



Civil Justice Subcommittee

**Thursday, January 25, 2024
8:00 AM - 11:00 AM
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 25, 2024 08:00 am
End Date and Time: Thursday, January 25, 2024 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

CS/HB 293 Hurricane Protections for Homeowners' Associations by Regulatory Reform & Economic Development Subcommittee, Sirois
HB 761 Interpersonal Violence Injunction Petitions by Garcia
HB 923 Wills and Estates by Fabricio
HB 987 Court-related Functions by López, J., Harris
HB 1077 Clerks of Court by Botana
HB 1093 Florida Uniform Fiduciary Income and Principal Act by Caruso
HB 1111 Fines and Fees by Rizo
HB 1167 Attorney Fees and Costs in Property Rights Disputes by Yarkosky
HB 1179 Litigation Financing by Gregory, Overdorf
HB 1231 Limited Liability Companies by Jacques
HB 1393 Court Interpreter Services by Tuck
HB 6003 Relief/Sidney Holmes/State of Florida by Gottlieb
HB 6007 Relief/Julia Perez/St. Johns County Sheriff's Office by Yarkosky

Consideration of the following proposed committee substitute(s):

PCS for HB 513 -- Electronic Signature Confirmation
PCS for HB 1229 -- Termination of Easements and Related Rights or Interests for Affordable Housing Development
PCS for HB 1255 -- Notaries Public

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

NOTICE FINALIZED on 01/23/2024 4:04PM by Ramirez.Julia

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 293 Hurricane Protections for Homeowners' Associations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Sirois
TIED BILLS: **IDEN./SIM. BILLS:** SB 600

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Larkin	Anstead
2) Civil Justice Subcommittee		Yeager	Jones
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs may impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents.

If the HOA's governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

Hurricane hardening involves improvements to a home or other structure to make it less susceptible to damage from extreme wind, flooding, or flying debris. Hardening improves the durability and stability of a structure, making it better able to withstand the impacts of hurricanes without sustaining major damage.

The bill:

- Requires an HOA or ARC to adopt **hurricane protection** specifications for each structure or other improvement on a parcel governed by the HOA. The specifications may include the color and style of hurricane protection products and must comply with the applicable building code.
- Prohibits an HOA or ARC from denying an application for installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to specifications adopted by the HOA or ARC.
- Allows the HOA or ARC to require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.
- Provides that "hurricane protection" includes, but is not limited to:
 - Metal roofs,
 - Permanent fixed or roll-down track storm shutters,
 - Impact-resistant windows and doors,
 - Polycarbonate panels,
 - Reinforced garage doors,
 - Erosion controls,
 - Exterior fixed generators, and
 - Fuel storage tanks.

The bill provides that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all HOAs in the state, regardless of when the community was created. The bill does not appear to have a fiscal impact on state or local governments and is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors (board). The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.²

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.³

HOA Architectural and Construction Improvement Covenants and Rules

If the governing documents allow, an HOA or its architectural, construction improvement, or other similar committee (ARC) may:⁴

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

The HOA or ARC may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.⁵

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges may not be unreasonably infringed upon or impaired by the HOA or ARC. If the an HOA or ARC unreasonably, knowingly, and willfully infringes

¹ S. 720.301(9), F.S.

² See generally ch. 720, F.S.

³ S. 720.311, F.S.

⁴ S. 720.3035(1), F.S.

⁵ S. 720.3035(2), F.S.

upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney fees.⁶

An HOA or ARC may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.⁷

Levying Fines

Owners, tenants, and guests must comply with an HOA's governing documents, including those related to architectural or construction improvements. HOAs may levy fines against or suspend the right of a parcel owner, tenant, or guest of an owner or occupant, to use the common areas⁸ or any other association property for failing to comply with any provision in the HOA's governing documents.⁹

No fine may exceed \$100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed \$1,000 in the aggregate. However, a fine may exceed \$1,000 if the HOA's governing documents authorize it. A fine may not become a lien on the property unless it exceeds \$1,000.¹⁰

Hurricane Hardening

Generally, hurricane hardening involves improvements to a building structure and its openings to make it less susceptible to damage from extreme wind, flooding, or flying debris. Hardening improves the durability and stability of a structure, making it better able to withstand the impacts of hurricanes and weather events without sustaining major damage.¹¹

Hurricane hardening includes installing hurricane impact-rated doors, windows with impact-resistant glass, reinforced roof and wall structures that meet or exceed high-velocity impact codes, independent emergency power systems, potable water storage, fuel stores, and other supplies and systems that will sustain those within the building for a certain time period after a storm.¹²

Most hurricane hardening must be installed in compliance with applicable codes, including the Florida Building Code, and by a licensed construction contractor.¹³

Condominium Hurricane Protection Specifications

Each residential condominium must adopt hurricane shutter specifications for each building of the condominium, which must include color, style, and other factors deemed relevant by the condominium. All such specifications must comply with the applicable building code.¹⁴ A condominium is not required to adopt other hurricane protection specifications.

A condominium may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a condominium unit owner conforming to the condominium's specifications.¹⁵

⁶ S. 720.3035(4), F.S.

⁷ S. 720.3035(5), F.S.

⁸ This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.

⁹ S. 720.305, F.S.

¹⁰ S. 720.305(2), F.S.

¹¹ *Hurricane Hardening*, WGI, (June 14, 2018), <https://wginc.com/hurricane-hardening/> (last visited Dec. 8, 2023); *Hardening and Resiliency U.S. Energy Industry Response to Recent Hurricane Seasons*, U.S. Department of Energy, Aug. 2010, p.8, <https://www.oe.netl.doe.gov/docs/HR-Report-final-081710.pdf> (last visited Dec. 8, 2023).

¹² *Id.*

¹³ See s. 553.72(1), F.S.; s. 489.105, F.S.

¹⁴ S. 718.113(5), F.S.

¹⁵ S. 718.113(5)(d), F.S.

Effect of the Bill

The bill requires an HOA or any ARC to adopt **hurricane protection** specifications for each structure or other improvement on a parcel governed by the HOA. The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board. All specifications adopted by the HOA must comply with the applicable building code.

The bill allows the HOA or ARC to require a parcel owner to adhere to an existing unified building scheme regarding the external appearance of the structure or other improvement on the parcel.

The bill provides that, regardless of any other provision in the HOA's governing documents, the HOA or ARC may not deny an application for the installation, enhancement, or replacement of hurricane protection by a parcel owner which conforms to the specifications adopted by the HOA or ARC.

The bill provides that "hurricane protection" includes, but is not limited to:

- Metal roofs,
- Permanent fixed storm shutters,
- Roll-down track storm shutters,
- Impact-resistant windows and doors,
- Polycarbonate panels,
- Reinforced garage doors,
- Erosion controls,
- Exterior fixed generators,
- Fuel storage tanks, and
- Other hurricane protection products used to preserve and protect the structures or improvements on a parcel governed by the HOA.

The bill provides that in order to protect the health, safety, and welfare of the people of the state and to ensure uniformity and consistency in the hurricane protection installed by parcel owners, the bill applies to all HOAs in the state, regardless of when the community was created.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 720.3035, F.S.; requiring HOAs to provide certain guidance and allow certain improvements related to hurricane protection.

Section 2: Provides an effective date.

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 allow more HOA parcel owners to harden their homes to withstand a storm, which could increase construction in the state and reduce effects of a storm on residences.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 17, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute adds exterior fixed generators and fuel storage tanks to the list of items for which an HOA must adopt specifications for acceptable use or installation by parcel owners.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

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A bill to be entitled
 An act relating to hurricane protections for
 homeowners' associations; amending s. 720.3035, F.S.;
 providing applicability; requiring the board or a
 committee of a homeowners' association to adopt
 hurricane protection specifications; requiring that
 such specifications conform to applicable building
 codes; prohibiting the board or a committee of an
 association from denying an application for the
 installation, enhancement, or replacement of certain
 hurricane protection; authorizing the requirement to
 adhere to certain guidelines regarding the external
 appearance of a structure or an improvement on a
 parcel; defining the term "hurricane protection";
 providing an effective date.

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

Section 1. Subsection (6) is added to section 720.3035,
 Florida Statutes, to read:

720.3035 Architectural control covenants; parcel owner
 improvements; rights and privileges.—

(6) (a) To protect the health, safety, and welfare of the
 people of the state and to ensure uniformity and consistency in
 the hurricane protection installed by parcel owners, this

26 subsection applies to all homeowners' associations in the state,
27 regardless of when the community was created. The board or any
28 architectural, construction improvement, or other such similar
29 committee of an association must adopt hurricane protection
30 specifications for each structure or other improvement on a
31 parcel governed by the association. The specifications may
32 include the color and style of hurricane protection products and
33 any other factor deemed relevant by the board. All
34 specifications adopted by the board must comply with the
35 applicable building code.

36 (b) Notwithstanding any other provision in the governing
37 documents of the association, the board or any architectural,
38 construction improvement, or other such similar committee may
39 not deny an application for the installation, enhancement, or
40 replacement of hurricane protection by a parcel owner which
41 conforms to the specifications adopted by the board or
42 committee. The board or committee may require a parcel owner to
43 adhere to an existing unified building scheme regarding the
44 external appearance of the structure or other improvement on the
45 parcel.

46 (c) For purposes of this subsection, the term "hurricane
47 protection" includes, but is not limited to, metal roofs,
48 permanent fixed storm shutters, roll-down track storm shutters,
49 impact-resistant windows and doors, polycarbonate panels,
50 reinforced garage doors, erosion controls, exterior fixed

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51 generators, fuel storage tanks, and other hurricane protection
52 products used to preserve and protect the structures or
53 improvements on a parcel governed by the association.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 513 Delivery of Notices
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7020

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

SUMMARY ANALYSIS

Section 1.01, Florida Statutes, provides definitions that apply throughout the entirety of the Florida Statutes. As such, when reading any section of the Florida Statutes, the defined terms under s. 1.01, F.S., carry the meaning listed under s. 1.01, F.S., context permitting. Section 1.01(11), F.S., provides that the term “registered mail” includes certified mail with return receipt requested. The term “registered mail,” along with “certified mail,” and “return receipt requested,” are used frequently throughout the Florida Statutes. Generally, registered mail contemplates an extra service by the United States Postal Service (USPS) which allows the sender to confirm that a document or piece of mail has been successfully delivered to the intended recipient.

PCS for HB 513 amends the definition of “registered mail” under s. 1.01(11), F.S., to clarify the definition. The PCS expands the types of delivery services that may be used in compliance with statutory mailing requirements in Florida.

The PCS expands the definition of “registered mail” to include any delivery service by the USPS or a private delivery service that is regularly engaged in the delivery of documents which provides proof of mailing or shipping and proof of delivery. Under the PCS, proof of delivery must be established by a receipt that is signed by the addressee or other responsible person at the delivery address indicated. The PCS also defines the term “return receipt requested” to include a delivery confirmation service by the United States Postal Service or a private delivery service that is regularly engaged in the mailing or shipping of documents and that confirms delivery by receipt that is signed by the addressee.

The PCS provides that the amendments made to the definition of registered mail are remedial in nature and apply retroactively.

The PCS may have a positive fiscal impact on the cost for sending items via certified mail or with return receipt requested. The PCS may result in a decrease in the reliance on the USPS in favor of other private delivery services. As such, the USPS may see a decrease in revenue associated the reduction in use of its services.

The PCS is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 1.01, Florida Statutes, provides definitions that apply throughout the entirety of the Florida Statutes. As such, when reading any section of the Florida Statutes, the defined terms under s. 1.01, F.S., carry the meaning listed under s. 1.01, F.S.,¹ as long as the context permits. Section 1.01(11), F.S., provides that the term “registered mail” includes certified mail with return receipt requested.² The inclusion of “registered mail” under s. 1.01, F.S., is significant: the term “registered mail,” along with “certified mail,” and “return receipt requested,” are used frequently throughout the Florida Statutes. Generally, registered mail contemplates an extra service by the United States Postal Service (USPS) which allows the sender to confirm that a document or piece of mail has been successfully delivered to the intended recipient.

Certified Mail and Extra Services

In addition to traditional mail services, the USPS offers extra services to senders to ensure that the mail sent is delivered. “Certified mail”³ provides the sender with a mailing receipt as confirmation that an item was sent (Form 3800/Receipt for Certified Mail).⁴ When opting to send a document via certified mail, the sender must attach a mailing receipt (Form 3800) when mailing the item. The certified mail service assigns a unique identifier to the mail piece and provides electronic verification of delivery or attempted delivery. As such, the sender is able to confirm that his or her mail did not get lost or remain stationary at any midpoint post office or station, but successfully made it to its destination.

Certified mail service may also be combined with “return receipt service” to provide the sender proof of signature, with the option of receiving the return receipt by mail or electronically.⁵ Mailing an item via certified mail through USPS requires an additional fee of \$4.35.⁶ Certified mail with restricted delivery or with adult signature required costs a fee of \$11.45.⁷

¹ S. 1.01, F.S.

² S. 1.01(11), F.S.

³ “Certified mail” and “registered mail” are registered trademarks owned by the USPS. See USPS, *Trademarks*, https://about.usps.com/strategic-planning/cs09/CSPO_09_001.htm#:~:text=The%20following%20are%20among%20the,First%2DClass%E2%84%A2%2C%20First%2D (last visited Jan. 19, 2024).

⁴ USPS, *Certified Mail The Basics*, <https://faq.usps.com/s/article/Certified-Mail-The-Basics#whatiscm> (last visited Jan. 19, 2024).

⁵ *Id.*

⁶ USPS, *Price List: Certified Mail*, https://pe.usps.com/text/dmm300/Notice123.htm? gl=1*1v0dt0* gcl au*MTE5MjUxMzMzMyNC4xNzA1NjkxMjM2* ga*OT EyOTQ4Nzc5LjE3MDU2OTEyMzY.* ga_3NXP3C8S9V*MTcwNTY5MTIzNS4xLjEuMTcwNTY5MjM0My4wLjAuMA..# c1_91 (last visited Jan. 19, 2024).

⁷ *Id.*

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: <div style="text-align: center; font-size: 2em; color: purple; opacity: 0.5;">SAMPLE</div>		B. Received by (Printed Name) _____ C. Date of Delivery _____	
2. Article Number (Transfer from service label) <div style="text-align: center; font-size: 2em; color: purple; opacity: 0.5;">SAMPLE</div>		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)		<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery	
PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt			

Historically, when a sender mailed an item with return receipt requested, he or she would attach a return receipt (Form 3811, more commonly referred to as a green card) pictured above. The green card would be returned to the sender with the recipient’s signature on it confirming the delivery of the mail piece. However, on July 1, 2020, the USPS revised its Mailing Standards in various sections to reflect the elimination of the return receipt option for merchandise service.⁹ As such, the traditional green card return service is no longer available in certain parts of the country.

Reliance on the U.S. Postal Service

Throughout Florida law, the term “registered mail” is used to require that proper notice is given to the right individuals. A few examples include the following:

- To initiate a suit against the state, two copies of the process must be sent via registered or certified mail to the Attorney General.¹⁰
- A subpoena may be served on the subject person in the manner required for service of process in the state or by certified mail showing receipt by the addressee.¹¹
- A landlord who intends to retain a renter’s security deposit must send written notice of such by certified mail to the tenant’s last known mailing address.¹²

The Florida Statutes do not specifically require registered mail or return receipt requested mail to be sent via the USPS as opposed to a private commercial carrier. This is because s. 1.01(11), F.S., states that “registered mail” includes certified mail with return receipt requested. Thus, a litigant, attorney, business owner, or other individual following the statutes to ensure proper notice of a lawsuit is sent may be unsure whether another commercial mail carrier may be used. As such, it has been common practice to use the USPS and its certified mail and return receipt requested services as a safe harbor, given the statutory ambiguity.

For example, in a situation where a litigant has delivered a required notice to an opposing party via Federal Express with a signature required the basic purpose of registered mail requirements, which is to ensure that the recipient actually received the notice on a date certain, has arguably been accomplished. On the other hand, based upon the language in the statute specifically referring to “certified mail with return receipt requested,” the opposing party could argue that the definition of registered mail only contemplates delivery via the USPS, not Federal Express. Accordingly, the opposing party could argue that the delivery of the notice via Federal Express does not comply with statutory requirements and is therefore invalid.

This dynamic exists against the backdrop of a changing landscape of the USPS and an effort for USPS practices to evolve to accommodate improvements in technology. The USPS’s elimination of return

⁸ USPS, *Return Receipt The Basics*, https://faq.usps.com/s/article/Return-Receipt-The-Basics#Green_Card (last visited Jan. 19, 2024).

⁹ USPS, *Postal Bulletin 22546: Policies, Procedures, and Forms Updates*, at 15, May 21, 2020, https://about.usps.com/postal-bulletin/2020/pb22546/html/updt_002.htm (last visited Jan. 19, 2024).

¹⁰ S. 48.121, F.S.

¹¹ S. 68.0831(2)(a), F.S.

¹² S. 83.49(3)(a), F.S.

receipts for merchandise services signal a trend towards an increased use of technology and a decrease in physical paper receipt practices. Although the USPS has not yet eliminated return receipts for other kinds of domestic mail such as legal documents, it could choose to do so in the future.

Effect of Proposed Changes

PCS for HB 513 amends the definition of “registered mail” under s. 1.01(11), F.S., to clarify the definition. The PCS expands the types of delivery services that may be used in compliance with statutory mailing requirements in Florida.

The PCS amends the definition of “registered mail” to include any delivery service by the USPS or a private delivery service that is regularly engaged in the delivery of documents which provides proof of mailing or shipping and proof of delivery. Under the PCS, proof of delivery must be established by a receipt that is signed by the addressee or other responsible person at the delivery address indicated.

The PCS adds subsection (20) to s. 1.01, F.S., to clarify that “return receipt requested” includes a delivery confirmation service by the USPS or a private delivery service that is regularly engaged in the mailing or shipping of documents and that confirms delivery by receipt that is signed by the addressee or another responsible person at the delivery address. The PCS eliminates the current ambiguity as to whether delivery services other than USPS may be utilized and allows other reputable carriers like Federal Express and UPS to satisfy the definition’s requirements. The PCS provides greater flexibility to a person seeking to comply with the Florida Statutes when choosing how to handle his or her legally-sensitive mail.

The PCS provides that the amendments made to the definition of registered mail are remedial in nature and apply retroactively.

The PCS is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 1.01, F.S., relating to definitions.

Section 2: Provides for retroactive application.

Section 3: Provides that the bill is effective upon becoming 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The explicit expansion of delivery services available to comply with Florida law may result in an increase in revenue for private delivery services.

Further, the switch from hard copy receipts for certified mail or mail sent “return receipt requested” to the acceptance of an electronic signature confirmation may have a positive fiscal impact on the cost for sending items via certified mail or with return receipt requested.

D. FISCAL COMMENTS:

The PCS may result in a decrease in the reliance on the USPS in favor of other private delivery services. As such, the USPS may see a decrease in revenue associated the reduction in use of its services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

A retroactive law is a law “that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect.”¹³ 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, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.¹⁴

The PCS provides that the amendment to s. 1.01, F.S., is remedial in nature and applies retroactively. Whether the Legislature’s retroactive modification of the definition is procedural, remedial, or substantive, is for the courts to decide.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

By adding this definition to s. 1.01, F.S., relating to definitions of terms, it becomes applicable to every affected definition within the Florida Statutes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

¹³ Congressional Research Service, *Retroactive Legislation: A Primer for Congress*, Aug. 15, 2019, <https://sgp.fas.org/crs/misc/IF11293.pdf> (last visited Jan. 19, 2024).

¹⁴ *State Farm Mutual Auto. Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

26 (20) The term "return receipt requested" includes a
27 delivery confirmation service by the United States Postal
28 Service or a private delivery service that is regularly engaged
29 in the mailing or shipping of documents and that confirms
30 delivery by receipt that is signed by the addressee or other
31 responsible person at the delivery address.

32 Section 2. The amendments made by this act to s. 1.01,
33 Florida Statutes, are remedial in nature and apply
34 retroactively.

35 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 761 Interpersonal Violence Injunction Petitions

SPONSOR(S): Garcia

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mathews	Jones
2) 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 notarized petition with the circuit court seeking a protective order or injunction for protection against domestic violence. Upon review of the petition and any supporting documents by a judge, one of three ex parte actions generally occurs:

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

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

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

The bill is unlikely to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Domestic Violence

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

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

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

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

² S. 741.28(2), F.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

outreach services program.¹⁷ 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.¹⁸

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.¹⁹ Unlike with domestic violence, there is no requirement that the alleged victim and aggressor reside together in the same home. Further, the existence of dating violence is proven based on a consideration of the following factors:²⁰

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

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.²¹ An injunction for protection against domestic violence (“domestic violence injunction”) may be sought by a family or household member.²² 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.²³

Under current law, every petition for injunction against domestic violence must be sworn to and signed in the presence of a notary.²⁴ Every petition must contain a statement directly above the signature line stating:

I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION 837.02, FLORIDA STATUTES.²⁵

Upon the filing of a petition for an injunction against domestic violence, the court must set a hearing at the earliest possible time.²⁶ However, if the court finds the petitioner is in immediate and present danger

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

¹⁸ *Id.*

¹⁹ S. 784.046(1)(d), F.S.

²⁰ *Id.*

²¹ Black’s Law Dictionary 540 (6th ed. 1995).

²² S. 741.30(1)(e), F.S.

²³ S. 741.30(1)(d) and (e), F.S.

²⁴ S. 741.30(3), F.S.

²⁵ S. 741.30(3)(c), F.S.

²⁶ S. 741.30(4), F.S.

of domestic violence, it may grant a temporary injunction in an ex parte proceeding,²⁷ pending a full hearing, and grant relief including:

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

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

Following a hearing, if the court determines that the petitioner is either a domestic violence victim or has reasonable cause to believe he or she is in imminent danger of becoming a domestic violence victim, it may issue a permanent domestic violence injunction.³²

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

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

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

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,³⁵ sexual violence, and dating violence. Under s. 784.046, F.S., any person who is the victim of repeat violence, sexual violence, or dating violence, as well as the parent or guardian of a minor who is living at home and is the victim of such violence, may file a sworn petition for an injunction for protection with the circuit court.³⁶

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

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

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

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

³⁰ S. 741.30(5)(a), F.S.

