected students
 583 must shelter in place, and notify the Office of Safe Schools.
 584 The office shall assist the school safety specialist with
 585 compliance during the inspection required under s. 1001.212(14).

586 2. Administrative personnel as defined in s. 1012.01(3)
 587 who knowingly violate the requirements of this paragraph are
 588 subject to disciplinary measures under ss. 1012.795 and
 589 1012.796.

590
 591 Persons who are aware of a violation of this paragraph must
 592 report the violation to the school principal. The school
 593 principal must report the violation to the school safety
 594 specialist no later than the next business day after receiving
 595 such report. If the person who violated this paragraph is the
 596 school principal or charter school administrator, the report
 597 must be made directly to the district school superintendent or
 598 charter school governing board, as applicable.

599 Section 6. Paragraph (b) of subsection (1) and subsections
 600 (3) and (5) of section 1006.12, Florida Statutes, are amended to

601 read:

602 1006.12 Safe-school officers at each public school.—For
 603 the protection and safety of school personnel, property,
 604 students, and visitors, each district school board and school
 605 district superintendent shall partner with law enforcement
 606 agencies or security agencies to establish or assign one or more
 607 safe-school officers at each school facility within the
 608 district, including charter schools. A district school board
 609 must collaborate with charter school governing boards to
 610 facilitate charter school access to all safe-school officer
 611 options available under this section. The school district may
 612 implement any combination of the options in subsections (1)-(4)
 613 to best meet the needs of the school district and charter
 614 schools.

615 (1) SCHOOL RESOURCE OFFICER.—A school district may
 616 establish school resource officer programs through a cooperative
 617 agreement with law enforcement agencies.

618 (b) School resource officers shall abide by district
 619 school board policies and shall consult with and coordinate
 620 activities through the school principal, but shall be
 621 responsible to the law enforcement agency in all matters
 622 relating to employment, subject to agreements between a district
 623 school board and a law enforcement agency. The agreements shall
 624 identify the entity responsible for maintaining records relating
 625 to training. Activities conducted by the school resource officer

626 | which are part of the regular instructional program of the
 627 | school shall be under the direction of the school principal.

628 | (3) SCHOOL GUARDIAN.—

629 | (a) At the school district's or the charter school
 630 | governing board's discretion, as applicable, pursuant to s.
 631 | 30.15, a school district or charter school governing board may
 632 | participate in the Chris Hixon, Coach Aaron Feis, and Coach
 633 | Scott Beigel Guardian Program to meet the requirement of
 634 | establishing a safe-school officer. The following individuals
 635 | may serve as a school guardian, in support of school-sanctioned
 636 | activities for purposes of s. 790.115, upon satisfactory
 637 | completion of the requirements under s. 30.15(1)(k) and
 638 | certification by a sheriff:

639 | ~~1.(a)~~ A school district employee or personnel, as defined
 640 | under s. 1012.01, or a charter school employee, as provided
 641 | under s. 1002.33(12)(a), who volunteers to serve as a school
 642 | guardian in addition to his or her official job duties; or

643 | ~~2.(b)~~ An employee of a school district or a charter school
 644 | who is hired for the specific purpose of serving as a school
 645 | guardian.

646 | (b) Before appointing an individual as a school guardian,
 647 | the school district or charter school shall contact the
 648 | Department of Law Enforcement and review all information
 649 | maintained under s. 30.15(1)(k)3.c. related to the individual.

650 | (c) The department shall provide to the Department of Law

651 Enforcement any information relating to a school guardian
 652 received pursuant to subsection (5).

653 (5) NOTIFICATION.—The district school superintendent or
 654 charter school administrator, or a respective designee, shall
 655 notify the county sheriff and the Office of Safe Schools
 656 immediately after, but no later than 72 hours after:

657 (a) A safe-school officer is dismissed for misconduct or
 658 is otherwise disciplined.

659 (b) A safe-school officer discharges his or her firearm in
 660 the exercise of the safe-school officer's duties, other than for
 661 training purposes.

662 (c) A safe-school officer separates from his or her
 663 appointment.

664
 665 If a district school board, through its adopted policies,
 666 procedures, or actions, denies a charter school access to any
 667 safe-school officer options pursuant to this section, the school
 668 district must assign a school resource officer or school safety
 669 officer to the charter school. Under such circumstances, the
 670 charter school's share of the costs of the school resource
 671 officer or school safety officer may not exceed the safe school
 672 allocation funds provided to the charter school pursuant to s.
 673 1011.62(12) and shall be retained by the school district.

674 Section 7. Paragraph (q) is added to subsection (1) of
 675 section 1012.795, Florida Statutes, to read:

676 1012.795 Education Practices Commission; authority to
 677 discipline.—

678 (1) The Education Practices Commission may suspend the
 679 educator certificate of any instructional personnel or school
 680 administrator, as defined in s. 1012.01(2) or (3), for up to 5
 681 years, thereby denying that person the right to teach or
 682 otherwise be employed by a district school board or public
 683 school in any capacity requiring direct contact with students
 684 for that period of time, after which the person may return to
 685 teaching as provided in subsection (4); may revoke the educator
 686 certificate of any person, thereby denying that person the right
 687 to teach or otherwise be employed by a district school board or
 688 public school in any capacity requiring direct contact with
 689 students for up to 10 years, with reinstatement subject to
 690 subsection (4); may permanently revoke the educator certificate
 691 of any person thereby denying that person the right to teach or
 692 otherwise be employed by a district school board or public
 693 school in any capacity requiring direct contact with students;
 694 may suspend a person's educator certificate, upon an order of
 695 the court or notice by the Department of Revenue relating to the
 696 payment of child support; may direct the department to place a
 697 certificateholder employed by a public school, charter school,
 698 charter school governing board, or private school that
 699 participates in a state scholarship program under chapter 1002
 700 on the disqualification list maintained by the department

701 pursuant to s. 1001.10(4)(b) for misconduct that would render
 702 the person ineligible pursuant to s. 1012.315 or sexual
 703 misconduct with a student; or may impose any other penalty
 704 provided by law, if the person:

705 (q) Is a school administrator who knowingly violated the
 706 school safety requirements under s. 1006.07(6)(f).

707 Section 8. For the 2024-2025 fiscal year and subject to
 708 legislative appropriation, the Department of Law Enforcement
 709 shall provide grants to sheriffs' offices and law enforcement
 710 agencies to conduct physical site security assessments for and
 711 provide reports to private schools with recommendations on
 712 improving such schools' infrastructure safety and security; to
 713 assist private schools in developing active assailant response
 714 protocols and develop and implement training relating to active
 715 assailant responses, including active assailant response drills
 716 for students and school personnel; and to consult with or
 717 provide guidance to private schools in implementing a threat
 718 management program similar to the program required under s.
 719 1001.212(12), Florida Statutes, for public schools. The
 720 Department of Law Enforcement shall develop a site security
 721 assessment form for use by sheriffs' offices and law enforcement
 722 agencies and provide the form, including any subsequent
 723 revisions, to the recipient of funds in conducting the duties
 724 outlined in this section. Grants awarded under this section may
 725 be used for personnel costs and to purchase software and other

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ORIGINAL

2024

726 items necessary to assist private schools. The Department of Law
727 Enforcement shall establish the requirements for awarding grants
728 under this section through an open, competitive process. Grants
729 must be awarded no later than October 1, 2024.

