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# Civil Justice Subcommittee

Thursday, January 11, 2024  
2:00 PM - 5:00 PM  
404 HOB

Meeting Packet

Paul Renner  
Speaker

William Robinson  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Civil Justice Subcommittee

**Start Date and Time:** Thursday, January 11, 2024 02:00 pm  
**End Date and Time:** Thursday, January 11, 2024 05:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 29 Value of Motor Vehicles Exempt from Legal Process by Benjamin  
HB 45 Hope Cards for Persons Issued Orders of Protection by Gottlieb, Koster  
HB 175 Judgment Liens by Benjamin  
HB 283 Self-service Storage Facility Liens by Borrero  
HB 353 Alternative Headquarters for District Court Judges by Maney  
HB 481 Building Construction Regulations and System Warranties by Maggard  
HB 521 Equitable Distribution of Marital Assets and Liabilities by Koster  
HB 619 Sovereign Immunity for Professional Firms by Tuck  
HB 799 Easements Affecting Real Property Owned by Same Owner by Robinson, W.

**Consideration of the following proposed committee substitute(s):**

PCS for HB 569 -- Suits Against the Government

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](http://www.myfloridahouse.gov).

**NOTICE FINALIZED on 01/09/2024 4:10PM by Ramirez.Julia**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 29 Value of Motor Vehicles Exempt from Legal Process

**SPONSOR(S):** Benjamin

**TIED BILLS:** IDEN./SIM. BILLS: SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mathews	Jones
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

**SUMMARY ANALYSIS**

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors as long as it is used as a residence. In addition to this constitutional exemption of homestead property and other personal property, Florida law protects certain assets from legal process so that they also remain beyond a creditor’s reach, including:

- Funds held in individual retirement accounts (“IRA”) and other tax-exempt accounts.
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract.
- Funds held in qualified tuition programs and medical, Coverdell education, and hurricane savings accounts.
- Disability income benefits.
- Wages, unless the debtor agrees to waive the exemption in writing.
- Social security benefits; unemployment compensation, or public assistance benefits; veterans’ benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.
- A debtor’s interest in any professionally prescribed health aids for the debtor or for a debtor’s dependent.
- A debtor’s interest in a refund or a credit received or to be received pursuant to the Internal Revenue Code; however, this exemption is not applicable to a debt owed for child support or spousal support.
- A debtor’s interest in personal property, not to exceed \$4,000, if the debtor does not claim or receive the benefits of a homestead exemption; however, this exemption is not applicable to a debt owed for child support or spousal support.
- A debtor’s interest, not to exceed \$1,000 in value, in a single motor vehicle.

HB 29 increases the maximum value of an exempt motor vehicle from \$1,000 to \$5,000.

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

##### Constitutional Exemptions

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors as long as it is used as a residence, as well as up to \$1,000 in personal property.<sup>1</sup>

##### Other Asset Exemptions

In addition to the exemption of homestead property and personal property provided by the Florida Constitution, chapter 222, F.S., protects certain assets from legal process so that they remain out of a creditor's reach, including:

- Funds held in an individual retirement account ("IRA") and other tax-exempt accounts.<sup>2</sup>
- A life insurance policy's proceeds.<sup>3</sup>
- A life insurance policy's cash surrender value and an annuity contract's proceeds.<sup>4</sup>
- Funds held in qualified tuition programs and medical, Coverdell education, and hurricane savings accounts.<sup>5</sup>
- Disability income benefits.<sup>6</sup>
- Wages, unless the debtor agrees to waive the exemption in writing.<sup>7</sup>
- Certain personal property items.<sup>8</sup>
- Any professionally prescribed health aides.<sup>9</sup>
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.<sup>10</sup>
- A debtor's interest in a motor vehicle, up to \$1,000 in value.<sup>11</sup>

#### Effect of Proposed Changes

HB 29 amends section 222.25, F.S., to increase the maximum value for a single exempt motor vehicle from \$1,000 to \$5,000. The maximum value has not been amended since s. 222.25, F.S., was created in 1993.

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

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 222.25, F.S., relating to other individual property of natural persons exempt from legal process.

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

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<sup>1</sup> Art. X, s. 4, Fla. Const.

<sup>2</sup> S. 222.21, F.S.

<sup>3</sup> S. 222.13, F.S.

<sup>4</sup> S. 222.14, F.S.

<sup>5</sup> S. 222.22, F.S.

<sup>6</sup> S. 222.18, F.S.

<sup>7</sup> Ss. 222.11 and 225.15, F.S.

<sup>8</sup> S. 222.061, F.S.

<sup>9</sup> S. 222.25, F.S.

<sup>10</sup> S. 222.201, F.S.

<sup>11</sup> S. 222.25(1), F.S.

## 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.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

During the 2022 session, the Legislature passed CS/HB 265. CS/HB 265 was substantively similar to HB 29, except that it contained a provision limiting the exemption to bankruptcy proceedings. The Governor vetoed the bill due to the limitation of the exemption to only Floridians in bankruptcy. However, the Governor noted in his veto message that the exemption value is likely ripe for an increase.<sup>12</sup>

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<sup>12</sup> See Veto Letter of Ron DeSantis, Governor (May 20, 2022), <https://www.flgov.com/wp-content/uploads/2022/05/5.20.22-Transmittal-Letters.pdf> (last visited Nov. 29, 2024).

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

1                   A bill to be entitled  
 2           An act relating to value of motor vehicles exempt from  
 3           legal process; amending s. 222.25, F.S.; revising  
 4           upward the value of a motor vehicle owned by a natural  
 5           person which is exempt from legal process; providing  
 6           an effective date.

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

9  
 10           Section 1. Subsection (1) of section 222.25, Florida  
 11   Statutes, is amended to read:

12           222.25 Other individual property of natural persons exempt  
 13   from legal process.—The following property is exempt from  
 14   attachment, garnishment, or other legal process:

15           (1) A debtor's interest, not to exceed \$5,000 ~~\$1,000~~ in  
 16   value, in a single motor vehicle as defined in s. 320.01(1) ~~s.~~  
 17   ~~320.01~~.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 45 Hope Cards for Persons Issued Orders of Protection

**SPONSOR(S):** Gottlieb and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 86

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mathews	Jones
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### 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.

Chapter 741, F.S., provides a process for an alleged victim to seek protection from domestic violence. Generally, a petitioner files a sworn 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.

HB 45 creates s. 741.311, F.S., establishing the Hope Card Program to provide a wallet-sized card to a person issued an order of protection from domestic violence. The bill directs the Office of the State Court Administrator to implement the program in consultation with the Attorney General, the Secretary of State, and the clerks of court. Under the bill, a person who has been issued a final judgment on injunction for protection against domestic violence, stalking, repeat violence, sexual violence, dating violence, or abuse or exploitation of an elderly person or disabled adult may apply for a Hope Card with the clerk in the circuit court where the petition was originally filed. If the person is under protection by a foreign order, he or she may apply for a Hope Card with any clerk in the state.

The bill provides specifications for the form and content of the card and imposes time limitations on when the card must be produced and mailed to the applicant.

The bill may have an indeterminate negative fiscal impact on state government and the clerks of court to implement the program and create and mail the card to an applicant.

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

# FULL ANALYSIS

## 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 member<sup>1</sup> by another family or household member,<sup>2</sup> including:

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

In 2020,<sup>13</sup> Florida law enforcement agencies received 106,615 domestic violence reports,<sup>14</sup> resulting in 63,345 arrests.<sup>15</sup> During fiscal year 2021-2022, Florida's 41 certified domestic violence shelters<sup>16</sup> admitted 11,811 victims to a residential services program and 38,630 victims to a non-residential

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<sup>1</sup> "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.

<sup>2</sup> S. 741.28(2), F.S.

<sup>3</sup> "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.

<sup>4</sup> "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.

<sup>5</sup> "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.

<sup>6</sup> "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.

<sup>7</sup> "Sexual assault" has the same meaning as sexual battery.

<sup>8</sup> "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.

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

<sup>10</sup> "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.

<sup>11</sup> "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.

<sup>12</sup> "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.

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

<sup>14</sup> *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](https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx) (last visited Jan. 4, 2024).

<sup>15</sup> *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](https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/07/DV_Jurisdiction_Arrests_2020.aspx) (last visited Jan. 4, 2024).

<sup>16</sup> "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.

outreach services program.<sup>17</sup> During the same year, the domestic violence centers answered 81,357 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.<sup>18</sup>

### Repeat Violence, Sexual Violence, and 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, 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.<sup>19</sup> 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:<sup>20</sup>

- 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.

### Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults

Section 825.103, F.S., prohibits specified exploitation of elderly persons or disabled adults and provides criminal penalties for a violation. Under s. 825.101(4), F.S., an elderly person is defined as a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired. A disabled adult is defined as a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.<sup>21</sup>

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult (EPDA) means:

- Knowingly obtaining or using, or endeavoring to obtain or use, an EPDA’s funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the EPDA, by a person who:
  - Stands in a position of trust and confidence with the EPDA; or
  - Has a business relationship with the EPDA.<sup>22</sup>
- Obtaining or using, or endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA’s funds, assets, or property with the intent to temporarily or permanently deprive the EPDA of the use, benefit, or possession of the funds, assets, or property, or to benefit someone

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<sup>17</sup> 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](https://www.myflfamilies.com/sites/default/files/2023-02/Domestic_Violence_Annual_Report_2021-22.pdf) (last visited Jan. 4, 2024).

<sup>18</sup> *Id.*

<sup>19</sup> S. 784.046(1)(d), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 825.101(3), F.S.

<sup>22</sup> S. 825.103(1)(a), F.S.

other than the EPDA, by a person who knows or reasonably should know that the EPDA lacks the capacity<sup>23</sup> to consent.<sup>24</sup>

- Breach of a fiduciary duty to an EPDA by the person's guardian, trustee, or agent under a power of attorney which results in an unauthorized appropriation, sale, transfer of property, kickback,<sup>25</sup> or receipt of an improper benefit.<sup>26</sup> An unauthorized appropriation occurs when the EPDA does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates a specified duty.<sup>27</sup>
- Misappropriating, misusing, or transferring without authorization money belonging to an EPDA from an account<sup>28</sup> in which the EPDA placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.<sup>29</sup>
- Intentionally and negligently failing to effectively use an EPDA's income and assets for the necessities required for that person's support and maintenance, by a caregiver or a person who stands in a position of trust and confidence with the EPDA.<sup>30</sup>
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an EPDA's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the EPDA without:
  - A court order which authorizes the modification or alteration;
  - A written instrument executed by the EPDA, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
  - Action of an agent under a valid power of attorney which authorizes the modification or alteration.<sup>31</sup>

## 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.<sup>32</sup> An injunction for protection against domestic violence ("domestic violence injunction") may be sought by a family or household member.<sup>33</sup> 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.<sup>34</sup>

Upon the filing of a petition for an injunction against domestic violence, the court must set a hearing at the earliest possible time.<sup>35</sup> However, if the court finds the petitioner is in immediate and present danger

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<sup>23</sup> "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause, that causes an elderly person or disabled adult to lack sufficient understanding or capacity to make or communicate reasonable decisions concerning the elderly person's or disabled adult's person or property. S. 825.101(10), F.S.

<sup>24</sup> S. 825.103(1)(b), F.S.

<sup>25</sup> "Kickback" means a remuneration or payment, by or on behalf of a provider of health care services or items, to any person as an incentive or inducement to refer patients for past or future services or items, when the payment is not tax deductible as an ordinary and necessary expense. S. 456.054(1), F.S.

<sup>26</sup> "Improper benefit" means any remuneration or payment, by or on behalf of any service provider or merchant of goods, to any person as an incentive or inducement to refer customers or patrons for past or future services or goods. S. 825.101(8), F.S.

<sup>27</sup> S. 825.103(1)(c), F.S.

<sup>28</sup> This type of exploitation only applies to the following types of accounts: personal accounts; joint accounts created with the intent that only the elderly person or disabled adult enjoys all rights, interests, and claims to monies deposited into such account; or convenience accounts created in accordance with s. 655.80, F.S. S. 825.103(d)(1.-3.), F.S.

<sup>29</sup> S. 825.103(1)(d), F.S.

<sup>30</sup> S. 825.103(1)(e), F.S.

<sup>31</sup> S. 825.103(1)(f), F.S.

<sup>32</sup> Black's Law Dictionary 540 (6th ed. 1995).

<sup>33</sup> S. 741.30(1)(e), F.S.

<sup>34</sup> S. 741.30(1)(d) and (e), F.S.

<sup>35</sup> S. 741.30(4), F.S.

of domestic violence, it may grant a temporary injunction in an ex parte proceeding,<sup>36</sup> 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,<sup>37</sup> including a timesharing schedule,<sup>38</sup> which may award the petitioner up to 100 percent of the timesharing.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

In determining whether reasonable cause exists that the petitioner is in imminent danger exists, the court must consider ten specific factors:<sup>42</sup>

1. The history between the petitioner and the respondent, including threats, harassment, stalking, and physical abuse.
2. Whether the respondent has attempted to harm the petitioner or family members or individuals closely associated with the petitioner.
3. Whether the respondent has threatened to conceal, kidnap, or harm the petitioner's child or children.
4. Whether the respondent has intentionally injured or killed a family pet.
5. Whether the respondent has used, or has threatened to use, against the petitioner any weapons such as guns or knives.
6. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement.
7. Whether the respondent has a criminal history involving violence or the threat of violence.
8. The existence of a verifiable order of protection issued previously or from another jurisdiction.
9. Whether the respondent has destroyed personal property, including, but not limited to, telephones or other communications equipment, clothing, or other items belonging to the petitioner.
10. Whether the respondent engaged in any other behavior or conduct that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence.

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.<sup>43</sup>

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<sup>36</sup> "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](https://www.law.cornell.edu/wex/ex_parte) (last visited Nov. 28, 2023).

<sup>37</sup> 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.

<sup>38</sup> "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.

<sup>39</sup> S. 741.30(5)(a), F.S.

<sup>40</sup> S. 741.30(5)(a), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> S. 741.30(6)(b), F.S.

<sup>43</sup> S. 741.30(6)(a), F.S.

The terms of a permanent domestic violence injunction remain in effect until modified or dissolved, and either party may move at any time for modification or dissolution.<sup>44</sup>

### *Injunction for Protection Against Exploitation of a Vulnerable Adult*

Under s. 825.1035, F.S., a vulnerable adult<sup>45</sup> in imminent danger of being exploited may file a petition<sup>46</sup> for an injunction for protection against exploitation. There is no requirement for any exploitation to have already occurred before the vulnerable adult may petition for an injunction.<sup>47</sup> A court may grant a temporary injunction ex parte, pending a full hearing on the petition,<sup>48</sup> upon making specified findings including that an immediate and present danger of exploitation of the vulnerable adult exists.<sup>49</sup> A temporary injunction may:

- Prohibit the respondent from having any direct or indirect contact with the vulnerable adult;
- Restrain the respondent from committing any acts of exploitation against the vulnerable adult;<sup>50</sup>
- Freeze the assets or credit lines of the vulnerable adult;
- Award the temporary exclusive use and possession of the dwelling that the vulnerable adult and the respondent share to the vulnerable adult, or bar the respondent from the vulnerable adult's residence; or
- Include any other terms the court deems necessary to protect the vulnerable adult or his or her assets, including any injunctions or directives to law enforcement agencies.<sup>51</sup>

In determining whether reasonable cause exists to believe that the vulnerable adult is, or is in imminent danger of becoming, a victim of exploitation, the court must consider the following factors:

- The existence of a verifiable order of protection issued previously or from another jurisdiction.
- Any history of exploitation by the respondent upon the vulnerable adult in the petition or any other vulnerable adult.
- Any history of the vulnerable adult being previously exploited or unduly influenced.
- The capacity of the vulnerable adult to make decisions related to his or her finances and property.
- Susceptibility of the vulnerable adult to undue influence.
- Any criminal history of the respondent or previous probable cause findings by the adult protective services program, if known.<sup>52</sup>

A court may grant a temporary ex parte injunction if it finds any of the following:<sup>53</sup>

- An immediate and present danger of exploitation of the vulnerable adult exists.
- There is a likelihood of irreparable harm and non-availability of an adequate remedy at law.
- There is a substantial likelihood of success on the merits.
- The threatened injury to the vulnerable adult outweighs possible harm to the respondent.
- Granting the injunction will not disserve the public interest.
- Such injunction provides for the vulnerable adult's physical or financial safety.<sup>54</sup>

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<sup>44</sup> S. 741.30(6)(c), F.S.

<sup>45</sup> "Vulnerable adult" means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging. S. 415.102(28), F.S.

<sup>46</sup> Additionally, the guardian of a vulnerable adult, a person or organization acting on behalf of and with the consent of the vulnerable adult or his or her guardian, an agent acting under power of attorney, or a person simultaneously filing a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult may file a petition for injunction for protection from exploitation. S. 825.1035(2)(a)2.-5., F.S.

<sup>47</sup> S. 825.1035(2)(e), F.S.

<sup>48</sup> An ex parte temporary injunction may be effective for up to 15 days, unless good cause is shown to extend the injunction, in which case, the temporary injunction may be extended one time for up to an additional 30 days. S. 825.1035(5)(d), F.S.

<sup>49</sup> S. 825.1035(5)(a)1., F.S.

<sup>50</sup> The terms of an injunction restraining the respondent remain in effect until the injunction is modified or dissolved. S. 825.1035(8)(c), F.S.

<sup>51</sup> Ss. 825.1035(3)(a)2., (5)(a)2., and (8)(a)2., F.S.

<sup>52</sup> S. 825.1035(6), F.S.

<sup>53</sup> The findings required for a temporary injunction and continuing an injunction after a full hearing on the petition are the same with the exception of probable cause findings that exploitation occurred if the temporary injunction froze the vulnerable adult's assets. Ss.

825.1035(5)(a)1. and (8)(a)1., F.S.

After a final hearing, a court may grant any additional relief the court deems appropriate, including:

- Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent;
- Directing the vulnerable adult's frozen assets or credit lines to be returned to the vulnerable adult; or
- Entering a final cost judgment against the respondent and in favor of the petitioner for all taxable costs and entering a final cost judgment against the respondent and in favor of the clerk of the circuit court for all the clerk's filing fees and service charges that were waived.

A court may enforce a violation of an injunction for protection through a civil or criminal contempt proceeding. A state attorney may also prosecute the violation under s. 825.1036, F.S.<sup>54</sup> A person who willfully violates an injunction for protection against exploitation of a vulnerable adult commits a first-degree misdemeanor.<sup>55</sup> A vulnerable adult who suffers an injury or loss as a result of a violation of an injunction for protection may be awarded economic damages and attorney fees and costs for enforcement of such injunction.<sup>57</sup> Alternatively, actual damages may be assessed against the petitioner if the court finds that the petition lacks substantial fact or legal support.<sup>58</sup>

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

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,<sup>59</sup> 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 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.<sup>60</sup>

Once a petition has been filed, the court must set a hearing to be held as soon as possible.<sup>61</sup> 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.

Upon proper notice and a full hearing, the court may grant such relief as it deems appropriate, including the issuance of an injunction.<sup>62</sup>

### **Effect of Proposed Changes**

HB 45 creates the Hope Card program throughout the state. The bill directs the Office of the State Court Administrator (OSCA) to develop the program and the courts to implement the program. The bill provides that OSCA may consult with the Attorney General, Secretary of State, and the clerks of the court to develop and implement the program.

Under the bill, a person who has received a final judgment for injunction for protection against domestic violence, stalking, repeat violence, sexual violence, dating violence, or exploitation of a vulnerable adult may apply for a Hope Card. If the final injunction was issued in the state, the application must be submitted to the clerk of the circuit court in which the petition was originally filed. If the applicant is under a foreign order for protection from a court outside of Florida, he or she may apply to any clerk of

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<sup>54</sup> S. 825.1035(5)(a)1., F.S.

<sup>55</sup> S. 825.1035(11)(a), F.S.

<sup>56</sup> 825.1036(4)(a), F.S. A first-degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>57</sup> S. 825.1036(5), F.S.

<sup>58</sup> S. 825.1035(12), F.S.

<sup>59</sup> "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.

<sup>60</sup> S. 784.064(2), F.S.

<sup>61</sup> S. 784.064(5), F.S.

<sup>62</sup> *Id.*



court in the state. Under the bill, an applicant's failure to register the foreign order does not preclude the issuance of a Hope Card.

A person may apply for a Hope Card at any time after the final judgment for injunction is issued and at any time prior to the expiration of the underlying injunction. The bill requires the application for the Hope Card to be made available on the website for each clerk of court as well as in a hardcopy format at each clerk's office. Under the bill, the clerk must mail, via certified mail, the Hope Card to the applicant within 24 hours after receiving the application for the card. Pursuant to the bill, no fee for the application or the receipt of the card may be assessed.