³¹ S. 741.30(5)(a), F.S.

³² *Id.*

³³ S. 741.30(6)(a), F.S.

³⁴ S. 741.30(6)(c), F.S.

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

³⁶ S. 784.064(2), F.S.

³⁷ S. 784.046(4)(a), F.S.

³⁸ S. 784.064(5), F.S.

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

Injunction for Protection from Stalking

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

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

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

Similar to an injunction for protection against domestic violence, a court may grant an ex parte temporary injunction in response to a petitioner’s petition for injunction for protection against stalking. Upon proper notice and a full hearing, the court may grant such relief as it deems appropriate, including the issuance of an injunction.⁴³

Effect of Proposed Changes

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

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

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

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

B. SECTION DIRECTORY:

³⁹ *Id.*

⁴⁰ S. 784.0845(1), F.S.

⁴¹ S. 784.0845(3), F.S.

⁴² S. 784.0845(3)(f), F.S.

⁴³ S. 784.0845(6)(a), F.S.

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 | (d) Physical description of respondent:

45 | Race.....

46 | Sex.....

47 | Date of birth.....

48 | Height.....

49 | Weight.....

50 | Eye color.....

51 Hair color.....

52 Distinguishing marks or scars.....

53 (e) Aliases of respondent:

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

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

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

68
69 Case numbers should be included if available.

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

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

78 |

79 |

80 |committed or threatened to commit domestic violence
81 | defined in s. 741.28, Florida Statutes, as any assault,
82 | aggravated assault, battery, aggravated battery, sexual assault,
83 | sexual battery, stalking, aggravated stalking, kidnapping, false
84 | imprisonment, or any criminal offense resulting in physical
85 | injury or death of one family or household member by another.

86 | With the exception of persons who are parents of a child in
87 | common, the family or household members must be currently
88 | residing or have in the past resided together in the same single
89 | dwelling unit.

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

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

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

96 |intentionally injured or killed a family pet.

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

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

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

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

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

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

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

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

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

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

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

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

126 petitioner because:.....

127

128 (j) Petitioner genuinely fears imminent domestic violence

129 by respondent.

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

131 section or sections)...

132Immediately restraining the respondent from committing

133 any acts of domestic violence.

134Restraining the respondent from committing any acts of

135 domestic violence.

136Awarding to the petitioner the temporary exclusive use

137 and possession of the dwelling that the parties share or

138 excluding the respondent from the residence of the petitioner.

139Providing a temporary parenting plan, including a

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

141 or children of the parties which might involve prohibiting or

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

143 third party.

144Establishing temporary support for the minor child or

145 children or the petitioner.

146Directing the respondent to participate in a batterers'

147 intervention program.

148Providing any terms the court deems necessary for the

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

150 children of the victim, including any injunctions or directives

151 to law enforcement agencies.

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

156
 157 I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH
 158 STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE STATEMENTS
 159 MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY,
 160 PUNISHABLE AS PROVIDED IN SECTION 92.525 ~~837.02~~, FLORIDA
 161 STATUTES.

162 ...(initials)...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

255

256

257

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

262

263

264

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

276
 277
 278

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

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

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

294
 295 I HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH
 296 STATEMENT IS TRUE AND CORRECT. I UNDERSTAND THAT THE
 297 STATEMENTS MADE IN THIS PETITION ARE BEING MADE UNDER
 298 PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
 299 92.525, FLORIDA STATUTES.

300

FOR PROTECTION AGAINST STALKING

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

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

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

HB 761

2024

351 | text, as follows:

352 |

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

358 | ...(initials)...

359 | Section 4. 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 Garcia offered the following:

Amendment

Remove lines 157-357 and insert:

6 UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE
7 FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE. I
8 UNDERSTAND THAT THE STATEMENTS MADE IN THIS PETITION ARE BEING
9 MADE UNDER PENALTY OF PERJURY, PUNISHABLE AS PROVIDED IN SECTION
10 92.525 ~~837.02~~, FLORIDA STATUTES.

11 ...(initials)...

12 (d) If the verified ~~sworn~~ petition seeks to determine a
13 parenting plan and time-sharing schedule with regard to the
14 minor child or children of the parties, the verified ~~sworn~~
15 petition must be accompanied by or must incorporate the

Amendment No. 1

16 | allegations required by s. 61.522 of the Uniform Child Custody
17 | Jurisdiction and Enforcement Act.

18 | Section 2. Subsections (2) and (4) of section 784.046,
19 | Florida Statutes, are amended to read:

20 | 784.046 Action by victim of repeat violence, sexual
21 | violence, or dating violence for protective injunction; dating
22 | violence investigations, notice to victims, and reporting;
23 | pretrial release violations; public records exemption.—

24 | (2) There is created a cause of action for an injunction
25 | for protection in cases of repeat violence, there is created a
26 | separate cause of action for an injunction for protection in
27 | cases of dating violence, and there is created a separate cause
28 | of action for an injunction for protection in cases of sexual
29 | violence.

30 | (a) Any person who is the victim of repeat violence or the
31 | parent or legal guardian of any minor child who is living at
32 | home and who seeks an injunction for protection against repeat
33 | violence on behalf of the minor child has standing in the
34 | circuit court to file a verified ~~sworn~~ petition for an
35 | injunction for protection against repeat violence.

36 | (b) Any person who is the victim of dating violence and
37 | has reasonable cause to believe he or she is in imminent danger
38 | of becoming the victim of another act of dating violence, or any
39 | person who has reasonable cause to believe he or she is in
40 | imminent danger of becoming the victim of an act of dating

Amendment No. 1

41 violence, or the parent or legal guardian of any minor child who
42 is living at home and who seeks an injunction for protection
43 against dating violence on behalf of that minor child, has
44 standing in the circuit court to file a verified ~~sworn~~ petition
45 for an injunction for protection against dating violence.

46 (c) A person who is the victim of sexual violence or the
47 parent or legal guardian of a minor child who is living at home
48 who is the victim of sexual violence has standing in the circuit
49 court to file a verified ~~sworn~~ petition for an injunction for
50 protection against sexual violence on his or her own behalf or
51 on behalf of the minor child if:

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

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

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

Amendment No. 1

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

67 (4) (a) The verified ~~sworn~~ petition shall allege the
68 incidents of repeat violence, sexual violence, or dating
69 violence and shall include the specific facts and circumstances
70 that form the basis upon which relief is sought. With respect to
71 a minor child who is living at home, the parent or legal
72 guardian seeking the protective injunction on behalf of the
73 minor child must:

74 1. Have been an eyewitness to, or have direct physical
75 evidence or affidavits from eyewitnesses of, the specific facts
76 and circumstances that form the basis upon which relief is
77 sought, if the party against whom the protective injunction is
78 sought is also a parent, stepparent, or legal guardian of the
79 minor child; or

80 2. Have reasonable cause to believe that the minor child
81 is a victim of repeat violence, sexual violence, or dating
82 violence to form the basis upon which relief is sought, if the
83 party against whom the protective injunction is sought is a
84 person other than a parent, stepparent, or legal guardian of the
85 minor child.

86 (b) The verified ~~sworn~~ petition must be in substantially
87 the following form:

Amendment No. 1

PETITION FOR INJUNCTION FOR PROTECTION
AGAINST REPEAT VIOLENCE, SEXUAL
VIOLENCE, OR DATING VIOLENCE

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

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

2. Respondent resides at ... (address)

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

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

.....
.....
.....

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

Amendment No. 1

111
 112
 113

114 c. Petitioner is a victim of dating violence and has
 115 reasonable cause to believe that he or she is in imminent danger
 116 of becoming the victim of another act of dating violence or has
 117 reasonable cause to believe that he or she is in imminent danger
 118 of becoming a victim of dating violence, as demonstrated by the
 119 fact that the respondent has: ...(list the specific incident or
 120 incidents of violence and describe the length of time of the
 121 relationship, whether it has been in existence during the last 6
 122 months, the nature of the relationship of a romantic or intimate
 123 nature, the frequency and type of interaction, and any other
 124 facts that characterize the relationship)...

125
 126
 127

128 4. Petitioner genuinely fears repeat violence by the
 129 respondent.

130 5. Petitioner seeks: an immediate injunction against the
 131 respondent, enjoining him or her from committing any further
 132 acts of violence; an injunction enjoining the respondent from
 133 committing any further acts of violence; and an injunction
 134 providing any terms the court deems necessary for the protection
 135 of the petitioner and the petitioner's immediate family,

Amendment No. 1

136 including any injunctions or directives to law enforcement
137 agencies.

138 (c) Every petition for an injunction against sexual
139 violence, dating violence, or repeat violence must contain,
140 directly above the signature line, a statement in all capital
141 letters and bold type not smaller than the surrounding text, as
142 follows:

143
144 UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE
145 FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE
146 TRUE. I UNDERSTAND THAT THE STATEMENTS MADE IN THIS
147 PETITION ARE BEING MADE UNDER PENALTY OF PERJURY,
148 PUNISHABLE AS PROVIDED IN SECTION 92.525, FLORIDA STATUTES.

149
150 ...(initials)...

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

154 784.0485 Stalking; injunction; powers and duties of court
155 and clerk; petition; notice and hearing; temporary injunction;
156 issuance of injunction; statewide verification system;
157 enforcement.—

158 (1) There is created a cause of action for an injunction
159 for protection against stalking. For the purposes of injunctions

Amendment No. 1

160 for protection against stalking under this section, the offense
161 of stalking shall include the offense of cyberstalking.

162 (a) A person who is the victim of stalking or the parent
163 or legal guardian of a minor child who is living at home who
164 seeks an injunction for protection against stalking on behalf of
165 the minor child has standing in the circuit court to file a
166 verified ~~sworn~~ petition for an injunction for protection against
167 stalking.

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

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

173 PETITION FOR INJUNCTION

174 FOR PROTECTION AGAINST STALKING

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

178 1. Petitioner resides at: ... (address) ...

179 (Petitioner may furnish the address to the court in a separate
180 confidential filing if, for safety reasons, the petitioner
181 requires the location of the current residence to be
182 confidential.)

183 2. Respondent resides at: ... (last known address) ...

Amendment No. 1

- 184 3. Respondent's last known place of employment: ...(name of
185 business and address)...
- 186 4. Physical description of respondent:
- 187 5. Race:
- 188 6. Sex:
- 189 7. Date of birth:
- 190 8. Height:
- 191 9. Weight:
- 192 10. Eye color:
- 193 11. Hair color:
- 194 12. Distinguishing marks or scars:
- 195 13. Aliases of respondent:

196 (f) Every petition for an injunction against stalking must
197 contain, directly above the signature line, a statement in all
198 capital letters and bold type not smaller than the surrounding
199 text, as follows:

200

201 UNDER PENALTIES OF PERJURY, I DECLARE THAT I HAVE READ THE
202 FOREGOING DOCUMENT AND THAT THE FACTS STATED IN IT ARE TRUE. ±
203 ~~HAVE READ EVERY STATEMENT MADE IN THIS PETITION AND EACH~~
204 ~~STATEMENT IS TRUE AND CORRECT.~~ I UNDERSTAND THAT THE STATEMENTS
205 MADE IN THIS PETITION ARE BEING MADE UNDER PENALTY OF PERJURY,
206 PUNISHABLE AS PROVIDED IN SECTION 92.525 ~~837.02~~, FLORIDA
207 STATUTES.
208 ...(initials)...

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 923 Wills and Estates

SPONSOR(S): Fabricio

TIED BILLS: **IDEN./SIM. BILLS:** SB 1064

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

SUMMARY ANALYSIS

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

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

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

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

HB 923:

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

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

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

STORAGE NAME: h0923.CJS

DATE: 1/23/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Probate Code

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

Venue

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

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

Effect of Probate

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

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

Determination of Beneficiaries

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

¹ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, <https://www.floridabar.org/public/consumer/pamphlet026/> (last visited Jan. 23, 2024); s. 731.201(2) and (20), F.S.

² The Florida Probate Rules of Court are available at <https://www-media.floridabar.org/uploads/2020/01/Probate-Rules-01-01-20.pdf> (last visited Jan. 23, 2024). S. 731.005, F.S.

³ S. 733.101, F.S.

⁴ S. 733.103(1), F.S.

⁵ S. 733.103(2), F.S.

⁶ S. 732.101, F.S.

⁷ *Id.*

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

⁹ S. 733.105, F.S.

¹⁰ *Id.*

Personal Representatives

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

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

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

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

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

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

Recording of Probate Records

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

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

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

¹² S. 733.303(1), F.S.

¹³ S. 733.304, F.S.

¹⁴ S. 733.601, F.S.

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

¹⁶ S. 733.602, F.S.

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

¹⁸ *Id.*

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

²⁰ *Id.*

Probate Creditor Claims

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

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

Disposition of Marital Property Upon Spouse's Death

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

Community Property States

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

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

²¹ S. 733.2121, F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

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

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

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

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

Common Law Property States

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

Florida Uniform Disposition of Community Property Rights at Death Act

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

Application

²⁸ RPPTLS, *supra* note 17.

²⁹ Joseph M. Percopo, *Understanding the New Florida Community Property Trust, Part I*, 96 Fla. Bar Journal No. 4, <https://www.floridabar.org/the-florida-bar-journal/understanding-the-new-florida-community-property-trust-part-i/> (last visited Jan. 23, 2024).

³⁰ Exceptions may apply, such as when the surviving spouse has homestead rights in a parcel of real property under Florida law. Homestead rights give the surviving spouse an interest in the property; such interest is a life estate or a tenancy in common where the decedent is survived by both a spouse and children, and a full ownership interest where the decedent is not survived by children. Title to the homestead property will pass in such manner automatically upon the spouse's death, even if a will or trust directs otherwise. Further, Florida law recognizes the right of a surviving spouse to elect up to a 1/3 share of the decedent spouse's probate estate, regardless of the terms of the decedent's will. This prevents one spouse from disinheriting the other, and possibly leaving the surviving spouse destitute. Ss. 732.201-732.2155, F.S.

³¹ A tenancy in common is a method of joint property ownership in which two or more persons concurrently own a share of a property, which share is not required to be equal. Each co-tenant has an equal right to possess, use, and enjoy the property (although this right may be modified by agreement of the parties), and may freely sell his or her ownership share; similarly, when a co-tenant dies, his or her ownership share becomes part of his or her probate estate. Oni Harton, *Differences Between Joint Tenants with Survivorship and Tenants in Common*, <https://www.findlaw.com/estate/planning-an-estate/whats-the-difference-between-joint-tenants-with-survivorship-and-.html> (last visited Jan. 23, 2024).

³² A joint tenancy with rights of survivorship is a method of joint property ownership in which two or more persons concurrently own an equal share of a property. Each joint tenant has an equal right to possess, use, and enjoy the property (which right cannot be modified even by agreement of the parties) but cannot sell or otherwise transfer his or her ownership interest; when one joint tenant dies, his or her ownership interest automatically passes to the other joint tenants. *Id.*

³³ A tenancy by the entirety is a form of joint ownership only available to married couples. Under such an ownership structure, the spouses are considered one person and, thus, each spouse owns a 100 percent share of the property. Neither spouse may transfer the property without joinder of the other spouse, but upon a spouse's death, the surviving spouse automatically receives full title to the property. Anne Buzby-Walt, *Are Florida Laws on Tenancy by the Entireties in Personalty as Clear as We Think?*, 85 Fla. Bar Journal No. 8 (Sept./Oct. 2011), <https://www.floridabar.org/the-florida-bar-journal/are-florida-laws-on-tenancy-by-the-entireties-in-personalty-as-clear-as-we-think/> (last visited Jan. 23, 2024).

³⁴ A life estate gives the holder thereof a right to exclusive use and possession of a property during his or her lifetime but not the right to sell the property without joinder of the remainder beneficiaries. Aisha Success, *The Differences Between Life Estates and Trusts*, (June 30, 2022), <https://www.findlaw.com/estate/trusts/the-differences-between-life-estates-and-trusts.html> (last visited Jan. 23, 2024); Percopo, *supra* note 29.

³⁵ See, e.g., *Quintana v. Ordone*, 195 So. 2d 577, 579-580 (Fla. 3d DCA 1967).

³⁶ RPPTLS, *supra* note 17.

Under the Act, when one spouse dies, one-half of the couple's community property is the property of the surviving spouse, while the other one-half of that property is the property of the decedent.³⁷ The Act applies to the disposition at death of the following property acquired by a married person:

- Personal property, wherever located, which:
 - Was acquired as, or became and remained, community property under the laws of another jurisdiction;
 - Was acquired with the rents, issues, or income of, or the proceeds from, or in exchange for, community property; or
 - Is traceable to that community property.³⁸
- Real property, except real property held as tenants by the entirety, which is located in Florida, and which:
 - Was acquired with the rents, issues, or income of, the proceeds from, or in exchange for, property acquired as, or which became and remained, community property under the laws of another jurisdiction; or
 - Is traceable to that community property.³⁹

In determining whether the Act applies to specific property, the following rebuttable presumptions apply:

- Property acquired during marriage by a spouse of that marriage while domiciled in a community property state is presumed to have been acquired as, or to have become and remained, community property.⁴⁰
- Real property located in Florida, other than homestead and real property held as tenants by the entirety, and personal property wherever located acquired by a married person while domiciled in a common law property state and title to which was taken in a form which created rights of survivorship are presumed to not be community property.⁴¹

Further, the reinvestment of any property to which the Act applies in real property located in Florida which is or becomes homestead property creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.⁴²

Title Disputes

Because community property rights generally apply regardless of how property acquired during a marriage is titled, it may be necessary to perfect title to certain property in either the surviving spouse or a beneficiary of the decedent spouse to fairly distribute each spouse's one-half share. Under the Act, if the title to any property to which the Act applies is held by the surviving spouse at the time of the decedent's death, the decedent's personal representative or beneficiary may bring an action to perfect title to the property.⁴³ However, the personal representative has no duty to discover whether any property held by the surviving spouse is community property to which the Act applies, unless a written demand is made by a beneficiary within three months after service of a copy of the notice of administration on the beneficiary or by a creditor within three months after the first publication of the notice to creditors.⁴⁴

Further, if title to any property to which the Act applies was held by the decedent at the time of the decedent's death, title of the surviving spouse may be perfected by a probate court's order or by execution of an instrument by the decedent's personal representative or beneficiaries with the probate court's approval.⁴⁵ However, the probate court in which the decedent's estate is being administered has no duty to discover whether property held by the decedent is community property, and the personal representative has no duty to discover whether property held by the decedent is community property

³⁷ S. 732.219, F.S.

³⁸ S. 732.217, F.S.

³⁹ *Id.*

⁴⁰ S. 732.218, F.S.

⁴¹ *Id.*

⁴² S. 732.225, F.S.

⁴³ S. 732.221, F.S.

⁴⁴ *Id.*

⁴⁵ S. 732.223, F.S.

unless a written demand is made by the surviving spouse within three months after service of a copy of the notice of administration on the surviving spouse.⁴⁶

Probate Creditor Claims

Nothing in the Act requires a surviving spouse to make a probate creditor claim to preserve his or her community property rights. However, in 2018, the Fourth District Court of Appeal held that probate creditor claim procedures apply to title disputes arising under the Act.⁴⁷ In other words, the court held that a surviving spouse's attempt to confirm his or her community property rights is a probate creditor claim, and, thus, subject to the statute of limitations period and the two-year statute of repose applicable to such claims.⁴⁸ This has the potential to result in the unintended forfeiture of a surviving spouse's community property rights where the surviving spouse fails to bring a timely creditor claim and is thus forever barred from asserting his or her rights.⁴⁹

Effect of Proposed Changes

Probate Records

HB 923 amends s. 28.223, F.S., to expand the types of probate records which the clerk must file. Specifically, the bill provides that the clerks must file, in addition to those documents already required under current law: orders admitting a will to probate; orders determining beneficiaries; and petitions affecting or describing real property. Practically speaking, this should ensure that evidence of heirship will be forever preserved in a county's official records and, thus, be easily and publicly accessible. Where such evidence reflects real property ownership passing through probate, this change may help to avoid economic loss for true heirs and their descendants.

Florida Uniform Disposition of Community Property Rights at Death Act

Application

The bill amends s. 732.217, F.S., to clarify the types of property to which the Act does not apply. Specifically, the bill clarifies that the Act does not apply to personal property held as tenants by the entirety or to homestead property. The bill also:

- Amends s. 732.218, F.S., to remove unnecessary language indicating that property held as tenants by the entirety or as homestead property acquired by a married person while domiciled in a common law property state is not community property.
- Amends s. 732.225, F.S., to provide that the reinvestment of any community property in real property located in Florida which is or becomes real or personal property held by tenants by the entirety creates a conclusive presumption that the spouses have agreed to terminate the community property attribute of the property reinvested.

⁴⁶ *Id.*

⁴⁷ *Johnson v. Townsend*, 259 So. 3d 851 (Fla. 4th DCA 2018).

⁴⁸ *Id.*

⁴⁹ RPPTLS, *supra* note 17.

Disposition Upon Death

The bill amends s. 732.219, F.S., to expressly state that, upon the death of a married person, the surviving spouse's one-half share of the community property is not property of the decedent's probate estate, but the other one-half share of the community property is part of the decedent's probate estate. Further, the bill amends this section to:

- Define "probate estate" for the purposes of this section to mean all property, wherever located, that is subject to estate administration in any state or in the District of Columbia.
- Expressly authorize a surviving spouse to waive any right, title, or interest in community property, wholly or partly, by written contract, agreement, or waiver, signed by the surviving spouse or any person acting on behalf of the surviving spouse, where such written contract, agreement, or waiver includes statutorily-required language.

Similarly, the bill amends s. 732.702, F.S., to include the right to assert a claim under the Act as a right of a surviving spouse which may be waived.