730 Section 9. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Trabulsy offered the following:

3

4 **Amendment (with title amendment)**

5 Remove lines 178-283 and insert:

6 b. Complete a 144-hour training program, consisting of 12
7 hours of training to improve the school guardian's knowledge and
8 skills necessary to respond to and de-escalate incidents on
9 school premises ~~certified nationally recognized diversity~~

10 ~~training~~ and 132 total hours of comprehensive firearm safety and
11 proficiency training conducted by Criminal Justice Standards and
12 Training Commission-certified instructors, which must include:

13 (I) Eighty hours of firearms instruction based on the
14 Criminal Justice Standards and Training Commission's Law
15 Enforcement Academy training model, which must include at least
16 10 percent but no more than 20 percent more rounds fired than

PCS for HB 1473 a1

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Amendment No. 1

17 associated with academy training. Program participants must
18 achieve an 85 percent pass rate on the firearms training.

19 (II) Sixteen hours of instruction in precision pistol.

20 (III) Eight hours of discretionary shooting instruction
21 using state-of-the-art simulator exercises.

22 (IV) Sixteen hours of instruction in active shooter or
23 assailant scenarios.

24 (V) Eight hours of instruction in defensive tactics.

25 (VI) Four hours of instruction in legal issues.

26 c. Pass a psychological evaluation administered by a
27 psychologist licensed under chapter 490 and designated by the
28 Department of Law Enforcement and submit the results of the
29 evaluation to the sheriff's office. The Department of Law
30 Enforcement is authorized to provide the sheriff's office with
31 mental health and substance abuse data for compliance with this
32 paragraph.

33 d. Submit to and pass an initial drug test and subsequent
34 random drug tests in accordance with the requirements of s.
35 112.0455 and the sheriff's office.

36 e. Successfully complete ongoing training, weapon
37 inspection, and firearm qualification on at least an annual
38 basis.

39
40 The sheriff who conducts the guardian training or waives the
41 training requirements for a person under sub-subparagraph 1.g.

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42 shall issue a school guardian certificate to persons ~~individuals~~
43 who meet the requirements of this section to the satisfaction of
44 the sheriff, and shall maintain documentation of weapon and
45 equipment inspections, as well as the training, certification,
46 inspection, and qualification records of each school guardian
47 certified by the sheriff. A person ~~An individual~~ who is
48 certified under this paragraph may serve as a school guardian
49 under s. 1006.12(3) only if he or she is appointed by the
50 applicable school district superintendent, charter school
51 principal, or private school head of school.

52 3.a.(I) Within 30 days after issuing a school guardian
53 certificate, the sheriff who issued the certificate must report
54 to the Department of Law Enforcement the name, date of birth,
55 and certification date of the school guardian.

56 (II) By September 1, 2024, each sheriff who issued a
57 school guardian certificate must report to the Department of Law
58 Enforcement the name, date of birth, and certification date of
59 each school guardian who received a certificate from the
60 sheriff.

61 b.(I) By February 1 and September 1 of each school year,
62 each school district, charter school, and private school must
63 report to the Department of Law Enforcement the name, date of
64 birth, and appointment date of each person appointed as a school
65 guardian. The school district, charter school, and private
66 school must also report to the Department of Law Enforcement the

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67 date such person separates from his or her appointment as a
68 school guardian.

69 (II) By September 1, 2024, each school district, charter
70 school, and private school must report to the Department of Law
71 Enforcement the name, date of birth, and appointment date of
72 each person appointed as a school guardian. Within 30 days after
73 a school guardian separates from his or her appointment, the
74 school district, charter school, and private school must report
75 to the Department of Law Enforcement the date such person
76 separated from his or her appointment as a school guardian.

77 c. The Department of Law Enforcement shall maintain a list
78 of each person appointed as a school guardian in the state. The
79 list must include the name and certification date of each school
80 guardian and the date the person was appointed as a school
81 guardian, including the name of the school district, charter
82 school, or private school in which the school guardian is
83 appointed, any information provided pursuant to s. 1006.12(5),
84 and, if applicable, the date such person separated from his or
85 her appointment as a school guardian. The Department of Law
86 Enforcement shall remove from the list any person whose training
87 has expired pursuant to sub-subparagraph 1.d.

88 d. Each sheriff must report on a quarterly basis to the
89 Department of Law Enforcement the schedule for upcoming school
90 guardian trainings, including the dates of the training, the
91 training locations, a contact person to register for the

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92 training, and the class capacity. The Department of Law
93 Enforcement shall publish on its website a list of the upcoming
94 school guardian trainings. The Department of Law Enforcement
95 must update such list quarterly.

96 e. A sheriff who fails to report the information required
97 by this subparagraph may not receive reimbursement from the
98 Department of Education for school guardian trainings. Upon the
99 submission of the required information, a sheriff is deemed
100 eligible for such funding and is authorized to continue to
101 receive reimbursement for school guardian training.

102 f. A school district, charter school, or private school
103 that fails to report the information required by this
104 subparagraph may not operate a school guardian program for the
105 following school year. Upon the submission of the required
106 information, the school district, charter school, or private
107 school is authorized to resume operation of the school guardian
108 program.

109 g. By March 1 and October 1 of each school year, the
110 Department of Law Enforcement shall notify the Department of
111 Education of any sheriff, school district, charter school, or
112 private school that has not complied with the reporting
113 requirements of this subparagraph.

114 Section 2. Subsection (5) of section 330.41, Florida
115 Statutes, is renumbered as subsection (6), and a new subsection
116 (5) is added to that section to read:

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Published On: 1/29/2024 6:20:13 PM

Amendment No. 1

117 330.41 Unmanned Aircraft Systems Act.—

118 (5) PROTECTION OF SCHOOLS.—

119 (a) A person may not knowingly or willfully:

120 1. Operate a drone over a public or private school serving
121 students in any grade from voluntary prekindergarten through
122 grade 12; or

123 2. Allow a drone to make contact with a school, including
124 any person or object on the premises of or within the school
125 facility.

126 (b) A person who violates paragraph (a) commits a
127 misdemeanor of the second degree, punishable as provided in s.
128 775.082 or s. 775.083. A person who commits a second or
129 subsequent violation commits a misdemeanor of the first degree,
130 punishable as provided in s. 775.082 or s. 775.083.

131 (c) A person who violates paragraph (a) and records video
132 of the school, including any person or object on the premises of
133 or within the school facility commits a misdemeanor of the first
134 degree, punishable as provided in s. 775.082 or s. 775.083. A
135 person who commits a second or subsequent violation commits a
136 felony of the third degree, punishable as provided in s.
137 775.082, s. 775.083, or s. 775.084.

138 (d) This subsection does not apply to actions identified
139 in paragraph (a) which are committed by:

PCS for HB 1473 a1

Published On: 1/29/2024 6:20:13 PM

Amendment No. 1

140 1. A person acting under the prior written consent of the
141 school principal, district school board, superintendent, or
142 school governing board.

143 2. A law enforcement agency that is in compliance with s.
144 934.50, or a person under contract with or otherwise acting
145 under the direction of such law enforcement agency.