The bill provides that each Hope Card issued must be a durable, laminated, wallet-sized card and must include all of the following information:

- The respondent's name, date of birth, height, weight, sex, race, eye color, hair color, and any other distinguishing features of the respondent.
- The petitioner's name and date of birth.
- The names and dates of birth of any minor children protected under the injunction.
- The name and date of birth of any other person or animal protected under the injunction.
- Any pertinent information about the injunction, including, but not limited to:
  - The issuing court;
  - The case number;
  - The date of issuance;
  - The expiration date of the injunction, if any;
  - The locations from which the respondent is restrained; and
  - Any other relevant details of the injunction.

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

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 741.311, relating to Hope Card Program for persons issued orders of protection.

**Section 2:** Amends s. 741.30, relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; statewide verification system; enforcement; public records exemption.

**Section 3:** Amends s. 741.315, relating to recognition of foreign protection orders.

**Section 4:** Amends s. 784.046, 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 5:** Amends s. 784.0485, 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 6:** Amends s. 825.1035, relating to injunction for protection against exploitation of a vulnerable adult.

**Section 7:** 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 indeterminate negative fiscal impact on state and local governments due to the cost to create and implement the program and the costs associated with producing the Hope Cards and mailing them via certified mail within the allotted time frame.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Office of the State Court Administrator has rulemaking authority 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 Hope Cards for persons issued  
3           orders of protection; creating s. 741.311, F.S.;  
4           requiring the Office of the State Courts  
5           Administrator, in consultation with others, to develop  
6           the Hope Card Program; requiring state courts to  
7           implement the program; authorizing the Office of the  
8           State Courts Administrator to adopt rules; authorizing  
9           certain persons to apply for a Hope Card after a  
10          specified date; requiring applications for a Hope Card  
11          to be available online and in the clerks' offices;  
12          requiring clerks' offices to mail, by certified mail,  
13          a Hope Card to petitioners within a specified time  
14          frame; prohibiting the assessment of a fee; providing  
15          requirements for the Hope Card; amending s. 741.315,  
16          F.S.; authorizing a person protected by an injunction  
17          for protection issued by a court of a foreign state to  
18          apply for and receive a Hope Card even if the person  
19          does not register the order for protection in this  
20          state; amending ss. 741.30, 784.046, 784.0485, and  
21          825.1035, F.S.; conforming provisions to changes made  
22          by the act; providing an effective date.

23  
24   Be It Enacted by the Legislature of the State of Florida:  
25

26 Section 1. Section 741.311, Florida Statutes, is created  
27 to read:

28 741.311 Hope Card Program for persons issued orders of  
29 protection.-

30 (1) The Office of the State Courts Administrator shall  
31 develop and all district, county, and circuit courts shall  
32 implement the Hope Card Program, which provides for the issuance  
33 of a Hope Card to any person who has been issued an order of  
34 protection by a district, county, or circuit court in this  
35 state, or by a court of a foreign state pursuant to s. 741.315.  
36 The Office of the State Courts Administrator may consult with  
37 the Attorney General, the Secretary of State, and the clerks of  
38 court to develop and implement the program. The Office of the  
39 State Courts Administrator may adopt rules to implement this  
40 section.

41 (2) Beginning July 1, 2024, a person who has been issued a  
42 final judgment on injunction for protection under s. 741.30, s.  
43 784.046, s. 784.0485, or s. 825.1035 may apply for a Hope Card  
44 with the clerk of the court of the circuit where the petition  
45 for an injunction for protection was initially filed. A person  
46 protected by a foreign protection order under s. 741.315 may  
47 submit an application for a Hope Card to any clerk of court in  
48 the state. A person may apply for a Hope Card at the time the  
49 final judgment on injunction for protection is issued or at any  
50 other time before the expiration of the order of protection.

51       (3) Hope Card applications must be available on the  
52 website of each clerk of the court and paper applications must  
53 also be available at the clerk's office. After the court has  
54 issued an injunction for protection and within 24 hours after  
55 receipt of an application, the clerk of the court shall mail the  
56 Hope Card to the petitioner by certified mail.

57       (4) The clerk of the court may not assess a fee for the  
58 issuance of a Hope Card.

59       (5) A Hope Card issued under the program must be a  
60 durable, laminated, wallet-sized card containing all of the  
61 following information:

62       (a) The respondent's name, date of birth, height, weight,  
63 sex, race, eye color, hair color, and any other distinguishing  
64 features or characteristics of the respondent.

65       (b) The petitioner's name and date of birth and the names  
66 and dates of birth of any minor children protected under the  
67 order.

68       (c) The name and date of birth, if applicable, of any  
69 other person or animal protected under the order.

70       (d) Pertinent information about the order of protection,  
71 including, but not limited to, the issuing court; the case  
72 number; the date the order of protection was issued; the  
73 expiration date, if any, of the order of protection; the  
74 locations from which the respondent is restrained; and any other  
75 relevant details of the order.

76 Section 2. Paragraph (d) is added to subsection (8) of  
 77 section 741.30, Florida Statutes, to read:

78 741.30 Domestic violence; injunction; powers and duties of  
 79 court and clerk; petition; notice and hearing; temporary  
 80 injunction; issuance of injunction; statewide verification  
 81 system; enforcement; public records exemption.—

82 (8)

83 (d) If the petitioner applies for a Hope Card under s.  
 84 741.311, after the court has issued a final order of protection,  
 85 the clerk of the court must mail the Hope Card to the petitioner  
 86 by certified mail within 24 hours after receipt of the  
 87 petitioner's application for the card.

88 Section 3. Subsections (4), (5), and (6) of section  
 89 741.315, Florida Statutes, are renumbered as subsections (5),  
 90 (6), and (7), respectively, and a new subsection (4) is added to  
 91 that section, to read:

92 741.315 Recognition of foreign protection orders.—

93 (4) A person protected by an injunction for protection  
 94 issued by a court of a foreign state may apply for a Hope Card  
 95 under s. 741.311, as if the order of protection was issued by a  
 96 Florida court. Failure to register a foreign order does not  
 97 preclude a protected person from applying and receiving a Hope  
 98 Card.

99 Section 4. Paragraph (d) is added to subsection (8) of  
 100 section 784.046, Florida Statutes, to read:

101           784.046 Action by victim of repeat violence, sexual  
 102 violence, or dating violence for protective injunction; dating  
 103 violence investigations, notice to victims, and reporting;  
 104 pretrial release violations; public records exemption.—

105           (8)

106           (d) If the petitioner applies for a Hope Card under s.  
 107 741.311, after the court has issued a final order of protection,  
 108 the clerk of the court must mail the Hope Card to the petitioner  
 109 by certified mail within 24 hours after receipt of the  
 110 petitioner's application for the card.

111           Section 5. Paragraph (c) is added to subsection (8) of  
 112 section 784.0485, Florida Statutes, to read:

113           784.0485 Stalking; injunction; powers and duties of court  
 114 and clerk; petition; notice and hearing; temporary injunction;  
 115 issuance of injunction; statewide verification system;  
 116 enforcement.—

117           (8)

118           (c) If the petitioner applies for a Hope Card under s.  
 119 741.311, after the court has issued a final order of protection,  
 120 the clerk of the court must mail the Hope Card to the petitioner  
 121 by certified mail within 24 hours after receipt of the  
 122 petitioner's application for the card.

123           Section 6. Paragraph (c) is added to subsection (10) of  
 124 section 825.1035, Florida Statutes, to read:

125           825.1035 Injunction for protection against exploitation of

HB45

2024

126 | a vulnerable adult.—

127 |       (10) TRANSMITTAL TO SHERIFF; SERVICE; HOPE CARD.—

128 |       (c) If the petitioner applies for a Hope Card under s.  
129 | 741.311, after the court has issued a final order of protection,  
130 | the clerk of the court must mail the Hope Card to the petitioner  
131 | by certified mail within 24 hours after receipt of the  
132 | petitioner's application for the card.

133 |       Section 7. This act shall take effect July 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>	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Gottlieb offered the following:

**Amendment (with title amendment)**

Remove lines 30-75 and insert:

6 (1) The Office of the State Courts Administrator, in  
7 consultation with the Office of the Attorney General and the  
8 clerks of the circuit courts, through their association, shall  
9 develop the Hope Card Program, which provides for the issuance  
10 of a Hope Card to any person who has been issued an order of  
11 protection by a county or circuit court in this state, or by a  
12 court of a foreign state pursuant to s. 741.315. The Hope Card  
13 Program shall be implemented by the clerks of the circuit  
14 courts.

15 (2) Beginning July 1, 2024, a person who has been issued a  
16 final judgment on injunction for protection under s. 741.30, s.

Amendment No. 1

17 784.046, s. 784.0485, or s. 825.1035 may apply for a Hope Card  
18 with the clerk of the court of the circuit where the petition  
19 for an injunction for protection was initially filed. A person  
20 protected by a foreign protection order under s. 741.315 may  
21 submit an application for a Hope Card to any clerk of court in  
22 the state. A person may apply for a Hope Card at the time the  
23 final judgment on injunction for protection is issued or at any  
24 other time before the expiration of the order of protection.

25 (3) Hope Card applications must be available on the  
26 website of each clerk of the court and paper applications must  
27 also be available at the clerk's office. After the court has  
28 issued an injunction for protection and within 24 hours after  
29 receipt of an application, the clerk of the court shall mail the  
30 Hope Card to the petitioner by certified mail.

31 (4) The clerk of the court may not assess a fee for the  
32 issuance of a Hope Card.

33 (5) A Hope Card shall be valid for two years from the date  
34 of issuance or the expiration date of the injunction, whichever  
35 is earlier. A Hope Card may be renewed after the two year period  
36 if the injunction is still in effect.

37 (6) A Hope Card issued under the program must be a  
38 durable, laminated, wallet-sized card containing all of the  
39 following information:

40 (a) The respondent's name, date of birth, height, weight,  
41 sex, race, eye color, hair color, and any other distinguishing

Amendment No. 1

42 features or characteristics of the respondent.

43 (b) The petitioner's name and date of birth and the names  
44 and dates of birth of any minor children protected under the  
45 order.

46 (c) The name and date of birth, if applicable, of any  
47 other person or animal protected under the order.

48 (d) Pertinent information about the order of protection,  
49 including, but not limited to, the issuing court; the case  
50 number; the date the order of protection was issued; the  
51 expiration date, if any, of the order of protection; the  
52 locations from which the respondent is restrained; and any other  
53 relevant details of the order.

54 (e) A statement providing that the Hope Card is valid for  
55 two years from the date of issuance or until the expiration date  
56 of the injunction, whichever is earlier.

57 (7) A person who, having actual knowledge that he or she  
58 is not protected by an injunction that is currently in force and  
59 effect, knowingly and willfully presents to another person a  
60 Hope Card or other document purporting to be a Hope Card for the  
61 purpose of evidencing the existence of an injunction, commits a  
62 misdemeanor of the second degree, punishable as provided in s.  
63 775.082 or s. 775.083.

64

65

66

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**T I T L E   A M E N D M E N T**

Amendment No. 1

67           Remove lines 6-15 and insert:  
68   the Hope Card Program; requiring the clerks of the circuit  
69   courts to implement the program; authorizing certain persons to  
70   apply for a Hope Card after a specified date; requiring  
71   applications for a Hope Card to be available online and in the  
72   clerks' offices; requiring clerks' offices to mail, by certified  
73   mail, a Hope Card to petitioners within a specified time frame;  
74   prohibiting the assessment of a fee; providing requirements for  
75   the Hope Card; prohibiting the fraudulent use of a Hope Card in  
76   certain situations; amending s. 741.315,



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 175 Judgment Liens  
**SPONSOR(S):** Benjamin  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 984

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor and becomes a “judgment creditor,” either the defendant (“judgment debtor”) will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the judgment debtor’s property which is not exempt from a creditor’s reach. To assist in judgment satisfaction, Florida law has long authorized a judgment creditor to obtain a lien on the judgment debtor’s non-exempt real and tangible personal property. However, until July 1, 2023, Florida law did not allow a judgment lien to attach to a judgment debtor’s intangible personal property, including payment intangibles and accounts and the proceeds thereof, which could be pledged as collateral for a security agreement under Article 9 of the Uniform Commercial Code (“UCC”), codified in Ch. 679, F.S. This changed with the passage of 2023 CS/HB 27, which, in pertinent part:

- Allowed a judgment lien to attach to payment intangibles and accounts and the proceeds thereof;
- Specified such a judgment lien’s priority as against pre-existing security agreements; and
- Clarified that a third party owing money to a judgment debtor under payment intangibles or accounts (“account debtor”) must stop paying the judgment debtor only when the account debtor is served by process with a complaint or petition by the judgment creditor seeking judicial relief with respect to the payment intangibles or accounts, and that the account debtor may thereafter discharge the account debtor’s payment obligation only in accordance with a final order or judgment.

Once a judgment lien is secured, the judgment lienholder has numerous judicial remedies available to enforce the lien. However, Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against creditors or subsequent purchasers unless the lien is noted on the vehicle or vessel’s title certificate. 2023 CS/HB 27 created two statutory mechanisms for lien notation on title certificates.

HB 175:

- Clarifies that the priority of conflicting rights between a secured party and a judgment lienholder or a judgment creditor without an enforceable lien is determined under Ch. 679, F.S.
- Clarifies that, if a judgment debtor’s personal property includes a motor vehicle or vessel, Ch. 679, F.S., may be used where appropriate to determine a judgment lien’s enforceability against the creditors or subsequent purchasers of such vehicle or vessel.
- Provides that, where an account debtor is served with a complaint or petition by a judgment creditor seeking judicial relief with respect to payment intangibles or accounts, the account debtor may thereafter discharge its payment obligation in accordance with a settlement agreement.
- Changes the phrase “be primed as to” to “take priority over” as it relates to a judgment lien’s effect to conform the terminology with terminology used elsewhere in Florida law and the UCC.

The bill does not appear to have a fiscal impact on local governments but may have a limited fiscal impact on the state court system. The bill provides an effective date of upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Judgment Liens

##### *Creation and Enforcement*

When a plaintiff in a civil lawsuit obtains a monetary judgment in its favor and becomes a “judgment creditor,” either the defendant (“judgment debtor”) will pay the judgment creditor the money owed or the judgment creditor may seek to satisfy the judgment from the judgment debtor’s property which is not exempt from the reach of creditors.<sup>1</sup> To assist in judgment satisfaction, Florida law has long authorized a judgment creditor to obtain a lien<sup>2</sup> on the judgment debtor’s non-exempt:<sup>3</sup>

- Real property, secured by recording a certified copy of the judgment in the county in which the real property is located.<sup>4</sup>
- Tangible personal property,<sup>5</sup> secured by recording a judgment lien certificate with the Florida Department of State (“DOS”).<sup>6</sup>

The main benefit of a judgment lien is that the judgment debtor can no longer easily sell the lien property because any purchaser would, generally speaking, acquire the property subject to the lien. In other words, a purchaser would assume the obligation to satisfy the lien, making the property unappealing to buy, or else face the possibility that the judgment lienholder may foreclose on the lien. Additionally, a judgment creditor seeking to enforce a judgment lien on personal property has several judicial remedies, including an order, known as a writ of execution, issued by the clerk of the circuit court directing the sheriff to take into possession a judgment debtor’s non-exempt property to satisfy the lien.<sup>7</sup>

Further, where the clerk has issued a writ of execution but the judgment remains unsatisfied, a judgment creditor may bring a proceeding supplementary to execution in which the court may summon the judgment debtor and any involved third parties to be questioned about property that may be the subject of the writ and issue an order that the sheriff seize such property.<sup>8</sup> A proceeding supplementary to execution is a continuation of the original lawsuit that resulted in the judgment and, thus, a judgment creditor is not required to file a separate action to initiate the proceeding.<sup>9</sup>

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<sup>1</sup> S. 55.141, F.S.

<sup>2</sup> A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens s. 37:1.

<sup>3</sup> A judgment debtor that is an individual may choose to exempt one motor vehicle worth \$1,000 or less and, if the debtor does not claim or receive a homestead exemption, additional personal property items with an aggregate worth of \$4,000 or less. Corporations and other business entities are not entitled to exemptions. Ss. 55.201-55.209 and 222.25(1) and (4), F.S.; art. X, s. 4, Fla. Const.; s. 55.10(1), F.S.

<sup>4</sup> Recording the certified copy of the judgment establishes the lien’s priority; in other words, the recording of the judgment generally guarantees that the lienholder will be paid before lienholders with later-recorded liens on the same property. However, homestead property is exempt from the reach of creditors. S. 55.10(1), F.S.; art. X, s. 4, Fla. Const.; s. 55.10(1), F.S.

<sup>5</sup> “Tangible personal property” is property which is capable of being taken into possession by the sheriff. Examples include motor vehicles, vessels, mobile homes, furniture, jewelry, stocks, and artwork. S. 56.061, F.S.

<sup>6</sup> The judgment lien certificate establishes the lien’s priority; in other words, the filing of a judgment lien certificate generally guarantees that the lienholder will be paid before lienholders with later-perfected liens on the judgment debtor’s tangible personal property.

<sup>7</sup> Other judicial remedies include attachment under ch. 76, F.S.; garnishment under ch. 77, F.S.; and a charging order under ss. 605.0503, 620.1703, or 620.8504, F.S. Legal Information Institute, *Writ of Execution*, [https://www.law.cornell.edu/wex/writ\\_of\\_execution](https://www.law.cornell.edu/wex/writ_of_execution) (last visited Jan. 8, 2024).

<sup>8</sup> Judicial process is important for lien satisfaction as it gives the judgment debtor an opportunity to go before the court and argue that specific property the judgment creditor is trying to obtain is exempt from seizure and should not be taken to satisfy the lien. S. 56.29, F.S.

<sup>9</sup> *Id.*

## *Judgment Liens on Intangible Personal Property*

Before July 1, 2023, Florida law did not allow a judgment lien to attach to intangible personal property, such as royalty rights and the right to receive rents or payments for the sale of goods or services.<sup>10</sup> Thus, a judgment debtor's intangible personal property remained outside the reach of a judgment creditor even though the value of such property might have been significant and sufficient to satisfy the judgment lien. However, during the 2023 Legislative Session, the Legislature passed CS/HB 27 which, in pertinent part, allowed a judgment lien to attach to certain types of intangible personal property (specifically payment intangibles and accounts and the proceeds thereof) and specified the priority of such liens as against pre-existing security agreements in which such property was pledged as collateral to secure the loan.<sup>11</sup>

## *Judgment Liens on Motor Vehicles and Vessels*

Florida law provides that a judgment lien on a motor vehicle or vessel, though enforceable against the judgment debtor, is not enforceable against creditors or subsequent purchasers for value unless the lien is noted on the title certificate.<sup>12</sup> Thus, where a judgment creditor obtains a lien on a motor vehicle or vessel and the lien is not noted on the title certificate, the judgment debtor may sell the subject property free of the lien.

Before July 1, 2023, a judgment creditor's only remedy was to petition the court to order the Department of Highway Safety and Motor Vehicles ("DHSMV") to note the lien on the title certificate; however, this process was not spelled out in statute and confusion existed as to whether the judgment creditor needed to institute a separate action to obtain such an order or merely initiate a proceeding supplementary to execution. 2023 CS/HB 27 provided two statutory mechanisms by which a judgment creditor may cause a judgment lien to be noted on the title certificate of a judgment debtor's motor vehicle or vessel, thereby ensuring that a subsequent purchaser of the vehicle or vessel takes title to such property subject to the lien.

## Secured Transactions Under the UCC

The Uniform Commercial Code ("UCC"), adopted in all fifty states, is a set of laws governing and providing uniformity in commercial transactions.<sup>13</sup> Florida's UCC provisions are codified in chapters 670-680 of the Florida Statutes.

Article 9 of the UCC (codified in ch. 679, F.S.) governs secured transactions, meaning transactions involving the granting of credit under a security agreement in exchange for the borrower's pledge of personal property ("collateral") which the secured party may take possession of if the debtor defaults on the loan.<sup>14</sup> In addition to tangible personal property, collateral recognized by the UCC includes:

- Accounts, meaning a right to payment of a monetary obligation:
  - For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
  - For services rendered or to be rendered;
  - For a policy of insurance issued or to be issued;
  - For a secondary obligation incurred or to be incurred;
  - For energy provided or to be provided;
  - For the use or hire of a vessel under a charter or other contract;
  - Arising out of the use of a credit or charge card; or

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<sup>10</sup> S. 56.061, F.S.

<sup>11</sup> Ch. 2023-300, L.O.F.

<sup>12</sup> "Title certificate" means the record that is evidence of ownership of a vehicle, whether a paper certificate authorized by the Department of Highway Safety and Motor Vehicles or a certificate consisting of information that is stored in an electronic form in the department's database. Ss. 319.001(1) and 319.27(2), F.S.

<sup>13</sup> Chs. 670-680, F.S.; Uniform Law Commission, *Uniform Commercial Code*, <https://www.uniformlaws.org/acts/ucc> (last visited Jan. 8, 2024).