Title Disputes

The bill repeals s. 732.221, F.S., relating to perfection of title of personal representative or beneficiary, and s. 732.223, F.S., relating to perfection of title of surviving spouse, and replaces these sections with newly-created s. 732.2211, F.S., which section expressly exempts title disputes from the definition of creditor claim and specifies that such disputes are not subject to the statutes of limitations or of repose applicable to such claims.

Instead, the bill creates a new dispute resolution mechanism in this section for title disputes arising under the Act and provides a two-year statute of repose for such disputes. Under the bill, any demand or dispute arising under the Act regarding any right, title, or interest in any property held by the decedent or surviving spouse when the decedent died must be determined in an action for declaratory relief governed by the Florida Rules of Civil Procedure. Such an action must be filed within two years after the decedent's death or is forever barred, and the rights of any interested person who fails to timely file an action for declaratory relief under this section are forfeited. The decedent's surviving spouse, personal representative, or any other person or entity that at any time possesses any property to which the Act applies, or may apply, is not subject to liability for any such forfeit rights, and the decedent's personal representative may distribute the assets without liability for any such forfeit rights.

Further, the bill provides that the personal representative has no duty to discover whether property held by the decedent or surviving spouse when the decedent died is community property, unless a written demand is made by:

- The surviving spouse or a beneficiary within six months after service of a copy of the notice of administration on such person.
- A creditor, except as otherwise provided, within three months after the time of the first publication of the notice to creditors.
- A creditor required to be served with a copy of the notice to creditors, within the later of 30 days after the date of service on the creditor or three months after the time of the first publication of the notice.

The bill amends ss. 733.212 and 733.2121, F.S., to require the notice of administration and the notice to creditors to specify as such. However, the bill also amends s. 733.607, F.S., to specify that the personal representative has no right to, and shall not knowingly take possession or control of, a surviving spouse's one-half share of community property.

Protection of Payors and Other Third Parties

The bill creates s. 732.2231, F.S., to provide that a property interest is subject to community property rights, but that a payor or other third party is not liable for paying, distributing, or transferring such property to a beneficiary designated in a governing instrument, or for taking any other action in good faith reliance on the validity of a governing instrument. Under the bill:

- “Governing instrument” means a deed; will; trust; insurance or annuity policy; account with payable-on-death designation; security registered in a beneficiary form; pension, profit-sharing, retirement, or similar benefit plan; an instrument creating or exercising a power of appointment or a power of attorney; or a dispositive, appointive, or nominative instrument of any similar type.
- “Payor” means the decedent’s personal representative, a trustee of a trust created by the decedent, an insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

Effective Date

The bill provides an effective date of upon becoming a law, except as otherwise expressly provided in the Act.

B. SECTION DIRECTORY:

Section 1: Amending s. 28.223, F.S., relating to probate records; recordation.

Section 2: Amending s. 732.217, F.S., relating to application.

Section 3: Amending s. 732.218, F.S., relating to rebuttable presumptions.

Section 4: Amending s. 732.219, F.S., relating to disposition upon death.

Section 5: Repealing s. 732.221, F.S., relating to perfection of title of personal representatives or beneficiary.

Section 6: Creating s. 732.2211, F.S., relating to demands or disputes; statute of repose.

Section 7: Repealing s. 732.223, F.S., relating to perfection of title of surviving spouse.

Section 8: Creating s. 732.2231, F.S., relating to protection of payors and other third parties.

Section 9: Amending s. 732.225, F.S., relating to acts of married persons.

Section 10: Amending s. 732.702, F.S., relating to waiver of spousal rights.

Section 11: Amending s. 733.212, F.S., relating to notice of administration; filing of objections.

Section 12: Amending s. 733.2121, F.S., relating to notice to creditors, filing of claims.

Section 13: Amending s. 733.607, F.S., relating to possession of estate.

Section 14: Providing an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on the clerks of the court due to the requirement that the clerks record additional probate documents. To the extent that the clerks can assume the recording of such additional documents within existing resources, the bill’s fiscal impact will be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

- Records identifying a decedent's beneficiaries, which may help true heirs avoid economic loss where real property ownership passes through probate by intestacy succession.
- A surviving spouse's community property rights.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to wills and estates; amending s.
3 28.223, F.S.; expanding the types of probate documents
4 that must be recorded; revising a provision for
5 incorporating a certain direction by reference;
6 amending s. 732.217, F.S.; revising the types of
7 property subject to the provisions of a certain act;
8 amending s. 732.218, F.S.; revising the types of
9 property for which there is a rebuttable presumption
10 under a specified act; amending s. 732.219, F.S.;
11 specifying that certain property is either included or
12 excluded from the probate estate at the time of death;
13 defining the term "probate estate"; authorizing
14 specified parties to waive certain property rights;
15 specifying how such rights may be waived; requiring
16 such waiver include specified language; repealing s.
17 732.221, F.S., relating to perfection of title of
18 personal representative or beneficiary; creating s.
19 732.2211, F.S.; providing that demands and disputes
20 arising under a certain act must be determined using a
21 specified action; requiring such action be governed by
22 specified rules; requiring such action be filed within
23 a certain period of time; providing construction;
24 providing that certain parties have no duty to
25 discover if property is subject to a specified act;

26 providing exceptions; providing that certain rights
27 are forfeit if specified actions are not taken;
28 prohibiting certain parties from being held liable in
29 specified circumstances; providing construction;
30 repealing s. 732.223, F.S., relating to perfection of
31 title of surviving spouses; creating s. 732.2231,
32 F.S.; providing definitions; providing that certain
33 parties are not liable for specified actions taken
34 regarding property subject to a certain act; amending
35 s. 732.225, F.S.; expanding the types of property for
36 which there is a certain conclusive presumption;
37 amending s. 732.702, F.S.; expanding the types of
38 rights which may be waived by a surviving spouse;
39 expanding the types of rights considered to be "all
40 rights" within a waiver; amending s. 733.212, F.S.;
41 requiring a notice of administration state that
42 specified parties have no duty to discover if property
43 is subject to a certain act; providing an exception;
44 amending s. 733.2121, F.S.; requiring a notice to
45 creditors state that specified parties have no duty to
46 discover if property is subject to a certain act;
47 providing an exception; amending s. 733.607, F.S.;
48 specifying that specified parties have no rights to,
49 and may not take possession of, certain property;
50 providing an exception; providing effective dates.

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

Section 1. Effective January 1, 2025, subsection (1) of section 28.223, Florida Statutes, is amended to read:

28.223 Probate records; recordation.—

(1) The clerk of the circuit shall record all wills and codicils admitted to probate, orders admitting the will to probate, orders determining beneficiaries, orders revoking the probate of any wills and codicils, letters of administration, petitions and orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk's office. No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except on the written direction of the court. The direction may be in the order by incorporation in the order of the words "To be recorded," or words to that effect. Failure to record an order or a judgment shall not affect its validity.

Section 2. Section 732.217, Florida Statutes, is amended to read:

732.217 Application.—Sections 732.216–732.228 apply to the disposition at death of the following property acquired by a married person:

(1) Personal property, except personal property held as tenants by the entirety, wherever located, which:

76 (a) Was acquired as, or became and remained, community
 77 property under the laws of another jurisdiction;

78 (b) Was acquired with the rents, issues, or income of, or
 79 the proceeds from, or in exchange for, community property; or

80 (c) Is traceable to that community property.

81 (2) Real property, except real property held as tenants by
 82 the entirety and homestead property, which is located in this
 83 state, and which:

84 (a) Was acquired with the rents, issues, or income of, the
 85 proceeds from, or in exchange for, property acquired as, or
 86 which became and remained, community property under the laws of
 87 another jurisdiction; or

88 (b) Is traceable to that community property.

89 Section 3. Subsection (2) of section 732.218, Florida
 90 Statutes, is amended to read:

91 732.218 Rebuttable presumptions.—In determining whether
 92 ss. 732.216–732.228 apply to specific property, the following
 93 rebuttable presumptions apply:

94 (2) Real property located in this state, ~~other than~~
 95 ~~homestead and real property held as tenants by the entirety,~~ and
 96 personal property wherever located acquired by a married person
 97 while domiciled in a jurisdiction under whose laws property
 98 could not then be acquired as community property and title to
 99 which was taken in a form which created rights of survivorship
 100 are presumed to be property to which these sections do not

101 apply.

102 Section 4. Section 732.219, Florida Statutes, is amended
 103 to read:

104 732.219 Disposition upon death; waiver.—

105 (1) Upon the death of a married person, one-half of the
 106 property to which ss. 732.216-732.228 apply is the property of
 107 the surviving spouse, is not property of the decedent's probate
 108 estate, and is not subject to testamentary disposition by the
 109 decedent or distribution under the laws of succession of this
 110 state. One-half of that property is the property of the
 111 decedent's probate estate ~~decedent~~ and is subject to
 112 testamentary disposition or distribution under the laws of
 113 succession of this state. The decedent's one-half of that
 114 property is not in the elective estate. For purposes of this
 115 section, the term "probate estate" means all property wherever
 116 located, that is subject to estate administration in any state
 117 of the United States or in the District of Columbia.

118 (2) If not previously waived pursuant to s. 732.702, the
 119 right of a surviving spouse to assert a claim arising under ss.
 120 732.216-732.228, to any right, title, or interest in any
 121 property held by the decedent at the time of his or her death
 122 may be waived, wholly or partly, by a written contract,
 123 agreement, or waiver, signed by the surviving spouse, or any
 124 person acting on behalf of a surviving spouse, including, but
 125 not limited to, an attorney in fact; agent; guardian of the

126 property; or personal representative, if the written contract,
 127 agreement, or waiver includes the following or substantially
 128 similar language:

129 "By executing this contract, agreement, or waiver, I intend
 130 to waive my right as a surviving spouse to assert a claim
 131 to any right, title or interest in property held by the
 132 decedent at the time of the decedent's death arising under
 133 the Florida Uniform Disposition of Community Property
 134 Rights at Death Act (ss. 732.216-732.228, Florida
 135 Statutes), wholly or partly, as provided herein."

136 Section 5. Section 732.221, Florida Statutes, is repealed.

137 Section 6. Section 732.2211, Florida Statutes, is created
 138 to read:

139 732.2211 Demands or disputes; statute of repose.-

140 (1) (a) Any demand or dispute arising, wholly or partly,
 141 under ss. 732.216-732.228, regarding any right, title, or
 142 interest in any property held by the decedent or surviving
 143 spouse at the time of the decedent's death shall be determined
 144 in an action for declaratory relief governed by the rules of
 145 civil procedure. Notwithstanding any other law, a complaint for
 146 such action must be filed within 2 years after the decedent's
 147 death or be forever barred.

148 (b) A action for declaratory relief instituted pursuant to
 149 this section is not a claim, as defined in s. 731.201, and is
 150 not subject to the provisions of s. 733.702(1) or s. 733.710.

151 (2) The personal representative or curator has no duty to
152 discover whether property held by the decedent or surviving
153 spouse at the time of the decedent's death is property to which
154 ss. 732.216-732.228 apply, or may apply, unless a written demand
155 is made by:

156 (a) The surviving spouse or a beneficiary within 6 months
157 after service of a copy of the notice of administration on the
158 surviving spouse or beneficiary.

159 (b) A creditor, except as provided in paragraph (c),
160 within 3 months after the time of the first publication of the
161 notice to creditors.

162 (c) A creditor required to be served with a copy of the
163 notice to creditors, within the later of 30 days after the date
164 of service on the creditor or the time under paragraph (b).

165 (3) The rights of any interested person who fails to
166 timely file an action for declaratory relief pursuant to this
167 section are forfeited. The decedent's surviving spouse, personal
168 representative or curator, or any other person or entity that at
169 any time is in possession of any property to which ss. 732.216-
170 732.228 apply, or may apply, shall not be subject to liability
171 for any such forfeit rights. The decedent's personal
172 representative or curator may distribute the assets of the
173 decedent's estate without liability for any such forfeit rights.

174 (4) This section does not affect any issue or matter not
175 arising, wholly or partly, under ss. 732.216-732.228.

176 Section 7. Section 732.223, Florida Statutes, is repealed.

177 Section 8. Section 732.2231, Florida Statutes, is created
178 to read:

179 732.2231 Protection of payors and other third parties.—

180 (1) As used in this section the terms:

181 (a) "Governing instrument" has the same meaning as in s.
182 732.2025.

183 (b) "Payor" means the decedent's personal representative,
184 a trustee of a trust created by the decedent, an insurer,
185 business entity, employer, government, governmental agency or
186 subdivision, or any other person authorized or obligated by law
187 or a governing instrument to make payments.

188 (c) "Person" has the same meaning as in s. 732.2025.

189 (2) A property interest is subject to property rights
190 under ss. 732.216-732.228, however a payor or other third party
191 is not liable for paying, distributing, or transferring such
192 property to a beneficiary designated in a governing instrument,
193 or for taking any other action in good faith reliance on the
194 validity of a governing instrument.

195 Section 9. Section 732.225, Florida Statutes, is amended
196 to read:

197 732.225 Acts of married persons.—Sections 732.216-732.228
198 do not prevent married persons from severing or altering their
199 interests in property to which these sections apply. The
200 reinvestment of any property to which these sections apply in

201 real property located in this state which is or becomes real or
 202 personal property held by tenants by the entirety or homestead
 203 property creates a conclusive presumption that the spouses have
 204 agreed to terminate the community property attribute of the
 205 property reinvested.

206 Section 10. Subsection (1) of section 732.702, Florida
 207 Statutes, is amended to read:

208 732.702 Waiver of spousal rights.—

209 (1) The rights of a surviving spouse to an elective share,
 210 intestate share, pretermitted share, homestead, exempt property,
 211 family allowance, or to assert a claim under the Florida Uniform
 212 Disposition of Community Property Rights at Death Act as
 213 described in ss. 732.216-732.228, and preference in appointment
 214 as personal representative of an intestate estate or any of
 215 those rights, may be waived, wholly or partly, before or after
 216 marriage, by a written contract, agreement, or waiver, signed by
 217 the waiving party in the presence of two subscribing witnesses.
 218 The requirement of witnesses shall be applicable only to
 219 contracts, agreements, or waivers signed by Florida residents
 220 after the effective date of this law. Any contract, agreement,
 221 or waiver executed by a nonresident of Florida, either before or
 222 after this law takes effect, is valid in this state if valid
 223 when executed under the laws of the state or country where it
 224 was executed, whether or not he or she is a Florida resident at
 225 the time of death. Unless the waiver provides to the contrary, a

226 waiver of "all rights," or equivalent language, in the property
 227 or estate of a present or prospective spouse, or a complete
 228 property settlement entered into after, or in anticipation of,
 229 separation, dissolution of marriage, or divorce, is a waiver of
 230 all rights to elective share, intestate share, pretermitted
 231 share, homestead, exempt property, family allowance, or to
 232 assert a claim under the Florida Uniform Disposition of
 233 Community Property Rights at Death Act as described in ss.
 234 732.216-732.228, and preference in appointment as personal
 235 representative of an intestate estate, by the waiving party in
 236 the property of the other and a renunciation by the waiving
 237 party of all benefits that would otherwise pass to the waiving
 238 party from the other by intestate succession or by the
 239 provisions of any will executed before the written contract,
 240 agreement, or waiver.

241 Section 11. Paragraph (g) is added to subsection (2) of
 242 section 733.212, Florida Statutes, to read:

243 733.212 Notice of administration; filing of objections.-

244 (2) The notice shall state:

245 (g) That the personal representative or curator has no
 246 duty to discover whether any property held at the time of the
 247 decedent's death by the decedent or the decedent's surviving
 248 spouse is property to which the Florida Uniform Disposition of
 249 Community Property Rights at Death Act as described in ss.
 250 732.216-732.228 applies, or may apply, unless a written demand

251 is made by the surviving spouse or a beneficiary as specified
 252 under s. 732.2211.

253 Section 12. Subsection (1) of section 733.2121, Florida
 254 Statutes, is amended to read:

255 733.2121 Notice to creditors; filing of claims.—

256 (1) Unless creditors' claims are otherwise barred by s.
 257 733.710, the personal representative shall promptly publish a
 258 notice to creditors. The notice shall contain the name of the
 259 decedent, the file number of the estate, the designation and
 260 address of the court in which the proceedings are pending, the
 261 name and address of the personal representative, the name and
 262 address of the personal representative's attorney, and the date
 263 of first publication. The notice shall state that creditors must
 264 file claims against the estate with the court during the time
 265 periods set forth in s. 733.702, or be forever barred. The
 266 notice shall state that a personal representative or curator has
 267 no duty to discover whether any property held at the time of the
 268 decedent's death by the decedent or the decedent's surviving
 269 spouse is property to which the Florida Uniform Disposition of
 270 Community Property Rights at Death Act as described in ss.
 271 732.216-732.228, applies, or may apply, unless a written demand
 272 is made by a creditor as specified under s. 732.2211.

273 Section 13. Subsection (1) of section 733.607, Florida
 274 Statutes, is amended to read:

275 733.607 Possession of estate.—

276 (1) Except as otherwise provided by a decedent's will,
277 every personal representative has a right to, and shall take
278 possession or control of, the decedent's property, except the
279 protected homestead, but any real property or tangible personal
280 property may be left with, or surrendered to, the person
281 presumptively entitled to it unless possession of the property
282 by the personal representative will be necessary for purposes of
283 administration. The request by a personal representative for
284 delivery of any property possessed by a beneficiary is
285 conclusive evidence that the possession of the property by the
286 personal representative is necessary for the purposes of
287 administration, in any action against the beneficiary for
288 possession of it. The personal representative shall take all
289 steps reasonably necessary for the management, protection, and
290 preservation of the estate until distribution and may maintain
291 an action to recover possession of property or to determine the
292 title to it. Notwithstanding anything in this section, the
293 personal representative has no right to, and shall not knowingly
294 take possession or control of, a surviving spouse's one-half
295 share of property to which the Florida Uniform Disposition of
296 Community Property Rights at Death Act as described in ss.
297 732.216-732.228, applies.

298 Section 14. Except as otherwise expressly provided in this
299 act, this act shall take effect upon becoming a law.

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 Fabricio offered the following:

3

4

Amendment

5

Remove line 61 and insert:

6

orders affecting or describing real property,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 987 Court-related Functions
SPONSOR(S): López, J. and others
TIED BILLS: IDEN./SIM. BILLS: SB 1660

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

SUMMARY ANALYSIS

The State Constitution mandates that there be an elected clerk of the circuit court in each of Florida's 67 counties to serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds. As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law. One such duty includes the provision of ministerial assistance to *pro se* litigants, which assistance may not include the provision of legal advice.

The State Constitution also mandates that all funding for the offices of the clerks of the circuit court performing court-related functions come from judicial proceeding filing fees, services charges, and costs for performing such functions as required by general law. Because revenue generated from such fees, charges, and costs varies from year to year, the annual operating budget of the clerks of the circuit court similarly varies.

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency ("LEP individual") can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI's prohibition against national origin discrimination; this is often true of failing to ensure that an LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods. To promote such access, the Florida Evidence Code and the Florida Rules of Judicial Administration require an interpreter's appointment for judicial proceedings in specified situations. An interpreter may also be necessary for depositions, mediations, and other case-related proceedings and to give an LEP individual access to points of public contact for the court system, which may include the offices of the clerks of the circuit court.

HB 987 authorizes, but does not require, a clerk of the circuit court to contract with a third-party interpretation service provider and a third-party translation service provider for interpretation and translation services for civil cases and adds such services to the list of court-related functions the clerks may fund from filing fees, service charges, court costs, and fines. Under the bill, interpretation and translation services are ministerial and may be made available to any party requesting such services, regardless of whether the party is represented by counsel.

The bill also:

- Allows the clerks to provide ministerial assistance in making translation services available.
- Specifies that the ministerial assistance the clerks may provide to *pro se* litigants may include interpretation and translation services.
- Provides that a party to a civil case is not prohibited from providing for his or her own interpretation or translation services or service providers.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local governments. The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

The State Constitution mandates that there be an elected clerk of the circuit court in each of Florida's 67 counties to serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.¹ As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.² One such duty includes the provision of ministerial assistance to *pro se* litigants,³ which assistance may not include the provision of legal advice.⁴

The State Constitution also mandates that all funding for the offices of the clerks of the circuit court performing court-related functions come from judicial proceeding filing fees⁵ and services charges⁶ and costs for performing such functions as required by general law.⁷ Court-related functions include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing case assignment, reopening, reassignment, and appeals;
- Processing of bond forfeiture payments;
- Data collection and reporting;
- Determination of indigent status;⁸ and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.⁹

Because revenue generated from such fees, charges, and costs varies year to year, the annual operating budget of the clerks of the circuit court similarly varies.¹⁰

¹ The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and Art. VIII, s. 1, Fla. Const.; Florida Department of State, *County Governments*, <https://dos.myflorida.com/library-archives/research/florida-information/government/local-resources/fl-counties/> (last visited Jan. 22, 2024).

² "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

³ A "*pro se* litigant" is a litigant who represents himself or herself – that is, a litigant unrepresented by an attorney. Legal Information Institute, *Pro Se*, https://www.law.cornell.edu/wex/pro_se (last visited Jan. 22, 2024).

⁴ Florida law considers the provision of legal advice to be the practice of law. However, Florida law prohibits the clerks of the circuit court from practicing law in this state. Ss. 28.215 and 454.18, F.S.

⁵ Filing fees which the clerks must charge are generally set out in s. 28.241, F.S. Certain filings for which the clerks may not charge a filing fee, set out elsewhere in Florida law, include a petition for a protective injunction against domestic, repeat, dating, or sexual violence. See, e.g., ss. 741.30 and 784.046, F.S.

⁶ Service charges which the clerks must charge are generally set out in s. 28.24, F.S.

⁷ Selected salaries, costs, and expenses of the state courts system may also be funded from such fees, charges, and costs as provided by general law. Art. V, s. 14, Fla. Const.