147 -----

148 **T I T L E A M E N D M E N T**

149 Remove lines 10-27 and insert:

150 requirements; revising specified training requirements
151 for school guardians; requiring school districts,
152 charter schools, private schools, and sheriffs to
153 report specified information relating to school
154 guardians and school guardian programs to the
155 Department of Law Enforcement within specified
156 timeframes; requiring the Department of Law
157 Enforcement to maintain a list of school guardians and
158 school guardian trainings; providing for the removal
159 of specified persons from such list; providing
160 requirements for such list; prohibiting sheriffs who
161 fail to report specified information from receiving
162 certain reimbursement; prohibiting school districts,
163 charter schools, and private schools that fail to
164 report specified information from operating school

PCS for HB 1473 a1

Published On: 1/29/2024 6:20:13 PM

Amendment No. 1

165 guardian programs for the following school year;
166 requiring the Department of Law Enforcement to report
167 certain information to the Department of Education by
168 specified dates of each school year; amending 330.41,
169 F.S.; prohibiting the operation of a drone over public
170 and private schools and recording video of such
171 schools; providing criminal penalties; providing
172 exemptions; amending s.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Trabulsy offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Between lines 663 and 664, insert:

6 (6) CRISIS INTERVENTION TRAINING.—

7 ~~(a)~~ Each safe-school officer who is also a sworn law
8 enforcement officer shall complete mental health crisis
9 intervention training using a curriculum developed by a national
10 organization with expertise in mental health crisis
11 intervention. The training must improve the officer's knowledge
12 and skills as a first responder to incidents involving students
13 with emotional disturbance or mental illness, including de-
14 escalation skills to ensure student and officer safety.

15 ~~(b) Each safe-school officer who is not a sworn law~~
16 ~~enforcement officer shall receive training to improve the~~

PCS for HB 1473 a2

Published On: 1/29/2024 6:21:00 PM

Amendment No. 2

17 ~~officer's knowledge and skills necessary to respond to and de-~~
18 ~~escalate incidents on school premises.~~

19

20

21

22

D I R E C T O R Y A M E N D M E N T

23

Remove line 600 and insert:

24

(3), (5), and (6) of section 1006.12, Florida Statutes, are

25

amended to

26

27

28

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

29

Between lines 80 and 81, insert:

30

repealing specified training requirements for safe-

31

school officers;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1509 Public Records

SPONSOR(S): Judiciary Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Wolff	Kramer

SUMMARY ANALYSIS

Section 1006.12, F.S., requires district school boards and school district superintendents to partner with law enforcement or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A safe-school officer may be a school resource officer, school safety officer, school guardian, or a school security guard. Each of these safe-school officers must meet specified training and eligibility requirements and be certified for a specified safe-school officer position. Documentation of a person’s training and certification as a safe-school officer is maintained by the sheriff, school district, or charter school. Section 1006.12(8), F.S., provides a public record exemption for information held by a law enforcement agency, school district, or charter school that would identify whether a person has been appointed as a safe-school officer. Similarly, s. 1002.42(18), F.S., provides a public record exemption for any information that is held by a law enforcement agency that may identify whether a particular individual has been assigned as a safe-school officer at a private school.

HB 1473 (2024), to which this bill is linked, amends s. 30.15, F.S., to require that a sheriff’s office that certifies individuals to serve as school guardians, and school districts, charter schools, and private schools that appoint school guardians, report specified information to the Florida Department of Law Enforcement (FDLE). Based on these reports, the FDLE is required to maintain a list of each person who is appointed as a school guardian, including the school guardian’s name, the date on which he or she was certified as a school guardian, and the date on which he or she was appointed a school guardian, including the name of the school to which the guardian is appointed, and, as applicable, the date their appointment as a school guardian ended.

PCS for HB 1509, which is linked to the passage of HB 1473 (2024), amends s. 30.15, F.S., to create a public record exemption for any information held by the FDLE or a law enforcement agency, school district, or charter school and reported to FDLE as required by HB 1473 that would identify an individual who has been certified to serve as a school guardian. The bill provides the public record exemption is necessary to effectuate the existing public record exemption for information that is held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a safe-school officer at a public, charter school, or private school, since such information is now required to be forwarded to the FDLE.

The bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill does not appear to have a fiscal impact.

The bill will become effective on the same date that HB 1473 (2024) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.²

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act (Act)³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ In addition, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁵

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption. When considering reenacting an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. If continued and expanded, the exemption requires a public necessity statement and a two-thirds vote of the members present.

Safe-school Officers

District school boards and school district superintendents are required to partner with law enforcement or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. To assist charter schools with fulfilling this requirement, a district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options.⁶

A safe-school officer may be a school resource officer, school safety officer, school guardian, or a school security guard. A school district may implement any combination of the following options based upon the needs of the school district and may:⁷

¹ Art. I, s. 24(c), Fla. Const.

² *Id.*

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ S. 1006.12, F.S.

⁷ S. 1006.12(1)-(4), F.S.

- School Resource Officer: Establish a school resource officer program through a cooperative agreement with law enforcement agencies. A school resource officer is a certified law enforcement officer⁸ who is employed by a law enforcement agency and is required to undergo criminal background checks, drug testing, and a psychological evaluation.⁹ School resource officers abide by school board policies and consult with and coordinate activities through the school principal. They are responsible to the law enforcement agency in all matters relating to employment, subject to agreements between a school board and a law enforcement agency. Activities conducted by the school resource officer, which are part of the regular instructional program of the school, are under the principal's direction.¹⁰
- School Safety Officer: Commission one or more school safety officers as recommended by the district school superintendent and appointed by the district school board. A school safety officer is a certified law enforcement officer who may be employed by a district school board or law enforcement agency and is required to undergo criminal background checks, drug testing, and a psychological evaluation. A school safety officer has and must exercise the power to make arrests for violations of law on school board property or on property owned or leased by a charter school under a charter contract. The officer may also make arrests off school board property if the law violation occurred on such property and may carry weapons when performing his or her official duties. A school safety officer's salary may be paid jointly by the school board and the law enforcement agency, as mutually agreed.¹¹
- School Guardian: Appoint a school guardian under the Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program who is certified by the sheriff after completing a psychological evaluation, drug testing, and specified training, which includes firearm instruction. A guardian may be a school district employee or charter school employee who volunteers to serve as a guardian, in support of school sanctioned activities, in addition to his or her official job duties. A qualifying individual may also be employed specifically as a guardian.¹² Guardians do not have arrest powers.¹³
- School Security Guard: Contract with a security agency to employ a school security guard. A school security guard is an individual who is employed by a security agency and serves on a school facility as a safe-school officer in support of school sanctioned activities. Security guards are required to hold a concealed carry weapon permit and undergo drug testing and a psychological evaluation. An individual serving in this capacity must complete guardian program training, including 144 training hours.¹⁴ A security guard must aid in the prevention or abatement of active assailant incidents on school premises,¹⁵ but does not have arrest powers.¹⁶

A school district contract with a security agency must define the entity or entities responsible for training and the responsibilities for maintaining records relating to training, inspection, and firearm qualification.¹⁷

All safe-school officers are required to receive mental health training. Safe-school officers who are sworn law enforcement officers must complete mental health crisis intervention training using a curriculum developed by a national organization with expertise in the topic. The training must improve the safe-school officers' knowledge and skills as a first responder to incidents involving students with emotional disturbance or mental illness, to include de-escalation skills. Safe-school officers who are not sworn law enforcement officers are required to receive training to improve their knowledge and skills related to incident response and de-escalation.¹⁸

⁸ See s. 943.10(1), F.S.

⁹ S. 1006.12(1)(a), F.S.

¹⁰ S. 1006.12(1)(b), F.S.

¹¹ S. 1006.12(2), F.S.

¹² S. 1006.12(3), F.S.

¹³ S. 30.15(1)(k), F.S.

¹⁴ S. 1006.12(4), F.S.

¹⁵ S. 1006.12(4)(c), F.S.

¹⁶ S. 30.15(1)(k), F.S.

¹⁷ S. 1006.12(4)(b), F.S.

¹⁸ S. 1006.12(6), F.S.