<sup>14</sup> For example, a mortgage loan is typically a secured transaction wherein the home is pledged as collateral for the loan; in other words, if the borrower defaults on his or her mortgage payments, the mortgage company may (through appropriate legal process) take possession and ownership of the purchased home. *Id.*



- As winnings in a lottery or other game of chance operated or sponsored by a state or its governmental unit.<sup>15</sup>
- Payment intangibles, meaning general intangibles<sup>16</sup> under which the account debtor's<sup>17</sup> principal obligation is a monetary obligation.<sup>18</sup>

Under 2023 CS/HB 27, accounts and payment intangibles are forms of intangible personal property to which a judgment lien may now attach. Further, CS/HB 27 clarified that a third party owing money to a judgment debtor under payment intangibles or accounts ("account debtor") must stop paying the judgment debtor only when the account debtor is served by process with a complaint or petition by the judgment creditor seeking judicial relief with respect to the payment intangibles or accounts. Thereafter, the account debtor may discharge the account debtor's payment obligation only in accordance with a final order or judgment.

## **Effect of Proposed Changes**

### Judgment Liens

HB 175 amends s. 55.202(3), F.S., to clarify that the priority of conflicting rights as between a judgment lienholder and a secured party will be determined under Article 9 of the UCC, as codified in Ch. 679, F.S. Thus, the bill continues to prevent a judgment lienholder's rights from taking priority over the rights of a secured party whose security interest predated the filing of the judgment lien certificate unless Ch. 679, F.S., specifies otherwise.

Similarly, the bill amends s. 55.205(1), F.S. to clarify that, where a judgment creditor who has not acquired a judgment lien or whose lien has lapsed decides to proceed against the judgment debtor's property through appropriate judicial process, the judgment creditor may do so subject to the priority of conflicting rights under Ch. 679, F.S. Thus, the bill continues to prevent the rights of a judgment creditor without an enforceable judgment lien from taking priority over the rights of a secured party whose security interest predated the establishment of the judgment creditor's rights unless Ch. 679, F.S., specifies otherwise.

Further, the bill amends s. 55.205(5)(a), F.S., to clarify that, if a judgment debtor's personal property includes a motor vehicle or vessel, the enforceability of a judgment lien against the creditors or subsequent purchasers of such vehicle or vessel may be determined under Ch. 679, F.S., in addition to the title statutes already provided for in current law. Thus, the bill continues to preserve the rights of creditors and subsequent purchasers of a vehicle or vessel on which a judgment lien attached.

### Secured Transactions Under the UCC

The bill amends s. 55.205(7), F.S., to provide that, where an account debtor is served with a complaint or petition by a judgment creditor seeking judicial relief with respect to payment intangibles or accounts, the account debtor may thereafter discharge the account debtor's payment obligation in accordance with a settlement agreement. Thus, where there is a dispute as to an account debtor's payment obligations, the parties to the dispute would be allowed to resolve the dispute by settlement agreement, instead of having to wait for the account debtor's payment obligations to be established by final order or judgment as required under current law.

<sup>15</sup> The term includes healthcare receivables but does not include rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card. S. 9-102(2), UCC; s. 679.1021(1), F.S.

<sup>16</sup> "General intangibles" are any form of intangible personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. Examples include partnership interests, various licenses (such as a liquor license), publication rights, and intellectual property (such as copyrights). S. 9-102, UCC; s. 679.1021(1)(pp), F.S.

<sup>17</sup> "Account debtor" means a person obligated on an account, chattel paper, or general intangible but does not include a person obligated to pay a negotiable instrument. S. 9-102, UCC; s. 679.1021(1)(c), F.S.

<sup>18</sup> S. 9-406, UCC; s. 679.1021(1), F.S.

Finally, the bill changes the phrase “may not be primed as to” in s. 55.208(1), F.S., to “may not take priority over.” This is a non-substantive change conforming the terminology used in this section, relating to the effect of prior liens on payment intangibles and accounts, to the terminology used elsewhere in Florida law and the UCC.

Effective Date

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

B. SECTION DIRECTORY:

**Section 1:** Amends s. 55.202, F.S., relating to judgments, orders, and decrees; lien on personal property.

**Section 2:** Amends s. 55.205, F.S., relating to effect of judgment lien.

**Section 3:** Amends s. 55.208, F.S., relating to effect of prior liens on payment intangibles and accounts; effect of filed judgment lien on writs of execution previously delivered to a sheriff.

**Section 4:** Provides 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:

The bill may reduce state government expenditures to the extent that disputes involving an account debtor’s payment obligations as to payment intangibles or accounts are resolved by settlement agreement, thereby reducing the burden on the state court system.

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 financial impact on the private sector to the extent that:

- Disputes involving an account debtor’s payment obligations as to payment intangibles or accounts are resolved by settlement agreement, thereby reducing litigation costs for the parties to the dispute.
- The rights of a secured party are further protected by the clarifications made in the bill.

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

1                                   A bill to be entitled  
2           An act relating to judgment liens; amending s. 55.202,  
3           F.S.; specifying the provisions to be used in  
4           resolving the priority of conflicting rights between a  
5           judgment lienholder and a secured party; amending s.  
6           55.205, F.S.; specifying that the rights of certain  
7           judgment debtors to proceed against the judgment  
8           debtor's property are subject to certain provisions;  
9           providing that an account debtor may discharge certain  
10          obligations through a settlement agreement; amending  
11          s. 55.208, F.S.; revising provisions concerning the  
12          priority of certain judgment liens; providing an  
13          effective date.

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

16  
17          Section 1. Subsection (3) of section 55.202, Florida  
18          Statutes, is amended to read:

19          55.202   Judgments, orders, and decrees; lien on personal  
20          property.—

21          (3)   Except as otherwise provided in s. 55.208, the  
22          priority of a judgment lien acquired in accordance with this  
23          section or s. 55.204(3) is established at the date and time the  
24          judgment lien certificate is filed. The priority of conflicting  
25          rights between a judgment lienholder under this section and a

26 secured party, as defined in s. 679.1021(1)(ttt), must be  
27 determined as provided under chapter 679.

28 Section 2. Subsection (1), paragraph (a) of subsection  
29 (5), and subsection (7) of section 55.205, Florida Statutes, are  
30 amended to read:

31 55.205 Effect of judgment lien.—

32 (1) A judgment creditor who has not acquired a judgment  
33 lien as provided in s. 55.202 or whose lien has lapsed may  
34 nevertheless proceed against the judgment debtor's property  
35 through any appropriate judicial process, subject to the  
36 priority of conflicting rights under chapter 679 of a secured  
37 party, as defined in s. 679.1021(1)(ttt). Such judgment creditor  
38 proceeding by writ of execution acquires a lien as of the time  
39 of levy and only on the property levied upon.

40 (5)(a) If the judgment debtor's personal property, to the  
41 extent not exempt from execution, includes a motor vehicle or a  
42 vessel for which a Florida certificate of title has been issued,  
43 a judgment lien acquired under this section on such property not  
44 yet noted on the certificate of title is valid and enforceable  
45 against the judgment debtor. However, enforceability under this  
46 chapter of such judgment lien against creditors or subsequent  
47 purchasers is determined as provided under s. 319.27(2), ~~or~~ s.  
48 328.14, or chapter 679, as applicable.

49 (7) Notwithstanding the attachment of a judgment lien  
50 acquired under s. 55.202 to payment intangibles or accounts and

51 | the proceeds thereof, the account debtor may, absent receipt of  
52 | notice under s. 679.607(1)(a) from a secured party, discharge  
53 | the account debtor's obligation to pay payment intangibles or  
54 | accounts or the proceeds thereof by paying the judgment debtor  
55 | until, but not after, the account debtor is served by process  
56 | with a complaint or petition by the judgment creditor seeking  
57 | judicial relief with respect to the payment intangibles or  
58 | accounts. Thereafter, the account debtor may discharge the  
59 | account debtor's obligation to pay payment intangibles or  
60 | accounts or the proceeds thereof under this section only in  
61 | accordance with a settlement agreement, final order, or judgment  
62 | issued in such judicial process that complies with this section.

63 | Section 3. Subsection (1) of section 55.208, Florida  
64 | Statutes, is amended to read:

65 | 55.208 Effect of prior liens on payment intangibles and  
66 | accounts; effect of filed judgment lien on writs of execution  
67 | previously delivered to a sheriff.—

68 | (1) A judgment lien under s. 55.202 existing before  
69 | October 1, 2023, becomes enforceable and perfected as of October  
70 | 1, 2023, as to payment intangibles and accounts and the proceeds  
71 | thereof of a judgment debtor under s. 55.202(2). Any security  
72 | interest or lien on payment intangibles or accounts and the  
73 | proceeds thereof of a judgment debtor which is enforceable and  
74 | perfected before October 1, 2023, continues to have the same  
75 | rights and priority as existed before October 1, 2023, and may

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76 | not take priority over ~~be primed as to~~ payment intangibles or  
77 | accounts by a judgment lien certificate filed before October 1,  
78 | 2023.

79 |       Section 4. This act shall take effect upon becoming a law.

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>	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Benjamin offered the following:

**Amendment (with directory and title amendments)**

5 Between lines 20 and 21, insert:

6 (2) A judgment lien may be acquired on a judgment debtor's  
7 interest in all personal property in this state subject to  
8 execution under s. 56.061 and in all, ~~including~~ payment  
9 intangibles and accounts of a judgment debtor whose location is  
10 in this state as established by s. 679.3071, ~~as those terms are~~  
11 ~~defined in s. 679.1021(1),~~ and the proceeds thereof, but  
12 excluding fixtures, money, negotiable instruments, and  
13 mortgages. As used in this subsection, the terms "payment  
14 intangibles," "account," and "proceeds" have the same meaning as  
15 in s. 679.1021(1).



Amendment No. 1

16 (a) For payment intangibles and accounts and the proceeds  
17 thereof:

18 1. The rights of a judgment lienholder under this section  
19 are subject to the rights under chapter 679 of a secured party,  
20 as defined in s. 679.1021(1), who has a prior filed financing  
21 statement encumbering such payment intangibles or accounts and  
22 the proceeds thereof.

23 2. This section does not affect the obligation under s.  
24 679.607(1) of an account debtor, as defined in s. 679.1021(1),  
25 except as the rights and obligations under this paragraph are  
26 otherwise adjudicated under applicable law in a legal proceeding  
27 to which the secured party and account debtor are joined as  
28 parties.

29 (b) A judgment lien is acquired by filing a judgment lien  
30 certificate in accordance with s. 55.203 with the Department of  
31 State after the judgment has become final and if the time to  
32 move for rehearing has lapsed, no motion for rehearing is  
33 pending, and no stay of the judgment or its enforcement is then  
34 in effect. A court may authorize, for cause shown, the filing of  
35 a judgment lien certificate before a judgment has become final  
36 when the court has authorized the issuance of a writ of  
37 execution in the same matter. A judgment lien certificate not  
38 filed in compliance with this subsection is permanently void and  
39 of no effect but does not preclude the filing of a judgment lien  
40 certificate that is in compliance with this subsection.

Amendment No. 1

41 (c) For any lien, warrant, assessment, or judgment  
42 collected by the Department of Revenue, a judgment lien may be  
43 acquired by filing the judgment lien certificate information or  
44 warrant with the Department of State in accordance with  
45 subsection (5).

46 (d) Except as provided in s. 55.208, the effective date of  
47 a judgment lien is the date, including the time of day, of  
48 filing. Although no lien attaches to property, and a creditor  
49 does not become a lien creditor as to liens under chapter 679,  
50 until the debtor acquires an interest in the property, priority  
51 among competing judgment liens is determined in order of filing  
52 date and time.

53 (e) Except as provided in s. 55.204(3), a judgment  
54 creditor may file only one effective judgment lien certificate  
55 based upon a particular judgment.

56

57 -----

58 **D I R E C T O R Y A M E N D M E N T**

59 Remove lines 17-18 and insert:

60 Section 1. Subsections (2) and (3) of section 55.202,  
61 Florida Statutes, are amended to read:

62

63 -----

64 **T I T L E A M E N D M E N T**

65 Remove line 3 and insert:

Amendment No. 1

66 F.S.; authorizing a judgment lien to attach to specified  
67 personal property and all payment intangibles and accounts of a  
68 judgment debtor located in this state; providing definitions;  
69 specifying that the filing of a noncompliant judgment lien  
70 certificate does not preclude the subsequent filing of a  
71 compliant judgment lien certificate; specifying the provisions  
72 to be used in



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 283 Self-service Storage Facility Liens

**SPONSOR(S):** Borrero

**TIED BILLS:** IDEN./SIM. BILLS: SB 456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Self-Storage Facility Act, set out in Part III of Ch. 83, F.S., regulates the relationship between the owner of a self-service storage facility or self-contained storage unit and the facility's or unit's tenants. Under the Act, the facility or unit owner has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit, for rent, labor charges, or other charges relating to the personal property and for expenses necessary for its preservation or reasonably incurred in its sale or other disposition under the Act. Such lien attaches when the personal property is brought to the self-service storage facility or when the tenant takes possession of the self-contained storage unit, and the lien's priority is as provided in s. 83.808, F.S.

To enforce such a lien, a self-service storage facility or self-contained storage unit owner may sell the tenant's personal property as provided in the Act. However, before any such sale may occur, the facility or unit owner must give notice of an impending sale to the tenant in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address, and conspicuously post such notice at the self-service storage facility or on the self-contained storage unit. Such notice must specify that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place. Following the expiration of the time given in the notice, the facility or unit owner must also:

- Advertise the sale in a newspaper of general circulation in the area where the facility or unit is located once a week for two consecutive weeks; or
- If there is no such newspaper, post the advertisement at least ten days before the sale in at least three conspicuous places in the neighborhood where the facility or unit is located.

HB 283 requires that a rental agreement for storage space in a self-service storage facility or in a self-contained storage unit contain a provision authorizing the tenant to designate an alternate contact person, which person may be contacted only for purposes of providing the required notice of sale or as the rental agreement otherwise authorizes. The bill also:

- Specifies that the designation of an alternate contact person does not give such person an interest in the contents stored at the self-service storage facility or in the self-contained storage unit.
- Requires that the notice of sale be given in a specified manner to the alternate contact person, if any.
- Clarifies that publication of the advertisement of sale must be once a week, for a full day, for two consecutive weeks.
- Authorizes the advertisement of sale to be published on a public website that customarily conducts or advertises personal property auctions in lieu of newspaper publication and specifies how the sale must be advertised if there is no qualifying newspaper and the facility or unit owner does not publish online.

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

##### Self-Service Storage Facility Act Definitions

The Self-Storage Facility Act, set out in Part III of Ch. 83, F.S., regulates the relationship between the owner of a self-service storage facility or a self-contained storage unit and the facility's or unit's tenants. Significantly, the Act allows the owner to seize and sell the personal property within the storage unit if the tenant does not pay rent and specified conditions are met. Under the Act:

- "Last known address" means the street address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided by hand delivery, first-class mail, or e-mail;
- "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility or self-contained storage unit or his or her agent or any other person authorized by him or her to manage the facility or to receive rent from a tenant under a rental agreement;
- "Rental agreement" means any agreement or lease which establishes or modifies terms, conditions, rules, or any other provisions concerning the use and occupancy of a self-service storage facility or of a self-contained storage unit;
- "Self-contained storage unit" means any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant;
- "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property and where no individual storage space is used for residential purposes; and
- "Tenant" means a person or the person's sublessee, successor, or assign entitled to the use of storage space at a self-service storage facility or in a self-contained storage unit, under a rental agreement, to the exclusion of others.<sup>1</sup>

##### Liens Under the Self-Storage Facility Act

A lien is a claim against property that evidences a debt, obligation, or duty.<sup>2</sup> A self-service storage facility or self-contained storage unit owner has a lien upon all personal property, whether or not owned by the tenant, located at the self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges relating to the property and for expenses necessary for its preservation or reasonably incurred in its sale or other disposition under the Self-Storage Facility Act.<sup>3</sup> Such lien attaches when the personal property is brought to the storage facility or when the tenant takes possession of the self-contained storage unit, and the lien's priority<sup>4</sup> is as provided in s. 83.808, F.S.; however, in the event of default, the owner must give notice to persons holding perfected security interests<sup>5</sup> in which the tenant is named as the debtor.<sup>6</sup>

##### Withholding Access to Personal Property Upon Nonpayment of Rent

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<sup>1</sup> S. 83.803, F.S.

<sup>2</sup> Fla. Jur. 2d Liens § 37:1.

<sup>3</sup> S. 83.805, F.S.

<sup>4</sup> A lien's priority determines the order in which the lienholder will be paid after sale of the property to which the lien attached. Generally, earlier-recorded liens take priority over later-recorded liens. State and federal law may also specify a particular lien's priority. Legal Information Institute, Debtor and Creditor, [https://www.law.cornell.edu/wex/debtor\\_and\\_creditor](https://www.law.cornell.edu/wex/debtor_and_creditor) (last visited Jan. 8, 2024).

<sup>5</sup> A security interest arises when, in exchange for a loan, a borrower pledges in a security agreement specified assets owned by the borrower, which assets the lender may take and sell if the borrower defaults on the loan. Legal Information Institute, *Secured Transactions*, [https://www.law.cornell.edu/wex/secured\\_transactions](https://www.law.cornell.edu/wex/secured_transactions) (last visited Jan. 8, 2024).

<sup>6</sup> S. 83.805, F.S.

If a tenant in a self-service storage facility or self-contained storage unit fails to pay the rent for such storage space when it becomes due, the facility or unit owner may, without notice, after five days from the date the rent was due, deny the tenant access to the personal property located in the facility or unit.<sup>7</sup> In denying the tenant access to such personal property, the owner may proceed without judicial process – that is, without obtaining a court order – if this can be done without breach of the peace.<sup>8</sup>

#### Lien Enforcement: Notice of Sale or Other Disposition

To satisfy an owner's lien under the Self-Storage Facility Act, s. 83.806, F.S., specifies that the owner must notify the tenant by written notice delivered in person, by e-mail, or by first-class mail with a certificate of mailing to the tenant's last known address, and such notice must be conspicuously posted at the self-service storage facility or on the self-contained storage unit. If the facility or unit owner sends notice of a pending sale of property to the tenant's last known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the tenant by first-class mail with a certificate of mailing to the tenant's last known address before the sale.<sup>9</sup>

The notice must include:

- An itemized statement of the facility or unit owner's claim, showing the amount due at the time of the notice and the date when the amount became due;
- The same description, or a reasonably similar description, of the personal property as provided in the rental agreement;
- A demand for payment within a specified time of not less than 14 days after the notice's delivery;
- A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place; and
- The name, street address, and telephone number of the owner whom the tenant may contact to respond to the notice.<sup>10</sup>

The notice is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.<sup>11</sup>

#### Lien Enforcement: Advertisement of Sale or Other Disposition

After the expiration of the time given in the notice of sale, an advertisement of the sale or other disposition must be published once a week for two consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located.<sup>12</sup> A lien sale may be conducted on a public website that customarily conducts personal property auctions, and the facility or unit owner is not required to hold a license to post property for online sale.<sup>13</sup> Should a sale involve the property of multiple tenants, one advertisement may be used to dispose of the property at any one sale.<sup>14</sup>

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<sup>7</sup> S. 83.8055, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> S. 83.806, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

The advertisement must include:

- A brief and general description of what is believed to constitute the personal property contained in the storage unit;
- The address of the self-service storage facility or the address where the self-contained storage unit is located and the tenant's name; and
- The time, place, and manner of the sale or other disposition, which sale or other disposition must take place at least 15 days after the first publication.<sup>15</sup>

However, if there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least ten days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.<sup>16</sup>

#### Lien Enforcement: Sale or Other Disposition

Any sale or other disposition of a tenant's personal property must conform to the terms of the notification and must be conducted in a commercially reasonable manner.<sup>17</sup> However, before any such sale or other disposition, the tenant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under the Self-Storage Facility Act and thereby redeem the personal property.<sup>18</sup> Upon receipt of such payment, the owner must return the property to the tenant and thereafter has no liability to any person with respect to such personal property.<sup>19</sup> However, if the tenant fails to redeem the personal property or satisfy the lien, including reasonable expenses, he or she will be deemed to have unjustifiably abandoned the self-service storage facility or self-contained storage unit, and the owner may resume possession of the premises for himself or herself.<sup>20</sup>

In the event of a sale, the facility or unit owner may satisfy his or her lien from the sale's proceeds, if the owner's lien has priority over all other liens on the personal property.<sup>21</sup> The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale, and the balance, if any, must be held by the owner for delivery on demand to the tenant.<sup>22</sup> A notice of any balance must be delivered to the tenant in person or by first-class mail with a certificate of mailing to the tenant's last known address.<sup>23</sup> If the tenant fails to claim the balance within two years after the sale date, the proceeds are deemed abandoned, and the facility or unit owner has no further obligation to pay the balance.<sup>24</sup>

If the facility or unit owner's lien does not have priority over all other liens, the sale proceeds must be held for the benefit of those lienholders with priority over the owner's lien.<sup>25</sup> A notice of the amount of the sale proceeds must be delivered by the facility or unit owner to the tenant and secured lienholders in person or by first-class mail with a certificate of mailing to their last known addresses.<sup>26</sup> If the tenant or the secured lienholders do not claim the sale proceeds within two years after the sale date, the proceeds are deemed abandoned, and the owner has no further obligation to pay the proceeds.<sup>27</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*



## Lien Enforcement: Motor Vehicles and Watercraft

If a lien is claimed on a motor vehicle or a watercraft and rent and other charges related to such property remain unpaid for 60 days after the maturity of the obligation to pay the rent and other charges, the facility or unit owner may sell the property under the Self-Storage Facility Act or have the property towed.<sup>28</sup> If a motor vehicle or watercraft is towed, the facility or unit owner is not liable for the motor vehicle or watercraft or any damages thereto once a wrecker takes possession of such property.<sup>29</sup> However, such wrecker must comply with all notification and sale requirements set out in s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.<sup>30</sup>

## Rental Agreements

Section 83.808, F.S., sets out additional provisions that govern rental agreements under the Self-Service Storage Facility Act. Specifically, a rental agreement must contain a provision disclosing whether the applicant is a member of the uniformed services as that term is defined in 10 U.S.C. s. 101(a)(5).<sup>31</sup> Further, the owner of a self-service storage facility or self-contained storage unit may charge a tenant a reasonable late fee for:

- Each period that he or she fails to pay rent due under the rental agreement. The amount of the late fee and the conditions for imposing such fee must be stated in the rental agreement or in an addendum to such agreement.<sup>32</sup> For purposes of the Act, a late fee of \$20, or 20 percent of the monthly rent, whichever is greater, is reasonable and does not constitute a penalty.<sup>33</sup>
- Any expenses incurred as a result of rent collection or lien enforcement.<sup>34</sup>

However, s. 83.809, F.S., clarifies that nothing in the Act may be construed as impairing or affecting the right of any person to create additional rights, duties, and obligations in a rental agreement, and the provisions of the Act are in addition to all other rights allowed by law in a creditor-debtor or landlord-tenant relationship.