⁸ Florida law exempts an indigent person from paying specified fees, charges, and costs in any judicial proceeding. A person seeking to be designated indigent must apply to the clerk for a determination of his or her status, which application must meet specified statutory requirements. A person is considered "indigent" if he or she has an annual income equal to or below 200 percent of the federal poverty guidelines or is receiving Temporary Assistance for Needy Families -Cash Assistance, poverty-related veterans' benefits, or supplemental Social Security income. Ss. 57.081 and 57.082, F.S.

⁹ S. 28.35(3)(a), F.S.

¹⁰ Florida Clerks of Court Operations Corporation, *CFY-2022-23 Budget Development Spreadsheet*, <https://flccoc.org/clerks-budget/#opb> (last visited Jan. 22, 2024); Florida Clerks of Court Operations Corporation, *CFY2021-22 Approved Budget*, <https://flccoc.org/wp-content/uploads/2021/08/CFY2122-Approved-Budget-081121.pdf> (last visited Jan. 22, 2024).

Interpretation and Translation Services

Although the terms “interpreter” and “translator” are often used interchangeably, there are significant differences between the two roles. An interpreter works with spoken language, by listening to a speaker speak in one language and repeating what the speaker said in another language.¹¹ Interpreters use one of two modes interpreting, consecutive¹² or simultaneous,¹³ depending on the context.¹⁴ Translators work with written documents and take text written in the source language and translate it into text in the target language (such as taking a document written in Spanish and translating the document into English).¹⁵

According to data from the United States Census Bureau, over 60,000,000 people living in the United States who are over the age of five speak a language other than English at home.¹⁶ Of these, over 25,000,000 speak English “less than very well.”¹⁷ In Florida alone, nearly 30 percent of the state’s population over the age of five speaks a language other than English at home.¹⁸

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency (“LEP individual”) can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI’s prohibition against national origin discrimination; this is often true of failing to ensure that an LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods.¹⁹

The Florida Evidence Code provides that, when a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, a duly-qualified interpreter must be sworn in to interpret for the witness, at no cost to the witness.²⁰ Similarly, the Florida Rules of Judicial Administration require an interpreter’s appointment free of charge to the person needing the interpreter’s services:

- In any criminal or juvenile delinquency proceeding in which an LEP individual is the:
 - Accused; or
 - Victim, unless the court finds that he or she does not require an interpreter; and
- In all other proceedings in which an LEP individual is a litigant, if the court determines that:
 - The litigant’s inability to comprehend English deprives him or her of an understanding of the court proceedings;
 - A fundamental interest is at stake;²¹ and
 - No alternative to an interpreter’s appointment exists.²²

The Office of the State Courts Administrator manages and administers the Court Interpreter Certification and Regulation Program and maintains a registry of certified,²³ language-skilled,²⁴

¹¹ American Translators Association, *What’s the Difference Between a Translator and an Interpreter?*, (Feb. 1, 2023), <https://www.atanet.org/client-assistance/whats-the-difference-between-a-translator-and-an-interpreter/> (last visited Jan. 22, 2024).

¹² Consecutive interpreting involves listening to a speaker and repeating what has been said after the speaker stops talking. *Supra* note 11.

¹³ Simultaneous interpreting involves listening to a speaker and simultaneously repeating their speech in the target language on a slight delay. *Supra* note 11.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (last visited Jan. 22, 2024).

¹⁷ *Id.*

¹⁸ U.S. Census Bureau, *Quick Facts: Florida*, <https://www.census.gov/quickfacts/fact/table/FL/POP815221> (last visited Jan. 22, 2024).

¹⁹ U.S. Dept. of Justice, *Working with State Courts to Remove Language Barriers to Justice*, <https://www.justice.gov/archives/opa/blog/working-state-courts-remove-language-barriers-justice> (last visited Jan. 22, 2024).

²⁰ S. 90.606, F.S.

²¹ A fundamental interest may include civil commitment, termination of parental rights, paternity, or dependency proceedings.

²² R. 2.560, F.R.J.A.

²³ A “certified” designation is the highest-qualified state-level interpreter designation for languages for which there is a state-level certification examination. Currently, these languages are Amharic, Arabic, Bosnian/Serbian/Croatian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Spanish, Turkish, and Vietnamese. Office of

provisionally approved,²⁵ and registered²⁶ court interpreters.²⁷ Generally, the court must appoint an interpreter to provide interpretation services in the following order of preference:²⁸

- A certified or language-skilled interpreter.
- A provisionally-approved interpreter.
- A registered interpreter.
- An interpreter who is not certified, language-skilled, provisionally-approved, or registered, if the court finds good cause (such as preventing burdensome delay or the LEP individual's consent).

Parties to litigation may, for proceedings for which no interpreter is appointed, contract for the services of an interpreter at their own expense, but must observe the same preferences when retaining an interpreter as do the courts when appointing them.²⁹ However, the United States Department of Justice has noted that interpreters are not just necessary for court appearances; an interpreter may also be necessary to give an LEP individual access to points of public contact for the court system, which may include information desks and filing offices, including the offices of the clerks of the circuit court.³⁰

Effect of Proposed Changes

HB 987 authorizes, but does not require, each clerk of the circuit court to contract with a third-party interpretation service provider and a third-party translation service provider for interpretation and translation services for civil cases. The bill adds interpretation and translation services to the list of court-related functions the clerks may fund from filing fees, service charges, court costs, and fines. Under the bill, interpretation and translation services are ministerial and may be made available to any party requesting such services, regardless of whether the party is represented by counsel.

The bill also:

- Allows the clerks to provide ministerial assistance in making interpretation and translation services available.
- Specifies that the ministerial assistance the clerks may provide to *pro se* litigants may include interpretation and translation services.
- Provides that a party to a civil case is not prohibited from providing for his or her own interpretation and translation services or third-party interpretation and translation service providers.
- Expressly states that provision of interpretation and translation services under the bill is an optional court-related function and that nothing in s. 28.217, F.S., requires the clerks to provide such services.
- Provides an effective date of October 1, 2024.

Practically speaking, where a clerk of the circuit court contracts with a third-party interpretation or translation service provider as contemplated by the bill, this could make interpretation and translation services available free of charge to a person requiring such services in civil proceedings for which an interpreter is not already appointed by the court.

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

the State Courts Administrator, *Find an Interpreter*, <https://www.flcourts.gov/Resources-Services/Court-Services/Court-Interpreting/Find-an-Interpreter> (last visited Jan. 22, 2024).

²⁴ The “language-skilled” designation is the highest-qualified state-level interpreter designation for languages for which there is no state-level certification examination. *Id.*

²⁵ The “provisionally approved” designation is the next highest qualified state-level interpreter designation below the certified and language-skilled designations. Such an interpreter may be utilized when no certified or language-skilled interpreter is available. *Id.*

²⁶ Registration is the initial step towards obtaining an official state-level designation, and “registered” refers to interpreters who have satisfied general prerequisites but who have yet to qualify for an official designation. Such an interpreter may be utilized when there is no certified, language-skilled, or provisionally approved interpreter available. *Id.*

²⁷ *Id.*; Office of the State Courts Administrator, *Court Services*, <https://www.flcourts.gov/Resources-Services/Court-Services> (last visited Jan. 22, 2024).

²⁸ R. 2.560, F.R.J.A.

²⁹ *Id.*

³⁰ Letter from the U.S. Dept. of Justice, Civil Rights Division, to Chief Justices/State Court Administrators (August 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 22, 2024).

STORAGE NAME: h0987.CJS

DATE: 1/24/2024

B. SECTION DIRECTORY:

Section 1: Amends s. 28.35, F.S., relating to Florida Clerks of Court Operations Corporation.

Section 2: Amends s. 28.215, F.S., relating to pro se assistance.

Section 3: Creates s. 28.127, F.S., relating to interpretation and translation services.

Section 4: Provides an effective date.

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 increase local government expenditures to the extent that the clerk of the circuit court for a particular county elects to contract for interpretation and translation services as provided in the bill and was not already funding similar services.

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. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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 fund from filing fees, service charges, court costs, and fines
 27 is limited to those functions expressly authorized by law or
 28 court rule. Those functions include the following: case
 29 maintenance; records management; court preparation and
 30 attendance; interpretation and translation services; processing
 31 the assignment, reopening, and reassignment of cases; processing
 32 of appeals; collection and distribution of fines, fees, service
 33 charges, and court costs; processing of bond forfeiture
 34 payments; data collection and reporting; determinations of
 35 indigent status; and paying reasonable administrative support
 36 costs to enable the clerk of the court to carry out these court-
 37 related functions.

38 Section 2. Section 28.215, Florida Statutes, is amended to
 39 read:

40 28.215 Pro se assistance.—The clerk of the circuit court
 41 shall provide ministerial assistance to pro se litigants.

42 (1) Assistance may ~~shall~~ not include the provision of
 43 legal advice.

44 (2) Assistance may include interpretation and translation
 45 services, as provided in s. 28.217, to pro se litigants.

46 Section 3. Section 28.217, Florida Statutes, is created to
 47 read:

48 28.217 Interpretation and translation services.—

49 (1) The clerk of the circuit court may contract with a
 50 third-party interpretation service provider and a third-party

51 translation service provider to provide interpretation and
52 translation services, respectively, in civil actions.

53 (2) The provision of such services is ministerial and is
54 an authorized court-related function under s. 28.35(3)(a), and
55 such services are an allowable expenditure by the clerk of the
56 circuit court under s. 28.36.

57 (3) Such services may be made available, upon request, to
58 any party to such an action, regardless of whether the party is
59 represented by counsel. The clerk of the circuit court may only
60 provide ministerial assistance in making such services
61 available, and such assistance may not include the provision of
62 legal advice.

63 (4) This section may not be construed to prohibit a party
64 to such an action from providing his or her own interpretation
65 or translation services or from using his or her own third-party
66 interpreter or translation service providers.

67 (5) The provision of interpretation and translation
68 services under this section is an optional court-related
69 function, and this section does not require the clerk of the
70 circuit court to provide such services.

71 Section 4. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1077 Clerks of Court
SPONSOR(S): Botana and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

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

SUMMARY ANALYSIS

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerks collect court fines, fees, service charges, and court costs related to court dispositions and are authorized to charge fees to perform various functions. Much of the funding for the clerks' annual operating budgets comes from such fees, services charges, fines, and court costs that are deposited into the Florida Clerk of Court Trust Fund. However, such revenue does not go entirely to the clerks. Florida law directs the Florida Department of Revenue to distribute such revenue among the clerks, municipalities, counties, 51 state trust funds of various statutory functions, and the state's General Revenue Fund (GRF).

Under ss. 318.15 and 322.245, F.S., a person's driver license and driving privilege may be suspended for various reasons, including failing to comply with civil penalties or other court directives within a specified time period; failing to enter into or comply with the terms of a penalty payment plan; or failing to pay child support. A person's driver license and privilege may not be reinstated until the person complies with all obligations and penalties imposed or with other specified court directives; and presents a certificate of compliance to a driver license office along with a nonrefundable service charge of \$60.

HB 1077 amends a number of statutes which increase revenue for clerks through reimbursement for certain petitions and applications and through redistribution of cumulative excess clerk revenue and other specified fees. Specifically, the bill:

- Amends ss. 27.52, 27.54, and 501.2101, F.S., to revise which trust funds certain moneys are deposited into.
- Amends ss. 28.241, 34.041, and 318.18, F.S., to reduce the amount of fees distributed to the General Revenue Fund.
- Amends ss. 28.35, 28.37, 40.29, 741.30, 784.046, and 784.0485, F.S., to expand the duties of the Florida Clerks of Court Operations Corporation.
- Creates s. 322.76, F.S., to authorize the establishment of the Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program.
- Amends s. 27.703, F.S., to require appointed capital collateral regional counsel or other appointed attorney to be paid from funds appropriated to JAC.
- Amends s. 110.112, F.S., to eliminate state attorney and public defender reporting requirements regarding affirmative action programs.
- Amends s. 186.003, F.S., to update the definition of "state agency" or "agency" in the state and regional planning chapter of the Florida Statutes.

The bill may have a significant fiscal impact on state and local governments. See Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerk may also serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.¹ As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.² Such duties include the performance of court-related functions, such as:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing case assignment, reopening, reassignment, and appeals;
- Processing of bond forfeiture payments;
- Data collection and reporting;
- Determination of indigent status; and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.³

Funding for the Clerks of the Circuit Courts

Annual Operating Budgets

Much of the funding for the clerks' annual operating budgets comes from collected revenues including judicial proceeding fees,⁴ services charges,⁵ fines,⁶ and court costs that are deposited into the Florida Clerk of Court Trust Fund ("FCC Trust Fund").⁷ However, such revenue does not go entirely to the clerks. Florida law directs the Florida Department of Revenue ("DOR") to distribute such revenue among the clerks, municipalities, counties, 51 state trust funds of various statutory functions, and the state's General Revenue Fund.

Court-Related Functions

The Florida Constitution mandates that funding for much of the clerks' court-related functions come from collected revenue deposited into the FCC Trust Fund.⁸ Additionally, each clerk must create a Fine and Forfeiture Fund for use by the clerk's office in its execution of court-related functions. The Fine and Forfeiture Fund must consist of specified fines, fees, and costs which the clerk is authorized to retain or which are otherwise directed to the Fund.⁹

Budget Procedures

¹ The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and art. VIII, s. 1, Fla. Const.

² "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

³ S. 28.35(3)(a), F.S.

⁴ Filing fees which the clerks must charge are generally set out in s. 28.241, F.S.

⁵ Service charges which the clerks must charge are generally set out in s. 28.24, F.S.

⁶ Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities, must be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions. S. 28.37(6), F.S.

⁷ Other funding sources include grants and payments remitted by counties for the performance of county-related functions.

⁸ Selected salaries, costs, and expenses of the state courts system and court-related functions may also be funded from such fines, fees, charges, and costs. Art. V, s. 14, Fla. Const.; s. 28.37(1), F.S.

⁹ S. 142.01, F.S.

On or prior to June 1st of each year, each clerk must prepare, summarize, and submit a proposed budget to CCOC in the manner and form prescribed by CCOC.¹⁰ The proposed budget must:

- Provide detailed information on the anticipated revenues available and expenditures necessary for the performance of court-related functions for the fiscal year beginning October 1; and
- Be balanced such that the total of the estimated revenues available¹¹ equals or exceeds the total of the anticipated expenditures.¹²

If a clerk estimates that his or her available funds in addition to projected revenues are insufficient to meet anticipated expenditures, the clerk must report the revenue deficit to CCOC. If the CCOC verifies that a revenue deficit is likely, the CCOC must certify the deficit and notify DOR that the clerk will, as required by statute, retain collected revenues in an amount necessary to fully fund the projected revenue deficit, which revenues the clerk would otherwise have to remit to DOR for deposit into the FCC Trust Fund.¹³

If a revenue deficit is still projected for that clerk after retaining revenues as described above, the CCOC must certify the revenue deficit amount to the Executive Office of the Governor (“EOG”) and request release authority for additional funds from the FCC Trust Fund. The EOG may approve the release of such funds and provide notice of such approval to DOR and the Chief Financial Officer (“CFO”). The DOR must then request monthly distributions from the CFO in equal amounts to each clerk certified to have a revenue deficit.¹⁴

Once a clerk receives his or her court-related budget allocation for the fiscal year, the total is divided by 12 to give an estimated monthly budget allocation. In the event that the clerk collects more than the monthly projection, the clerk must submit such additional amount to the FCC Trust Fund by the 10th of the following month.¹⁵ Such revenue is then redistributed to clerks in counties that do not bring in sufficient revenue to fund their budget allocations.

Each year the clerks are required to remit to DOR for deposit into the FCC Trust Fund the cumulative excess¹⁶ of all fines, fees, service charges, and court costs retained by the clerks, plus any funds received from the FCC Trust Fund based on revenue deficiency, which exceed the amount needed to meet the clerks’ authorized budget amounts.¹⁷ Thereafter, DOR must transfer 50 percent of the cumulative excess of the original revenue projection from the FCC Trust Fund to the General Revenue Fund. The remaining 50 percent in the FCC Trust Fund may be used in the development of the total combined budgets of the clerks.¹⁸

Florida Clerks of Court Operations Corporation

In 2003, the Florida Legislature created the Florida Clerks of Court Operations Corporation (CCOC) to provide budget support to the clerks. All clerks of the circuit courts are members of the CCOC and hold their positions and authority in an ex officio capacity.¹⁹ CCOC is funded through appropriations by general law pursuant to a contract with the CFO.²⁰

The CCOC is responsible for approving the combined budgets submitted by the clerks, and ensuring that the total combined budgets of all 67 clerks does not exceed the total estimated revenues from

¹⁰ S. 28.36, F.S.

¹¹ “Estimated revenues available” may include the fines, fees, charges, and costs to be collected by the clerk in the upcoming fiscal year; the total of unspent budgeted funds for court-related functions carried forward by the clerk from the previous county fiscal year; and the portion of the balance of funds remaining in the FCC Trust Fund after the transfer of funds to the General Revenue Fund which has been allocated to the each clerk by CCOC. S. 28.36(2)(b), F.S.

¹² *Id.*

¹³ S. 28.36(4), F.S.

¹⁴ *Id.*

¹⁵ S. 28.37(3), F.S.

¹⁶ Section 28.37(2)(a), F.S., defines “cumulative excess” to mean revenues derived from fines, fees, service charges, and court costs collected by the clerks of the court which are greater than the original revenue projection.

¹⁷ S. 28.37(4)(a), F.S.

¹⁸ S. 28.37(4)(b), F.S.

¹⁹ S. 28.35(1)(a), F.S.

²⁰ S. 28.35(4), F.S.

fees, service charges, court costs, and fines for court-related functions available for court-related expenditures; plus the balance of funds remaining in the Clerks of Court Trust Fund after the transfer of funds to the General Revenue Fund; and plus any appropriations for court-related functions.²¹

Additional CCOC duties include, but are not limited to:

- Adopting a plan of operations.
- Recommending to the Legislature changes in the amounts and distribution of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks in the performance of their court-related functions.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.
- Preparing and submitting a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees by January 1 of each year on the operations and activities of the CCOC and detailing the budget development for the clerks of the court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk of court.
- Preparing an annual budget request which provides the anticipated amount necessary for reimbursement pursuant to s. 40.29(6), F.S., for certain petitions and orders.²² The request for reimbursement shall be submitted to the Governor for transmittal to the Legislature.²³
- Participating in the Florida Retirement System for its eligible employees.²⁴

No Fee Court Functions

There are certain filings for which clerks may not charge a filing fee, including:

- A filing by an indigent party;²⁵
- A petition for habeas corpus filed by a person detained as a mental health patient;²⁶
- An ex parte order for an involuntary examination;²⁷
- A petition for an involuntary commitment;²⁸
- Appellate filings for an indigent person determined to be, and involuntarily committed as, a sexually violent predator;²⁹
- A petition for involuntary assessment and stabilization for substance abuse impairment;³⁰
- A petition for a risk protection order;³¹ and
- A petition for a protective injunction against domestic violence;³² repeat, sexual, or dating violence;³³ or stalking.³⁴

However, subject to legislative appropriation, clerks may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence; repeat, sexual, or dating violence; or stalking issued by the court, at the rate of \$40 per petition. From this reimbursement, if any, the clerk must pay any law enforcement agency that served such an injunction a fee requested by the agency, not to exceed \$20.³⁵

²¹ S. 28.35(2)(f), F.S.

²² JAC is not authorized to make changes to the budget request except for technical changes necessary to conform to the legislative budget instructions. S. 28.35(2)(i), F.S.

²³ S. 28.35(2), F.S.

²⁴ S. 28.35(4), F.S.

²⁵ Ss. 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

²⁶ S. 394.459, F.S.

²⁷ S. 394.463, F.S.

²⁸ S. 394.467, F.S.

²⁹ S. 394.917, F.S.

³⁰ S. 397.6814, F.S.

³¹ S. 790.401, F.S.

³² S. 741.30, F.S.

³³ S. 784.046, F.S.

³⁴ S. 784.0485, F.S.

³⁵ Ss. 741.30(2)(a), 784.046(3)(b), and 784.0485(2)(a), F.S.

Driver License Suspension in Florida

Section 318.15, F.S., requires a clerk to notify the Department of Highway Safety and Motor Vehicles (DHSMV) if a person fails to:

- Comply with civil penalties within a specified time period;
- Enter into or comply with the terms of a penalty payment plan;
- Attend driver improvement school; or
- Appear at a scheduled hearing.³⁶

Section 322.245, F.S., requires a clerk to notify DHSMV if a person fails to:

- Comply with all directives of a court, imposed based on a violation of a criminal offense, within the time allotted by the court; or
- Pay child support.³⁷

Upon receipt of such notice from a clerk, pursuant to either s. 318.15 or 322.245, F.S., DHSMV must immediately issue an order suspending the driver license and driving privilege of such person. The order must inform the person that he or she may contact the clerk to establish a payment plan to make partial payments for court-related fines, fees, service charges, and court costs.³⁸

A person's driver license and privilege may not be reinstated until the person:

- Complies with the terms of a periodic payment plan or a revised payment plan with the clerk; complies with all obligations and penalties imposed; or complies with all court directives including payment of a delinquency fee; and
- Presents a certificate of compliance issued by the court to a driver license office along with a nonrefundable service charge of \$60.^{39, 40}

Effect of Proposed Changes

Trust Fund Deposits

The bill amends ss. 27.52, 27.54, and 501.2101, F.S., to:

- Require 25 percent of any costs recovered by a state attorney from a fraudulent indigency application to be remitted to DOR for deposit into the Grants and Donations Trust Fund of the applicable state attorney instead of into the Grants and Donations Trust Fund of JAC.
- Require any payments received from a county or municipality in support of the operation of the offices of the various public defenders and regional counsel to be deposited into the Grants and Donations Trust Fund of the applicable public defender or criminal conflict and civil regional counsel instead of into the Grants and Donations Trust Fund of JAC.
- Require any moneys received by an enforcing authority for attorney fees and costs of investigation or litigation for specified proceedings to be deposited into the Grants and Donations Trust Fund of a state attorney if the action is brought by the state attorney.