A district school superintendent or charter school administrator, or their designee, is required to notify its county sheriff and the Office of Safe Schools (OSS) within 72 hours after a safe-school officer being dismissed for misconduct, being disciplined, or discharging a firearm in the exercise of duties during a non-training incident.¹⁹

The OSS must annually publish certain information about safe-school officers including the total number of officers, officers disciplined or relieved of duty due to misconduct, disciplinary incidents, and incidents in which a safe-school officer discharged his or her firearm outside of a training situation or in the course of duty.²⁰

Florida law exempts from disclosure any information held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a safe-school officer.²¹

Florida law prohibits a person from falsely impersonating a school guardian and a violation of the prohibition is a third degree felony. In addition, the law prohibits a person from impersonating a law enforcement officer or licensed security officer acting in the capacity of a safe-school officer.²²

Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program

The Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program (Guardian Program) authorizes qualified school personnel to serve as an armed guard to aid in the prevention or abatement of active assailant incidents on school premises.²³

A school district or charter school employee may serve as a guardian if the individual is appointed by the district school superintendent or charter school principal and is certified by a sheriff. The individual must satisfy the following requirements:

- Hold a concealed weapons or concealed firearms license;
- Pass a psychological evaluation administered by a licensed psychologist;
- Pass an initial drug test and subsequent random drug tests;
- Successfully complete a 144-hour training program that includes at least 12 hours of a certified, nationally recognized diversity training program and 132 total hours of specified, comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, and ongoing training, weapon inspection, and firearm qualification on at least an annual basis.²⁴

An individual must satisfy the background screening, psychological evaluation, and drug testing requirements prior to participating in the required guardian training. All training for the guardian program must be conducted by a sheriff.²⁵

A county sheriff must establish a program if the district school board elects to participate. The sheriff may contract with another county sheriff who has already established a program to provide training. Charter school governing boards may directly request guardian training from the county sheriff even if the school district decides not to participate. Should the sheriff deny the request, the charter school may contract with a county sheriff who is willing to provide the training.²⁶

A sheriff who establishes a program may consult with the FDLE on programmatic guiding principles, practices, and resources.²⁷

¹⁹ S. 1006.12(5), F.S.

²⁰ S. 1001.212(16), F.S.

²¹ Ss. 1006.12(8) and 1002.42(18)(c), F.S.

²² S. 843.08, F.S. A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

²³ S. 30.15(1)(k), F.S.

²⁴ *Id.*

²⁵ S. 1006.12(7), F.S.

²⁶ S. 30.15(1)(k), F.S.

²⁷ S. 943.03(16), F.S.

A school guardian has no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident on school premises.²⁸ The sheriff who conducts the guardian training must issue a school guardian certificate to individuals who meet these requirements and maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian certified by the sheriff.²⁹

The guardian training specified in statute is the statewide standard that must be used, however, sheriffs are authorized to supplement such training. A guardian that has received the required training cannot be required to attend the training again unless there has been at least a one-year break in her or his employment as a guardian.³⁰

Safe-school Officers in Private Schools

In 2023, the Legislature expanded the Guardian Program by authorizing private schools to partner with a law enforcement or security agency to establish or assign a safe-school officer to their schools.³¹ The private school is responsible for any costs associated with implementing a safe-school officer, including training under the Guardian Program.³² A private school electing to implement a safe-school officer must comply with the same statutory requirements for such officers as school districts and charter schools.³³

If the county in which a private school operates does not currently participate in the Guardian Program, the private school may request the sheriff to initiate a Guardian Program for the purpose of training private school employees.³⁴ If the local sheriff declines, the private school may contract with a sheriff of a county that has implemented a Guardian Program to provide the necessary training.³⁵ The private school is responsible for notifying the local sheriff prior to entering into such a contract and is responsible for all costs associated with the training of private school employees to serve as guardians.³⁶ The sheriff providing guardian training to private school employees is prohibited from comingling funds received for such training with funds received from the state for the purposes of training school district or charter school employees to serve as guardians.³⁷

HB 1473 (2024)

HB 1473 (2024), to which this bill is linked, amends s. 30.15, F.S., requiring sheriff's offices that certify individuals to serve as school guardians and school districts, charter schools, and private schools that appoint school guardians, to report specified information to the FDLE. Based on these reports, the FDLE is required to maintain a list of each person who is appointed as a school guardian, including the school guardian's name, the date on which he or she was certified as a school guardian, and the date on which he or she was appointed a school guardian, including the name of the school district, charter school, or private school to which the guardian is appointed, and, as applicable, the date their appointment as a school guardian ended.

Effect of Proposed Changes

PCS for HB 1509, which is linked to the passage of HB 1473 (2024), amends s. 30.15, F.S., to create a public record exemption for any information held by the FDLE or a law enforcement agency, school district, or charter school and reported to FDLE as required by HB 1473 that would identify an individual

²⁸ S. 30.15(1)(k), F.S.

²⁹ *Id.*

³⁰ S. 30.15(1)(k)1.d., F.S.

³¹ S. 2, ch. 2023-18, Laws of Fla.

³² S. 30.15(1)(k)1.c., F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

who has been certified to serve as a school guardian. This public record exemption supports the existing public record exemption for information that is held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a safe-school officer at a public school, charter school, or private school. The list, required to be maintained by the FDLE under HB 1473, if not protected, could identify a school guardian rendering the existing exemption ineffective.

The bill provides the public record exemption is a public necessity because disclosure of the identity of a safe-school officer could affect his or her ability to adequately respond to an active assailant situation.

The bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that HB 1473 (2024) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

B. SECTION DIRECTORY:

Section 1: Amends s. 30.15, F.S., regarding powers, duties, and obligations.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Section 3: Provides that the bill is effective on the same date that HB 1473 (2024) or similar legislation takes effect.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for any information held by FDLE, a school district, or charter school that would identify a person who is certified to serve as a school guardian. This public record exemption is an extension of the current exemption for school guardian information that is held by a law enforcement agency, school district, or charter school and applies to specified information that is required to be reported to FDLE by HB 1473. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s. 30.15,
 3 F.S.; providing that certain information relating to
 4 school guardians which is held and reported by any
 5 school district, charter school, private school, or
 6 sheriff to the Department of Law Enforcement is exempt
 7 from public records requirements; providing an
 8 effective date.

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

11
 12 Section 1. Paragraph (k) of subsection (1) of section
 13 30.15, Florida Statutes, as amended by HB 1473, 2024 Regular
 14 Session, is amended to read:

15 30.15 Powers, duties, and obligations; public records
 16 exemption.-

17 (1) Sheriffs, in their respective counties, in person or
 18 by deputy, shall:

19 (k) Assist district school boards and charter school
 20 governing boards in complying with, or private schools in
 21 exercising options in, s. 1006.12. A sheriff must, at a minimum,
 22 provide access to a Chris Hixon, Coach Aaron Feis, and Coach
 23 Scott Beigel Guardian Program to aid in the prevention or
 24 abatement of active assailant incidents on school premises, as
 25 required under this paragraph. Persons certified as school

26 guardians pursuant to this paragraph have no authority to act in
 27 any law enforcement capacity except to the extent necessary to
 28 prevent or abate an active assailant incident.

29 1.a. If a local school board has voted by a majority to
 30 implement a guardian program, the sheriff in that county shall
 31 establish a guardian program to provide training, pursuant to
 32 subparagraph 2., to school district, charter school, or private
 33 school employees, either directly or through a contract with
 34 another sheriff's office that has established a guardian
 35 program.

36 b. A charter school governing board in a school district
 37 that has not voted, or has declined, to implement a guardian
 38 program may request the sheriff in the county to establish a
 39 guardian program for the purpose of training the charter school
 40 employees. If the county sheriff denies the request, the charter
 41 school governing board may contract with a sheriff that has
 42 established a guardian program to provide such training. The
 43 charter school governing board must notify the superintendent
 44 and the sheriff in the charter school's county of the contract
 45 prior to its execution.