## **Effect of Proposed Changes**

### Rental Agreements

HB 283 amends s. 83.808, F.S., to require that a rental agreement for storage space in a self-service storage facility or self-contained storage unit contain a provision authorizing the tenant to designate an optional alternate contact person, which person may be contacted only for the purposes of giving the notice of sale required under the Self-Storage Facility Act or as the rental agreement otherwise authorizes. Under the bill, the designation of an alternate contact person does not give such person an interest in the contents stored at the self-service storage facility or in the self-contained storage unit.

### Lien Enforcement: Notice

The bill amends s. 83.806, F.S., to specify that the written notice required by that section to be sent to the tenant before any sale or disposition of the tenant's personal property must also be sent to the alternate contact person designated by the tenant, if any, at such person's last known address. Under the bill, if the facility or unit owner sends notice of a pending sale to the alternate contact person's last known e-mail address and receives no response, return receipt, or delivery confirmation from such e-mail address, the owner must send notice of the sale to the alternate contact person by first-class mail with a certificate of mailing to such person's last known address before proceeding with the sale.

### Lien Enforcement: Sale or Other Disposition

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Where a tenant is an active duty member of the uniformed services and deployed, the Servicemembers Civil Relief Act provides additional protections for the tenant's property. S. 83.808, F.S.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

The bill amends s. 83.806, F.S., to clarify that the advertisement of the sale or other disposition must, if published in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, be published once a week, for a full day, for two consecutive weeks. The bill also allows such an advertisement to be published on a public website that customarily conducts or advertises personal property auctions once a week for a full day for two consecutive weeks in lieu of newspaper publication. Further, the bill specifies that, if there is no qualifying newspaper of general circulation and the facility or unit owner does not publish the advertisement on a qualifying public website, the advertisement must be posted at least ten days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood in which the self-service storage facility or self-contained storage unit is located.

#### Effective Date

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

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 83.806, F.S., relating to enforcement of lien.

**Section 2:** Amends s. 83.808, F.S., relating to contracts.

**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.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on:

- Owners of a self-service storage facility or self-contained storage unit to the extent that such an owner chooses to publish the advertisement of the sale on a qualifying public website instead of in a newspaper and thereby reduces his or her publication costs.
- Tenants of a self-service storage facility or self-contained storage unit to the extent that their designation of an alternate contact person leads to the tenant receiving notice of an upcoming sale and the tenant is thereby able to pay the rent amount he or she owes and redeem his or her personal property.

#### 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**

1                   A bill to be entitled  
 2           An act relating to self-service storage facility  
 3           liens; amending s. 83.806, F.S.; revising written  
 4           notice requirements relating to the satisfaction of an  
 5           owner's lien; revising publication requirements  
 6           relating to advertising the sale or other disposition  
 7           of self-service storage facilities; amending s.  
 8           83.808, F.S.; requiring that rental agreements  
 9           authorize tenants to designate an optional alternate  
 10          contact for purposes of providing specified notice;  
 11          specifying that designating an alternate contact does  
 12          not give such person an interest in the contents  
 13          stored at a self-service storage facility or in a  
 14          self-contained storage unit; providing an effective  
 15          date.

16  
 17   Be It Enacted by the Legislature of the State of Florida:

18  
 19           Section 1. Subsections (1) and (4) of section 83.806,  
 20   Florida Statutes, are amended to read:

21           83.806 Enforcement of lien.—An owner's lien as provided in  
 22   s. 83.805 may be satisfied as follows:

23           (1) The tenant must ~~shall~~ be notified by written notice  
 24   delivered in person, by e-mail, or by first-class mail with a  
 25   certificate of mailing to the tenant's last known address and

26 | the last known address of the alternate contact person  
27 | designated by the tenant under the rental agreement, if any, and  
28 | conspicuously posted at the self-service storage facility or on  
29 | the self-contained storage unit. If the owner sends notice of a  
30 | pending sale of property to the tenant's and the alternate  
31 | contact person's last known e-mail address and does not receive  
32 | a response, return receipt, or delivery confirmation from the  
33 | same e-mail address, the owner must send notice of the sale to  
34 | the tenant and the alternate contact person by first-class mail  
35 | with a certificate of mailing to the tenant's and the alternate  
36 | contact person's last known address before proceeding with the  
37 | sale.

38 | (4) After the expiration of the time given in the notice,  
39 | an advertisement of the sale or other disposition must ~~shall~~ be  
40 | published once a week, for a full day, for 2 consecutive weeks  
41 | in a newspaper of general circulation in the area in which ~~where~~  
42 | the self-service storage facility or self-contained storage unit  
43 | is located or on a public website that customarily conducts or  
44 | advertises personal property auctions.

45 | (a) A lien sale may be conducted on a public website that  
46 | customarily conducts personal property auctions. The facility or  
47 | unit owner is not required to hold a license to post property  
48 | for online sale. ~~Inasmuch~~ As any sale may involve property of  
49 | more than one tenant, a single advertisement may be used to  
50 | dispose of property at any one sale.

51 (b) The advertisement must ~~shall~~ include:

52 1. A brief and general description of what is believed to  
53 constitute the personal property contained in the storage unit,  
54 as provided in paragraph (2) (b).

55 2. The address of the self-service storage facility or the  
56 address at which ~~where~~ the self-contained storage unit is  
57 located and the name of the tenant.

58 3. The time, place, and manner of the sale or other  
59 disposition. The sale or other disposition shall take place at  
60 least 15 days after ~~the first~~ publication.

61 (c) If there is no newspaper of general circulation in the  
62 area in which ~~where~~ the self-service storage facility or self-  
63 contained storage unit is located and the owner does not publish  
64 the advertisement on a public website that customarily conducts  
65 or advertises personal property auctions, the advertisement must  
66 ~~shall~~ be posted at least 10 days before the date of the sale or  
67 other disposition in at least three conspicuous places in the  
68 neighborhood in which ~~where~~ the self-service storage facility or  
69 self-contained storage unit is located.

70 Section 2. Subsection (4) is added to section 83.808,  
71 Florida Statutes, to read:

72 83.808 Contracts.—

73 (4) A rental agreement must contain a provision that  
74 authorizes the tenant to designate an optional alternate contact  
75 person. The alternate contact person may be contacted only for

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76 | purposes of providing notice under s. 83.806(1) or as otherwise  
77 | authorized by the rental agreement. Designating an alternate  
78 | contact person does not give such person an interest in the  
79 | contents stored at the self-service storage facility or in the  
80 | self-contained storage unit.

81 | Section 3. This act shall take effect July 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: Civil Justice Subcommittee  
 2 Representative Borrero offered the following:

**Amendment (with directory and title amendments)**

Remove lines 38-80 and insert:

(2) The notice shall include:

(a) An itemized statement of the owner's claim, showing  
 the sum due at the time of the notice and the date when the sum  
 became due.

(b) The same description, or a reasonably similar  
 description, of the personal property as provided in the rental  
 agreement.

(c) A demand for payment within a specified time not less  
 than 14 days after delivery of the notice.

(d) A conspicuous statement that, unless the claim is paid  
 within the time stated in the notice, the personal property will



Amendment No. 1

17 be advertised for sale or other disposition and will be sold or  
18 otherwise disposed of at a specified time and place.

19 (e) If the advertisement for sale will be published on a  
20 public website that customarily conducts or advertises personal  
21 property auctions, the name of the website on which the  
22 advertisement will be published.

23 (f) The name, street address, and telephone number of the  
24 owner whom the tenant may contact to respond to the notice.

25 (4) After the expiration of the time given in the notice,  
26 an advertisement of the sale or other disposition must ~~shall~~ be  
27 published once a week for 2 consecutive weeks in a newspaper of  
28 general circulation in the area in which ~~where~~ the self-service  
29 storage facility or self-contained storage unit is located or  
30 for 7 consecutive full days on a public website that customarily  
31 conducts or advertises personal property auctions.

32 (a) A lien sale may be conducted on a public website that  
33 customarily conducts personal property auctions. The facility or  
34 unit owner is not required to hold a license to post property  
35 for online sale. ~~Inasmuch~~ As any sale may involve property of  
36 more than one tenant, a single advertisement may be used to  
37 dispose of property at any one sale.

38 (b) The advertisement must ~~shall~~ include:

39 1. A brief and general description of what is believed to  
40 constitute the personal property contained in the storage unit,  
41 as provided in paragraph (2) (b).

Amendment No. 1

42           2. The address of the self-service storage facility or the  
43 address at which ~~where~~ the self-contained storage unit is  
44 located and the name of the tenant.

45           3. The time, place, and manner of the sale or other  
46 disposition. The sale or other disposition shall take place at  
47 least 15 days after the first publication.

48           (c) If there is no newspaper of general circulation in the  
49 area in which ~~where~~ the self-service storage facility or self-  
50 contained storage unit is located and the owner does not publish  
51 the advertisement on a public website that customarily conducts  
52 or advertises personal property auctions, the advertisement must  
53 ~~shall~~ be posted at least 10 days before the date of the sale or  
54 other disposition in at least three conspicuous places in the  
55 neighborhood in which ~~where~~ the self-service storage facility or  
56 self-contained storage unit is located.

57           Section 2. Subsection (4) of section 83.808, Florida  
58 Statutes, is created to read:

59           83.808 Contracts.—

60           (4) A rental agreement must contain the following:

61           (a) A provision authorizing the tenant to designate an  
62 optional alternate contact person, which person may be contacted  
63 only for purposes of providing notice under s. 83.806(1) or as  
64 otherwise authorized by the rental agreement. Designating an  
65 alternate contact person does not give such person an interest  
66 in the contents stored at the self-service storage facility or

Amendment No. 1

67 in the self-contained storage unit.

68 (b) A warning that, if the property is advertised for sale  
69 or other disposition, a description of what is believed to  
70 constitute the personal property contained in the storage unit  
71 will be published in the advertisement.

72

73 -----

74 **D I R E C T O R Y A M E N D M E N T**

75 Remove line 19 and insert:

76 Section 1. Subsections (1), (2), and (4) of section 83.806,

77

78 -----

79 **T I T L E A M E N D M E N T**

80 Remove line 14 and insert:

81 self-contained storage unit; requiring that rental agreements  
82 warn that, if the property is advertised for sale or other  
83 disposition, a description of the property will be published in  
84 the advertisement; providing an effective



**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		Mathews	Jones
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

**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 a personal headquarters within his or her county of residence and to be reimbursed for trips between such personal 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 official headquarters and the DCA, or
- The amount that would be authorized for travel between an official headquarters in the judge’s county of residence and the DCA.

The bill may have an insignificant indeterminate fiscal impact 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.<sup>1</sup> The appellate-level courts consist of the Supreme Court and six district courts of appeal.<sup>2</sup> Each of Florida's 67 counties has at least one county court judge.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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 statutes<sup>6</sup> and may hear decisions of a county court that are certified by the county court to be of great public importance.<sup>7</sup> 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.<sup>8</sup>

The current appellate districts are organized as follows:<sup>9</sup>

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

<sup>1</sup> Art. V, ss. 5 and 6, Fla. Const.

<sup>2</sup> 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 Dec. 7, 2023); Office of the State Court Administrator, District Courts of Appeal, <https://www.flcourts.gov/Florida-Courts/District-Courts-of-Appeal> (last visited Dec. 7, 2023).

<sup>3</sup> Art. V, s. 6(a), Fla. Const.

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

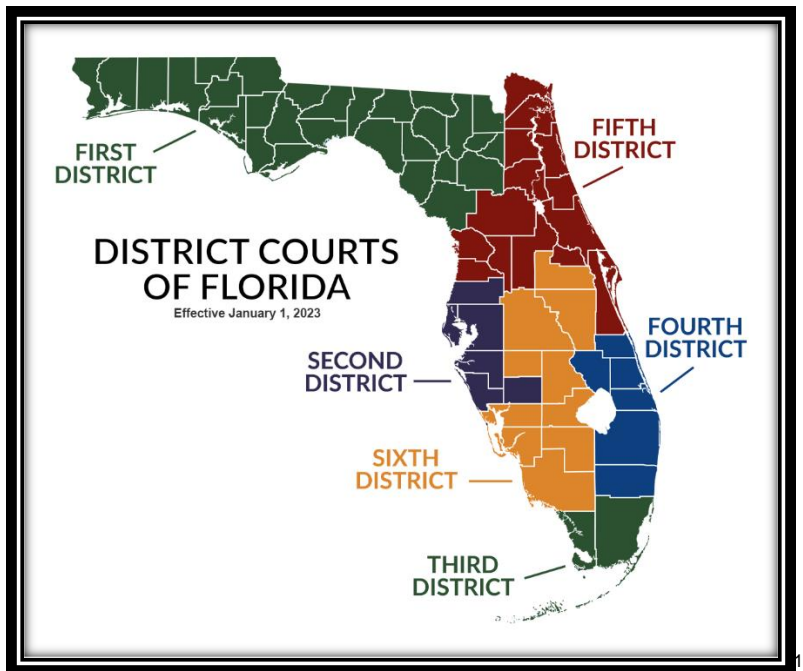
<sup>5</sup> Art. V, s. 5(b), Fla. Const.; s. 26.012, F.S.

<sup>6</sup> S. 35.065, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> Art. V, s. 3(b), Fla. Const.

<sup>9</sup> Ss. 35.01-35.044, F.S.



### Supreme Court Headquarters

The Florida Supreme Court is located in Tallahassee, Leon County, Florida.<sup>11</sup> 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 personal headquarters, which may only serve as the justice's private chambers.<sup>12</sup> 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 personal headquarters.<sup>13</sup>

A justice who chooses to designate an official 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 official headquarters and the headquarters of the Supreme Court.<sup>14</sup>

### DCA Headquarters

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

- 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.

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 a personal

<sup>10</sup> Fla. 4th DCA, *District Court Boundary Changes Effective January 1, 2023* (Dec. 19, 2022), <https://4dca.flcourts.gov/About-the-Court/Court-News/District-Court-Boundary-Changes-Effective-January-1-2023> (last visited Dec. 8, 2023).

<sup>11</sup> Art. II, s. 2, Fla. Const.

<sup>12</sup> S. 25.025(1)(a), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> S. 25.025(1)(b), F.S.

<sup>15</sup> 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.

headquarters and to be reimbursed for trips between such personal headquarters and the DCA location in a manner similar to Supreme Court justices.<sup>16</sup>

The personal 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.<sup>17</sup> However, no county is required to provide space to a DCA judge for his or her personal headquarters.<sup>18</sup> The DCA may contract with a county regarding the use of courthouse space, but state funds may not be used to lease the space.<sup>19</sup>

### **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 alternative headquarters in an county adjacent to the judge's county of residence within the district he or she serves in. 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 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 official headquarters and the DCA headquarters or designated branch headquarters; or
- The amount that would otherwise be authorized for travel between an official 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.

##### **2. Expenditures:**

The bill may have an indeterminate impact on state expenditures, as it would allow a DCA judge to establish an alternate headquarters in a county adjacent to his or her county of residence within the district he or she serves. Depending on the location the judge selects as his or her personal headquarters and the location he or she would have selected in his or her county of residence pursuant to current law, travel costs and reimbursements may be increased or decreased.

However, the bill does not modify the requirements necessary for a judge to be able to establish an alternate headquarters and, as such, is unlikely to increase the number of judges utilizing alternate headquarters.

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<sup>16</sup> S. 35.051(1), F.S.

<sup>17</sup> S. 35.051(1)(a), F.S.

<sup>18</sup> S. 35.051(3)(a), F.S.

<sup>19</sup> S. 35.051(3)(b), F.S.



**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**

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 481 Building Construction Regulations and System Warranties

**SPONSOR(S):** Maggard

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee			
3) Judiciary Committee			

### 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, and incorporates all state laws and rules pertaining to such standards, including the technical portions of the Florida Accessibility Code for Building Construction (“Accessibility Code”). A substantially affected person may challenge a Building Code or Accessibility Code interpretation by petitioning the Florida Building Commission; however, Florida law does not presently authorize an automatic attorney fee award in such challenges.

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.

HB 481:

- Authorizes an attorney fee award to the prevailing party in a Building Code or Accessibility Code interpretation challenge.
- 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.
- 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 government but may have a fiscal impact on local governments. The bill provides an effective date of July 1, 2024.

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

**STORAGE NAME:** h0481.CJS

**DATE:** 1/9/2024

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Building Construction Standards

##### *Florida Accessibility Code for Building Construction*

The Florida Accessibility Code for Building Construction (“Accessibility Code”), established in part II of ch. 553, F.S., incorporates into Florida law the requirements of the American’s with Disabilities Act<sup>1</sup> with the goal of maintaining United States Department of Justice certification of the Accessibility Code as being equivalent to federal standards for building accessibility.<sup>2</sup> The Accessibility Code also sets out additional standards which building construction in the state must meet if such standards provide increased accessibility.<sup>3</sup>

The Accessibility Code applies to:

- All areas of newly-designed and newly-constructed buildings as determined by specified federal standards;
- Portions of altered buildings as determined by specified federal standards;
- A building that is being converted from residential to nonresidential or mixed use, as those terms are defined in Florida law; and
- Buildings where the original construction or any former alteration or renovation violate applicable permitting law.<sup>4</sup>

However, persons subject to the Accessibility Code who face unreasonable hardships in meeting the Code’s requirements may apply to the Florida Building Commission (“Commission”), housed within the Department of Business and Professional Regulation (“DBPR”), for a waiver from strict Code compliance.<sup>5</sup> The Accessibility Advisory Council<sup>6</sup> must review any such waiver before it may be granted, and any such waiver may not violate applicable Federal law.<sup>7</sup> If the Commission denies a waiver application, the applicant may appeal the decision to the Florida Department of Community Affairs.<sup>8</sup>

##### *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.<sup>9</sup> The Building Code is adopted by the Commission and enforced by local governments.<sup>10</sup>

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<sup>1</sup> See 42 U.S.C. ss. 12101, et seq. Areas regulated include vertical accessibility; barriers at common or emergency entrances and exits; parking; door and gate opening force; lavatory and water closet accessibility; and hotel, motel, and condominium special accessibility features.

<sup>2</sup> S. 553.502, F.S.

<sup>3</sup> Ss. 553.502 and 553.503, F.S.

<sup>4</sup> S. 553.507, F.S.

<sup>5</sup> S. 553.512, F.S.

<sup>6</sup> The Accessibility Advisory Council consists of seven members knowledgeable in the area of accessibility for persons with disabilities and appointed by DBPR’s Secretary. *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> S. 553.72(1), F.S.

<sup>10</sup> Ss. 125.56, 553.72, 553.73, and 553.74, F.S.