Deposit and Distribution of Fees

The bill amends ss. 28.241 and 34.041, F.S., to:

- Reduce the amount of the filing fees, received in a mortgage foreclosure action in which the value of the claim is \$250,000 or more and in which there are not more than five defendants, distributed to DOR for deposit into the General Revenue Fund from \$930 to \$465.
- Require the filing fee received from a party filing a cross-claim, counterclaim, counterpetition, or third-party complaint, or notice of cross-appeal or notice of joinder or motion to intervene as an appellate, cross-appellant, or petitioner in a civil action to be deposited into the clerk's Fine and

³⁶ S. 318.15(1)(a), F.S.

³⁷ S. 322.245(1-2), F.S.

³⁸ Ss. 318.15(1) and 322.245(3), F.S.

³⁹ S. 318.15(2), F.S.

⁴⁰ S. 322.29(2), F.S.

Forfeiture Fund if the relief sought by the party exceeds \$2,500 but is not more than \$15,000 instead of being remitted to DOR for deposit into the General Revenue Fund.

- Require service charges collected for issuing a summons to be deposited into the clerk's Fine and Forfeiture Fund instead of being remitted to DOR for deposit into the General Revenue Fund.

The bill amends s. 318.18, F.S., to:

- Require a \$16 civil penalty for failure to comply or failure to pay civil penalties under s. 318.18(8)(a), F.S., to be distributed as follows:
 - \$1.50 to DOR for deposit into the General Revenue Fund.
 - \$9.50 to DOR for deposit in the Highway Safety Operating Trust Fund.
 - \$5 to be retained by the clerk and deposited into the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk.
- Require a \$12.50 administrative fee collected for all noncriminal and nonmoving violations to be distributed as follows:
 - \$6.25 to be retained by the clerk and deposited into the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk.
 - \$6.25 to be deposited into the clerk's Fine and Forfeiture Fund.

Florida Clerks of Court Operations Corporation

The bill amends s. 28.35, F.S., to:

- Require CCOC to request the anticipated amount of reimbursement necessary pursuant to s. 40.29(7), F.S., for approved applications for civil indigency, in its annual budget request.
- Require CCOC to include the anticipated amount necessary to fund increases in employer contribution rates for court-related employees participating in the Florida Retirement System in its annual budget request. This request must be submitted in the form and manner prescribed by JAC and submitted to the Governor for transmittal to the Legislature. JAC may not alter the request except to make technical changes to conform to the legislative budget instructions.
- Authorize clerks to fund improvements to court technology from filing fees, service charges, court costs, and fines.

The bill amends s. 28.37, F.S., to:

- Require COCC to calculate the cumulative excess of clerk revenues and allow the clerks to retain 100 percent of the cumulative excess, instead of only 50 percent, for use in the development of the total combined budgets of the clerks of the court.
- Removes authority from DOR to automatically transfer 50 percent of the cumulative excess of clerk revenues to the General Revenue Fund.

The bill amends ss. 40.29, 741.30, 784.046, and 784.0485, F.S., to:

- Authorize CCOC to submit a certified request to the Justice Administrative Commission (JAC), on behalf of the clerks, for reimbursement for petitions and orders filed under:
 - Sections 394.459, 394.463, 394.467, 394.917, and 397.6814 at a rate of \$40 per petition or order; and
 - Sections 741.30, 784.046, and 784.0485 at a rate of \$195 per petition. From such a reimbursement, the bill requires a clerk to pay any law enforcement agency that served an injunction a fee not to exceed \$40, if a fee is requested by the agency.
- Authorize CCOC to submit a certified request for reimbursement to JAC for approved applications for civil indigency, where the civil filing fee was waived, at a rate of \$195 per approved application.
- Require CCOC to submit to JAC a certified amount by county of the employer contribution rate increases for the Florida Retirement System for court-related employees.

Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program

The bill creates s. 322.76, F.S., to authorize the establishment of the Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program. The bill authorizes the Clerk of the Circuit Court for Miami-

Dade County to reinstate or provide an affidavit to the department to reinstate a suspended driver license that was originally suspended for the following reasons when the obligations have been met or the suspension period has lapsed:

- Failure to fulfill a court-ordered child support obligation.
- Driving record points.
- Failure to comply with any provision of ch. 318 or 322, F.S.

The bill requires a person to comply with the provisions of s. 322.29, F.S., in order to qualify to have his or her license reinstated under this pilot program.

The bill requires DHSMV to ensure that its technology system allows the Miami-Dade County Clerk to reinstate suspended driver licenses within the system under the pilot program beginning on July 1, 2024.

The bill requires the Miami-Dade County Clerk to submit a report containing the following information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Executive Director of CCOC by December 31, 2025:

- The number of driver licenses reinstated.
- The amount of fees and costs collected, including the aggregate funds received by the clerk and local and state governmental entities, including from the General Revenue Fund.
- The personnel, operating, and other expenditures incurred by the clerk.
- Feedback received from the community, if any, in response to the Clerk's participation in the pilot program.
- Information regarding whether the pilot program provided more expeditious reinstatement of driver licenses.
- The Clerk's recommendation as to whether the pilot program should be extended in Miami-Dade County or to other clerks' offices.
- Any other information the Clerk deems necessary.

The bill repeals this pilot program on July 1, 2026.

Other Changes

The bill amends s. 27.703, F.S., to require appointed capital collateral regional counsel or other appointed attorney to be paid from funds appropriated to JAC instead of from funds appropriated to the CFO.

The bill amends s. 110.112, F.S., to eliminate state attorney and public defender reporting requirements regarding affirmative action programs for the previous fiscal year.

The bill amends s. 186.003, F.S., to remove an improper reference to state attorneys, public defenders, capital collateral regional counsel, and JAC from the definition of "state agency" or "agency" in the state and regional planning chapter of the Florida Statutes.

The bill makes other technical and conforming changes.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 27.52, F.S., relating to determination of indigent status.

Section 2: Amends s. 27.54, F.S., relating to limitation on payment of expenditures other than by the state.

Section 3: Amends s. 27.703, F.S., relating to conflict of interest and substitute counsel.

Section 4: Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

Section 5: Amends s. 28.35, F.S., relating to Florida Clerks of Court Operations Corporation.

Section 6: Amends s. 28.37, F.S., relating to fines, fees, service charges, and costs remitted to the

state.

Section 7: Amends s. 34.041, F.S., relating to filing fees.

Section 8: Amends s. 40.29, F.S., relating to payment of due-process costs; reimbursement for petitions and orders.

Section 9: Amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 10: Amends s. 110.112, F.S., relating to affirmative action; equal employment opportunity.

Section 11: Amends s. 186.003, F.S., relating to definitions.

Section 12: Amends s. 318.18, F.S., relating to amount of penalties.

Section 13: Creates s. 322.76, F.S., relating to Miami-Dade County the Clerk of Court Driver License Reinstatement Pilot Program.

Section 14: Amends s. 501.2101, F.S., relating to enforcing authorities; moneys received in certain proceedings.

Section 15: Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 16: Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 17: Amends s. 784.0485, F.S., relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 18: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a significant fiscal impact on state and local governments, as it makes a number of changes that allow for clerks to increase their revenue through reimbursement for certain petitions and applications and through redistribution of cumulative excess clerk revenue and other specified fees. While increasing revenue for the clerks, these changes may also negatively impact state revenue as less funds will be deposited into the General Revenue Fund and the state may be required to provide additional reimbursements to clerks' offices for certain petitions and applications at an increased cost.

Additionally, the bill may require the Miami-Dade County Clerk's Office to spend funds to develop and implement the pilot program created in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may require the Miami-Dade County clerk's office to spend funds to develop and implement the pilot program created in the bill; however, an exemption may apply as the bill may have only an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

26 removing a provision requiring each state attorney to
 27 publish an annual report addressing results of his or
 28 her affirmative action program; amending s. 186.003,
 29 F.S.; revising the definition of "state agency" for
 30 certain purposes; amending s. 318.18, F.S.; revising
 31 the distribution of certain civil penalty amounts and
 32 administrative fees; creating s. 322.76, F.S.;
 33 creating the Clerk of the Court Driver License
 34 Reinstatement Pilot Program; authorizing the Clerk of
 35 the Circuit Court for Miami-Dade County to reinstate
 36 or provide an affidavit to the department to reinstate
 37 certain suspended driver licenses; establishing
 38 requirements for the clerk under the program to be
 39 performed by a date certain; providing for expiration
 40 of the program; amending s. 501.2101, F.S.; revising
 41 the funds into which certain moneys received by state
 42 attorneys must be deposited; amending s. 741.30, F.S.;
 43 removing a provision authorizing certain clerks of
 44 circuit courts to request reimbursement for certain
 45 petitions related to domestic violence; amending s.
 46 784.046, F.S.; removing a provision authorizing the
 47 clerk of circuit court, under specific circumstances,
 48 to request reimbursement for certain petitions related
 49 to repeat, sexual, or dating violence; amending s.
 50 784.0485, F.S.; removing a provision authorizing the

51 clerk of circuit courts, under specific circumstances,
 52 to request reimbursement for certain petitions related
 53 to stalking; providing an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Paragraph (b) of subsection (7) of section
 58 27.52, Florida Statutes is amended to read:

59 27.52 Determination of indigent status.—

60 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

61 (b) If the court has reason to believe that any applicant,
 62 through fraud or misrepresentation, was improperly determined to
 63 be indigent or indigent for costs, the matter shall be referred
 64 to the state attorney. Twenty-five percent of any amount
 65 recovered by the state attorney as reasonable value of the
 66 services rendered, including fees, charges, and costs paid by
 67 the state on the person's behalf, shall be remitted to the
 68 Department of Revenue for deposit into the Grants and Donations
 69 Trust Fund of the applicable state attorney ~~within the Justice~~
 70 ~~Administrative Commission~~. Seventy-five percent of any amount
 71 recovered shall be remitted to the Department of Revenue for
 72 deposit into the General Revenue Fund.

73 Section 2. Paragraph (c) of subsection (2) of section
 74 27.54, Florida Statutes, is amended to

75 27.54 Limitation on payment of expenditures other than by

76 | the state.—
 77 | (2) A county or municipality may contract with, or
 78 | appropriate or contribute funds to, the operation of the offices
 79 | of the various public defenders and regional counsels ~~counsel~~ as
 80 | provided in this subsection. A public defender or regional
 81 | counsel defending violations of special laws or county or
 82 | municipal ordinances punishable by incarceration and not
 83 | ancillary to a state charge shall contract with counties and
 84 | municipalities to recover the full cost of services rendered on
 85 | an hourly basis or reimburse the state for the full cost of
 86 | assigning one or more full-time equivalent attorney positions to
 87 | work on behalf of the county or municipality. Notwithstanding
 88 | any other provision of law, in the case of a county with a
 89 | population of less than 75,000, the public defender or regional
 90 | counsel shall contract for full reimbursement, or for
 91 | reimbursement as the parties otherwise agree. In local ordinance
 92 | violation cases, the county or municipality shall pay for due
 93 | process services that are approved by the court, including
 94 | deposition costs, deposition transcript costs, investigative
 95 | costs, witness fees, expert witness costs, and interpreter
 96 | costs. The person charged with the violation shall be assessed a
 97 | fee for the services of a public defender or regional counsel
 98 | and other costs and fees paid by the county or municipality,
 99 | which assessed fee may be reduced to a lien, in all instances in
 100 | which the person enters a plea of guilty or no contest or is

101 found to be in violation or guilty of any count or lesser
 102 included offense of the charge or companion case charges,
 103 regardless of adjudication. The court shall determine the amount
 104 of the obligation. The county or municipality may recover
 105 assessed fees through collections court or as otherwise
 106 permitted by law, and any fees recovered pursuant to this
 107 section shall be forwarded to the applicable county or
 108 municipality as reimbursement.

109 (c) Any payments received pursuant to this subsection
 110 shall be deposited into the Grants and Donations Trust Fund of
 111 ~~within~~ the applicable public defender or criminal conflict and
 112 civil regional counsel ~~Justice Administrative Commission~~ for
 113 appropriation by the Legislature.

114 Section 3. Subsection (2) of section 27.703, Florida
 115 Statutes, is amended to read:

116 27.703 Conflict of interest and substitute counsel.-

117 (2) Appointed counsel shall be paid from funds
 118 appropriated to the Justice Administrative Commission ~~Chief~~
 119 ~~Financial Officer~~. The hourly rate may not exceed \$100. However,
 120 all appointments of private counsel under this section shall be
 121 in accordance with ss. 27.710 and 27.711.

122 Section 4. Paragraph (a) of subsection (1) of section
 123 28.241, Florida Statutes, is amended to read:

124 28.241 Filing fees for trial and appellate proceedings.-

125 (1) Filing fees are due at the time a party files a

126 pleading to initiate a proceeding or files a pleading for
127 relief. Reopen fees are due at the time a party files a pleading
128 to reopen a proceeding if at least 90 days have elapsed since
129 the filing of a final order or final judgment with the clerk. If
130 a fee is not paid upon the filing of the pleading as required
131 under this section, the clerk shall pursue collection of the fee
132 pursuant to s. 28.246.

133 (a)1.a. Except as provided in sub-subparagraph b. and
134 subparagraph 2., the party instituting any civil action, suit,
135 or proceeding in the circuit court shall pay to the clerk of
136 that court a filing fee of up to \$395 in all cases in which
137 there are not more than five defendants and an additional filing
138 fee of up to \$2.50, from which the clerk shall remit \$0.50 to
139 the Department of Revenue for deposit into the General Revenue
140 Fund, for each defendant in excess of five. Of the first \$200 in
141 filing fees, \$195 must be remitted to the Department of Revenue
142 for deposit into the State Courts Revenue Trust Fund, \$4 must be
143 remitted to the Department of Revenue for deposit into the
144 Administrative Trust Fund within the Department of Financial
145 Services and used to fund the contract with the Florida Clerks
146 of Court Operations Corporation created in s. 28.35, and \$1 must
147 be remitted to the Department of Revenue for deposit into the
148 Administrative Trust Fund within the Department of Financial
149 Services to fund audits of individual clerks' court-related
150 expenditures conducted by the Department of Financial Services.

151 b. The party instituting any civil action, suit, or
152 proceeding in the circuit court under chapter 39, chapter 61,
153 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
154 753 shall pay to the clerk of that court a filing fee of up to
155 \$295 in all cases in which there are not more than five
156 defendants and an additional filing fee of up to \$2.50 for each
157 defendant in excess of five. Of the first \$100 in filing fees,
158 \$95 must be remitted to the Department of Revenue for deposit
159 into the State Courts Revenue Trust Fund, \$4 must be remitted to
160 the Department of Revenue for deposit into the Administrative
161 Trust Fund within the Department of Financial Services and used
162 to fund the contract with the Florida Clerks of Court Operations
163 Corporation created in s. 28.35, and \$1 must be remitted to the
164 Department of Revenue for deposit into the Administrative Trust
165 Fund within the Department of Financial Services to fund audits
166 of individual clerks' court-related expenditures conducted by
167 the Department of Financial Services.

168 c. An additional filing fee of \$4 shall be paid to the
169 clerk. The clerk shall remit \$3.50 to the Department of Revenue
170 for deposit into the Court Education Trust Fund and shall remit
171 50 cents to the Department of Revenue for deposit into the
172 Administrative Trust Fund within the Department of Financial
173 Services to fund clerk education provided by the Florida Clerks
174 of Court Operations Corporation. An additional filing fee of up
175 to \$18 shall be paid by the party seeking each severance that is

176 granted, from which the clerk shall remit \$3 to the Department
177 of Revenue for deposit into the General Revenue Fund. The clerk
178 may impose an additional filing fee of up to \$85, from which the
179 clerk shall remit \$10 to the Department of Revenue for deposit
180 into the General Revenue Fund, for all proceedings of
181 garnishment, attachment, replevin, and distress. Postal charges
182 incurred by the clerk of the circuit court in making service by
183 certified or registered mail on defendants or other parties
184 shall be paid by the party at whose instance service is made.
185 Additional fees, charges, or costs may not be added to the
186 filing fees imposed under this section, except as authorized in
187 this section or by general law.

188 2.a. Notwithstanding the fees prescribed in subparagraph
189 1., a party instituting a civil action in circuit court relating
190 to real property or mortgage foreclosure shall pay a graduated
191 filing fee based on the value of the claim.

192 b. A party shall estimate in writing the amount in
193 controversy of the claim upon filing the action. For purposes of
194 this subparagraph, the value of a mortgage foreclosure action is
195 based upon the principal due on the note secured by the
196 mortgage, plus interest owed on the note and any moneys advanced
197 by the lender for property taxes, insurance, and other advances
198 secured by the mortgage, at the time of filing the foreclosure.
199 The value shall also include the value of any tax certificates
200 related to the property. In stating the value of a mortgage

201 foreclosure claim, a party shall declare in writing the total
202 value of the claim, as well as the individual elements of the
203 value as prescribed in this sub-subparagraph.

204 c. In its order providing for the final disposition of the
205 matter, the court shall identify the actual value of the claim.
206 The clerk shall adjust the filing fee if there is a difference
207 between the estimated amount in controversy and the actual value
208 of the claim and collect any additional filing fee owed or
209 provide a refund of excess filing fee paid.

210 d. The party shall pay a filing fee of:

211 (I) Three hundred and ninety-five dollars in all cases in
212 which the value of the claim is \$50,000 or less and in which
213 there are not more than five defendants. The party shall pay an
214 additional filing fee of up to \$2.50 for each defendant in
215 excess of five. Of the first \$200 in filing fees, \$195 must be
216 remitted by the clerk to the Department of Revenue for deposit
217 into the General Revenue Fund, \$4 must be remitted to the
218 Department of Revenue for deposit into the Administrative Trust
219 Fund within the Department of Financial Services and used to
220 fund the contract with the Florida Clerks of Court Operations
221 Corporation created in s. 28.35, and \$1 must be remitted to the
222 Department of Revenue for deposit into the Administrative Trust
223 Fund within the Department of Financial Services to fund audits
224 of individual clerks' court-related expenditures conducted by
225 the Department of Financial Services;

226 (II) Nine hundred dollars in all cases in which the value
 227 of the claim is more than \$50,000 but less than \$250,000 and in
 228 which there are not more than five defendants. The party shall
 229 pay an additional filing fee of up to \$2.50 for each defendant
 230 in excess of five. Of the first \$355 in filing fees, \$350 must
 231 be remitted by the clerk to the Department of Revenue for
 232 deposit into the General Revenue Fund, \$4 must be remitted to
 233 the Department of Revenue for deposit into the Administrative
 234 Trust Fund within the Department of Financial Services and used
 235 to fund the contract with the Florida Clerks of Court Operations
 236 Corporation created in s. 28.35, and \$1 must be remitted to the
 237 Department of Revenue for deposit into the Administrative Trust
 238 Fund within the Department of Financial Services to fund audits
 239 of individual clerks' court-related expenditures conducted by
 240 the Department of Financial Services; or

241 (III) One thousand nine hundred dollars in all cases in
 242 which the value of the claim is \$250,000 or more and in which
 243 there are not more than five defendants. The party shall pay an
 244 additional filing fee of up to \$2.50 for each defendant in
 245 excess of five. Of the first \$1,240 ~~\$1,705~~ in filing fees, \$465
 246 ~~\$930~~ must be remitted by the clerk to the Department of Revenue
 247 for deposit into the General Revenue Fund, \$770 must be remitted
 248 to the Department of Revenue for deposit into the State Courts
 249 Revenue Trust Fund, \$4 must be remitted to the Department of
 250 Revenue for deposit into the Administrative Trust Fund within

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251 the Department of Financial Services to fund the contract with
252 the Florida Clerks of Court Operations Corporation created in s.
253 28.35, and \$1 must be remitted to the Department of Revenue for
254 deposit into the Administrative Trust Fund within the Department
255 of Financial Services to fund audits of individual clerks'
256 court-related expenditures conducted by the Department of
257 Financial Services.

258 e. An additional filing fee of \$4 shall be paid to the
259 clerk. The clerk shall remit \$3.50 to the Department of Revenue
260 for deposit into the Court Education Trust Fund and shall remit
261 50 cents to the Department of Revenue for deposit into the
262 Administrative Trust Fund within the Department of Financial
263 Services to fund clerk education provided by the Florida Clerks
264 of Court Operations Corporation. An additional filing fee of up
265 to \$18 shall be paid by the party seeking each severance that is
266 granted. The clerk may impose an additional filing fee of up to
267 \$85 for all proceedings of garnishment, attachment, replevin,
268 and distress. Postal charges incurred by the clerk of the
269 circuit court in making service by certified or registered mail
270 on defendants or other parties shall be paid by the party at
271 whose instance service is made. Additional fees, charges, or
272 costs may not be added to the filing fees imposed under this
273 section, except as authorized in this section or by general law.

274 Section 5. Paragraph (i) of subsection (2) and paragraph
275 (a) of subsection (3) of section 28.35, Florida Statutes are

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276 amended, and paragraph (j) is added to subsection (2) of that
277 section, to read:

278 28.35 Florida Clerks of Court Operations Corporation.—

279 (2) The duties of the corporation shall include the
280 following:

281 (i) Annually preparing a budget request which,
282 notwithstanding the provisions of chapter 216 and in accordance
283 with s. 216.351, provides the anticipated amount necessary for
284 reimbursement pursuant to s. 40.29(6) and 40.29(7). The request
285 for the anticipated reimbursement amount shall be submitted in
286 the form and manner prescribed by the Justice Administrative
287 Commission. Such request is not subject to change by the Justice
288 Administrative Commission, except for technical changes
289 necessary to conform to the legislative budget instructions, and
290 shall be submitted to the Governor for transmittal to the
291 Legislature.

292 (j) Annually preparing a budget request that,
293 notwithstanding the provisions of chapter 216 and in accordance
294 with s. 216.351, provides the anticipated amount necessary to
295 fund increases in employer contribution rates pursuant to 121.71
296 and 121.72 for court-related employees participating in the
297 Florida Retirement System. The request for the anticipated
298 appropriation must be submitted in the form and manner
299 prescribed by the Justice Administrative Commission. The budget
300 request may not be changed by the Justice Administrative

301 Commission, except for technical changes necessary to conform to
 302 the legislative budget instructions and must be submitted to the
 303 Governor for transmittal to the Legislature.