46 c. A private school in a school district that has not
 47 voted, or has declined, to implement a guardian program may
 48 request that the sheriff in the county of the private school
 49 establish a guardian program for the purpose of training private
 50 school employees. If the county sheriff denies the request, the

51 private school may contract with a sheriff from another county
52 who has established a guardian program to provide such training.
53 The private school must notify the sheriff in the private
54 school's county of the contract with a sheriff from another
55 county before its execution. The private school is responsible
56 for all training and screening-related costs for a school
57 guardian program. The sheriff providing such training must
58 ensure that any moneys paid by a private school are not
59 commingled with any funds provided by the state to the sheriff
60 as reimbursement for screening-related and training-related
61 costs of any school district or charter school employee.

62 d. The training program required in sub-subparagraph 2.b.
63 is a standardized statewide curriculum, and each sheriff
64 providing such training shall adhere to the course of
65 instruction specified in that sub-subparagraph. This
66 subparagraph does not prohibit a sheriff from providing
67 additional training. A school guardian who has completed the
68 training program required in sub-subparagraph 2.b. may not be
69 required to attend another sheriff's training program pursuant
70 to that sub-subparagraph unless there has been at least a 1-year
71 break in his or her appointment as a guardian.

72 e. The sheriff conducting the training pursuant to
73 subparagraph 2. for school district and charter school employees
74 will be reimbursed for screening-related and training-related
75 costs and for providing a one-time stipend of \$500 to each

76 | school guardian who participates in the school guardian program.

77 | f. The sheriff may waive the training and screening-
 78 | related costs for a private school for a school guardian
 79 | program. Funds provided pursuant to sub-subparagraph e. may not
 80 | be used to subsidize any costs that have been waived by the
 81 | sheriff.

82 | g. A person who is certified under the Florida Criminal
 83 | Justice Standards and Training Commission, who meets the
 84 | qualifications established in s. 943.13, and who is otherwise
 85 | qualified for the position of a school guardian may be certified
 86 | as a school guardian by the sheriff without completing the
 87 | training requirements of sub-subparagraph 2.b. However, a person
 88 | certified as a school guardian under this sub-subparagraph must
 89 | meet the requirements of sub-subparagraphs 2.c.-e.

90 | 2. A sheriff who establishes a program shall consult with
 91 | the Department of Law Enforcement on programmatic guiding
 92 | principles, practices, and resources, and shall certify as
 93 | school guardians, without the power of arrest, school employees,
 94 | as specified in s. 1006.12(3), who:

95 | a. Hold a valid license issued under s. 790.06.

96 | b. Complete a 144-hour training program, consisting of 12
 97 | hours of certified nationally recognized diversity training and
 98 | 132 total hours of comprehensive firearm safety and proficiency
 99 | training conducted by Criminal Justice Standards and Training
 100 | Commission-certified instructors, which must include:

101 (I) Eighty hours of firearms instruction based on the
 102 Criminal Justice Standards and Training Commission's Law
 103 Enforcement Academy training model, which must include at least
 104 10 percent but no more than 20 percent more rounds fired than
 105 associated with academy training. Program participants must
 106 achieve an 85 percent pass rate on the firearms training.

107 (II) Sixteen hours of instruction in precision pistol.

108 (III) Eight hours of discretionary shooting instruction
 109 using state-of-the-art simulator exercises.

110 (IV) Sixteen hours of instruction in active shooter or
 111 assailant scenarios.

112 (V) Eight hours of instruction in defensive tactics.

113 (VI) Four hours of instruction in legal issues.

114 c. Pass a psychological evaluation administered by a
 115 psychologist licensed under chapter 490 and designated by the
 116 Department of Law Enforcement and submit the results of the
 117 evaluation to the sheriff's office. The Department of Law
 118 Enforcement is authorized to provide the sheriff's office with
 119 mental health and substance abuse data for compliance with this
 120 paragraph.

121 d. Submit to and pass an initial drug test and subsequent
 122 random drug tests in accordance with the requirements of s.
 123 112.0455 and the sheriff's office.

124 e. Successfully complete ongoing training, weapon
 125 inspection, and firearm qualification on at least an annual

126 basis.

127

128 The sheriff who conducts the guardian training or waives the
 129 training requirements for a person under sub-subparagraph 1.g.
 130 shall issue a school guardian certificate to persons who meet
 131 the requirements of this section to the satisfaction of the
 132 sheriff, and shall maintain documentation of weapon and
 133 equipment inspections, as well as the training, certification,
 134 inspection, and qualification records of each school guardian
 135 certified by the sheriff. A person who is certified under this
 136 paragraph may serve as a school guardian under s. 1006.12(3)
 137 only if he or she is appointed by the applicable school district
 138 superintendent, charter school principal, or private school head
 139 of school.

140 3.a.(I) Within 30 days after issuing a school guardian
 141 certificate, the sheriff who issued the certificate must report
 142 to the Department of Law Enforcement the name, date of birth,
 143 and certification date of the school guardian.

144 (II) By September 1, 2024, each sheriff who issued a
 145 school guardian certificate must report to the Department of Law
 146 Enforcement the name, date of birth, and certification date of
 147 each school guardian who received a certificate from the
 148 sheriff.

149 b.(I) By February 1 and September 1 of each school year,
 150 each school district, charter school, and private school must

151 report to the Department of Law Enforcement the name, date of
 152 birth, and appointment date of each person appointed as a school
 153 guardian. The school district, charter school, and private
 154 school must also report to the Department of Law Enforcement the
 155 date such person separates from his or her appointment as a
 156 school guardian.

157 (II) By September 1, 2024, each school district, charter
 158 school, and private school must report to the Department of Law
 159 Enforcement the name, date of birth, and appointment date of
 160 each person appointed as a school guardian. Within 30 days after
 161 a school guardian separates from his or her appointment, the
 162 school district, charter school, and private school must report
 163 to the Department of Law Enforcement the date such person
 164 separated from his or her appointment as a school guardian.

165 c. The Department of Law Enforcement shall maintain a list
 166 of each person appointed as a school guardian in the state. The
 167 list must include the name and certification date of each school
 168 guardian and the date the person was appointed as a school
 169 guardian, including the name of the school district, charter
 170 school, or private school in which the school guardian is
 171 appointed, any information provided pursuant to s. 1006.12(5),
 172 and, if applicable, the date such person separated from his or
 173 her appointment as a school guardian. The Department of Law
 174 Enforcement shall remove from the list any person whose training
 175 has expired pursuant to sub-subparagraph 1.d.

176 d.(I) Any information held by the department or a law
 177 enforcement agency, school district, or charter school pursuant
 178 to sub-subparagraphs a.-c. that would identify a person who has
 179 been certified to serve as a school guardian is exempt from s.
 180 119.07(1) and s. 24(a), Art. I of the State Constitution.

181 (II) This sub-subparagraph is subject to the Open
 182 Government Sunset Review Act in accordance with s. 119.15 and
 183 shall stand repealed on October 2, 2029, unless reviewed and
 184 saved from repeal through reenactment by the Legislature.

185 ~~e.d.~~ Each sheriff must report on a quarterly basis to the
 186 Department of Law Enforcement the schedule for upcoming school
 187 guardian trainings, including the dates of the training, the
 188 training locations, a contact person to register for the
 189 training, and the class capacity. The Department of Law
 190 Enforcement shall publish on its website a list of the upcoming
 191 school guardian trainings. The Department of Law Enforcement
 192 must update such list quarterly.