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.<sup>11</sup> 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, including the technical portions of the Accessibility Code.<sup>12</sup>

### *Plan Review and Building Permits*

Each local government must issue building permits for construction projects within its jurisdiction.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

### *Inspections and Violations*

For any construction requiring a building permit, the building official<sup>16</sup> must inspect the work to ensure that it complies with the Building Code.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

### *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 building<sup>20</sup> is newly constructed, and such work passes its final building inspection.<sup>21</sup> When a new structure to be occupied<sup>22</sup> passes its final building inspection, the building official issues a certificate of occupancy.<sup>23</sup> 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.<sup>24</sup> The temporary certificate grants the applicant the same rights as a

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<sup>11</sup> 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](http://www.floridabuilding.org/Upload/Courses_trp/421-2-MATERIAL-Adv%20FL%20Bldg%20Code%20-%20Course%20PDF%20version%207.0.pdf) (last visited Jan. 8, 2024).

<sup>12</sup> S. 553.73(1), F.S. The civil rights portions of the Accessibility Code are not incorporated.

<sup>13</sup> 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.

<sup>14</sup> Ss. 125.56 and 553.79, F.S.

<sup>15</sup> Building permits are generally not required for cosmetic improvements, such as painting or flooring replacement. S. 553.79, F.S.

<sup>16</sup> A building official is a local government employee or a person contracted with a government entity who supervises building code activities. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> S. 553.781, F.S.

<sup>19</sup> *Id.*

<sup>20</sup> 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. 8, 2024).

<sup>21</sup> 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).

<sup>22</sup> This includes an existing building or structure for which the occupancy classification is changing.

<sup>23</sup> S. 111, Fla. Bldg. Code, 7th Ed. (2020).

<sup>24</sup> 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>



certificate of completion or occupancy but expires after a set time period unless the building official grants an extension.<sup>25</sup> 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.<sup>26</sup>

### *Interpretations*

Any substantially affected person, including an owner or builder subject to a local building official's decision or an association of owners or builders having members who are subject to such decisions, may petition the Commission for a review of such decisions where the interpretation of the Building Code or the Accessibility Code is contested.<sup>27</sup> The Commission must coordinate with the Building Officials Association of Florida, Inc., to designate a panel composed of seven members to hear decision review requests and adopt a form for the petition, which form must include:

- The name and address of the county or municipality in which provisions of the Building Code or Accessibility Code are being interpreted;
- The name and address of the local building official who has made the interpretation being appealed;
- The petitioner's name, address, and telephone number, if any, along with an explanation of how the petitioner's substantial interests are being affected by the local interpretation;
- A statement of the provisions of the Building Code or Accessibility Code which are being interpreted by the local building official;
- A statement of the interpretation given to the Building Code or Accessibility Code provisions and a statement supporting the petitioner's interpretation; and
- Space for the local building official to respond in writing.<sup>28</sup>

The petitioner must submit the petition form to the local building official, who must place the date of the petition's receipt on the petition.<sup>29</sup> The local building official must then:

- Respond to the petition, which response must, at a minimum, include a statement admitting or denying the statements contained in the petition and a statement of the interpretation of the Building Code or the Accessibility Code which the local jurisdiction or local building official contends is correct.<sup>30</sup>
- Return the petition, along with his or her response, to the petitioner within five business days after receipt.

The petitioner may file the petition with Commission at any time after the local building official provides a response, or, if no such response is provided, within ten days after submitting the petition to the local building official.<sup>31</sup> However, the Commission may undertake a decision review only after the local board of appeals has considered the decision, if such a board exists, and if such appeals process is concluded within 25 business days.<sup>32</sup>

Upon receipt of a petition which meets all statutory requirements, the Commission must immediately give copies of the petition to the panel and publish the petition, including any response thereto, on the Building Code Information System ("BCIS") in a manner that allows interested persons to address the issues by posting comments.<sup>33</sup> The panel must then:

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[occupancy-tco-35571](#) (last visited Jan. 8, 2024) (requiring an applicant for a temporary certificate of occupancy to affirm that construction will be complete within 90 days); *id.*

<sup>25</sup> S. 111, Fla. Bldg. Code, 7th Ed. (2020).

<sup>26</sup> *Id.*

<sup>27</sup> S. 553.775(3), F.S.

<sup>28</sup> Such panel must be comprised of five licensed building code administrators, one licensed architect, and one licensed engineer; and each panelist must have experience in interpreting or enforcing the Building Code and the Accessibility Code. *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

- Conduct proceedings necessary to resolve the issue, giving due regard to the petitions, the response, and to comments posted on the BCIS.
- Issue an interpretation of the Building Code or Accessibility Code within 21 days after the petition's filing, which interpretation must be given to the Commission.

The Commission must then publish the interpretation on the BCIS and in the Florida Administrative Register.<sup>34</sup> Such interpretation is considered an interpretation of the Commission and is binding upon the parties and all jurisdictions subject to the Building Code or Accessibility Code unless it is superseded by a declaratory statement issued by the Commission or by a final order entered after an appeal proceeding conducted under this section.<sup>35</sup> Such an appeal may be brought by any substantially affected party by filing a petition with the Commission within 30 days after the interpretation's publication.<sup>36</sup> Hearings on such petitions for appeal must be conducted in accordance with the Administrative Procedures Act codified in Ch. 120, F.S. and the uniform rules of procedure.<sup>37</sup> The Commission's final order is binding on the parties and all jurisdictions subject to the Building Code or Accessibility Code, but Commission decisions are subject to judicial review under s. 120.68, F.S.

## 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.<sup>38</sup> 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 side<sup>39</sup> of the dedicated existing electrical disconnect switch.<sup>40</sup>
- "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.<sup>41</sup>
- "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,<sup>42</sup> including replacing, disconnecting, or reconnecting power wiring on the load side of the dedicated existing electrical disconnect switch.<sup>43</sup>

### *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,<sup>44</sup> from its power source.<sup>45</sup> Electricity to a disconnect switch is fed

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> S. 489.105(3), F.S.

<sup>39</sup> The electrical wiring to the disconnect feed is fed from the "load side," or outgoing side.

<sup>40</sup> S. 489.105(3), F.S.

<sup>41</sup> *Id.*

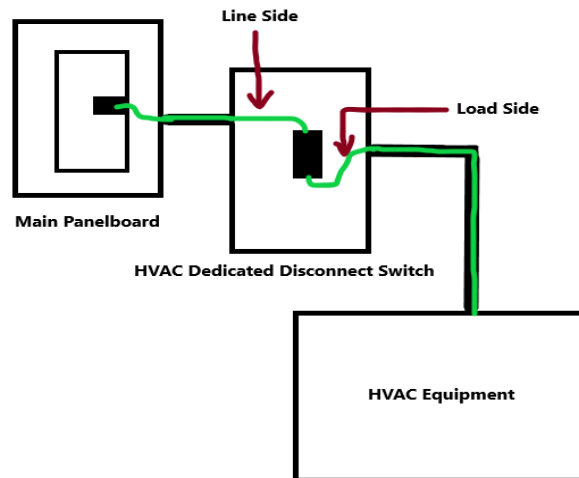
<sup>42</sup> In addition to the tasks a class A contractor may perform, a mechanical contractor may work on medical and fuel gas lines.

<sup>43</sup> *Id.*

<sup>44</sup> 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*

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.<sup>46</sup> 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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> 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 generally needed to upgrade the insufficient components before the HVAC contractor may safely turn on the new or repaired HVAC unit.

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*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. 8, 2024).

<sup>45</sup> 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. 8, 2024).

<sup>46</sup> 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 Dec. 20, 2023).

<sup>47</sup> 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. 8, 2024).

<sup>48</sup> S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

<sup>49</sup> S. 489.505(12), F.S.

<sup>50</sup> S. 301.10, Florida Building Code (7th Ed. 2020); s. 440.14 of NFPA 70, National Electrical Code (2023 ed.).

**STORAGE NAME:** h0481.CJS

**DATE:** 1/9/2024

## 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.<sup>51</sup> A warranty can be either express or implied.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> 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.<sup>55</sup>

### *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.<sup>56</sup> 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.<sup>57</sup>

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.<sup>58</sup> 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")<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

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<sup>51</sup> 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. 8, 2024).

<sup>52</sup> 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

<sup>53</sup> S. 672.313, F.S.

<sup>54</sup> S. 672.314, F.S.

<sup>55</sup> S. 672.316, F.S.

<sup>56</sup> Kenton, *supra* note 51.

<sup>57</sup> *Id.*

<sup>58</sup> 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. 8, 2024).

<sup>59</sup> 15 U.S.C. ss. 2301-2312 (1975).

<sup>60</sup> 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](https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act) (last visited Jan. 8, 2024).

<sup>61</sup> *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.

### Attorney Fees

The traditional "English rule" entitled a prevailing party in a civil action to recover his or her attorney fees from the losing party as a matter of right. However, Florida and a majority of other United States jurisdictions have adopted the "American rule," where each party bears its own attorney fees unless a "fee-shifting statute" provides an entitlement to fees.

When such a fee-shifting statute applies, the court must determine and calculate what constitutes a reasonable attorney fee; in 1985, the Florida Supreme Court held that courts should calculate this amount under what is known as the "loadstar approach."<sup>62</sup> Under this approach, the court must first determine the number of hours reasonably expended by the prevailing party's attorney. The court must then determine a reasonable hourly rate for such attorney, which may involve a consideration of the attorney's experience and practice locale. The number of hours reasonably expended (determined in the first step), multiplied by the reasonable hourly rate (determined in the second step), produces the "loadstar amount," which is considered an objective basis for what the attorney fee amount should be.

In certain instances, however, the court may greatly increase the loadstar amount by applying a contingency fee multiplier, which essentially takes the loadstar amount and multiplies that amount by a factor of 1.5, 2.0, 2.5, or some other number.<sup>63</sup> The concept of the contingency fee multiplier arose from judicial interpretations of statutory authorization of attorney fees in particular cases,<sup>64</sup> but the

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<sup>62</sup> *Fla. Patient's Comp. Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985).

<sup>63</sup> The Court may also adjust the amount based on the results obtained by the attorney. *Standard Guar. Ins. Co. v. Quanstrom*, 555 So. 2d 828, 830-31 (Fla. 1990). Contingency risk multipliers are also referred to as contingency fee multipliers.

<sup>64</sup> The rationale for applying a contingency risk multiplier to increase an attorney fee award is that plaintiffs and plaintiffs' attorneys generally do not recover any money unless they prevail. The attorney fee multiplier induces attorneys to take a risk on cases they might not otherwise take, allowing would-be plaintiffs to find attorneys willing to represent them.

Legislature has also expressly provided for use of a contingency fee multiplier in certain cases.<sup>65</sup> In 2023, the Legislature amended s. 57.104, F.S., to provide that there is generally a strong presumption that the loadstar amount is sufficient and reasonable.<sup>66</sup>

## Effect of Proposed Changes

### Florida Building Code

HB 481 amends s. 553.775, F.S., to provide that, in a proceeding on a petition for an interpretation of the Building Code or Accessibility Code by the Commission, the prevailing party is entitled to recuperate all attorney fees accrued from the losing party.

### HVAC Contractors

The bill 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 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:

- 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

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<sup>65</sup> See s. 790.33(3)(f)1, F.S. (explicitly authorizing a contingency fee multiplier in certain cases relating to the preemption of firearm and ammunition regulation).

<sup>66</sup> Ch. 2023-15, L.O.F.

- 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. 553.775, F.S., relating to interpretations.

**Section 3:** Amends s. 559.956, F.S., relating to registration and transfers of heating, ventilation, and air-conditioning system manufacturer warranties; required contractor documentation.

**Section 4:** Creates s. 559.957, F.S., relating to registration of heating, ventilation, and air-conditioning systems; prohibition against warranty conditioned upon registration.

**Section 5:** 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:

The bill may have a positive fiscal impact on local government revenues to the extent that such entities prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus allowed to recoup all of their attorney fees, which fees are not subject to a reasonableness limitation.

##### 2. Expenditures:

The bill may have a negative fiscal impact on local government expenditures to the extent that such entities do not prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus required to pay all of the opposing party's attorney fees, which fees are not subject to a reasonableness limitation.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive economic impact on the private sector to the extent that private persons or businesses prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus authorized to recoup all of their attorney fees, which fees are not subject to a reasonableness limitation. Conversely, the bill may have a negative economic impact to the extent that private persons or businesses do not prevail in a proceeding for an interpretation of the Building Code or Accessibility Code and are thus required to pay all of the opposing party's attorney fees, which fees are not subject to a reasonableness limitation.

The bill may also 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 have to 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. 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**





26 | of section 489.105, Florida Statutes, are amended to read:

27 |       489.105 Definitions.—As used in this part:

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

45 |       (f) "Class A air-conditioning contractor" means a  
 46 | contractor whose services are unlimited in the execution of  
 47 | contracts requiring the experience, knowledge, and skill to  
 48 | install, maintain, repair, fabricate, alter, extend, or design,  
 49 | if not prohibited by law, central air-conditioning,  
 50 | refrigeration, heating, and ventilating systems, including duct

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

76 | electrical power wiring. A Class A air-conditioning contractor  
77 | may test and evaluate central air-conditioning, refrigeration,  
78 | heating, and ventilating systems, including duct work; however,  
79 | a mandatory licensing requirement is not established for the  
80 | performance of these specific services.

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

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

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

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

151 including duct work; however, a mandatory licensing requirement  
152 is not established for the performance of these specific  
153 services.

154 Section 2. Paragraph (c) of subsection (3) of section  
155 553.775, Florida Statutes, is amended to read:

156 553.775 Interpretations.—

157 (3) The following procedures may be invoked regarding  
158 interpretations of the Florida Building Code or the Florida  
159 Accessibility Code for Building Construction:

160 (c) The commission shall review decisions of local  
161 building officials and local enforcement agencies regarding  
162 interpretations of the Florida Building Code or the Florida  
163 Accessibility Code for Building Construction after the local  
164 board of appeals has considered the decision, if such board  
165 exists, and if such appeals process is concluded within 25  
166 business days.

167 1. The commission shall coordinate with the Building  
168 Officials Association of Florida, Inc., to designate a panel  
169 composed of seven members to hear requests to review decisions  
170 of local building officials. Five members must be licensed as  
171 building code administrators under part XII of chapter 468, one  
172 member must be licensed as an architect under chapter 481, and  
173 one member must be licensed as an engineer under chapter 471.  
174 Each member must have experience interpreting or enforcing  
175 provisions of the Florida Building Code and the Florida

176 Accessibility Code for Building Construction.

177         2. Requests to review a decision of a local building  
 178 official interpreting provisions of the Florida Building Code or  
 179 the Florida Accessibility Code for Building Construction may be  
 180 initiated by any substantially affected person, including an  
 181 owner or builder subject to a decision of a local building  
 182 official or an association of owners or builders having members  
 183 who are subject to a decision of a local building official. In  
 184 order to initiate review, the substantially affected person must  
 185 file a petition with the commission. The commission shall adopt  
 186 a form for the petition, which shall be published on the  
 187 Building Code Information System. The form shall, at a minimum,  
 188 require the following:

189         a. The name and address of the county or municipality in  
 190 which provisions of the Florida Building Code or the Florida  
 191 Accessibility Code for Building Construction are being  
 192 interpreted.

193         b. The name and address of the local building official who  
 194 has made the interpretation being appealed.

195         c. The name, address, and telephone number of the  
 196 petitioner; the name, address, and telephone number of the  
 197 petitioner's representative, if any; and an explanation of how  
 198 the petitioner's substantial interests are being affected by the  
 199 local interpretation of the Florida Building Code or the Florida  
 200 Accessibility Code for Building Construction.



201           d. A statement of the provisions of the Florida Building  
 202 Code or the Florida Accessibility Code for Building Construction  
 203 which are being interpreted by the local building official.

204           e. A statement of the interpretation given to provisions  
 205 of the Florida Building Code or the Florida Accessibility Code  
 206 for Building Construction by the local building official and the  
 207 manner in which the interpretation was rendered.

208           f. A statement of the interpretation that the petitioner  
 209 contends should be given to the provisions of the Florida  
 210 Building Code or the Florida Accessibility Code for Building  
 211 Construction and a statement supporting the petitioner's  
 212 interpretation.

213           g. Space for the local building official to respond in  
 214 writing. The space shall, at a minimum, require the local  
 215 building official to respond by providing a statement admitting  
 216 or denying the statements contained in the petition and a  
 217 statement of the interpretation of the provisions of the Florida  
 218 Building Code or the Florida Accessibility Code for Building  
 219 Construction which the local jurisdiction or the local building  
 220 official contends is correct, including the basis for the  
 221 interpretation.

222           3. The petitioner shall submit the petition to the local  
 223 building official, who shall place the date of receipt on the  
 224 petition. The local building official shall respond to the  
 225 petition in accordance with the form and shall return the

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226 petition along with his or her response to the petitioner within  
227 5 days after receipt, exclusive of Saturdays, Sundays, and legal  
228 holidays. The petitioner may file the petition with the  
229 commission at any time after the local building official  
230 provides a response. If no response is provided by the local  
231 building official, the petitioner may file the petition with the  
232 commission 10 days after submission of the petition to the local  
233 building official and shall note that the local building  
234 official did not respond.

235 4. Upon receipt of a petition that meets the requirements  
236 of subparagraph 2., the commission shall immediately provide  
237 copies of the petition to the panel, and the commission shall  
238 publish the petition, including any response submitted by the  
239 local building official, on the Building Code Information System  
240 in a manner that allows interested persons to address the issues  
241 by posting comments.

242 5. The panel shall conduct proceedings as necessary to  
243 resolve the issues; shall give due regard to the petitions, the  
244 response, and to comments posed on the Building Code Information  
245 System; and shall issue an interpretation regarding the  
246 provisions of the Florida Building Code or the Florida  
247 Accessibility Code for Building Construction within 21 days  
248 after the filing of the petition. The panel shall render a  
249 determination based upon the Florida Building Code or the  
250 Florida Accessibility Code for Building Construction or, if the

251 code is ambiguous, the intent of the code. The panel's  
252 interpretation shall be provided to the commission, which shall  
253 publish the interpretation on the Building Code Information  
254 System and in the Florida Administrative Register. The  
255 interpretation shall be considered an interpretation entered by  
256 the commission, and shall be binding upon the parties and upon  
257 all jurisdictions subject to the Florida Building Code or the  
258 Florida Accessibility Code for Building Construction, unless it  
259 is superseded by a declaratory statement issued by the Florida  
260 Building Commission or by a final order entered after an appeal  
261 proceeding conducted in accordance with subparagraph 7. The  
262 prevailing party is entitled to the recuperation of all attorney  
263 fees accrued from the losing party.

264 6. It is the intent of the Legislature that review  
265 proceedings be completed within 21 days after the date that a  
266 petition seeking review is filed with the commission, and the  
267 time periods set forth in this paragraph may be waived only upon  
268 consent of all parties.

269 7. Any substantially affected person may appeal an  
270 interpretation rendered by the panel by filing a petition with  
271 the commission. Such appeals shall be initiated in accordance  
272 with chapter 120 and the uniform rules of procedure and must be  
273 filed within 30 days after publication of the interpretation on  
274 the Building Code Information System or in the Florida  
275 Administrative Register. Hearings shall be conducted pursuant to

276 chapter 120 and the uniform rules of procedure. Decisions of the  
 277 commission are subject to judicial review pursuant to s. 120.68.  
 278 The final order of the commission is binding upon the parties  
 279 and upon all jurisdictions subject to the Florida Building Code  
 280 or the Florida Accessibility Code for Building Construction.

281 8. The burden of proof in any proceeding initiated in  
 282 accordance with subparagraph 7. is on the party who initiated  
 283 the appeal.

284 9. In any review proceeding initiated in accordance with  
 285 this paragraph, including any proceeding initiated in accordance  
 286 with subparagraph 7., the fact that an owner or builder has  
 287 proceeded with construction may not be grounds for determining  
 288 an issue to be moot if the issue is one that is likely to arise  
 289 in the future.

290  
 291 This paragraph provides the exclusive remedy for addressing  
 292 requests to review local interpretations of the Florida Building  
 293 Code or the Florida Accessibility Code for Building Construction  
 294 and appeals from review proceedings.

295 Section 3. Section 559.956, Florida Statutes, is amended  
 296 to read:

297 559.956 ~~Registrations and Transfers of heating,~~  
 298 ~~ventilation, and air-conditioning system manufacturer~~  
 299 ~~warranties; required contractor documentation.-~~

300 (1) If a residential real property that includes a

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301 heating, ventilation, and air-conditioning (HVAC) system as a  
302 fixture to the property is conveyed to a new owner on or after  
303 July 1, 2024, a manufacturer's warranty in effect on that system  
304 or a component of that system:

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

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

308 (2) A warrantor continues to be obligated under the terms  
309 of a manufacturer's warranty agreement for a warranty  
310 transferred under this section and may not charge a fee for the  
311 transfer of the warranty.

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

314 (4) A manufacturer's warranty of a HVAC system or a  
315 component of the system may not be in any way conditioned upon  
316 the product registration.

317 (5) This section applies if:

318 (a) A sale of a residential property that includes an HVAC  
319 system as a fixture to the property occurs on or after July 1,  
320 2024.