304 (3)(a) The list of court-related functions that clerks may
 305 fund from filing fees, service charges, court costs, and fines
 306 is limited to those functions expressly authorized by law or
 307 court rule. Those functions include the following: case
 308 maintenance; records management; court preparation and
 309 attendance; processing the assignment, reopening, and
 310 reassignment of cases; processing of appeals; collection and
 311 distribution of fines, fees, service charges, and court costs;
 312 processing of bond forfeiture payments; data collection and
 313 reporting; determinations of indigent status; improving court
 314 technology; and paying reasonable administrative support costs
 315 to enable the clerk of the court to carry out these court-
 316 related functions.

317 Section 6. Paragraph (b) subsection (4) of section 28.37,
 318 Florida Statutes is amended to read:

319 28.37 Fines, fees, service charges, and costs remitted to
 320 the state.—

321 (4)

322 (b) No later than February 1 annually, ~~2022, and each~~
 323 ~~February 1 thereafter,~~ the Florida Clerks of Court Operations
 324 Corporation must calculate ~~Department of Revenue shall transfer~~
 325 ~~50 percent of the cumulative excess, which of the original~~

326 ~~revenue projection from the Clerks of the Court Trust Fund to~~
 327 ~~the General Revenue Fund. The remaining 50 percent in the Clerks~~
 328 ~~of the Court Trust Fund~~ may be used in the development of the
 329 total combined budgets of the clerks of the court as provided in
 330 s. 28.35(2)(f)6. ~~However,~~ A minimum of 10 percent ~~of the clerk-~~
 331 ~~retained portion~~ of the cumulative excess amount must be held in
 332 reserve until such funds reach an amount equal to at least 16
 333 percent of the total budget authority from the current county
 334 fiscal year, as provided in s. 28.36(3)(a).

335 Section 7. Paragraphs (c) and (d) of subsection (1) of
 336 section 34.041, Florida Statutes, are amended to read:

337 34.041 Filing fees.—

338 (1)

339 (c) A party in addition to a party described in paragraph
 340 (a) who files a pleading in an original civil action in the
 341 county court for affirmative relief by cross-claim, counterclaim,
 342 counterpetition, or third-party complaint, or who files a notice
 343 of cross-appeal or notice of joinder or motion to intervene as an
 344 appellant, cross-appellant, or petitioner, shall pay the clerk of
 345 court a fee of \$295 if the relief sought by the party under this
 346 paragraph exceeds \$2,500 but is not more than \$15,000 and \$395 if
 347 the relief sought by the party under this paragraph exceeds
 348 \$15,000. The clerk shall deposit ~~remit~~ the fee if the relief
 349 sought by the party under this paragraph exceeds \$2,500 but is
 350 not more than \$15,000 ~~to the Department of Revenue for deposit~~

351 into the fine and forfeiture fund established pursuant to s.
 352 142.01 General Revenue Fund. This fee does not apply if the
 353 cross-claim, counterclaim, counterpetition, or third-party
 354 complaint requires transfer of the case from county to circuit
 355 court. However, the party shall pay to the clerk the standard
 356 filing fee for the court to which the case is to be transferred.

357 (d) The clerk of court shall collect a service charge of
 358 \$10 for issuing a summons or an electronic certified copy of a
 359 summons, which the clerk shall deposit into the fine and
 360 forfeiture fund established pursuant to s. 142.01 ~~remit to the~~
 361 ~~Department of Revenue for deposit into the General Revenue~~
 362 ~~Fund~~. The clerk shall assess the fee against the party seeking
 363 to have the summons issued.

364 Section 8. Subsection (6) of section 40.29, Florida
 365 Statutes, is amended, and subsections (7) and (8) are added to
 366 that section, to read:

367 40.29 Payment of due-process costs; reimbursement for
 368 petitions, ~~and~~ orders, and waived civil filing fees for
 369 indigency; payment of Florida Retirement System costs for
 370 court-related employees.-

371 (6) Subject to legislative appropriation, the Florida
 372 Clerks of Court Operations Corporation ~~clerk of the circuit~~
 373 ~~court~~ may, on behalf of the clerks of the circuit court, on a
 374 quarterly basis, submit to the Justice Administrative
 375 Commission a certified request for reimbursement for petitions

376 and orders filed under ss. 394.459, 394.463, 394.467, 394.917,
377 and 397.6814, at the rate of \$40 per petition or order and for
378 orders filed under ss. 741.30, 784.046, and 784.0485, the
379 Florida Clerks of Court Operation Corporation may, on a
380 quarterly basis, submit a request for reimbursement at the
381 rate of \$195 per petition. From this reimbursement, the clerk
382 of the court receiving reimbursement must pay any law
383 enforcement agency serving injunctions a fee not to exceed
384 \$40, if so requested by the law enforcement agency. Such
385 request for reimbursement shall be submitted in the form and
386 manner prescribed by the Justice Administrative Commission
387 pursuant to s. 28.35(2)(i).

388 (7) Subject to legislative appropriation, the Florida
389 Clerks of Court Operations Corporation may, on a quarterly
390 basis, submit to the Justice Administrative Commission a
391 certified request for reimbursement for approved applications
392 for civil indigency under s. 57.082, in which the civil filing
393 fee has been waived, at the rate of \$195 per approved
394 application. The request for reimbursement shall be submitted
395 in the form and manner prescribed by the Justice
396 Administrative Commission pursuant to s. 28.35(2)(i).

397 (8) Subject to legislative appropriation, the Florida
398 Clerks of Court Operations Corporation must submit to the
399 Justice Administrative Commission a certified amount by county
400 of the employer contribution rate increases for the Florida

401 Retirement System for court-related employees.

402 Section 9. Paragraph (b) of subsection (7) of section
403 57.082, Florida Statutes, is amended to read:

404 57.082 Determination of civil indigent status.—

405 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

406 (b) If the court has reason to believe that any applicant,
407 through fraud or misrepresentation, was improperly determined to
408 be indigent, the matter shall be referred to the state attorney.

409 Twenty-five percent of any amount recovered by the state
410 attorney as reasonable value of the services rendered, including
411 fees, charges, and costs paid by the state on the person's
412 behalf, shall be remitted to the Department of Revenue for
413 deposit into the Grants and Donations Trust Fund of ~~within~~ the
414 applicable state attorney ~~Justice Administrative Commission~~.

415 Seventy-five percent of any amount recovered shall be remitted
416 to the Department of Revenue for deposit into the General
417 Revenue Fund.

418 Section 10. Paragraph (d) of subsection (4) of section
419 110.112, Florida Statutes, is amended to read:

420 110.112 Affirmative action; equal employment opportunity.—

421 (4) Each state attorney and public defender shall:

422 ~~(d) Report annually to the Justice Administrative~~
423 ~~Commission on the implementation, continuance, updating, and~~
424 ~~results of his or her affirmative action program for the~~
425 ~~previous fiscal year.~~

426 Section 11. Subsection (6) of section 186.003, Florida
 427 Statutes, is amended to read:

428 186.003 Definitions; ss. 186.001-186.031, 186.801-
 429 186.901.—As used in ss. 186.001-186.031 and 186.801-186.901, the
 430 term:

431 (6) "State agency" or "agency" means any official, officer,
 432 commission, board, authority, council, committee, or department
 433 of the executive branch of state government. For purposes of
 434 this chapter, "state agency" or "agency" includes ~~state~~
 435 ~~attorneys, public defenders, the capital collateral regional~~
 436 ~~counsel, the Justice Administrative Commission, and the Public~~
 437 Service Commission.

438 Section 12. Paragraph (a) of subsection (8) and subsection
 439 (18) of section 318.18, Florida Statutes, are amended to read:

440 318.18 Amount of penalties.—The penalties required for a
 441 noncriminal disposition pursuant to s. 318.14 or a criminal
 442 offense listed in s. 318.17 are as follows:

443 (8)(a) Any person who fails to comply with the court's
 444 requirements or who fails to pay the civil penalties specified
 445 in this section within the 30-day period provided for in s.
 446 318.14 must pay an additional civil penalty of \$16, \$1.50 ~~\$6.50~~
 447 of which must be remitted to the Department of Revenue for
 448 deposit in the General Revenue Fund, ~~and~~ \$9.50 of which must be
 449 remitted to the Department of Revenue for deposit in the Highway
 450 Safety Operating Trust Fund, and \$5.00 of which shall be

451 retained by the clerk of the court to be deposited in the Public
452 Records Modernization Trust Fund and used exclusively for
453 funding court-related technology needs of the clerk, as defined
454 in s. 29.008(1)(f)2. and (h). ~~Of this additional civil penalty~~
455 ~~of \$16, \$4 is not revenue for purposes of s. 28.36 and may not~~
456 ~~be used in establishing the budget of the clerk of the court~~
457 ~~under that section or s. 28.35.~~ The department shall contract
458 with the Florida Association of Court Clerks, Inc., to design,
459 establish, operate, upgrade, and maintain an automated statewide
460 Uniform Traffic Citation Accounting System to be operated by the
461 clerks of the court which shall include, but not be limited to,
462 the accounting for traffic infractions by type, a record of the
463 disposition of the citations, and an accounting system for the
464 fines assessed and the subsequent fine amounts paid to the
465 clerks of the court. The clerks of the court must provide the
466 information required by this chapter to be transmitted to the
467 department by electronic transmission pursuant to the contract.

468 (18) In addition to any penalties imposed, an
469 administrative fee of \$12.50 must be paid for all noncriminal
470 moving and nonmoving violations under chapters 316, 320, and
471 322. Of this administrative fee, \$6.25 must be deposited into
472 the Public Records Modernization Trust Fund and used exclusively
473 for funding court-related technology needs of the clerk, as
474 defined in s. 29.008(1)(f)2. and (h), and \$6.25 must be
475 deposited into the fine and forfeiture fund established pursuant

476 ~~to s. 142.01. The clerk shall remit the administrative fee to~~
 477 ~~the Department of Revenue for deposit into the General Revenue~~
 478 ~~Fund.~~

479 Section 13. Section 322.76, Florida Statutes, is created
 480 to read:

481 322.76 Miami-Dade County the Clerk of Court Driver License
 482 Reinstatement Pilot Program.-There is created in Miami-Dade
 483 County the Clerk of Court Driver License Reinstatement Pilot
 484 Program.

485 (1) As used in this section, the term "clerk" means the
 486 Clerk of the Circuit Court for Miami-Dade County.

487 (2) Notwithstanding any other provision to the contrary in
 488 this chapter, the clerk may reinstate or provide an affidavit to
 489 the department to reinstate a suspended driver license:

490 (a) For a person's failure to fulfill a court-ordered
 491 child support obligation.

492 (b) As a result of the end of suspension because of
 493 points, under s. 322.37, notwithstanding hardship license.

494 (c) For failure to comply with any provision of chapter
 495 318 or this chapter.

496 (3) Notwithstanding s. 322.29(1), an examination is not
 497 required for the reinstatement of a driver license suspended
 498 under s. 318.15 or s. 322.245 unless an examination is otherwise
 499 required by this chapter. A person applying for the
 500 reinstatement of a driver license suspended under s. 318.15 or

501 s. 322.245 must present to the clerk certification from the
502 court that he or she has either complied with all obligations
503 and penalties imposed pursuant to s. 318.15 or with all
504 directives of the court and the requirements of s. 322.245.

505 (4) A nonrefundable service fee must be paid pursuant to
506 s. 322.29(2).

507 (5) Before July 1, 2024, the department shall work with
508 the clerk, through its association, to ensure the ability within
509 its technology system for the clerk to reinstate suspended
510 driver licenses under the pilot program, to begin on July 1,
511 2024.

512 (6) By December 31, 2025, the clerk must submit the
513 Governor, the President of the Senate, the Speaker of the House
514 of Representatives, and the Executive Director of the Florida
515 Clerks of Court Operations Corporation a report containing the
516 following information:

517 (a) Number of driver license reinstatements.

518 (b) Amount of fees and costs collected, including the
519 aggregate funds received by the clerk, local governmental
520 entities, and state entities, including the General Revenue
521 Fund.

522 (c) The personnel, operating, and other expenditures
523 incurred by the clerk.

524 (d) Feedback received from the community, if any, in
525 response to the clerk's participation in the pilot program.

526 (e) Whether the pilot program led to improved timeliness
 527 for the reinstatement of driver licenses.

528 (f) The clerk's recommendation as to whether the pilot
 529 program should be extended in Miami-Dade County or to other
 530 clerks' offices.

531 (g) Any other information the clerk deems necessary.

532 (7) This section is repealed on July 1, 2026.

533 Section 14. Subsection (1) of section 501.2101, Florida
 534 Statutes, is amended to read:

535 501.2101 Enforcing authorities; moneys received in certain
 536 proceedings.—

537 (1) Any moneys received by an enforcing authority for
 538 attorney ~~attorney's~~ fees and costs of investigation or
 539 litigation in proceedings brought under the provisions of s.
 540 501.207, s. 501.208, or s. 501.211 shall be deposited as
 541 received in the Legal Affairs Revolving Trust Fund if the action
 542 is brought by the Department of Legal Affairs, and in the Grants
 543 and Donations ~~Consumer Frauds~~ Trust Fund of a state attorney ~~the~~
 544 ~~Justice Administrative Commission~~ if the action is brought by
 545 the ~~a~~ state attorney.

546 Section 15. Paragraph (a) of subsection (2) of section
 547 741.30, Florida Statutes, is amended to read:

548 741.30 Domestic violence; injunction; powers and duties of
 549 court and clerk; petition; notice and hearing; temporary
 550 injunction; issuance of injunction; statewide verification

551 system; enforcement; public records exemption.—

552 (2)(a) Notwithstanding any other law, the assessment of a
 553 filing fee for a petition for protection against domestic
 554 violence is prohibited. ~~However, subject to legislative~~
 555 ~~appropriation, the clerk of the circuit court may, on a~~
 556 ~~quarterly basis, submit to the Office of the State Courts~~
 557 ~~Administrator a certified request for reimbursement for~~
 558 ~~petitions for protection against domestic violence issued by the~~
 559 ~~court, at the rate of \$40 per petition. The request for~~
 560 ~~reimbursement must be submitted in the form and manner~~
 561 ~~prescribed by the Office of the State Courts Administrator. From~~
 562 ~~this reimbursement, the clerk shall pay any law enforcement~~
 563 ~~agency serving the injunction the fee requested by the law~~
 564 ~~enforcement agency; however, this fee may not exceed \$20.~~

565 Section 16. Paragraph (b) of subsection (3) of section
 566 784.046, Florida Statutes, is amended to read:

567 784.046 Action by victim of repeat violence, sexual
 568 violence, or dating violence for protective injunction; dating
 569 violence investigations, notice to victims, and reporting;
 570 pretrial release violations; public records exemption.—

571 (3)(b) Notwithstanding any other law, the clerk of the
 572 court may not assess a fee for filing a petition for protection
 573 against repeat violence, sexual violence, or dating violence.
 574 ~~However, subject to legislative appropriation, the clerk of the~~
 575 ~~court may, each quarter, submit to the Office of the State~~

576 ~~Courts Administrator a certified request for reimbursement for~~
 577 ~~petitions for protection issued by the court under this section~~
 578 ~~at the rate of \$40 per petition. The request for reimbursement~~
 579 ~~shall be submitted in the form and manner prescribed by the~~
 580 ~~Office of the State Courts Administrator. From this~~
 581 ~~reimbursement, the clerk shall pay the law enforcement agency~~
 582 ~~serving the injunction the fee requested by the law enforcement~~
 583 ~~agency; however, this fee may not exceed \$20.~~

584 Section 17. Paragraph (a) of subsection (2) of section
 585 784.0485, Florida Statutes, is amended to read:

586 784.0485 Stalking; injunction; powers and duties of court
 587 and clerk; petition; notice and hearing; temporary injunction;
 588 issuance of injunction; statewide verification system;
 589 enforcement.—

590 (2) (a) Notwithstanding any other law, the clerk of court
 591 may not assess a filing fee to file a petition for protection
 592 against stalking. ~~However, subject to legislative appropriation,~~
 593 ~~the clerk of the circuit court may, on a quarterly basis, submit~~
 594 ~~to the Office of the State Courts Administrator a certified~~
 595 ~~request for reimbursement for petitions for protection against~~
 596 ~~stalking issued by the court, at the rate of \$40 per petition.~~
 597 ~~The request for reimbursement shall be submitted in the form and~~
 598 ~~manner prescribed by the Office of the State Courts~~
 599 ~~Administrator. From this reimbursement, the clerk shall pay any~~
 600 ~~law enforcement agency serving the injunction the fee requested~~

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601 | ~~by the law enforcement agency; however, this fee may not exceed~~
602 | ~~\$20.~~
603 | Section 18. This act shall take effect upon becoming a
604 | law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1093 Florida Uniform Fiduciary Income and Principal Act

SPONSOR(S): Caruso

TIED BILLS: IDEN./SIM. BILLS: SB 1316

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

SUMMARY ANALYSIS

A trust is a relationship in which one party, the “settlor,” gives another party, the “trustee,” the right to hold title to the settlor’s property or assets for a third party’s benefit (“beneficiary”). Traditionally, many trust beneficiaries were entitled to receive either income earned by trust investments (“income beneficiary”) or a share of trust principal when an income interest ended (“remainder beneficiary”). In such a scenario, the trustee’s allocation of receipts and expenditures to income or principal had a direct effect on a beneficiary’s financial interests, and the financial interests of an income beneficiary were often at odds with those of the remainder beneficiary.

In 1931, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) adopted the first Uniform Principal and Income Act (“UPIA”), which, in pertinent part, governed the allocation of trust and estate receipts and disbursements between income and principal where the terms of the trust did not provide for such allocation. Forty-seven states, including Florida, subsequently adopted some form of the UPIA; Florida’s version, known as the Florida Uniform Principal and Income Act (“FUPIA”), is codified in ch. 783, F.S. However, in recent decades, the distinction between income and principal has become less important, for two reasons. First, the “modern portfolio theory” allows trustees to invest for the maximum total return, whether the return is in the form of income or principal growth. This has led to the rise in popularity of the “unitrust,” which has reduced the likelihood that the financial interests of the income beneficiary and the remainder beneficiary will be at odds, as such a trust allows the income beneficiary to receive income from the trust at a set percentage of the trust’s fair market value while the remainder beneficiary receives a fair disbursement after the income interest ends. Second, modern trusts are often drafted with more flexible terms, giving trustees discretion to accumulate income or invade principal when advantageous to further the trust’s purposes.

In 2018, the NCCUSL adopted the Uniform Fiduciary Income and Principal Act (“UFIPA”) to account for these more recent developments. In response to UFIPA’s adoption, the Real Property, Probate and Trust Law Section of the Florida Bar convened a committee (“Committee”) to review UFIPA and consider whether Florida should adopt the new model law. The Committee ultimately proposed a revision to FUPIA that would incorporate UFIPA language wherever possible while preserving certain public policy choices found in existing Florida law. This proposed revision is the Florida Uniform Fiduciary Income and Principal Act (“FUFIPA”).

HB 1093 codifies FUFIPA into ch. 783, F.S., replacing FUPIA as the law governing the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for such an allocation. FUFIPA would, in addition to modernizing trust law generally:

- Allow for total-return investing under the “modern portfolio theory.”
- Provide for the conversion of an existing trust into a unitrust.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of January 1, 2025.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trusts

A trust is a relationship in which one party (the “settlor”)¹ gives another party (the “trustee”) the right to hold title to the settlor’s assets for a third party’s benefit (the “beneficiary”). A trust may be created and take effect during a settlor’s lifetime (“a living trust”) or may be created by a will and take effect when the settlor dies (“testamentary trust”).² A trust may also be revocable (so that the terms may be changed at any time before the settlor’s death) or irrevocable (so that the terms cannot be modified after the trust’s creation absent consent of the beneficiaries).³ Most trusts are generally governed by the Florida Trust Code, codified in chapter 736, F.S. However, additional provisions of Florida law may apply if the trust has special attributes.

Uniform Fiduciary Income and Principal Act

Traditionally, many trust beneficiaries were entitled to receive either income earned by trust investments (“income beneficiary”) or a share of trust principal when an income interest ended (“remainder beneficiary”).⁴ In such a scenario, the trustee’s allocation of receipts and disbursements to income or principal had a direct effect on a beneficiary’s financial interests, and, thus, the financial interests of an income beneficiary were often at odds with those of the remainder beneficiary.⁵

In 1931, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (“ULC”)⁶ adopted the first Uniform Principal and Income Act (“UPIA”), which, in pertinent part, governed the allocation of trust and estate receipts and disbursements between income and principal where the terms of the trust or will did not provide for such allocation or give the fiduciary a discretionary power of administration. Forty-seven states, including Florida, subsequently adopted some form of UPIA; Florida’s version, adopted in 2002 and known as the Florida Uniform Principal and Income Act (“FUPIA”), is codified in ch. 783, F.S.

However, in recent decades, the distinction between income and principal has lost some significance, for two reasons. First, the “modern portfolio theory” allows trustees to invest for the maximum total return, whether the return is in the form of income or principal growth.⁷ This has led to the rise in popularity of the “unitrust,” which trust allows the income beneficiary to receive income from the trust at a set percentage of the trust’s fair market value while the remainder beneficiary receives a fair disbursement after the income interest ends, thereby reducing the likelihood that the financial interests of the income beneficiary and the remainder beneficiary will be at odds.⁸ In other words, under a unitrust, both the income beneficiary and remainder beneficiary benefit from an increase in the value of

¹ “Settlor” means a person, including a testator, who creates or contributes property to a trust. S. 736.0103(18), F.S.

² See “inter vivos trust” and “testamentary trust,” Black’s Law Dictionary (11th ed. 2019).