193 ~~f.e.~~ A sheriff who fails to report the information
 194 required by this subparagraph may not receive reimbursement from
 195 the Department of Education for school guardian trainings. Upon
 196 the submission of the required information, a sheriff is deemed
 197 eligible for such funding and is authorized to continue to
 198 receive reimbursement for school guardian training.

199 ~~g.f.~~ A school district, charter school, or private school
 200 that fails to report the information required by this

201 subparagraph may not operate a school guardian program for the
 202 following school year. Upon the submission of the required
 203 information, the school district, charter school, or private
 204 school is authorized to resume operation of the school guardian
 205 program.

206 ~~h.g.~~ By March 1 and October 1 of each school year, the
 207 Department of Law Enforcement shall notify the Department of
 208 Education of any sheriff, school district, charter school, or
 209 private school that has not complied with the reporting
 210 requirements of this subparagraph.

211 Section 2. The Legislature finds that it is a public
 212 necessity that any information held and reported by any school
 213 district, charter school, private school, or sheriff to the
 214 Department of Law Enforcement that may identify whether a
 215 particular person is or has been certified or appointed as a
 216 school guardian be made exempt from s. 119.07(1), Florida
 217 Statutes, and s. 24(a), Article I of the State Constitution.
 218 School security and student safety are fundamental priorities in
 219 the state. The safety of people serving or who have served as
 220 school guardians is also an important priority in the state.
 221 School guardians serve a critical role as safe-school officers
 222 and first responders, and their presence on school grounds
 223 serves as a deterrent against incidents threatening the lives of
 224 students and school personnel. Disclosure of the identity of
 225 school guardians, whether there is a school guardian on a school

226 campus, and the number of school guardians on any school campus
227 may compromise their safety and adversely affect their ability
228 to adequately respond to an active assailant incident.

229 Accordingly, it is necessary to protect the identity of school
230 guardians from public records requirements in order to
231 effectively and efficiently implement the purpose and intent of
232 a school guardian program.

233 Section 3. This act shall take effect on the same date
234 that HB 1473 or similar legislation takes effect, if such
235 legislation is adopted in the same legislative session or an
236 extension thereof and becomes a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Trabulsy offered the following:

3
4 **Amendment**

5 Remove lines 96-98 and insert:

6 b. Complete a 144-hour training program, consisting of 12
7 hours of training to improve the school guardian's knowledge and
8 skills necessary to respond to and de-escalate incidents on
9 school premises and 132 total hours of comprehensive firearm
10 safety and proficiency



Special Master's Final Report

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: CS/HB 6007 - Representative Yarkosky
Relief/Julia Perez/St. Johns County Sheriff's Office

SUMMARY

This is a settled claim for \$6,300,000¹ by Julia Perez ("Perez") against the St. Johns County Sheriff's Office ("SJSO") for injuries and damages she suffered when an SJSO deputy drove his patrol vehicle directly into the path of a motorcycle operated by Perez on April 7, 2019, causing Perez's motorcycle to collide with his vehicle.

FINDINGS OF FACT

Accident

Shortly after 5:00 p.m. on April 7, 2019, then-51-year-old mother of two Julia Perez ("Perez") was operating a motorcycle, traveling eastbound on State Road 16 in unincorporated St. Johns County, Florida.² Perez wore a motorcycle helmet and was, according to witnesses, operating her motorcycle within the posted speed limits.

At the same time, on-duty St. Johns County Sheriff's Office ("SJSO") Deputy Brandon Hetzler ("Hetzler") was operating a marked SJSO patrol vehicle, traveling westbound on State Road 16.³ In response to a call for service, Hetzler proceeded into the left turn lane at the intersection of State Road 16 and Harvest Lane; however, Hetzler failed to activate his vehicle's emergency lights or sirens in response to this call, and he later testified in a deposition that the sun was shining in his eyes so he could not see oncoming traffic, including Perez, who had a continuous green signal giving her the right-of-way. In spite of this, Hetzler proceeded to enter the intersection to attempt to make a left turn, driving his patrol vehicle directly into the path of Perez's oncoming motorcycle.

The front of Perez's motorcycle collided with the front right side of Hetzler's patrol vehicle, and

¹ The Claim Bill, as originally filed, requested \$15,000,000. The parties subsequently settled the matter for \$6,500,000, \$200,000 of which has been paid. Consequently, the Civil Justice Subcommittee amended the Claim Bill on January 25, 2024, by agreement of the parties, to request the excess settlement amount of \$6,300,000.

² Perez traveled with her partner, Tom Eiland, who operated his own motorcycle. Eiland was injured in the same accident at issue in this Claim Bill but his injuries and damages are not the subject of this Claim Bill. Thus, they are not discussed herein.

³ At all times relevant to this Claim Bill, Hetzler, employed by the SJSO as a deputy sheriff, was acting within the course and scope of his employment.

the force of the crash ejected Perez from her motorcycle. Perez then impacted the hood of Hetzler's patrol vehicle, and the force of the impact propelled her over the vehicle's roof, causing her to impact the vehicle's trunk before she finally came to rest on the pavement of State Road 16. Several witnesses to the accident called 911, and an off-duty SJSO deputy who happened to be among the witnesses attended to Perez before emergency responders arrived. In the course of rendering emergency aid, the off-duty deputy had to revive Perez with a defibrillator he happened to have been carrying in his personal vehicle.

Once at the scene, emergency responders found Perez unconscious and hemorrhaging, with a Glasgow Coma Score of 3, indicating a severe, traumatic brain injury. Indeed, her injuries were so severe that she was not expected to survive; consequently, traffic homicide investigators with the Florida Highway Patrol ("FHP investigators") responded to the scene.⁴ At the conclusion of their investigation, the FHP investigators found Hetzler solely at fault for the accident and issued him a traffic citation, citing him with failure to yield to oncoming traffic when making a left turn under s. 316.122, F.S.⁵ Hetzler went on to plead no contest to the citation and the court withheld adjudication, ultimately fining Hetzler. An investigation conducted by the SJSO's Traffic Crash Review Board also found Hetzler solely at fault for the accident, and the Crash Review Board ultimately suspended his driving privileges for three months and ordered him to complete a remedial driving course.

Injuries and Treatment

Emergency responders transported Perez by ambulance to the emergency department of Memorial Hospital Jacksonville; while in the ambulance, Perez was intubated, placed on mechanical ventilation, and sedated. Upon arrival to Memorial Hospital Jacksonville, Perez was unresponsive with a blood pressure reading of 59/31 and in hemorrhagic shock, which required "aggressive resuscitation with massive transfusion protocol" and "emergent exploration" to determine the extent of her "devastating" injuries. Treating physicians ultimately found that, due to the April 7, 2019, accident, Perez had:

- A severe traumatic brain injury.
- Kidney tubular necrosis, which led to kidney failure.
- Multiple displaced pelvic fractures.
- A right distal humerus fracture.
- Right tibia and fibula fractures.
- Multiple right femur fractures.
- A left distal radius fracture.
- Left-side rib fractures.
- A right medial malleolar fracture.
- Fractures to the sternum and manubrium.
- Cervical spine fractures.
- A pneumothorax.
- A right-sided labia majora laceration.
- Liver lacerations.
- A hiatal hernia in the abdomen.
- A large right-sided pelvic sidewall hematoma.
- A bladder hematoma.

All told, Perez spent approximately eight months receiving in-patient medical care, first at Memorial Hospital Jacksonville, then at a rehabilitation facility, and ultimately at a nursing home before she was able to return home for ongoing out-patient care. During this time, she suffered numerous complications, including bed sores, a pulmonary embolism, and infections for which she had to take numerous antibiotics.