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

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

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326 ~~(a) Installs the new HVAC system; and~~  
327 ~~(b) Provides the manufacturer of the HVAC system with the~~  
328 ~~date of the issuance of the certificate of occupancy for~~  
329 ~~installations relating to new construction, or the serial number~~  
330 ~~of the HVAC system for installations relating to existing~~  
331 ~~construction, as applicable.~~

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

336 Section 4. Section 559.957, Florida Statutes, is created  
337 to read:

338 559.957 Registration of heating, ventilation, and air-  
339 conditioning systems; prohibition against warranty conditioned  
340 upon registration.-

341 (1) The full length of a manufacturer's, distributor's, or  
342 retailer's warranty of a heating, ventilation, and air-  
343 conditioning (HVAC) system or any component of the system is  
344 effective in this state on the date of installation if installed  
345 by a contractor licensed under part I of chapter 489.

346 (2) If a manufacturer, distributor, or retailer of a HVAC  
347 system or any component of the system provides a warranty or  
348 product registration card or form, or an electronic, online  
349 warranty or product registration form, the card or form must  
350 contain the following information, displayed in a clear and

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351 conspicuous manner:

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

353 (b) Failure to complete and return the card or form does  
354 not diminish any warranty rights or decrease the warranty  
355 length.

356 (3) Any offered manufacturer's, distributor's, or  
357 retailer's warranty of a HVAC system or a component of the  
358 system may not be in any way conditioned upon the product  
359 registration.

360 Section 5. This act shall take effect July 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>	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Maggard offered the following:

**Amendment (with title amendment)**

Remove lines 154-294

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**T I T L E   A M E N D M E N T**

Remove lines 4-8 and insert:

revising definitions; amending s. 559.956,



Amendment No. 2

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>	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Maggard offered the following:

**Amendment**

Remove lines 64-140 and insert:

6 fuses for dedicated HVAC circuits with proper use of a circuit  
 7 breaker lock; to install, disconnect, and reconnect low voltage  
 8 heating, ventilating, and air-conditioning control wiring; and  
 9 to install a condensate drain from an air-conditioning unit to  
 10 an existing safe waste or other approved disposal other than a  
 11 direct connection to a sanitary system. The scope of work for  
 12 such contractor also includes any excavation work incidental  
 13 thereto, but does not include any work such as liquefied  
 14 petroleum or natural gas fuel lines within buildings, except for  
 15 disconnecting or reconnecting changeouts of liquefied petroleum  
 16 or natural gas appliances within buildings; potable water lines

## Amendment No. 2

17 or connections thereto; sanitary sewer lines; swimming pool  
18 piping and filters; or electrical power wiring. A Class A air-  
19 conditioning contractor may test and evaluate central air-  
20 conditioning, refrigeration, heating, and ventilating systems,  
21 including duct work; however, a mandatory licensing requirement  
22 is not established for the performance of these specific  
23 services.

24 (g) "Class B air-conditioning contractor" means a  
25 contractor whose services are limited to 25 tons of cooling and  
26 500,000 Btu of heating in any one system in the execution of  
27 contracts requiring the experience, knowledge, and skill to  
28 install, maintain, repair, fabricate, alter, extend, or design,  
29 if not prohibited by law, central air-conditioning,  
30 refrigeration, heating, and ventilating systems, including duct  
31 work in connection with a complete system only to the extent  
32 such duct work is performed by the contractor as necessary to  
33 complete an air-distribution system being installed under this  
34 classification, and any duct cleaning and equipment sanitizing  
35 that requires at least a partial disassembling of the system; to  
36 install, maintain, repair, fabricate, alter, extend, or design,  
37 if not prohibited by law, piping and insulation of pipes,  
38 vessels, and ducts; to replace, disconnect, or reconnect power  
39 wiring on the line or load side of the dedicated existing  
40 electrical disconnect switch on single phase electrical systems;  
41 to repair or replace power wiring, disconnects, breakers, or

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42 fuses for dedicated HVAC circuits with proper use of a circuit  
43 breaker lock; to install, disconnect, and reconnect low voltage  
44 heating, ventilating, and air-conditioning control wiring; and  
45 to install a condensate drain from an air-conditioning unit to  
46 an existing safe waste or other approved disposal other than a  
47 direct connection to a sanitary system. The scope of work for  
48 such contractor also includes any excavation work incidental  
49 thereto, but does not include any work such as liquefied  
50 petroleum or natural gas fuel lines within buildings, except for  
51 disconnecting or reconnecting changeouts of liquefied petroleum  
52 or natural gas appliances within buildings; potable water lines  
53 or connections thereto; sanitary sewer lines; swimming pool  
54 piping and filters; or electrical power wiring. A Class B air-  
55 conditioning contractor may test and evaluate central air-  
56 conditioning, refrigeration, heating, and ventilating systems,  
57 including duct work; however, a mandatory licensing requirement  
58 is not established for the performance of these specific  
59 services.

60 (i) "Mechanical contractor" means a contractor whose  
61 services are unlimited in the execution of contracts requiring  
62 the experience, knowledge, and skill to install, maintain,  
63 repair, fabricate, alter, extend, or design, if not prohibited  
64 by law, central air-conditioning, refrigeration, heating, and  
65 ventilating systems, including duct work in connection with a  
66 complete system if such duct work is performed by the contractor

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67 as necessary to complete an air-distribution system, boiler and  
68 unfired pressure vessel systems, lift station equipment and  
69 piping, and all appurtenances, apparatus, or equipment used in  
70 connection therewith, and any duct cleaning and equipment  
71 sanitizing that requires at least a partial disassembling of the  
72 system; to install, maintain, repair, fabricate, alter, extend,  
73 or design, if not prohibited by law, piping, insulation of  
74 pipes, vessels and ducts, pressure and process piping, pneumatic  
75 control piping, gasoline tanks and pump installations and piping  
76 for same, standpipes, air piping, vacuum line piping, oxygen  
77 lines, nitrous oxide piping, ink and chemical lines, fuel  
78 transmission lines, liquefied petroleum gas lines within  
79 buildings, and natural gas fuel lines within buildings; to  
80 replace, disconnect, or reconnect power wiring on the line or  
81 load side of the dedicated existing electrical disconnect switch  
82 on single phase electrical systems; to repair or replace power  
83 wiring, disconnects, breakers, or fuses for dedicated HVAC  
84 circuits with proper use of a circuit breaker lock; to install,  
85 disconnect, and reconnect low voltage



## 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		Mathews	Jones
2) Judiciary Committee			

### 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.<sup>1</sup> Next, the court must distribute the marital assets and liabilities between the parties.<sup>2</sup> 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.<sup>3</sup> 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 agreement<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

##### *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;<sup>7</sup>
- Interspousal gifts during the marriage;<sup>8</sup>
- 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;

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<sup>1</sup> S. 61.075(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 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).

<sup>5</sup> S. 61.075(8), F.S.

<sup>6</sup> S. 61.075(10)(a), F.S.

<sup>7</sup> 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).

<sup>8</sup> 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:<sup>9</sup>

- 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 motion<sup>10</sup> 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.<sup>11</sup> "Good cause" means extraordinary circumstances that require an interim partial distribution;<sup>12</sup> 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.<sup>13</sup>

<sup>9</sup> S. 61.075(1)(a)-(j), F.S.

<sup>10</sup> 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).

<sup>11</sup> S. 61.075(5), F.S.

<sup>12</sup> S. 61.075(5)(d), F.S.

<sup>13</sup> 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.”<sup>14</sup> Goodwill may also be thought of as the tendency of clients or customers to return to the business and recommend the business to others.<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> 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 previously 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.

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

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

<sup>15</sup> See *Thompson*, 576 So. 2d at 269.

<sup>16</sup> See *id.* at 270.

<sup>17</sup> S. 689.01(1), F.S.

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 value<sup>18</sup> 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, under the bill, 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.

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.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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<sup>18</sup> 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.

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 entirety in accordance with this section.

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 569 Suits Against the Government

**SPONSOR(S):** Civil Justice Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Mathews	Jones

**SUMMARY ANALYSIS**

Sovereign immunity is a principle under which a government cannot be sued without its consent. Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In turn, s. 768.28(1), F.S., allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct.

However, section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident. Although a court may enter a judgment in excess of these caps, it is impossible, absent a claim bill passed by the Legislature, for a claimant to collect more than the caps allow. Further, section 768.28(6), F.S., imposes pre-suit requirements upon a claimant seeking to recover against a state or local government entity, allowing a general six-month period for the government entity to review and dispose of a claim before the claimant may file a lawsuit.

PCS for HB 569:

- Abolishes the common law doctrine of “home venue privilege” in relation to negligence suits against the state.
- Increases the sovereign immunity caps for damages against state and local government entities to \$400,000 per individual and \$600,000 per incident.
- Allows a local government to settle a claim and pay the settled amount without the need for a claim bill.
- Prohibits an insurance policy from conditioning the payment of benefits on the enactment of a claim bill.
- Requires the Department of Financial Services (DFS) to automatically adjust the statutory caps in accordance with the Consumer Price Index (CPI) on an annual basis, and provides that the cap in effect when a final judgment is entered controls.
- Reduces the statute of limitations for filing a claim against a government entity for claims based in negligence from four to two years.
- Provides a fifteen-year statute of limitations for filing a claim against a government entity for sexual battery of a victim under the age of 16 from the time the victim has reached the age of majority.
- Reduces the time period by which a claimant must provide written notice of the claim to the state, agency, or subdivision in certain types of cases.
- Reduces from six months to four months the general pre-suit statutory time period for a government entity to review and dispose of a claim.
- Applies to all claims arising on or after October 1, 2024.

The bill will likely have an indeterminate, significant negative fiscal impact on state and local governments. The increased costs will affect the State Risk Management Trust Fund and the budgets of local governments and agencies.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Common Law Doctrine of Home Venue Privilege

Common law is “law” that is derived from judicial decisions instead of from statutes.<sup>1</sup> Under the common law in Florida, the “home venue privilege” provides that venue for civil actions brought against the state or one of its agencies or subdivisions, absent waiver or exception, is proper in the county where the state, agency, or subdivision maintains its principal headquarters.<sup>2</sup> As such, absent waiver or exception, an action brought against a state agency in a county other than that of its official residence may be dismissed, severed, or transferred to the proper venue.<sup>3</sup>

##### Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.<sup>4</sup> Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with article X, section 13 of the Florida Constitution, Florida law allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment.<sup>5</sup> This liability exists only where a private person would be liable for the same conduct. The waiver of sovereign immunity provided under section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment.”<sup>6</sup>

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident.<sup>7</sup> Although a court may enter an excess judgment, absent a claim bill passed by the Legislature, a claimant may not collect more than the caps provide.<sup>8</sup>

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>9</sup> A government entity is not liable for any damages resulting for actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.<sup>10</sup>

##### Presuit Procedures for a Claim Against the Government

Before a claimant files a lawsuit against a government entity, the claimant generally must present the claim in writing to the government entity within a time period prescribed by law, which is generally three years.<sup>11</sup> If the claim is brought against the state, the claimant must also present the claim to the Department of Financial Services (DFS). The government entity generally then has six months to

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<sup>1</sup> Legal Information Institute, *Common Law*, [https://www.law.cornell.edu/wex/common\\_law](https://www.law.cornell.edu/wex/common_law) (last visited Dec. 7, 2023).

<sup>2</sup> 56 Fla. Jur. 2d Venue § 43; *Bush v. State*, 945 So. 2d 1207 (Fla. 2006)

<sup>3</sup> 56 Fla. Jur. 2d Venue § 43.

<sup>4</sup> *Sovereign immunity*, Legal Information Institute, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited Dec. 7, 2023).

<sup>5</sup> S. 768.28(1), F.S.

<sup>6</sup> *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.) (internal punctuation omitted).

<sup>7</sup> S. 768.28(5), F.S.

<sup>8</sup> *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

<sup>9</sup> S. 768.28(9)(a), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> See s. 768.28(6)(a), F.S.

review the claim. If the government entity does not dispose of the claim within that six-month period, the claimant may generally proceed with the lawsuit.<sup>12</sup>

### Damages

Generally, damages are of two kinds: compensatory and punitive.<sup>13</sup> Compensatory damages are awarded as compensation for the loss sustained to make the party whole, insofar as that is possible.<sup>14</sup> They arise from actual and indirect pecuniary loss.<sup>15</sup> Section 768.28, F.S., does not allow for the recovery of punitive damages, but only for the recovery of compensatory damages.

The liability caps in s. 768.28(5), F.S., of \$200,000 per person and \$300,000 per incident, apply to “all of the elements of the monetary award to a plaintiff against a sovereignly immune entity.”<sup>16</sup> In other words, a plaintiff’s entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S.

### Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.<sup>17</sup> Such obligations typically arise from the negligence of officers or employees of the State or a local governmental entity.<sup>18</sup> Legislative claim bills are typically pursued after procurement of a judgment or settlement in an action at law.<sup>19</sup> The amount awarded is based on the Legislature’s concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.<sup>20</sup> Unlike civil judgments, claim bills are not obtainable by right upon the claimant’s proof of his entitlement; rather, they are granted as a matter of legislative grace.<sup>21</sup>

Once a legislative claim bill is formally introduced, a special master usually conducts a quasi-judicial hearing.<sup>22</sup> This hearing may resemble a trial during which the claimant offers testimony as well as documentary and physical evidence necessary to establish the claim. Trial records may be substituted for witness testimony. Testifying witnesses are sworn and subject to cross-examination.<sup>23</sup> A respondent may present a defense to contest the claim, and the special master may then prepare a report with an advisory recommendation to the Legislature if the bill is placed on an agenda.<sup>24</sup>

Alternatively, a government entity may, without the need for a claim bill, settle a claim or pay a judgment against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of its insurance coverage.<sup>25</sup>

### Statute of Limitations for Sexual Battery on a Person Under 16

Section 95.11, F.S., provides statutes of limitation for various types of civil actions. In 2010, the Legislature amended s. 95.11 to remove any statute of limitations applying to a civil action against a private entity for sexual battery if the victim was under 16 at the time of the crime.<sup>26</sup> The Legislature

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<sup>12</sup> See s. 768.28(6)(d), F.S.

<sup>13</sup> 22 Am. Jur. 2d s. 1 at 13 (1965).

<sup>14</sup> *Fisher v. City of Miami*, 172 So. 2d 455 (Fla. 1965).

<sup>15</sup> *Margaret Ann Supermarkets, Inc. v. Dent*, 64 So. 2d 291 (Fla. 1953).

<sup>16</sup> *Gallagher v. Manatee Cty.*, 927 So. 2d 914, 918 (Fla. 2d DCA 2006).

<sup>17</sup> *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007)

<sup>18</sup> *Id.*

<sup>19</sup> *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

<sup>20</sup> *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).

<sup>21</sup> *United Servs. Auto. Ass’n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

<sup>22</sup> *Wagner*, 960 So. 2d at 788 (citing Kahn at 26).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> S. 768.28(5), F.S.

<sup>26</sup> Ch. 2010-54, s. 1, Laws of Fla.; s. 95.11(9), F.S.

provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.<sup>27</sup>

## **Effect of Proposed Changes**

### Home Venue Privilege

PCS for HB 569 amends s. 47.011, F.S., to abolish the common law doctrine of home venue privilege with respect to suits against the state. Therefore, the standard venue provisions would apply to claims against the state, and venue would be proper in the county where the defendant resides, the county where the cause of action accrued, or the county in which the property in litigation is located.

### Statutory Caps

The bill also amends s. 768.28, F.S., to increase the statutory caps on judgments against the state or an agency or subdivision thereof from \$200,000 per person and \$300,000 per incident to \$400,000 per person and \$600,000 per incident. As such, a judgment against the state could be paid without action by the Legislature if it does not exceed \$400,000 per person or \$600,000 per incident.

Further, the bill authorizes a subdivision of the state to agree to settle a claim made or judgment rendered against it in excess of the statutory limits without further action by the Legislature. Thus, a county or municipality could agree to pay a claim that exceeds the \$400,000/\$600,000 caps without the need for a claim bill. However, a claimant suing the state or an agency of the state would still have to seek legislative approval in the form of a claim bill for any judgment exceeding the statutory caps.

The bill clarifies that when determining the liability limits for a claim, the applicable caps are those that are in effect on the date a final judgment is entered in the matter. The bill also prohibits an insurance policy from conditioning the payment of benefits, in whole or in part, on the enactment of a claim bill.

### Annual Adjustment

The bill requires the Department of Financial Services (DFS) to annually adjust the caps to reflect the changes in the Consumer Price Index (CPI) for the Southeast as calculated by the United States Department of Labor. Such CPI adjustment must be done beginning July 1, 2025, and continuing each year thereafter.

### Timeframes for Filing an Action

The bill imposes various statutes of limitations on the ability to file a claim against the state or an agency or subdivision thereof. As such, a claim against the state or an agency or subdivision of the state is forever barred unless civil action is commenced as follows:

- For claims based on negligence: within two years.<sup>28</sup>
- For claims based on contribution: within the limitations established in s. 768.31(4), F.S.
- For claims based on medical malpractice or wrongful death: within the limitations established in s. 95.11(4), F.S.
- For claims based on sexual battery on a victim under 16: within 15 years after the victim has reached the age of majority, except for an action that would have been time-barred on or before July 1, 2010.
- For any other claim: within four years.

The bill decreases the allotted time for a claimant to present the required written notice of the claim to the appropriate agency from three years to 18 months. Similarly, the bill decreases the time period in which a claimant must present written notice of a claim for wrongful death from two years to 18 months.

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<sup>27</sup> *Id.* (“This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010”).

<sup>28</sup> This two-year period is the same as the statute of limitations for bringing a negligence claim against a private party. See s. 95.11(4)(a), F.S.

However, if the claim is based on a sexual battery of a victim under the age of 16, in violation of s. 794.011, the claimant must present written notice of the claim within 13 years after the claimant reaches the age of majority. However, the bill does not resuscitate any such claims which would have been time-barred as of July 1, 2010.

The bill also decreases from six months to four months the time period in which DFS or the appropriate agency must make final disposition of a claim. As such, the responding agency must make final disposition of a claim within four months of such claim being filed or it is deemed a final denial. However, the bill does not change the time period by which an agency must make a final disposition of a claim for medical malpractice or wrongful death. As such, a final disposition for a claim made for medical malpractice or wrongful death must still be made within 90 days from the date of filing or it is deemed a final denial of the claim.

### Applicability and Conforming Changes

The bill amends a number of statutory sections for the purpose of incorporating the changes made by the language of the bill and provides that the provisions of the bill are applicable to claims accruing on or after October 1, 2024.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 47.011, F.S., relating to where actions may be begun.

**Section 2:** Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.

**Section 3:** Reenacts provisions within the Florida Statutes for the purpose of incorporating the amendments made by the act.

**Section 4:** Provides that the act applies to claims accruing on or after October 1, 2024.

**Section 5:** 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:

By abolishing the Home Venue Privilege, representatives of the state government may be required to travel farther and more frequently to assist in litigation against the state. This may increase expenditures.

*See also* Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

The cost resulting from the change to a local government's ability to settle claims without regard to any statutory limit on damages under s. 768.28, F.S., is indeterminate. However, local government expenditures may increase for settlements, awards, and other legal costs.

*See also* Fiscal Comments.



**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may enable more individuals who have tort claims against the state or one of its agencies or subdivisions to receive larger payments without the need to pursue a claim bill. The ability to collect larger settlements or judgments against government entities may also serve as an incentive for private attorneys to represent claimants in these matters. However, the bill may reduce government services to the public in proportion to additional amounts paid to satisfy tort claims.

**D. FISCAL COMMENTS:**

By increasing the sovereign immunity cap, the bill increases the possibility that the state and its agencies and subdivisions will spend more of their resources to satisfy tort claims. The provision of larger payments in satisfaction of tort claims, however, may also reduce the demand for other government services that would have otherwise been necessary for claimants.

By reducing the statute of limitations for suits against the government arising in negligence, the bill may reduce the number of cases initiated and the potential damages sought by claimants from the government. Further, by reducing the pre-suit time period for a government entity or DFS to review and dispose of a claim against the state, the bill may affect the pre-suit settlement process.

By increasing the statute of limitations for sexual battery on a victim under 16, the bill may increase the number of claims against the government for such sexual battery. The bill may reduce the workload of the Legislature by reducing the number of claim bills filed but may also reduce the legislative oversight of claims against local government entities.