³ Greg Depersio, Investopedia (Apr. 30, 2023), *Revocable Trust v. Irrevocable Trust: What’s the Difference*, <https://www.investopedia.com/ask/answers/071615/what-difference-between-revocable-trust-and-living-trust.asp> (last visited Jan. 22, 2024).

⁴ For example, a trust may require that all trust income be distributed to the settlor’s surviving spouse, but that trust principal be held and accumulated for the settlor’s surviving children, to be paid after the surviving spouse’s death. Uniform Law Commission, *The Uniform Fiduciary Income and Principal Act: A Summary*, <https://www.uniformlaws.org/viewdocument/enactment-kit-74?CommunityKey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c&tab=librarydocuments> (last visited Jan. 22, 2024).

⁵ *Id.*

⁶ The NCCUSL is an association of commissioners appointed by each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands, that discusses and debates which areas of the law require uniformity among the states and territories and drafts uniform acts accordingly. Legal Information Institute, *National Conference of Commissioners on Uniform State Laws*, [https://www.law.cornell.edu/wex/national_conference_of_commissioners_on_uniform_state_laws_\(nccusl\)](https://www.law.cornell.edu/wex/national_conference_of_commissioners_on_uniform_state_laws_(nccusl)) (last visited Jan. 22, 2024).

⁷ Uniform Law Commission, *supra* note 4.

⁸ *Id.*; Rod Fluck, *What is a Unitrust and Why is it Used*, <http://buteralaw.com/newsletters/estate/what-is-a-unitrust-and-why-is-it-used/> (last visited Jan. 17, 2024).

a trust's assets.⁹ Second, modern trusts are often drafted with more flexible terms, thereby giving trustees discretion to accumulate income or invade principal when advantageous to further the trust's overall purposes.¹⁰

Thus, in 2018, the ULC adopted the Uniform Fiduciary Income and Principal Act ("UFIPA") to account for these developments, provide additional flexibility in tailoring individual trusts to meet a settlor's specific needs, provide for the conversion of older trusts into unitrusts, and provide a governing law section to help avoid jurisdictional disputes.¹¹ Seven states have since enacted some form of UFIPA.¹²

In response to UFIPA's adoption, the Real Property, Probate and Trust Law Section of the Florida Bar convened a Principal and Income Committee ("Committee") to review UFIPA and consider whether Florida should adopt the new model law. The Committee ultimately proposed a revision to FUIA, known as the Florida Uniform Fiduciary Income and Principal Act ("FUFIPA"), that would incorporate UFIPA language wherever possible while preserving certain public policy choices found in existing Florida law that continue to make sense for the State.

Effect of Proposed Changes

HB 1093 codifies FUFIPA into ch. 783, F.S., replacing FUIA as the law governing the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for such an allocation. FUFIPA would, in addition to modernizing Florida trust law generally:

- Allow for total-return investing under the "modern portfolio theory."
- Provide for the conversion of an older trust into a unitrust.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

Definitions

The bill revises s. 738.102, F.S., to modify existing definitions and provide new definitions to incorporate UFIPA terminology and concepts. Under the bill, the definitions of "accounting period," "income," "mandatory income interest," and "person" remain unchanged, while definitions for new terms, including "court," "estate," "personal representative," and "record," were added without impacting current policy. However, the bill modifies the following definitions in a substantive way:

- "Beneficiary" is redefined to distinguish between current income beneficiaries and current remainder beneficiaries, as well as to encompass persons holding life estates or term interests.
- "Fiduciary" is broadened to apply not only to the personal representative and trustee, as under current law, but also to those with a power to direct, those under a fiduciary's delegation, and those holding property for a successor beneficiary who may be impacted by principal or income allocations.
- "Income interest" is redefined as a right of a current income beneficiary and includes a current beneficiary's use of property held by a fiduciary.
- "Net income" is broadened to include application to a unitrust and an income to principal adjustment.
- "Principal" is modified from meaning that which is distributed to a remainder beneficiary to that which is held for distribution to, for production of income for, or for use by, a current or successor beneficiary.
- "Terms of the trust" is broadened to extend to wills, life estates, and term interests, and thus more closely follows the definition of the term in the Florida Trust Code.

⁹ Fluck, *supra* note 8.

¹⁰ Uniform Law Commission, *supra* note 4.

¹¹ *Id.*

¹² These states are Arkansas, California, Colorado, Kansas, Utah, Virginia, and Washington State. Uniform Law Commission, *Fiduciary Income and Principal Act: Legislative Bill Tracking*, <https://www.uniformlaws.org/committees/community-home?communitykey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c#LegBillTrackingAnchor> (last visited Jan. 17, 2024).

Additionally, the bill adds the following new definitions, which definitions modify Florida law in a substantive way:

- “Distribution,” meaning a payment or transfer by a fiduciary to a beneficiary in the beneficiary’s capacity as a beneficiary, without consideration other than the beneficiary’s right to receive the payment or transfer under the terms of the trust, will, life estate, or term interest.
- “Independent person,” meaning a person that is not:
 - For a trust, a qualified beneficiary; a settlor; an individual whose legal obligation to support a beneficiary may be satisfied by a trust distribution; or any trustee whom an interested distributee may remove and replace with a related or subordinate party.
 - For an estate, a beneficiary; a spouse, parent, brother, sister, or issue of specified persons; a corporation, partnership, limited liability company, or other entity in which specified persons have voting control; or an employee of a specified person.
- “Personal representative,” meaning an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person’s status.
- “Record,” meaning information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
- “Settlor,” meaning a person, including a testator, that creates or contributes property to a trust.
- “Special tax benefit,” meaning the annual gift tax exclusion,¹³ qualified subchapter S status,¹⁴ federal marital tax deduction,¹⁵ and generation-skipping transfer tax exemption.¹⁶
- “Successive interest,” meaning the interest of a successor beneficiary.
- “Successor beneficiary,” meaning a person entitled to receive income or principal or to use property when an income interest or other current interest ends.
- “Trust,” meaning an express trust, whether private or charitable, with additions to the trust, wherever and however created, and a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
- “Trustee,” meaning a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary.
- “Will,” meaning any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual’s property, effective at the individual’s death, and includes a codicil or other amendment to a testamentary instrument.

¹³ The Internal Revenue Service allows individuals to give away up to a specific amount of assets each year tax-free under the annual gift tax exclusion. Jean Gordon Carter and Janice L. Davies, Gift Tax, *the Annual Exclusion and Estate Planning*, <https://www.actec.org/resource-center/video/gift-tax-the-annual-exclusion-and-estate-planning/> (last visited Jan. 22, 2024)

¹⁴ A trust with qualified subchapter S status is eligible to own stock in an S corporation. A settlor can use this type of trust to make a gift of all or a part of the S corporation stock and retain voting power while the beneficiary receives the income and the tax burden. Rebecca C. Bowen, *Trusts as Eligible Shareholders of an S Corporation*, <https://www.t-m-law.com/commentary/trusts-as-eligible-shareholders-of-an-s-corporation/> (last visited Jan. 22, 2024).

¹⁵ The Internal Revenue Service allows a spouse to leave property of unlimited value to his or her surviving spouse tax-free. Such assets may be distributed by a direct transfer from the decedent to the surviving spouse or by an indirect transfer to a qualifying trust for the surviving spouse’s benefit. Peter B. von Stein, *Basic Estate Tax Planning for Married Couples: Opportunities for Use of Estate Tax Exemptions*, <https://www.wardandsmith.com/articles/basic-estate-tax-planning-married-couples-use-estate-tax-exemptions> (last visited Jan. 22, 2024).

¹⁶ The generation-skipping transfer tax is a federal tax on a gift or an inheritance that prevents the donor from avoiding estate taxes by skipping over children in favor of grandchildren. However, the Internal Revenue Service allows a person to give up to a certain amount to a qualified recipient to avoid this tax. Troy Segal, *What is the Generation-Skipping Transfer Tax*, Investopedia (Feb. 7, 2023), <https://www.investopedia.com/terms/g/generation-skipping-transfer-tax.asp> (last visited Jan. 22, 2024).

Scope

The bill amends s. 738.103, F.S., to provide FUFIPA's scope. Specifically, the bill states that, except as otherwise provided by the terms of a trust or FUFIPA, FUFIPA applies to a trust or estate and to a life estate or other term interest in which someone's interest will be succeeded by another's interest under s. 738.508, F.S.

Governing Law

The bill adds a new governing law provision to renumbered s. 738.104, F.S. Specifically, the bill provides that, if the principal place of administration of a trust or estate or the situs of property not held in trust or an estate is Florida, the trustee is governed by FUFIPA, except as otherwise provided in the terms of the trust or elsewhere in that chapter.

General Principles of Fiduciary Duties

The bill renumbers from s. 738.103, F.S., to s. 738.201, F.S., a provision setting forth a trustee's fiduciary duties, including the duty to administer a trust or estate impartially based on what is fair and reasonable to all beneficiaries. Current law also establishes the general principles for allocating receipts and disbursements to or between principal and income, specifying that, generally speaking, receipts and disbursements must be allocated to principal, and establishes a presumption that a determination made in accordance with ch. 738 is fair and reasonable.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:

- Incorporates the revised definition of "terms of the trust."
- Adds an express requirement that a fiduciary act in good faith.
- Requires a fiduciary to add undistributed income to principal within a specified time period.
- Incorporates the factors currently set out in s. 738.104(2), F.S., applicable in exercising the adjustment power, and making such factors applicable to all fiduciary decisions under FUFIPA.

The factors incorporated from s. 738.104(2), F.S., remain largely the same as in current law, except that the bill substitutes the objective "terms of the trust" factor for the subjective "intent of the grantor" factor, in keeping with changes made by UFIPA.

Judicial Review

The bill renumbers from s. 738.105, F.S., to s. 738.202, F.S., a provision governing judicial review of a trustee's exercise of or failure to exercise any discretionary power under FUFIPA, as it relates to a decision to transfer principal to income, or vice versa. Under current law, a court may not determine that a trustee abused its discretion merely because the court would have exercised the discretion differently, but, once an abuse of discretion is found, the court must take certain actions to restore the beneficiaries to the positions they would have been in had the trustee not abused its discretion.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:

- Updates the term "trustee" in this provision to "fiduciary," thus broadening this section's scope.
- Defines "fiduciary decisions" to expressly include the fiduciary's allocation between income and principal and the exercise or failure to exercise any power under FUFIPA.
- Expressly adds to the remedies available when a fiduciary abuses his or her discretion "all remedies authorized by law," including remedies and damages for breach of trust as set out in the Florida Trust Code in ss. 736.1001 and 736.1002, F.S.
- Removes an unnecessary provision prohibiting the court from substituting its discretion for that of the fiduciary.

Fiduciary's Adjustment Powers

The bill renumbers from s. 738.104, F.S., to s. 738.203, F.S., a provision authorizing a trustee to adjust between income and principal if specified conditions are met, including the consideration of enumerated factors, and a determination that an adjustment is necessary to administer the trust impartially, based on what is fair and reasonable. Under current law, a trustee is prohibited from exercising the adjustment power under certain circumstances where adverse tax consequences would result but may release all or part of the power for any time period. Further, current law expressly negates any inference of impropriety simply because a trustee declines to exercise the power.

The bill makes several changes to current law. Specifically, the bill:

- Expands the scope of this section from trustees to all fiduciaries.
- Relocates the conditions limiting when a fiduciary may adjust between principal and income to a different section, making such conditions applicable to all fiduciary decisions.
- Replaces the standard of “impossibility” with a standard of “assistance,” thereby authorizing a fiduciary to exercise the adjustment power if the fiduciary determines that doing so will assist the fiduciary in administering the trust or estate impartially.
- Authorizes the appointment of a co-fiduciary to exercise the adjustment power under specified circumstances.
- Includes a presumption that a release or delegation of the adjustment power is a release or delegation of the entire power, and that such a release or delegation is permanent.
- Clarifies that the exercise of the adjustment power may apply to the immediately preceding period, current period, and one or more subsequent periods.
- Adds new accountability procedures, including a requirement that the exercise of the adjustment power be included in the annual accounting report or communicated at least annually to the trust’s qualified beneficiaries.

Unitrusts

The bill replaces s. 738.1041, F.S., which specifically authorizes the express creation of a unitrust, provides that the unitrust amount is considered to be the trust’s net income for purposes of allowing or requiring income distributions, and provides for the conversion of an income trust to a unitrust, or vice versa, with ss. 738.301-738.310, F.S.

The bill makes several changes to current law. Specifically, the bill:

- Separates provisions relating to unitrusts into distinct sections, making them more visible.
- Specifies that these sections apply to estates only where a trust is a beneficiary of an estate.
- Adds definitions applicable to a unitrust, including “applicable value,” “express unitrust,” “net fair market value of a trust,” “unitrust,” “unitrust policy,” and “unitrust rate.”
- Modernizes but does not substantially alter provisions relating to a fiduciary’s authority and duties as they relate to unitrusts; the method for determining the unitrust rate; and the method for determining an asset’s fair market value for the purpose of determining the unitrust amount.
- Ensures that the unitrust provisions remain within the safe harbor standards of the Treasury Regulations (as they are under current law) but allows for future modification of the relevant provisions should the Treasury relax those standards.

Character of Receipts

The bill amends s. 738.401, F.S., which currently characterizes receipts from entities, applies a “lookback period”¹⁷ of unlimited duration, and establishes rules applicable to receipts from public entities; provisions regarding private trustees administering investment entities; treating as principal money received from specified sources; and treating as income dividends a fiduciary elects to reinvest. Current law favors objective calculations over the exercise of fiduciary discretion in such matters.

The bill modifies current law by:

¹⁷ Florida’s “lookback period” applies a portion of large receipts to income, at a rate of three percent per year.

- Limiting the lookback period to three accounting periods to simplify trust administration.
- Restructuring the law to more closely match UFIPA's overall organization.
- Amending or adding definitions, including "capital distribution," "entity," and "entity distribution," to clarify certain concepts incorporated into this section.

Allocations

Deferred Compensation Accounts, Annuities, and Similar Arrangements

The bill renumbers from s. 738.602, F.S., to s. 738.409, F.S., a section of law characterizing receipts from deferred compensation accounts, annuities, and other similar arrangements. Under current law, the "income of the fund" is determined in a specified manner, and such amount is compared to payments actually received from the fund; the lesser of such amounts is then allocated to income, while the remainder is allocated to principal.

The bill modifies this section by:

- Changing the phrase "income of the fund" to the more customary "internal income."
- Adding an accounting period concept to balance the allocation of intra-period receipts between principal and income.
- Specifically authorizing fiduciaries to transfer assets from principal to income as necessary to fully fund the internal income of the fund and distribute such income to the beneficiary.

Minerals, Water, and Other Natural Resources

The bill renumbers from s. 738.604, F.S., to s. 738.411, F.S., a provision allocating receipts from an interest in minerals, water, or other natural resources as 90 percent to principal and ten percent to income. The bill modifies this section by removing the 90/10 allocation standard and replacing it with a fact-specific standard.

Marital Deduction Property Not Productive of Income

The bill renumbers from s. 738.606, F.S., to s. 738.413, F.S., a provision providing a safe harbor to ensure that a trust intending to qualify for the estate tax marital deduction allows the surviving spouse to require the trustee to make property income-producing where the trust assets do not otherwise provide the spouse with sufficient income to qualify for the deduction. Current law also allows the surviving spouse to require the trustee to make property income-producing where trust assets have been used in whole or in part to satisfy the spouse's elective share under s. 732.2125, F.S.,¹⁸ and the property, in the aggregate, does not provide the spouse with sufficient income.

The bill substantially preserves current law but provides that this section may be overridden only if the terms of the trust explicitly reference this section.

Derivatives and Options

The bill renumbers from s. 738.607, F.S., to s. 738.414, F.S., a provision providing for the allocation of all amounts received from derivatives and options to principal. The bill also modifies this section to provide for the allocation of 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction to income, with the remaining balance allocated to principal.

Asset-Backed Securities

¹⁸ This section allows the surviving spouse of a decedent to claim up to 30 percent of the decedent's estate, regardless of the terms of the decedent's will. Practically speaking, this prevents a surviving spouse from being disinherited and potentially left destitute.

The bill renumbers from s. 738.608, F.S., to s. 738.415, F.S. a provision for the allocation of payments received in exchange for the trust's or estate's entire interest in an asset-backed security¹⁹ during a single accounting period entirely to principal. Current law also provides that, for payments that are part of a series of payments that will result in the liquidation of the trust's or estate's interest in the security over more than a single accounting period, the fiduciary must allocate 10 percent of the payment to income and the balance to principal.

The bill modifies the definition of an "asset-backed security" to more closely align with the definition used by the Securities and Exchange Commission and extends the 90/10 distribution rule to all receipts from or related to such a security.

Other Financial Instruments or Arrangements

The bill creates s. 738.416, F.S., to be a "catch-all" provision for the allocation of receipts and disbursements arising from or related to financial instruments or arrangements not specifically mentioned in FUFIPA. Under the bill, allocation must be 90 percent to principal and 10 percent to income, making the allocation standard the same as for derivatives, options, and asset-backed securities.

Disbursements

Disbursements from Income and Principal

The bill amends s. 738.501, F.S., which currently directs that one-half of certain forms of compensation and expenses be disbursed from income, along with all of the ordinary expenses incurred in connection with a trust property that primarily concerns the income interest.

The bill modifies this section to address what happens where there is insufficient income to disburse the full amount charged and to give the fiduciary the discretion to disburse specified amounts charged if the fiduciary is an independent person and the disbursement would be in the beneficiaries' interest.

The bill also amends s. 738.502, F.S., which currently directs that the remaining one-half of certain forms of compensation and expenses be disbursed from principal, along with all of the trustee's compensation for preparing property for sale; payments on the principal of trust debt; and expenses of proceedings that primarily concern trust principal.

The bill modifies this section to provide that principal must be disbursed in an amount equal to the remaining balance of the compensation and expenses provided for in s. 738.501, F.S., and to allow a fiduciary to use income to disburse the balance of such amounts charged to income before using principal. Further, the bill incorporates certain tax provisions found elsewhere in current law into this section.

Transfers from Income to Principal for Depreciation

The bill amends s. 738.503, F.S., which currently allows a fiduciary to transfer a reasonable amount of the net cash receipts from a principal asset from income to principal, subject to depreciation to such principal, with restrictions.

The bill substantially preserves current law, with three exceptions. Specifically, the bill:

- Replaces the term "fixed asset" with the term "tangible asset" to conform to changes made elsewhere in FUFIPA.
- Excludes depreciation for assets accounted for as a liquidating asset.
- Removes a safe harbor specifying that any amount of depreciation taken for an asset must be presumed to be a reasonable amount of depreciation.

¹⁹ Under current law, an "asset-backed security" is an asset, the value of which is based upon the right given to the owner to receive distributions from the proceeds of financial assets that provide collateral for the security.

Reimbursements

The bill amends s. 738.504, F.S., which currently relates to allocations from insurance policies and similar contracts, to create a provision authorizing a fiduciary to reimburse income from principal. Such reimbursement is not presently authorized under Florida law.

The bill also renumbers from s. 738.704, F.S., to s. 738.505, F.S., a provision authorizing a fiduciary to transfer an appropriate amount of income to principal to either reimburse or provide a reserve in specified situations. The bill modifies this section by clarifying that, when a current income interest of a principal asset ends and a successive income interest remains, the fiduciary may continue to transfer those appropriate amounts from income to principal as specified in this section. The bill also authorizes fiduciaries to transfer an appropriate amount from income to principal for the cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, and for a periodic payment on an obligation secured by a principal asset, in specified circumstances.

Income Taxes

The bill renumbers from s. 738.705, F.S., to s. 738.506, F.S., a provision specifying that, with respect to income tax, the fiduciary must disburse from income those amounts allocated to income and from principal those amounts allocated to principal. Current law also specifies that the same allocation rules must be followed on the trust's or estate's share of an entity's taxable income, except that principal must be used to disburse amounts exceeding total receipts from the entity; however, the fiduciary must also adjust income or principal receipts, pursuant to a specified formula, to the extent the trust's or estate's income taxes are reduced, but not eliminated, due to a deduction for beneficiary payments.

The bill substantially retains current law but makes several changes. Specifically, the bill:

- Removes the phrase “but not eliminated,” as it created confusion.
- Removes the formula outlining the amount distributable to a beneficiary.
- Adds a provision allowing a fiduciary to reimburse the “owner” of a “grantor trust”²⁰ for income taxes paid.

Adjustments Between Principal and Income Because of Taxes

The bill renumbers from s. 738.706, F.S., to s. 738.507, F.S., a provision authorizing a fiduciary to adjust between principal and income to offset the shifting of economic interests or tax benefits between income and remainder beneficiaries due to elections and decisions made by a fiduciary; a tax imposed on the fiduciary or beneficiary due to a distribution from the trust or estate; or the taxable income of an entity owned by the trust or estate includable in the taxable income of the trust, estate, or beneficiary. This section also provides that, when an estate tax marital deduction or charitable contribution deduction is reduced due to a fiduciary deducting an amount paid from principal for income tax purposes, resulting in the amount of income tax paid by the trust or estate decreasing, the income tax payor must reimburse principal for the amount of tax not paid, with limitations (“deduction adjustment”).

The bill substantially preserves current law but modifies this section to specify that a fiduciary that charges a beneficiary under the deduction adjustment may offset the charge by obtaining payment from the beneficiary, withholding future distributions to the beneficiary, or adopting another method or combination of methods.

Apportionment when Income Interest Ends

The bill amends s. 738.703, F.S., to incorporate the substance of former s. 738.303, F.S., which provides for the apportionment of income after an income interest ends. The bill also removes a

²⁰ A “grantor trust” is a type of trust that allows the settlor, in this case known as the “grantor,” to retain some control over trust assets. For tax purposes, the grantor is considered the owner of the trust and is liable for any taxes on trust income. Christopher R. Callahan and Scott M. Snyder, *Foreign Grantor Trust Planning: A Flexible Planning Structure for U.S. Income Tax*, Fla. Bar Journal Vol. 97, No. 6 (Nov./Dec. 2023), <https://www.floridabar.org/the-florida-bar-journal/foreign-grantor-trust-planning-a-flexible-planning-structure-for-u-s-income-tax/> (last visited Jan. 22, 2024).

provision for the proration of the unitrust amount under this section, as this concept is covered elsewhere in FUFIPA.