⁴ See THI Case No. FHP 119-20-001.

⁵ S. 316.122, F.S., is a noncriminal traffic infraction, a violation of which is punishable, without aggravating factors, by a civil penalty of up to \$500 and/or a requirement to attend a driver improvement school.

Due to her injuries, Perez also spent three months on a ventilator and feeding tube and underwent multiple surgeries, including: several orthopedic surgeries for the placement of a temporary external fixation device and later the placement of permanent rods and screws to stabilize her various fractures; and a gynecological surgery to repair the laceration to her labia majora. She also began kidney dialysis for treatment of her kidney failure and was, for a significant time period, a candidate for a kidney transplant.⁶

Civil Action

On March 14, 2020, Perez filed a Complaint in the Circuit Court of the Seventh Judicial Circuit in and for St. Johns County, Florida.⁷ Therein, Perez alleged that the SJSO was negligent through the actions of Hetzler and requested damages for her injuries, including: catastrophic bodily injury and resulting pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; expenses of hospitalization, medical and nursing care, and treatment; medical liens; debts for gratuitous services and attendant care; loss of earnings; loss of ability to earn money; and aggravation of a previously existing condition.

On April 29, 2020, the SJSO filed an Answer, wherein it raised several affirmative defenses, including sovereign immunity, a Fabre defense,⁸ collateral source payments, contributory negligence, and failure to mitigate. However, Perez and the SJSO ultimately agreed to settle the matter for \$6,500,000, and on November 27, 2023, Perez filed a Notice of Settlement wherein she asked that the matter be removed from the trial docket pending final disposition; the parties executed the Settlement Agreement on November 30, 2023, and the court dismissed the matter on January 15, 2024. The SJSO has since paid the \$200,000 authorized by Florida's sovereign immunity limits, leaving an excess settlement amount of \$6,300,000.

Economic Damages

Perez incurred over \$4,000,000 in medical bills for her initial medical care, the majority of which were paid by her health insurance provider at a negotiated rate; however, the health insurance provider has since imposed a lien in the amount of \$1,500,000 against any damages Perez may recover for the April 7, 2019, accident. Medicaid also covered a portion of Perez's medical bills, as she lost her health insurance coverage while still receiving accident-related medical care. According to the record, Medicaid intends to impose a lien against any damages Perez may recover for the April 7, 2019, accident, but has not yet provided the exact lien amount. Perez also owes approximately \$50,000 to several medical providers and facilities, and approximately \$71,962 to a litigation financier. Thus, she faces at least \$1,600,000 in liens for past medical care and related expenses, but this amount will likely increase when Medicaid provides its final lien amount.

In addition to her past medical expenses, Perez is expected to incur significant costs for future accident-related medical care. According to her Life Care Plan, such future costs will likely range from \$2,962,051.27 to \$3,575,770.73; however, should Perez's kidney function deteriorate, requiring her to resume dialysis or undergo a kidney transplant in the future, such costs will likely increase by approximately \$200,000, or more.⁹ Perez is also unable to maintain employment due to her injuries, and thus has suffered lost past and future wages of an estimated \$282,110 based on a minimum-wage earning capacity.¹⁰

⁶ As of the date of the Special Master Hearing held in this matter on January 12, 2024, Perez's kidney function had improved enough that she was not presently on dialysis or in immediate danger of needing a kidney transplant. According to the record, it is possible she may have to resume dialysis or undergo a kidney transplant at some future point, but no physician could say what her prognosis is with any degree of medical certainty.

⁷ See Case No. 2020-CA-387.

⁸ A Fabre defense allows a defendant in a civil lawsuit to reduce its liability by the degree of negligence attributed to a non-party to the lawsuit. *Fabre v. Martin*, 623 So. 2d 1182 (Fla. 1993).

⁹ Perez's Life Care Plan was prepared by rehabilitation counselor and life care planner Gil Spruance, MS, CRC, CVE, CCM, CLP, MSCC.

¹⁰ On April 7, 2019, Perez was working part-time as an Uber driver, making approximately \$1,200 per week. She previously held positions including a school bus driver, a patient transporter for a hospital, and the secretary and treasurer for several churches, for which she also volunteered.

Personal Impact

Before her accident, Perez was, according to her children, a vibrant, adventurous, fearless, and joyful woman. Perez's children described their mother as having once been full of life, committed to maintaining her health and to living in accordance with the tenets of her deep faith. Now, however, Perez's children testified that she is a completely different person, unable to live the full life she once had; although she is, according to her children, still a deeply faithful person and "the best mom ever." Perez, in turn, described her children as her "treasure," and the two halves of her heart.

Dr. Emily Keener, Perez's treating orthopedic trauma surgeon, testified that, in her opinion, it is likely that Perez's overall health and active lifestyle before her accident saved her life, as a person with comorbidities likely would not have survived such traumatic injuries, which Dr. Keener described as among the worst injuries she has seen in her career. Perez herself testified that she was an "adventure person" who once enjoyed many activities, including golfing, motorcycle riding, fitness classes, taking cruises, and camping, and that she looked forward to saving money to enjoy an active retirement, during which she hoped to ski and skydive. However, Perez testified that because she now lives with chronic pain and significant mobility limitations, her once-active lifestyle is now lost to her. Indeed, Perez testified that seemingly-simple activities, such as rising from a chair unassisted, are now impossible for her, and she requires the assistance of her mother, with whom she resides, for the completion of certain physical tasks she cannot herself perform.

In addition to her physical limitations, Perez testified that she suffers cognitive impairments from her traumatic brain injury, including memory loss, struggling to remember things like whether she has finished washing while in the shower or whether she has recently used the restroom. Dr. Syed Asad, Perez's treating neurologist, testified that, though Perez's motorcycle helmet likely contributed to saving her life, her cognitive impairment is, at this point, considered "chronic"; in other words, it is unlikely to improve to any significant degree, and will likely worsen due to the natural mental decline that often comes with aging.

CONCLUSIONS OF LAW

In the instant matter, Perez raises a negligence claim, the elements of which are duty, breach, causation, and damages. The SJSO has, as part of the Settlement Agreement in the underlying civil action, admitted liability for the April 7, 2019, accident through the actions of Hetzler. However, pursuant to House Rule 5.6(b), stipulations entered into by the parties to a claim bill are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard *de novo*, and the Special Master must make findings of fact and conclusions of law which support the claim.

Duty

Section 316.122, F.S., requires a motor vehicle driver intending to turn left within an intersection to yield the right-of-way to any vehicle approaching from the oncoming direction which is within the intersection or so close thereto as to constitute an immediate hazard. Because a motor vehicle driver has a duty to take reasonable care and to follow all applicable laws to prevent harm to those within the vehicle's path, Hetzler owed a duty to Perez to abide by s. 316.122, F.S.

Breach

The evidence presented demonstrates that Hetzler breached the duty of care described above when he improperly entered the intersection at State Road 16 and Harvest Lane while attempting to make a left turn and, in doing so, failed to yield the right-of-way to Perez as she approached the intersection from the oncoming direction.

Causation

The April 7, 2019, accident and Perez's consequential injuries were the direct and proximate result of Hetzler's breach of the duty described above. But for Hetzler's failure to yield the right-of-way to Perez as he attempted to make a left turn, the April 7, 2019, accident would not have occurred.

Damages

The SJSO settled the instant matter with Perez for \$6,500,000, \$200,000 of which has already been paid; thus, this claim bill is for \$6,300,000 to compensate Perez for her physical injuries caused by the April 7, 2019, accident and the economic and noneconomic damages she suffered due to said injuries.