Further, by automatically adjusting the caps on an annual basis to reflect the CPI, the bill will have a negative fiscal impact on both state and local governments. The annual adjustment will perpetually increase the caps, requiring the state and local governments to continuously pay out increased amounts. On the other hand, the annual CPI adjustment will positively increase the amount a private citizen is able to recover in future years.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**



26 | claims against the state or one of its agencies or  
 27 | subdivisions and exceptions thereto; reenacting ss.  
 28 | 45.061, 110.504, 111.071, 125.01015, 163.01, 190.043,  
 29 | 213.015, 252.51, 252.89, 252.944, 260.0125, 284.31,  
 30 | 284.38, 322.13, 337.19, 341.302, 351.03, 373.1395,  
 31 | 375.251, 381.0056, 393.075, 394.9085, 395.1055,  
 32 | 403.706, 409.175, 409.993, 420.504, 420.507, 455.221,  
 33 | 455.32, 456.009, 456.076, 471.038, 472.006, 497.167,  
 34 | 513.118, 548.046, 556.106, 589.19, 627.7491, 723.0611,  
 35 | 760.11, 766.1115, 766.112, 768.1355, 768.1382,  
 36 | 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33,  
 37 | 1002.333, 1002.34, 1002.351, 1002.37, 1002.55,  
 38 | 1002.83, 1002.88, 1006.24, and 1006.261, F.S., to  
 39 | incorporate the amendments made to s. 768.28, F.S., in  
 40 | references thereto; providing applicability; providing  
 41 | an effective date.

42 |  
 43 | Be It Enacted by the Legislature of the State of Florida:

44 |  
 45 | Section 1. Section 47.011, Florida Statutes, is amended to  
 46 | read:

47 | 47.011 Where actions may be begun.—

48 | (1) Actions shall be brought only in the county where the  
 49 | defendant resides, where the cause of action accrued, or where  
 50 | the property in litigation is located. This section shall not

51 apply to actions against nonresidents.

52 (2) The common-law doctrine of home venue privilege is  
 53 abolished with respect to civil actions brought against the  
 54 state. This subsection does not affect any venue provision  
 55 otherwise established in law.

56 Section 2. Subsection (5), paragraphs (a) and (d) of  
 57 subsection (6), and subsection (14) of section 768.28, Florida  
 58 Statutes, are amended to read:

59 768.28 Waiver of sovereign immunity in tort actions;  
 60 recovery limits; civil liability for damages caused during a  
 61 riot; limitation on attorney fees; statute of limitations;  
 62 exclusions; indemnification; risk management programs.—

63 (5)(a) The state and its agencies and subdivisions shall  
 64 be liable for tort claims in the same manner and to the same  
 65 extent as a private individual under like circumstances, but  
 66 liability shall not include punitive damages or interest for the  
 67 period before judgment. Neither the state nor its agencies or  
 68 subdivisions shall be liable to pay a claim or a judgment by any  
 69 one person which exceeds the sum of \$400,000 ~~\$200,000~~ or any  
 70 claim or judgment, or portions thereof, which, when totaled with  
 71 all other claims or judgments paid by the state or its agencies  
 72 or subdivisions arising out of the same incident or occurrence,  
 73 exceeds the sum of \$600,000 ~~\$300,000~~. However, a judgment or  
 74 judgments may be claimed and rendered in excess of these amounts  
 75 ~~and may be settled~~ and paid pursuant to this act up to \$400,000

76 | or \$600,000 ~~\$200,000 or \$300,000~~, as the case may be; and that  
 77 | portion of the judgment that exceeds these amounts may be  
 78 | reported to the Legislature, and ~~but~~ may be paid in part or in  
 79 | whole ~~only~~ by further act of the Legislature.

80 | (b) Notwithstanding the limited waiver of sovereign  
 81 | immunity provided in paragraph (a):

82 | 1. ~~herein,~~ The state or an agency ~~or subdivision~~ thereof  
 83 | may agree, within the limits of insurance coverage provided, to  
 84 | settle a claim made or a judgment rendered against it in excess  
 85 | of the waiver provided in paragraph (a) without further action  
 86 | by the Legislature.

87 | 2. A subdivision of the state may agree to settle a claim  
 88 | made or a judgment rendered against it in excess of the waiver  
 89 | provided in paragraph (a) without further action by the  
 90 | Legislature.

91 |  
 92 | However, ~~but~~ the state or an agency or subdivision thereof shall  
 93 | not be deemed to have waived any defense of sovereign immunity  
 94 | or to have increased the limits of its liability as a result of  
 95 | its obtaining insurance coverage for tortious acts in excess of  
 96 | the ~~\$200,000 or \$300,000~~ waiver provided in paragraph (a). An  
 97 | insurance policy may not condition the payment of benefits, in  
 98 | whole or in part, on the enactment of a claim bill ~~above~~.

99 | (c) The limitations of liability set forth in this  
 100 | subsection ~~shall~~ apply to the state and its agencies and

101 subdivisions whether or not the state or its agencies or  
 102 subdivisions possessed sovereign immunity before July 1, 1974.

103 ~~(d)-(b)~~ A municipality has a duty to allow the municipal  
 104 law enforcement agency to respond appropriately to protect  
 105 persons and property during a riot or an unlawful assembly based  
 106 on the availability of adequate equipment to its municipal law  
 107 enforcement officers and relevant state and federal laws. If the  
 108 governing body of a municipality or a person authorized by the  
 109 governing body of the municipality breaches that duty, the  
 110 municipality is civilly liable for any damages, including  
 111 damages arising from personal injury, wrongful death, or  
 112 property damages proximately caused by the municipality's breach  
 113 of duty. The sovereign immunity recovery limits in paragraph (a)  
 114 do not apply to an action under this paragraph.

115 (e) When determining liability limits for a claim, the  
 116 limitations of liability in effect on the date a final judgment  
 117 is entered shall apply to the claim.

118 (f) Beginning July 1, 2025, and every July 1 thereafter,  
 119 the Department of Financial Services shall adjust the  
 120 limitations of liability in this subsection to reflect changes  
 121 in the Consumer Price Index for the Southeast or a successor  
 122 index as calculated by the United States Department of Labor.

123 (6) (a) An action may not be instituted on a claim against  
 124 the state or one of its agencies or subdivisions unless the  
 125 claimant presents the claim in writing to the appropriate

126 agency, and also, except as to any claim against a municipality,  
 127 county, or the Florida Space Authority, presents such claim in  
 128 writing to the Department of Financial Services, within 18  
 129 months ~~3 years~~ after such claim accrues and the Department of  
 130 Financial Services or the appropriate agency denies the claim in  
 131 writing; except that, if:

132 1. Such claim is for contribution pursuant to s. 768.31,  
 133 it must be so presented within 6 months after the judgment  
 134 against the tortfeasor seeking contribution has become final by  
 135 lapse of time for appeal or after appellate review or, if there  
 136 is no such judgment, within 6 months after the tortfeasor  
 137 seeking contribution has either discharged the common liability  
 138 by payment or agreed, while the action is pending against her or  
 139 him, to discharge the common liability; or

140 2. Such action arises from a violation of s. 794.011  
 141 involving a victim who was younger than the age of 16 at the  
 142 time of the act, the claimant must present the claim in writing  
 143 within 13 years after the victim reaches the age of majority.  
 144 This subparagraph applies to any such action other than one  
 145 which would have been time barred on or before July 1, 2010,  
 146 under s. 95.11(9) is for wrongful death, the claimant must  
 147 present the claim in writing to the Department of Financial  
 148 Services within 2 years after the claim accrues.

149 (d) For purposes of this section, complete, accurate, and  
 150 timely compliance with the requirements of paragraph (c) shall

151 occur prior to settlement payment, close of discovery or  
 152 commencement of trial, whichever is sooner; provided the ability  
 153 to plead setoff is not precluded by the delay. This setoff shall  
 154 apply only against that part of the settlement or judgment  
 155 payable to the claimant, minus claimant's reasonable attorney's  
 156 fees and costs. Incomplete or inaccurate disclosure of unpaid  
 157 adjudicated claims due the state, its agency, officer, or  
 158 subdivision, may be excused by the court upon a showing by the  
 159 preponderance of the evidence of the claimant's lack of  
 160 knowledge of an adjudicated claim and reasonable inquiry by, or  
 161 on behalf of, the claimant to obtain the information from public  
 162 records. Unless the appropriate agency had actual notice of the  
 163 information required to be disclosed by paragraph (c) in time to  
 164 assert a setoff, an unexcused failure to disclose shall, upon  
 165 hearing and order of court, cause the claimant to be liable for  
 166 double the original undisclosed judgment and, upon further  
 167 motion, the court shall enter judgment for the agency in that  
 168 amount. Except as provided otherwise in this subsection, the  
 169 failure of the Department of Financial Services or the  
 170 appropriate agency to make final disposition of a claim within 4  
 171 ~~6~~ months after it is filed shall be deemed a final denial of the  
 172 claim for purposes of this section. For purposes of this  
 173 subsection, in medical malpractice actions and in wrongful death  
 174 actions, the failure of the Department of Financial Services or  
 175 the appropriate agency to make final disposition of a claim



176 within 90 days after it is filed shall be deemed a final denial  
 177 of the claim. The statute of limitations for medical malpractice  
 178 actions and wrongful death actions is tolled for the period of  
 179 time taken by the Department of Financial Services or the  
 180 appropriate agency to deny the claim. The provisions of this  
 181 subsection do not apply to such claims as may be asserted by  
 182 counterclaim pursuant to s. 768.14.

183 (14) Every claim against the state or one of its agencies  
 184 or subdivisions for damages for a negligent or wrongful act or  
 185 omission pursuant to this section shall be forever barred unless  
 186 the civil action is commenced by filing a complaint in the court  
 187 of appropriate jurisdiction:

188 (a) Within 2 4 years for an action founded on negligence.

189 (b) Within the limitations provided in s. 768.31(4) for an  
 190 action for contribution.

191 (c) Within the limitations provided in s. 95.11(4) for an  
 192 action for damages arising from medical malpractice or wrongful  
 193 death.

194 (d) Within 15 years after the victim reaches the age of  
 195 majority for any action arising from acts constituting a  
 196 violation of s. 794.011 involving a victim who was younger than  
 197 the age of 16 at the time of the act. This paragraph applies to  
 198 any such action other than one which would have been time barred  
 199 on or before July 1, 2010, under s. 95.11(9).

200 (e) Within 4 years for any other action not specified in

201 ~~this subsection after such claim accrues; except that an action~~  
 202 ~~for contribution must be commenced within the limitations~~  
 203 ~~provided in s. 768.31(4), and an action for damages arising from~~  
 204 ~~medical malpractice or wrongful death must be commenced within~~  
 205 ~~the limitations for such actions in s. 95.11(4).~~

206 Section 3. Sections 45.061, 110.504, 111.071, 125.01015,  
 207 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125,  
 208 284.31, 284.38, 322.13, 337.19, 341.302, 351.03, 373.1395,  
 209 375.251, 381.0056, 393.075, 394.9085, 395.1055, 403.706,  
 210 409.175, 409.993, 420.504, 420.507, 455.221, 455.32, 456.009,  
 211 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,  
 212 589.19, 627.7491, 723.0611, 760.11, 766.1115, 766.112, 768.1355,  
 213 768.1382, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33,  
 214 1002.333, 1002.34, 1002.351, 1002.37, 1002.55, 1002.83, 1002.88,  
 215 1006.24, and 1006.261, Florida Statutes, are reenacted for the  
 216 purpose of incorporating the amendments made by this act to s.  
 217 768.28, Florida Statutes, in references thereto.

218 Section 4. This act applies to claims accruing on or after  
 219 October 1, 2024.

220 Section 5. This act shall take effect October 1, 2024.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 619 Sovereign Immunity for Professional Firms

**SPONSOR(S):** Tuck

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Transportation & Modals Subcommittee			
3) Judiciary Committee			

**SUMMARY ANALYSIS**

“Sovereign immunity” is a doctrine, derived from English common law, which bars lawsuits against the government absent the government’s consent to be sued. Exceptions to this general principle include a voluntary waiver of sovereign immunity and when the entity is not an “arm of the state” – that is, when sovereign immunity is inapplicable in the first place because it is not technically the state being sued.

The sovereign immunity doctrine bars lawsuits against the State of Florida in state or federal court, unless an exception applies. However, article X, section 13 of the Florida Constitution authorizes the Legislature to waive sovereign immunity “as to all liabilities now existing or hereafter originating.” In accordance with this delegation of power, the Legislature has waived sovereign immunity in several areas, including, to a degree, for tort lawsuits as specified s. 768.28(1), F.S. Florida law also extends state sovereign immunity protections in such tort lawsuits to certain private entities by designating them as “agents of the state.” For example, s. 768.28(10)(e), F.S., specifies that, for purposes of s. 768.28(1), F.S., a professional firm that provides specified monitoring and inspection services, or any of the firm’s employees performing such services, is an agent of the Florida Department of Transportation (“FDOT”) while acting within the scope of the firm’s contract.

HB 619 amends s. 768.28(10)(e), F.S., to expand the scope of the sovereign immunity protections granted to a professional firm and its employees under that paragraph. Specifically, the bill provides that a professional firm that provides monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects, or any of the firm’s employees performing such services, is an agent of the state or of its applicable subdivision while acting within the scope of the firm’s contract to ensure that the project is constructed in conformity with the project’s plans, specifications, and contract provisions. Further, the bill specifies that sovereign immunity applies to both a professional firm in direct contract with the state or any of its subdivisions and to a professional firm providing monitoring and inspection services as a consultant to such a professional firm.

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

##### Sovereign Immunity

“Sovereign immunity” is a doctrine which bars lawsuits against the government absent the government’s consent to be sued.<sup>1</sup> The doctrine derives from English common law, under which the King could not be sued on the theories that he could do no wrong, and that there could be no legal rights against the authority that makes the laws upon which the rights depend.<sup>2</sup>

##### *History of State Sovereign Immunity*

The United States Constitution did not expressly incorporate the sovereign immunity doctrine as originally written. Instead, Article III of the United States Constitution extended federal judicial power to “all Cases” involving federal law “in which a State shall be a party” and to “controversies between a State and citizens of another State.” Thus, in 1793, the United States Supreme Court, applying a literal reading of the text of Article III, held that sovereign immunity did not bar a South Carolina citizen from suing the state of Georgia in federal court to recover a Revolutionary War debt.<sup>3</sup>

Within two years of this decision, Congress passed, and the states ratified, the Eleventh Amendment to the United States Constitution to expressly incorporate the sovereign immunity doctrine, as follows:

The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

However, the United States Supreme Court has since moved away from the literal reading of the Constitution applied by the 1793 Court, holding that “sovereign immunity derives not from the Eleventh Amendment but from the structure of the original Constitution itself.”<sup>4</sup> In doing so, the Court recognized the principle that, when the states ratified the United States Constitution, they each retained the sovereign immunity derived from English common law and thus could not generally be sued in either state or federal court.<sup>5</sup> Exceptions to this general principle include:

- An unequivocal, express Congressional abrogation made pursuant to a valid exercise of Congressional power – that is, where Congress passes a law pursuant to a constitutional provision granting Congress the power to abrogate sovereign immunity;<sup>6</sup>
- The *Ex Parte Young* exception, which allows a citizen to sue a state officer in his or her official capacity for prospective injunctive relief in order to end “a continuing violation of federal law”;<sup>7</sup>
- A voluntary waiver of sovereign immunity by the State;<sup>8</sup> and
- A situation where the entity sued is not “an arm of the state” – that is, when sovereign immunity is inapplicable in the first place because it is not technically the state being sued.<sup>9</sup>

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<sup>1</sup> Legal Information Institute, *Sovereign Immunity*, [https://www.law.cornell.edu/wex/sovereign\\_immunity](https://www.law.cornell.edu/wex/sovereign_immunity) (last visited Jan. 8, 2024).

<sup>2</sup> Miles McCann, Visiting Fellow, National Association of Attorneys General, *State Sovereign Immunity*, Nov. 11, 2017, <https://www.naag.org/attorney-general-journal/state-sovereign-immunity/> (last visited Jan. 8, 2024).

<sup>3</sup> *Chisolm v. Georgia*, 2 U.S. 419 (1793).

<sup>4</sup> *Alden v. Maine*, 527 U.S. 706, 728 (1999).

<sup>5</sup> *Id.* at 712 (“We hold that the powers delegated to Congress under Article I of the United States Constitution do not include the power to subject nonconsenting States to private suits for damages in state court.”).

<sup>6</sup> *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44 (1996).

<sup>7</sup> *Ex Parte Young*, 209 U.S. 123 (1908).

<sup>8</sup> *Clark v. Barnard*, 108 U.S. 436, 447-448 (1883) (Holding that sovereign immunity is a “personal privilege” that a state may waive “at [its] pleasure,” by state statute, state constitutional provision, or accepting federal funds through a federal program.).

<sup>9</sup> No comprehensive test exists for determining whether an entity is an “arm of the state.” However, the United States Supreme Court directs courts to at least examine the “relationship between the [state] and the entity in question” and “the essential nature and effect of

## Sovereign Immunity in Florida

Since its days as a United States Territory, Florida has declared in force within its jurisdiction those English common law doctrines which are of a general nature, if such doctrines are consistent with the United States Constitution, federal laws, and state laws; this includes the sovereign immunity doctrine.<sup>10</sup> Thus, the sovereign immunity doctrine bars lawsuits against the State of Florida in state or federal court, unless an exception applies.

Article X, section 13 of the Florida Constitution authorizes the Legislature to waive sovereign immunity “as to all liabilities now existing or hereafter originating.” In accordance with this delegation of power, the Legislature has waived sovereign immunity in several areas, including, to a degree, for tort<sup>11</sup> lawsuits. Specifically, s. 768.28(1), F.S., authorizes tort lawsuits brought against the state or one of its agencies or subdivisions alleging negligence on the part of an agency or subdivision employee committed while the employee was acting within the scope of his or her office or employment under circumstances in which the state or its agency or subdivision, if a private person, would be liable to the injured party. Recovery under this section is generally limited to \$200,000 per person and \$300,000 per incident, and the awarding of punitive damages<sup>12</sup> is prohibited.<sup>13</sup> Where a plaintiff recovers an amount above the statutory recovery limits, the plaintiff may seek payment of such excess amount by filing a claim bill with the Legislature.<sup>14</sup> However, payment through the passage of a claim bill is not a right; rather, it is an act of legislative grace.<sup>15</sup>

Florida law also extends state sovereign immunity protections in such tort lawsuits to certain private parties by designating them as “agents of the state.”<sup>16</sup> For example, s. 768.28(10)(e), F.S., specifies that, for purposes of the limited sovereign immunity waiver in s. 768.28(1), F.S., a professional firm that provides monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects, or any of the firm’s employees performing such services, is an agent of the Florida Department of Transportation (“FDOT”) while acting within the scope of the firm’s contract with FDOT to ensure that the project is constructed in conformity with the project’s plans, specifications, and contract provisions. Under this paragraph:

- Any contract with the professional firm must indemnify FDOT for any liability, including reasonable attorney fees, incurred up to the recovery limits set out in s. 768.28(1), F.S., to the extent caused by the negligence of the firm or its employees;
- Persons who provide monitoring and inspection services are not employees or agencies of the state for purposes of Florida’s Workers’ Compensation Law, set out in ch. 440, F.S.; and
- The sovereign immunity protections do not apply to:
  - A firm or its employees if involved in an accident while operating a motor vehicle; or
  - A firm engaged by FDOT for the design or construction of a state roadway, bridge, or other transportation facility construction project or to its employees, agents, or subcontractors.<sup>17</sup>

However, in April of 2023, the Circuit Court for the 17<sup>th</sup> Judicial Circuit declined to extend the sovereign immunity protections in s. 768.28(10)(e), F.S., to a professional firm that subcontracted with a professional firm in direct contract with FDOT to provide the statutorily-specified monitoring and inspection services, reasoning that the subcontracted professional firm was not “in contract with

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the proceeding.” Courts making such an examination give varying weight to two factors: the degree of state control over the entity, and the entity’s state law classification. *Alden*, 527 U.S. at 756; *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 (1997).

<sup>10</sup> S. 2.01, F.S. (first enacted in 1829).

<sup>11</sup> A tort is a civil wrong for which the law provides a remedy. A tort may be intentional, such as battery, or unintentional, such as negligence. Legal Information Institute, *Tort*, <https://www.law.cornell.edu/wex/tort> (last visited Jan. 8, 2024).

<sup>12</sup> “Punitive damages” are damages that punish the defendant for bad behavior. Legal Information Institute, *Punitive Damages*, [https://www.law.cornell.edu/wex/punitive\\_damages](https://www.law.cornell.edu/wex/punitive_damages) (last visited Jan. 8, 2024).

<sup>13</sup> A government entity may, however, settle a claim or pay a judgment against it for an amount in excess of the statutory recovery limits if that amount falls within the limits of the entity’s applicable insurance coverage. S. 768.28(1) and (5)(a), F.S.; *Fischer v. City of Miami*, 172 So. 2d 455 (Fla. 1965).

<sup>14</sup> S. 768.28(5)(a), F.S.

<sup>15</sup> *Id.*; *United Servs. Auto Ass’n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

<sup>16</sup> S. 768.28(10)-(12), F.S.

<sup>17</sup> S. 768.28(10)(e), F.S.