Respondent Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the scope of his or her employment; and
- Employee's activities were of a benefit to the employer.¹¹

For conduct to be considered within the course and scope of the employee's employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.¹²

Because Hetzler was at all times relevant to the instant matter employed by the SJSO as a deputy sheriff and was acting within the scope of his employment at the time the April 7, 2019, accident occurred, which employment benefitted the SJSO, the SJSO is liable for Hetzler's negligence under the common law *respondeat superior* doctrine.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant's Position:

Perez asserts that she is entitled to the remaining \$6,300,000 authorized by the settlement agreement she entered into with the SJSO in her underlying civil action, which money will compensate her for the injuries and damages she suffered due to the SJSO's negligence through the actions of Hetzler.

¹¹ *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

¹² *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

Respondent's Position:

The SJSO has admitted liability in the underlying civil action and supports the passage of the Claim Bill. The SJSO indicated, through counsel, that, should this Claim Bill pass, the St. Johns County Board of Commissioners has agreed that it will appropriate county funds to pay the amount awarded to Perez and, thus, passage of the Claim Bill will not impact the SJSO's operations.

LEGISLATIVE HISTORY

This Claim Bill is presented to the Legislature for the second time. It was first filed during the 2023 Legislative Session; however, the Claimant had not yet exhausted her remedies as the matter had not yet been settled and, thus, no Special Master Hearing occurred that Session.

ATTORNEY AND LOBBYING FEES

Under the terms of the settlement agreement, attorney fees may not exceed 25 percent of the total award, while lobbying fees may not exceed 7 percent of the total award. Thus, attorney fees may not exceed \$1,575,000, while lobbying fees may not exceed \$441,000.

RECOMMENDATION

Based on the foregoing, I recommend that CS/HB 6007 be reported FAVORABLY.

Respectfully submitted,



CAITLIN R. MAWN,
House Special Master

26 | impact the hood of the patrol car before she came to rest on the
 27 | pavement of State Road 16, and

28 | WHEREAS, the Florida Highway Patrol's traffic crash
 29 | investigators conducted an extensive crash investigation of the
 30 | accident, including preparation for a traffic homicide
 31 | reconstruction due to Ms. Perez's grave condition, and

32 | WHEREAS, witnesses on the scene told investigators that, at
 33 | the time of the crash, eastbound traffic had a steady green
 34 | signal, giving Ms. Perez the right of way, and

35 | WHEREAS, the investigation determined that the actions of
 36 | Ms. Perez were reasonable and did not contribute to or cause the
 37 | collision, and

38 | WHEREAS, the Florida Highway Patrol investigation found the
 39 | SJSO employee to be solely at fault for causing the accident and
 40 | issued him a traffic citation for failure to yield to oncoming
 41 | traffic in violation of s. 316.122, Florida Statutes, to which
 42 | he pled no contest, and

43 | WHEREAS, the St. Johns County Sheriff's Office has admitted
 44 | its employee was negligent in causing the collision and liable
 45 | for Ms. Perez's injuries, and

46 | WHEREAS, Ms. Perez suffered catastrophic injuries, was
 47 | intubated and resuscitated at the crash site by local emergency
 48 | medical services, and was rushed to the Trauma Center at
 49 | Memorial Hospital Jacksonville, where she arrived comatose and
 50 | had to undergo a series of blood transfusions, and

51 WHEREAS, Ms. Perez suffered multiple open and comminuted
52 fractures of the pelvis, arms, and legs, as well as organ
53 lacerations and punctures, including a punctured left lung,
54 resulting in cardiopulmonary arrest due to blood loss, and
55 numerous complications, including a pulmonary embolism, deep
56 vein thrombosis, and episodes of pneumonia; suffered at least
57 one myocardial infarction; and endured multiple systemic
58 infections, bowel obstructions, a fractured arm, and a nicked
59 artery, and

60 WHEREAS, Ms. Perez remained hospitalized and was in a
61 nursing home for almost eight months following the crash, and

62 WHEREAS, because of blood loss and infection, Ms. Perez
63 suffered renal tubular necrosis and a kidney injury, which
64 necessitated her to receive kidney dialysis for many months and
65 made it possible that she will need further kidney treatment in
66 the future, and

67 WHEREAS, Ms. Perez suffers from substantial pain when
68 trying to accomplish simple tasks of daily living and
69 experiences interrupted sleep on a nightly basis, chronic
70 migraine headaches, and severe elevated blood pressure, and

71 WHEREAS, Ms. Perez suffers from memory loss, confusion,
72 communication difficulties, fatigue, frustration, and
73 depression, and she is under the treatment of a neurologist, and

74 WHEREAS, Ms. Perez has undergone dozens of surgeries and
75 faces many more, and

76 WHEREAS, Ms. Perez's past medical bills attributable to the
 77 crash and related liens amount to more than \$3,863,108.09, and

78 WHEREAS, the costs of Ms. Perez's future medical care and
 79 related expenses are estimated to be as much as \$4,077,923.57
 80 over the course of Ms. Perez's life, and

81 WHEREAS, Ms. Perez has been declared to be totally and
 82 permanently disabled by her physicians, and her loss of earning
 83 capacity is estimated to be \$282,110, based on her full Social
 84 Security retirement age of 67 and a minimum-wage earning
 85 capacity, and

86 WHEREAS, a lawsuit was filed on behalf of Ms. Perez and was
 87 set for trial in the Circuit Court of the Seventh Judicial
 88 Circuit, in and for St. Johns County, Florida, styled *Julia*
 89 *Perez vs. Robert A. Hardwick, in his capacity as Sheriff of St.*
 90 *Johns County*, Case No.: 2020-CA-387; however, the parties agreed
 91 to a settlement amount of \$6.5 million before trial, and

92 WHEREAS, Ms. Perez has been paid the statutory limit of
 93 \$200,000 by the St. Johns County Sheriff's Office's self-
 94 insuring risk pool, leaving a balance of \$6.3 million which the
 95 St. Johns County Sheriff's Office is willing to pay upon being
 96 authorized to do so by the enactment of a claim bill pursuant to
 97 s. 768.28, Florida Statutes, and

98 WHEREAS, the parties agree to support a claim bill that
 99 authorizes and directs the St. Johns County Sheriff's Office to

100 appropriate from funds of the county and pay Julia Perez \$6.3
 101 million, and

102 WHEREAS, Ms. Perez seeks the total sum of \$6.3 million in
 103 relief from the Legislature for satisfaction of her injuries and
 104 damages, NOW, THEREFORE,

105

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

107

108 Section 1. The facts stated in the preamble to this act
 109 are found and declared to be true.

110 Section 2. The St. Johns County Sheriff's Office is
 111 authorized and directed to appropriate from funds of the county
 112 not otherwise encumbered and pay Julia Perez \$6.3 million, to
 113 compensate her for the injuries and damages she sustained due to
 114 the negligence of an employee of the St. Johns County Sheriff's
 115 Office.

116 Section 3. It is the intent of the Legislature that all
 117 lien interests held by the state, if any, resulting from the
 118 treatment and care of Julia Perez for the occurrences described
 119 in this act are waived. It is the intent of the Legislature that
 120 all Medicaid liens arising from the treatment and care of the
 121 injuries and damages to Julia Perez described in this act shall
 122 be waived.

123 Section 4. The amount awarded under this act is intended
 124 to provide the sole compensation for all present and future

CS/HB 6007

2024

125 claims arising out of the factual situation described in this
126 act which resulted in injuries and damages to Julia Perez. The
127 total amount paid for attorney fees relating to this claim may
128 not exceed 25 percent of the total amount awarded under this
129 act.

130 Section 5. This act shall take effect upon becoming a law.