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[FDOT]” and thus not entitled to sovereign immunity protections under the express meaning of s. 768.28(10)(e), F.S.<sup>18</sup> The court noted that the legislative intent of s. 768.28(10)(e), F.S. “was to specifically delineate those professional firms that would be given sovereign immunity” and that the legislature did not, in this instance, delineate subcontractors of a professional firm in direct contract with FDOT as deserving of such immunity.<sup>19</sup>

### Effect of Proposed Changes

HB 619 amends s. 768.28(10)(e), F.S., to expand the scope of the sovereign immunity protections granted to a professional firm and its employees under that paragraph. Specifically, the bill provides that a professional firm that provides monitoring and inspection services of the work required for state roadway, bridge, or other transportation facility construction projects, or any of the firm’s employees performing such services, is an agent of the state or of its applicable subdivision, rather than just an agent of FDOT as provided in current law, while acting within the scope of the firm’s contract to ensure that the project is constructed in conformity with the project’s plans, specifications, and contract provisions. Further, the bill specifies that this paragraph applies to both a professional firm in direct contract with the state or any of its subdivisions and to a professional firm providing monitoring and inspection services as a consultant to such a professional firm.

Under the bill:

- Any contract with the professional firm must indemnify the state or its applicable subdivision for any liability, including reasonable attorney fees, incurred up to the statutory recovery limits set out in s. 768.28(1), F.S., to the extent caused by the negligence of the firm or its employees;
- Persons who provide monitoring and inspection services are not employees or agencies of the state for purposes of Florida’s Workers’ Compensation Law, set out in ch. 440, F.S.; and
- The sovereign immunity protections do not apply to:
  - A firm or its employees if involved in an accident while operating a motor vehicle; or
  - A firm engaged by the state or any of its subdivisions for the design or construction of a state roadway, bridge, or other transportation facility construction project or to its employees, agents, or subcontractors.

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

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused by a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.

**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:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

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<sup>18</sup> As of the date of this bill analysis, the case is presently under appeal. *Lillo v. Lead Eng’g Contractors LLC*, Case No. CACE22004434 (17th Jud. Cir. April 10, 2023); *Pinnacle Consulting Enters., Inc. v. Lillo*, Case No. 4D2023-1144 (Fla. 4th DCA 2023).

<sup>19</sup> *Id.*

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on a professional firm shielded by sovereign immunity protections due to the bill's expansion of s. 768.28(10)(e), F.S., as its liability would be capped by the statutory recovery limits in s. 768.28(1), F.S., absent passage of a claim bill. However, the bill may have a negative economic impact on persons injured by the negligence of such a professional firm or its employees, as their recovery would likewise be limited by the statutory recovery limits placed in s. 768.28(1), F.S., absent passage of a claim bill.

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



1                                   A bill to be entitled  
 2           An act relating to sovereign immunity for professional  
 3           firms; amending s. 768.28, F.S.; providing that  
 4           professional firms or their employees when performing  
 5           specified services for certain public projects are  
 6           considered agents of the state or its applicable  
 7           subdivision when acting within the scope of their  
 8           contract; revising applicability; requiring that  
 9           contracts with such firms must, to the extent  
 10          permitted by law, provide indemnity to the state or  
 11          its applicable subdivision; providing applicability;  
 12          making technical changes; providing an effective date.

13  
 14   Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Paragraph (e) of subsection (10) of section  
 17   768.28, Florida Statutes, is amended to read:

18           768.28 Waiver of sovereign immunity in tort actions;  
 19   recovery limits; civil liability for damages caused during a  
 20   riot; limitation on attorney fees; statute of limitations;  
 21   exclusions; indemnification; risk management programs.—

22           (10)

23           (e) For purposes of this section, a professional firm that  
 24   provides monitoring and inspection services of the work required  
 25   for state roadway, bridge, or other transportation facility

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26 construction projects, or any employee of a firm ~~the firm's~~  
27 ~~employees~~ performing such services, is ~~shall be~~ considered an  
28 agent ~~agents~~ of the state or of its applicable subdivision  
29 ~~Department of Transportation~~ while acting within the scope of  
30 the firm's contract ~~with the Department of Transportation~~ to  
31 ensure that the project is constructed in conformity with the  
32 project's plans, specifications, and contract provisions. This  
33 paragraph applies to a professional firm in direct contract with  
34 the state or any of its subdivisions, as well as any  
35 professional firm providing monitoring and inspection services  
36 as a consultant to a professional firm. Any contract with a  
37 ~~between the~~ professional firm must ~~and the state,~~ to the extent  
38 permitted by law, ~~shall~~ provide for the indemnification of the  
39 state or its applicable subdivision ~~department~~ for any  
40 liability, including reasonable attorney ~~attorney's~~ fees,  
41 incurred up to the limits set out in this chapter to the extent  
42 caused by the negligence of the firm or its employees. This  
43 paragraph may ~~shall~~ not be construed as designating persons who  
44 provide monitoring and inspection services as employees or  
45 agents of the state for purposes of chapter 440. This paragraph  
46 is not applicable to the professional firm or its employees if  
47 involved in an accident while operating a motor vehicle. This  
48 paragraph is not applicable to a firm engaged by the state or by  
49 any of its subdivisions ~~Department of Transportation~~ for the  
50 design or construction of a state roadway, bridge, or other

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51 transportation facility construction project or to its  
52 employees, agents, or subcontractors.

53       Section 2. This act shall take effect July 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>	

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
2 Representative Tuck offered the following:

3

4

**Amendment**

5

Remove line 36 and insert:

6

as a consultant to a professional firm in direct contract with

7

the state or any of its subdivisions. Any contract with a



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 799 Easements Affecting Real Property Owned by Same Owner

**SPONSOR(S):** Robinson, W.

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Infrastructure Strategies Committee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The institution of private property is a fundamental element of the economic and social structure of the United States. Within this institution, different ownership principles define the existence and limits of private property rights. One such set of principles concerns the enforcement of private land use arrangements, known as "servitudes." A servitude is, essentially, an arrangement that ties rights and obligations to property ownership or possession so that such rights and obligations "run with the land" to successive owners and occupiers. Because a servitude can be terminated only by expiration of its terms, by the agreement of all involved parties, by merger of the dominant and servient estates, by court order, or by abandonment by the benefiting party, servitudes are significant for their ability to foster stable, long-term property use arrangements for a variety of purposes.

Florida law recognizes three basic types of servitudes: easements, real covenants, and profits à prendre. Generally speaking, a servitude cannot exist between parcels of land held in common ownership, or where the benefit and the burden of a servitude would both be held by one person. In Florida, however, it has been the custom of developers and others persons intending to divide property which they currently own to first create servitudes upon the affected real property before its division and sale. It has also been common practice for such persons to record real covenants in the public records of this state before the first sale of any portion of the affected property. In some instances, the establishment of servitudes before the property's division is mandated by land planning entities to further their land planning schemes.

However, recent Florida case law has called into question the validity of easements, and by extension other servitudes, contained in a written instrument, if such easements were created at a time when all of the affected property was held in common ownership. This development in case law has the potential to upend decades of land planning, to the extent that any such planning was implemented through the establishment of servitudes at a time when the affected property was held in common ownership. It also has the potential to frustrate the goals of property owners who bought into a property association with the understanding that the covenants and other servitudes established before the division of the property into separate parcels would remain in full force and effect, absent modifications or extinguishment under applicable law.

HB 799 creates s. 704.09, F.S., to provide that a real property owner may create an easement, servitude, or other interest in the owner's real property and such easement, servitude, or other interest is valid even though the owner owns all of the affected real property. The bill:

- Applies to any easement, surface water management agreement, or other rights in the nature of an easement, servitude, profit, use right, restriction, obligation, condition, reservation, or other covenant, contained in a written instrument, however denominated.
- Does not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before the bill's effective date.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Servitudes

The institution of private property is a fundamental element of the economic and social structure of the United States.<sup>1</sup> Within this institution, different ownership principles define the existence and limits of private property rights.<sup>2</sup> One such set of principles concerns the enforcement of private land use arrangements, known as “servitudes.”<sup>3</sup>

A servitude is, essentially, an arrangement that ties rights and obligations to property ownership or possession so that such rights and obligations run with the land to successive owners and occupiers.<sup>4</sup> Because a servitude can be terminated only by expiration of its terms, by the agreement of all involved parties, by merger of the dominant and servient estates,<sup>5</sup> by court order, or by abandonment by the benefiting party, servitudes are significant for their ability to foster stable, long-term property use arrangements for a variety of purposes, including shared land uses; maintaining the character of a residential neighborhood, commercial development, or historic property; and the establishment of infrastructure and common facilities.<sup>6</sup>

Florida law recognizes three basic types of servitudes: easements, real covenants, and profits à prendre.

##### Easements

An easement gives a person a nonpossessory right of use or enjoyment in another person’s land for a specific purpose not inconsistent with the property owner’s general rights.<sup>7</sup> An easement may be “appurtenant,” such that the benefit attaches to land ownership, or an easement may be “in gross,” such that the benefit attaches to a person, not to land ownership.<sup>8</sup> An easement may also be “affirmative,” in that it gives the easement’s beneficiary the right to use the land in a particular way, or “negative,” in that it prevents the owner of the land burdened by the easement from using the land in a particular way.<sup>9</sup>

Typically, an easement is expressly created in a written agreement, title, deed, deed reservation, or other legal instrument, which writing shows the landowner’s intention to create a permanent right in a

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<sup>1</sup> Ronald H. Rosenberg, *Fixing a Broken Common Law— Has the Property Law of Easements and Covenants Been Reformed by a Restatement*, William & Mary Law School Scholarship Repository, Faculty Publications (2016), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2932&context=facpubs> (last visited Jan. 8, 2024).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Susan French, *Servitude*, The Encyclopaedia Britannica, Dec. 19, 2003, <https://www.britannica.com/topic/servitude-property-law> (last visited Jan. 4, 2024); Michael J.D. Sweeney, *The Changing Role of Private Land Restrictions: Reforming Servitude Law*, 64 Fordham L. Rev. 661 (1995) <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3208&context=flr> (last visited Jan. 8, 2024).

<sup>5</sup> The “dominant estate” is the property that benefits from the servitude, while the “servient estate” is the property burdened by the servitude. Legal Information Institute, *Dominant Estate*, [https://www.law.cornell.edu/wex/dominant\\_estate](https://www.law.cornell.edu/wex/dominant_estate) (last visited Jan. 8, 2024); Legal Information Institute, *Servient Estate*, [https://www.law.cornell.edu/wex/servient\\_estate](https://www.law.cornell.edu/wex/servient_estate) (last visited Jan. 8, 2024).

<sup>6</sup> *Id.*

<sup>7</sup> Michael T. Olexa, et al., *Handbook of Florida Fence and Property Law: Easements and Rights of Way*, Oct. 3, 2022, <https://edis.ifas.ufl.edu/publication/FE108> (last visited Jan. 8, 2024).

<sup>8</sup> Easements appurtenant typically provide the beneficiary with a right of ingress or egress. For example, an easement appurtenant might allow a property owner whose property is cut off from access to the public roadway by an adjacent property to pass through such adjacent property to reach the public roadway. In contrast, easements in gross are typically seen in connection with the offering of utility services. For example, an easement in gross might allow the utility company to place electric power lines across a burdened property. C. Ryan Maloney, *Understanding Easements, Rights-of-Way and Their Affects on Property Value*, July 9, 2020, <https://www.jimersonfirm.com/blog/2020/07/easements-rights-of-way-building-rights-property-value/#:~:text=Easements%20by%20necessity%20are%20created,Stat> (last visited Jan. 8, 2024).

<sup>9</sup> *Id.*

specific property.<sup>10</sup> However, an easement may also be created by the passage of a state statute or local ordinance, or by implication through the doctrines of either necessity or prescription.<sup>11</sup>

### *Real Covenants*

A real covenant is a set of rules limiting a property owner's use of his or her property, typically for the benefit of other property owners in the community.<sup>12</sup> A real covenant may be "affirmative," that is, a covenant requiring the property owner to do something, or it may be "restrictive," that is, a covenant prohibiting the property owner from doing something.<sup>13</sup> In either case, to establish a valid and enforceable real covenant, a party must show:

- The covenant touches and concerns the land;
- The original parties to its creation intended for the covenant to run with the land; and
- The party against whom enforcement of the covenant is sought had notice of the restriction.<sup>14</sup>

Unlike an easement, a real covenant cannot be created by implication; instead, a real covenant must be expressly set out in a written deed or in another legal instrument referenced or incorporated therein, which deed or instrument should then be recorded in the public records of the state.<sup>15</sup> Such recording puts all subsequent purchasers of the property to which the real covenant applies on constructive notice of the covenant's existence.<sup>16</sup>

### *Profits à Prendre*

A profit à prendre ("profit") is a non-possessory right to enter upon and remove natural resources (such as minerals, timber, produce, wildlife, or grass<sup>17</sup>) from the property of another.<sup>18</sup> A profit may be "appurtenant," such that the benefit attaches to a particular estate, or it may be "in gross," such that the benefit attaches to a person, not to land ownership.<sup>19</sup> Generally speaking, a profit can be created in the same manner as an easement; that is, it may be expressly created in a writing, be implied by the doctrine of prescription, or result from the enactment of a state statute or local ordinance.<sup>20</sup>

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<sup>10</sup> Under the common law, now codified in the Florida Statutes, an easement by necessity is created when land is divided in such a way that a parcel is cut off from any reasonable route of ingress or egress; in such an instance, a right-of-way is presumed to have been granted or reserved. An easement by necessity is also created by statute when land used for a dwelling or for agricultural, timber raising, or stockraising purposes is shut off or hemmed in by lands, fencing, or other improvements by other persons so that no practicable route of ingress or egress is available therefrom; unlike with an easement of necessity under the common law, such land does not have to once have been joined with the property to which the easement attaches. Meanwhile, a prescriptive easement is created where a party can show: actual, continuous, and uninterrupted use of a limited and defined area of land for 20 years; use, under a claim of right, in conflict with the landowner's use (that is, the use was without the landowner's consent); and the landowner's knowledge of the use or use so open, notorious, visible, and uninterrupted that knowledge is imputed to the landowner. Olexa, *supra* note 6; s. 704.01, F.S.; *Downing v. Bird*, 100 So. 2d 57 (Fla. 1958); *Crigger v. Fla. Power Corp.*, 436 So. 2d 937 (Fla. 5th DCA 1983).

<sup>11</sup> Maloney, *supra* note 8.

<sup>12</sup> Legal Information Institute, *Covenant that Runs with the Land*, [https://www.law.cornell.edu/wex/covenant\\_that\\_runs\\_with\\_the\\_land](https://www.law.cornell.edu/wex/covenant_that_runs_with_the_land) (last visited Jan. 8, 2024).

<sup>13</sup> *Id.*

<sup>14</sup> *Hayslip v. U.S. Home Corp.*, 336 So. 3d 207 (Fla. 2022).

<sup>15</sup> FindLaw, *Creation and Termination of CC&Rs*, <https://www.findlaw.com/realestate/owning-a-home/creation-and-termination-of-cc-rs.html> (last visited Jan. 8, 2024).

<sup>16</sup> *Hayslip*, 336 So. 3d at 210; s. 695.11, F.S.

<sup>17</sup> Grazing rights are considered a profit.

<sup>18</sup> LexisNexis, *Profits à Prendre* [https://www.lexisnexis.com/uk/lexispsl/property/document/393788/55KG-P261-F18C-41F9-00000-00/Profits\\_prendre](https://www.lexisnexis.com/uk/lexispsl/property/document/393788/55KG-P261-F18C-41F9-00000-00/Profits_prendre) (last visited Jan. 8, 2024).

<sup>19</sup> *Id.*

<sup>20</sup> Oxford Reference, *Profit à Prendre*, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100348484> (last visited Jan. 8, 2024).



## Recent Case Law on Servitude Establishment

Generally speaking, a servitude cannot exist between parcels of land held in common ownership, or where the benefit and the burden of a servitude would be held by one person.<sup>21</sup> In Florida, however, it has been the custom of developers and others persons intending to divide property which they currently own to first create servitudes upon the affected real property before its division and sale.<sup>22</sup> It has also been common practice for such persons to record real covenants in the public records of this state before the first sale of any portion of the affected property, which puts all subsequent purchasers on notice of the real covenants' existence and could make the planned property owners' association, if any, responsible for bearing the costs of establishing and maintaining surface water management facilities, drainage and retention areas, roads, parks, environmental areas, and other shared components of the planned community.<sup>23</sup> Indeed, in some instances, the establishment of servitudes before the property's division is mandated by land planning entities to further their land planning schemes.<sup>24</sup>

However, recent Florida case law has called into question the validity of easements, and by extension other servitudes, contained in a written instrument, if such servitudes were created at a time when all of the affected property was held in common ownership.<sup>25</sup> This development in the common law has the potential to upend decades of land planning, to the extent that any such planning was implemented through the establishment of servitudes at a time when the affected property was held in common ownership.<sup>26</sup> It also has the potential to frustrate the goals of property owners who bought into a property association with the understanding that the covenants and other servitudes established before the division of the property into separate parcels would remain in full force and effect, absent modifications voted on by association members pursuant to the appropriate governing statute<sup>27</sup> or extinguishment under the Marketable Record Title Act.<sup>28</sup>

### **Effect of Proposed Changes**

HB 799 creates s. 704.09, F.S., to provide that a real property owner may create an easement, servitude, or other interest in the owner's real property and such easement, servitude, or other interest is valid even though the owner owns all of the affected real property. The bill:

- Applies to any easement, surface water management agreement, or any other rights in the nature of an easement, servitude, profit, use right, restriction, obligation, condition, reservation, or other covenant, contained in a written instrument, however denominated.
- Does not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before the bill's effective date.

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

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<sup>21</sup> Olexa, *supra* note 7; *J.C. Vereen & Sons v. Houser*, 167 So. 45, 47 (Fla. 1936).

<sup>22</sup> Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Creation of Easements, Servitudes, and Other Matters Affecting Real Property Owned by the Same Person* (July 21, 2023).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*; see *King v. Roorda*, 335 So. 3d 1001 (Fla. 2d DCA 2023); *AFP 103 Corp. v. Common Wealth Trust Serv., LLC*, 2023 WL 2146247 (Fla. 3d DCA 2023).

<sup>26</sup> RPPTL, *supra* note 22.

<sup>27</sup> Chapter 718, F.S., governs condominium associations; chapter 719, F.S., governs cooperative associations; and chapter 720, F.S., governs homeowners' associations.

<sup>28</sup> The Marketable Record Title Act simplifies the title examination process by confirming real property's marketability based on a 30-year marketable record period, automatically extinguishing clouds on title (including servitudes) after this period unless a statutory exception applies or the clouds are preserved from extinguishment. *Id.*; s. 712.02(1), F.S.

B. SECTION DIRECTORY:

**Section 1:** Creates s. 704.09, F.S., relating to creation of easements, servitudes, and other interests affecting real property owned by the same owner.

**Section 2:** Provides 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 a positive fiscal impact on local governments, to the extent that it preserves servitudes that, if extinguished, would result in the shifting of costs to a local government entity.

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 servitudes that, if extinguished, would result in a reduction in the dominant estate's value or cause the beneficiary to suffer another form of economic loss.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Retroactivity

In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature. A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary. However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.

HB 799 applies, without limitation, to any easement, surface water management agreement, or other rights in the nature of an easement, servitude, profit, use right, restriction, obligation, condition, reservation, or other covenant, contained in a written instrument, however denominated, and the bill specifies that it "clarifies existing law." Thus, the bill appears intended to apply to servitudes

established before the bill's effective date. However, in recent years, some persons have litigated the validity of certain servitudes created when the affected property was held in common ownership, and some courts have held such servitudes invalid; other cases challenging servitude validity on such grounds may still be pending in the courts.

Courts have held that a cause of action that has evolved into a judgment is generally a vested right and may not be abrogated by legislation, but that no one has a vested right in the common law generally, which the legislature may change.<sup>29</sup> Accordingly, the bill specifies that it does not revive or reinstate any right or interest that has been fully and finally adjudicated as invalid before the bill's effective date.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

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<sup>29</sup> *Williams v. American Optical Corp.*, 985 So. 2d 23 (Fla. 4th DCA 2008); *State Dept. of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981); *Plyler v. Moore*, 100 F. 3d 365 (4th Cir. 1996); *Miles v. Weingrad*, 164 So. 3d 1208 (Fla. 2015); *Clausell v. Hobart Corp.*, 515 So. 2d 1275 (Fla. 1987).



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26 utility easements, access easements, parking easements, negative  
27 easements, environmental easements, and solar easements; surface  
28 water management agreements; or any other rights in the nature  
29 of an easement, servitude, profit, use right, restriction,  
30 obligation, condition, reservation, or other covenant, contained  
31 in a written instrument, whether denominated as an easement,  
32 deed, plat, declaration, covenant, condition, restriction,  
33 servitude, or otherwise.

34 (3) This section does not revive or reinstate any right or  
35 interest that has been fully and finally adjudicated as invalid  
36 before the effective date of this act.

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