Relation to Electronic Signatures in Global and National Commerce Act

The bill amends s. 738.802, F.S., to replace existing law relocated elsewhere in the bill with a provision, not found in current law, specifying that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (“GNCA”),²¹ with exceptions, but does not authorize electronic delivery of specified notices described in the GNCA.

Non-Substantive Changes

The bill makes non-substantive, technical changes to what are now numbered as ss. 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, 738.508, 738.601, 738.602, 738.603, 738.605, 738.701, 738.702, and 738.801, F.S.

Severability

The bill amends s. 738.803, F.S., to provide for severability. Specifically, the bill states that if any provision of FUFIPA or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of FUFIPA which can be given effect without the invalid provisions or application.

Applicability

The bill amends s. 738.804, F.S., to provide that, except as otherwise provided by a trust’s terms or the bill itself, the bill applies to any receipt or expense received or incurred and any disbursement made after January 1, 2025, by any trust or estate, regardless of when the trust or estate was established or the asset involved was acquired.

Effective Date

The bill provides an effective date of January 1, 2025.

B. SECTION DIRECTORY:

Section 1: Amends s. 738.101, F.S., relating to short title.

Section 2: Amends s. 738.102, F.S., relating to definitions.

Section 3: Amends s. 738.103, F.S., relating to fiduciary duties; general principles.

Section 4: Amends s. 738.104, F.S., relating to trustee’s power to adjust.

Section 5: Repeals s. 738.1041, F.S., relating to total return unitrust.

Section 6: Repeals s. 738.105, F.S., relating to judicial control of discretionary powers.

Section 7: Amends s. 738.201, F.S., relating to determination and distribution of net income.

Section 8: Amends s. 738.202, F.S., relating to distribution to residuary and remainder beneficiaries.

Section 9: Creates s. 738.203, F.S., relating to fiduciary’s power to adjust.

Section 10: Amends s. 738.301, F.S., relating to when right to income begins and ends.

Section 11: Amends s. 738.302, F.S., relating to apportionment of receipts and disbursements when decedent dies or income interest begins.

Section 12: Amends s. 738.303, F.S., relating to apportionment when income interest ends.

Section 13: Creates s. 738.304, F.S., relating to notice.

Section 14: Creates s. 738.305, F.S., relating to unitrust policy.

Section 15: Creates s. 738.306, F.S., relating to unitrust rate.

Section 16: Creates s. 738.307, F.S., relating to applicable value.

Section 17: Creates s. 738.308, F.S., relating to period.

²¹ See 15. U.S.C. s. 7001(c). The GNCA provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing.

- Section 18:** Creates s. 738.309, F.S., relating to express unitrust.
- Section 19:** Creates s. 738.310, F.S., relating to other rules.
- Section 20:** Amends s. 738.401, F.S., relating to character of receipts.
- Section 21:** Amends s. 738.402, F.S., relating to distribution from trust or estate.
- Section 22:** Amends s. 738.403, F.S., relating to business and other activities conducted by fiduciary.
- Section 23:** Creates s. 738.404, F.S., relating to principal receipts.
- Section 24:** Creates s. 738.405, F.S., relating to rental property.
- Section 25:** Creates s. 738.406, F.S., relating to receipt on obligation to be paid in money.
- Section 26:** Creates s. 738.407, F.S., relating to insurance policy on contracts.
- Section 27:** Creates s. 738.408, F.S., relating to insubstantial allocation not required.
- Section 28:** Creates s. 738.409, F.S., relating to deferred compensation, annuity, or similar payment.
- Section 29:** Renumbers and amends s. 738.603, F.S., relating to liquidating asset.
- Section 30:** Renumbers and amends s. 738.604, F.S., relating to minerals, water, and other natural resources.
- Section 31:** Renumbers and amends s. 738.605, F.S., relating to timber.
- Section 32:** Renumbers and amends s. 738.606, F.S., relating to property not productive of income.
- Section 33:** Renumbers and amends s. 738.607, F.S., relating to derivatives and options.
- Section 34:** Renumbers and amends s. 738.608, F.S., relating to asset-backed securities.
- Section 35:** Creates s. 738.416, F.S., relating to other financial instrument or arrangement.
- Section 36:** Amends s. 738.501, F.S., relating to principal receipts.
- Section 37:** Amends s. 738.502, F.S., relating to rental property.
- Section 38:** Amends s. 738.503, F.S., relating to obligation to pay money.
- Section 39:** Amends s. 738.504, F.S., relating to insurance policies and similar contracts.
- Section 40:** Renumbers and amends s. 738.704, F.S., relating to transfers from income to reimburse principal.
- Section 41:** Renumbers and amends s. 738.705, F.S., relating to income taxes.
- Section 42:** Renumbers and amends s. 738.706, F.S., relating to adjustments between principal and income because of taxes.
- Section 43:** Creates s. 738.508, F.S., relating to apportionment of property expenses between tenant and remainderman.
- Section 44:** Amends s. 738.601, F.S., relating to insubstantial allocations not required.
- Section 45:** Amends s. 738.602, F.S., relating to payments from deferred compensation plans, annuities, and retirement plans or accounts.
- Section 46:** Amends s. 738.701, F.S., relating to disbursements from income.
- Section 47:** Amends s. 738.702, F.S., relating to disbursements from principal.
- Section 48:** Amends s. 738.703, F.S., relating to transfers from income to principal for depreciation.
- Section 49:** Amends s. 738.801, F.S., relating to apportionment of expenses; improvements.
- Section 50:** Amends s. 738.802, F.S., relating to uniformity of application and construction.
- Section 51:** Amends s. 738.803, F.S., relating to severability.
- Section 52:** Amends s. 738.804, F.S., relating to application.
- Section 53:** Provides an effective date of January 1, 2025.

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 will likely have a positive economic impact on the private sector to the extent that it provides more flexibility for individualized estate planning, allows for total-return investing under the “modern portfolio theory,” and otherwise gives Floridians advantages that benefit their financial interests.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Federalism

The framers of the United States Constitution allocated power among the federal and state governments, seeking to establish a unified national government of limited powers while carving out for the states a distinct sphere of autonomy for the exercise of general police powers.²² Although the Constitution does not clearly delineate many of the boundaries between federal and state government powers, the Supreme Court has invoked certain constitutional provisions when determining whether a government has exceeded its constitutional authority.²³

One such provision is the Supremacy Clause, found in Article IV of the United States Constitution, which clause gives federal law supremacy over state law where the laws conflict.²⁴ Put another way, under the Supremacy Clause, a federal law preempts any conflicting state laws.²⁵ Another such provision is the Commerce Clause, found in Article I, section 8, clause 3 of the United States

²² Library of Congress, *Constitution Annotated: Federalism and the Constitution*, https://constitution.congress.gov/browse/essay/intro.7-3/ALDE_0000032/ (last visited Jan. 22, 2024).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Constitution, which clause gives Congress broad power to regulate interstate and foreign commerce and restricts the states from impairing such commerce through the enactment of state laws.²⁶

The bill amends s. 738.802, F.S., to specify that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (“GNCA”), using language similar to language already appearing elsewhere in Florida law. The GNCA is a federal law, codified at 15 U.S.C. s. 7001, which law provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing. To the extent that, in a particular case, FUFIPA could conflict with the GNCA, or its application thereto otherwise could impair interstate or foreign commerce, a court may find the GNCA controls over the amendment to s. 738.802, F.S.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²⁶ Library of Congress, *Constitution Annotated: Overview of Commerce Clause*, https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/ (last visited Jan. 22, 2024).

1 A bill to be entitled
 2 An act relating to the Florida Uniform Fiduciary
 3 Income and Principal Act; amending s. 738.101, F.S.;
 4 revising a short title; amending s. 738.102, F.S.;
 5 revising and providing definitions governing ch. 738,
 6 F.S.; amending s. 738.103, F.S.; specifying the scope
 7 of ch. 738, F.S.; amending s. 738.104, F.S.;
 8 specifying circumstances under which ch. 738, F.S.,
 9 applies to a trust; repealing s. 738.1041, F.S.,
 10 relating to total return unitrusts; repealing s.
 11 738.105, F.S., relating to judicial control of
 12 discretionary powers; amending s. 738.201, F.S.;
 13 specifying the duties of a fiduciary; providing that a
 14 fiduciary's allocation, determination, or exercise of
 15 discretion is presumed to be fair and reasonable to
 16 all beneficiaries; requiring a fiduciary to take
 17 specified actions; authorizing a fiduciary to exercise
 18 discretionary power of administration under specified
 19 circumstances; requiring the fiduciary to consider
 20 specified factors before exercising such discretionary
 21 power; providing for applicability; amending s.
 22 738.202, F.S.; defining the term "fiduciary decision";
 23 prohibiting a court from ordering a fiduciary to
 24 change his or her decision unless the decision was an
 25 abuse of discretionary power; prohibiting a court from

26 determining that a fiduciary abused its discretion
27 under specified conditions; authorizing a court to
28 order a specified remedy; authorizing a court to
29 determine whether a proposed fiduciary decision will
30 result in an abuse of discretion; providing that a
31 beneficiary who opposes a proposed decision has the
32 burden to establish that such decision is an abuse of
33 discretion; requiring that any attorney fees incurred
34 in defending an action related to the abuse of a
35 fiduciary's discretion be paid from trust assets;
36 creating s. 738.203, F.S.; authorizing a fiduciary to
37 adjust between income and principal if such adjustment
38 assists in administering the trust or estate
39 impartially; providing construction; providing that a
40 fiduciary is not liable to another for an adjustment,
41 or failure to adjust, between income and principal
42 made in good faith; requiring a fiduciary to consider
43 certain relevant factors when considering such
44 adjustment; prohibiting a fiduciary from exercising or
45 considering such adjustment if certain conditions
46 exist; revising applicability; authorizing a fiduciary
47 to release or delegate to a cofiduciary specified
48 powers to adjust under specified conditions; providing
49 requirements and powers for any such releases and
50 delegations; providing applicability; requiring that

51 the description of an exercise of the power to adjust
52 between income and principal contain specified
53 information; amending s. 738.301, F.S.; defining
54 terms; amending s. 738.302, F.S.; specifying
55 applicability of specified provisions; authorizing the
56 conversion of an income trust to a unitrust;
57 restricting provisions to trusts that are
58 beneficiaries of an estate; providing construction;
59 providing that a fiduciary acting in good faith is not
60 liable to a person affected by a certain action or
61 inaction; amending s. 738.303, F.S.; specifying the
62 authority of a fiduciary with respect to the
63 administration of certain trusts; providing the
64 circumstances under which a fiduciary may perform such
65 actions; authorizing a beneficiary or a fiduciary to
66 request the court to allow the beneficiary or
67 fiduciary to take a specified action; requiring a
68 fiduciary to inform specified persons of a decision to
69 take action; authorizing a beneficiary to request a
70 court to direct the fiduciary to take the requested
71 action under specified circumstances; requiring
72 fiduciaries to consider specified factors before
73 taking a certain action; authorizing a fiduciary to
74 release or delegate the power to take certain actions;
75 creating s. 738.304, F.S.; requiring a certain notice

76 | to be sent to specified parties; providing
77 | applicability; authorizing a person to consent to a
78 | specified action in a record; providing that such
79 | person does not need to be sent notice of such action;
80 | providing requirements for such notices; creating s.
81 | 738.305, F.S.; requiring a fiduciary of a unitrust to
82 | follow a certain policy; providing rules for a
83 | unitrust policy; providing additional actions a
84 | unitrust policy may contain; creating s. 738.306,
85 | F.S.; requiring a unitrust rate to be within a
86 | specified range; authorizing a unitrust policy to
87 | provide for specified limits within such range;
88 | requiring a fiduciary who is a non-independent person
89 | to use a specified unitrust rate; creating s. 738.307,
90 | F.S.; requiring a unitrust policy to provide a
91 | specified method for determining fair market value of
92 | an asset in determining a unitrust amount; authorizing
93 | specified unitrust policies to provide methods for
94 | determining a certain net fair market value;
95 | prohibiting certain property from being included in
96 | the determination of the value of a trust; creating s.
97 | 738.308, F.S.; requiring a unitrust policy to provide
98 | a specified period; specifying that such period must
99 | be a calendar year; authorizing a unitrust policy to
100 | provide certain standards for periods; creating s.

101 738.309, F.S.; providing applicability; authorizing a
102 trustee of an express unitrust to determine the
103 unitrust amount by reference to the net fair market
104 value of the unitrust's assets in a specified
105 timeframe; providing that distribution of a unitrust
106 amount is considered a distribution of all the net
107 income of an express unitrust and is considered an
108 income interest; specifying that the unitrust amount
109 is considered a reasonable apportionment of the total
110 return of the express unitrust; providing that an
111 express unitrust that allows a distribution in excess
112 of a specified unitrust rate is considered a
113 distribution of all of the income of the unitrust;
114 authorizing an express unitrust to provide a mechanism
115 for changing the unitrust rate and for conversion from
116 a unitrust to an income trust or from an income trust
117 to a unitrust; specifying that unless an express
118 unitrust prohibits the power to change the rate or
119 convert the trust, the trustee has such power;
120 authorizing the governing instrument of an express
121 unitrust to grant the trustee discretion to adopt a
122 certain practice; specifying that unless an express
123 unitrust provides otherwise, the distribution of an
124 amount is considered a distribution from specified
125 sources in a specified order of priority; authorizing

126 a governing instrument of an express unitrust to allow
127 exclusion of specified assets; providing that the use
128 of such assets may be considered equivalent to income
129 or to the unitrust amount; creating s. 738.310, F.S.;
130 requiring a trustee, after the conversion of an income
131 trust to a unitrust, to consider the unitrust amount
132 paid from certain sources in a specified order of
133 priority; amending s. 738.401, F.S.; defining terms;
134 specifying that an attribute or action of an entity
135 includes an attribute or action from any other entity
136 in which the initial entity has an ownership interest
137 or holds another interest; requiring a fiduciary to
138 allocate certain money and tangible personal property
139 to income; requiring a fiduciary to allocate specified
140 property and money to principal; providing that
141 certain money received in an entity distribution is a
142 capital distribution in specified circumstances;
143 specifying that in cases of capital distribution, the
144 amount received in an entity distribution must be
145 reduced to the extent that cumulative distributions
146 from the entity to the fiduciary are within certain
147 ranges; authorizing a fiduciary to consider additional
148 information before deciding to make or change a
149 decision to make a payment to a beneficiary; providing
150 that if a fiduciary receives specified additional

151 information after a distribution to a beneficiary, the
152 fiduciary is not required to change or recover the
153 payment; authorizing a fiduciary in such a situation
154 to exercise other specified powers; revising
155 definitions; requiring a fiduciary to allocate certain
156 money and property to principal; providing the
157 mechanism for such allocation; defining the term
158 "public entity"; conforming provisions to changes made
159 by the act; amending s. 738.402, F.S.; conforming
160 provisions to changes made by the act; amending s.
161 738.403, F.S.; providing applicability; authorizing a
162 fiduciary to make certain determinations separately
163 and differently from the decisions concerning
164 distributions of income or principal; conforming
165 provisions to changes made by the act; making
166 technical changes; creating s. 738.404, F.S.;
167 specifying receipts that a fiduciary must allocate to
168 principal; creating s. 738.405, F.S.; providing for
169 the allocation of income from rental property;
170 creating s. 738.406, F.S.; specifying applicability;
171 requiring a fiduciary to allocate to income certain
172 amounts received as interest; requiring a fiduciary to
173 allocate to income increments in value of certain
174 bonds or other obligations; creating s. 738.407, F.S.;
175 specifying applicability; requiring a fiduciary to

176 allocate proceeds from insurance policies or contracts
 177 to principal in a specified manner; creating s.
 178 738.408, F.S.; specifying circumstances under which a
 179 fiduciary may allocate an insubstantial allocation to
 180 principal, subject to certain conditions and
 181 limitations; creating s. 738.409, F.S.; defining
 182 terms; specifying the manner in which a fiduciary may
 183 determine incomes of separate funds; providing duties
 184 of a fiduciary of a marital trust and other trusts;
 185 requiring a fiduciary of a nonseparate fund to
 186 calculate internal income in a specified manner;
 187 providing construction; transferring, renumbering, and
 188 amending s. 738.603, F.S.; revising the definition of
 189 the term "liquidating asset"; providing applicability;
 190 requiring a fiduciary to allocate to income and
 191 principal the receipts produced by liquidating assets
 192 in a certain manner; transferring, renumbering, and
 193 amending s. 738.604, F.S.; requiring a fiduciary to
 194 allocate the receipts from interests in minerals,
 195 water, or other natural resources to income,
 196 principal, or between income and principal under
 197 specified conditions; revising applicability;
 198 providing that an allocation between income and
 199 principal from a receipt from a natural resource is
 200 presumed equitable under a specified condition;

201 providing construction; transferring, renumbering, and
202 amending s. 738.605, F.S.; requiring a fiduciary to
203 allocate receipts from timber to income, principal, or
204 between income and principal under specified
205 conditions; revising applicability; transferring,
206 renumbering, and amending s. 738.606, F.S.;
207 authorizing a settlor's spouse to require the trustee
208 of a trust that receives certain property to make such
209 property produce income under specified conditions;
210 authorizing the trustee to take specified actions if
211 directed by such spouse; providing that the trustee
212 decides whether to take one or a combination of such
213 actions; revising applicability; providing
214 construction; transferring, renumbering, and amending
215 s. 738.607, F.S.; revising the definition of the term
216 "derivative"; requiring a fiduciary to allocate
217 specified percentages of certain receipts and
218 disbursements to income and allocate the balance to
219 principal; providing construction; requiring certain
220 fiduciaries to allocate a specified percentage to
221 income and allocate the balance to principal of
222 certain amounts; transferring, renumbering, and
223 amending s. 738.608, F.S.; requiring a fiduciary to
224 allocate to income a receipt from or related to asset-
225 backed securities under a specified condition;

226 requiring a fiduciary to allocate to income a
227 specified percentage of receipts from the transaction
228 and the disbursement of a payment received as a result
229 of an interest in an asset-backed security; conforming
230 provisions to changes made by the act; creating s.
231 738.416, F.S.; requiring a fiduciary to make specified
232 allocations from receipts from other financial
233 instruments or arrangements; providing construction;
234 amending s. 738.501, F.S.; specifying the manner by
235 which a fiduciary must make disbursements from income;
236 amending s. 738.502, F.S.; specifying the manner by
237 which a fiduciary must make disbursements from
238 principal; amending s. 738.503, F.S.; defining the
239 term "depreciation"; specifying the manner by which a
240 fiduciary may make transfers from income to principal
241 to account for depreciation; amending s. 738.504,
242 F.S.; specifying the manner by which a fiduciary may
243 make transfers from principal to income for
244 reimbursements; transferring, renumbering, and
245 amending s. 738.704, F.S.; providing that a fiduciary
246 that makes or expects to make a certain principal
247 disbursement may transfer an appropriate amount from
248 income to principal in one or more accounting periods;
249 providing applicability; making technical changes;
250 deleting a provision relating to payments necessary to

251 | avoid defaulting on a mortgage or security interest on
 252 | certain property; transferring, renumbering, and
 253 | amending s. 738.705, F.S.; revising the sources from
 254 | which a fiduciary must pay a tax required by a share
 255 | of an entity's taxable income; requiring a fiduciary
 256 | to adjust income or principal receipts if the taxes
 257 | paid are reduced due to a deduction for a payment made
 258 | to a beneficiary; providing construction; making
 259 | technical changes; transferring, renumbering, and
 260 | amending s. 738.706, F.S.; revising the circumstances
 261 | under which a fiduciary may make adjustments between
 262 | income and principal to offset shifts in the economic
 263 | interests or tax benefits of specified beneficiaries;
 264 | requiring a fiduciary to charge a beneficiary to
 265 | reimburse the principal if the beneficiary benefits
 266 | from an applicable tax deduction; requiring the share
 267 | of reimbursement for each fiduciary or beneficiary to
 268 | be the same as its share of the decrease in income
 269 | tax; authorizing such fiduciary to charge a
 270 | beneficiary to offset the estate tax by obtaining
 271 | payment from the beneficiary, withholding an amount
 272 | from future distributions, or adopting another method
 273 | or combination of methods; creating s. 738.508, F.S.;
 274 | defining terms; specifying the manner by which
 275 | property expenses are apportioned between a tenant and

276 remainderman; providing applicability and
277 construction; amending s. 738.601, F.S.; providing
278 applicability; specifying the manner by which a
279 fiduciary determines and distributes net income;
280 providing circumstances under which a fiduciary may
281 not reduce certain principal or income receipts;
282 amending s. 738.602, F.S.; providing that certain
283 beneficiaries of non-unitrusts are entitled to receive
284 a specified share of net income; providing that
285 certain requirements apply in determining a
286 beneficiary's share of net income; providing
287 construction; amending s. 738.701, F.S.; providing
288 that an income beneficiary is entitled to net income
289 when an asset is subject to a certain trust or
290 successive interest; providing that an asset becomes
291 subject to a specified trust on certain dates;
292 amending s. 738.702, F.S.; specifying the manner by
293 which a fiduciary allocates certain receipts and makes
294 disbursements when a decedent dies or income interest
295 begins; providing construction; amending s. 738.703,
296 F.S.; defining the term "undistributed income";
297 specifying the manner by which a fiduciary makes
298 allocations of undistributed income when income
299 interest ends; amending s. 738.801, F.S.; providing
300 for uniform application and construction of the act;

301 amending s. 738.802, F.S.; providing construction in
 302 relation to federal law; amending s. 738.803, F.S.;
 303 making a technical change; amending s. 738.804, F.S.;
 304 revising application of ch. 738, F.S., to conform to
 305 changes made by the act; providing an effective date.
 306

307 Be It Enacted by the Legislature of the State of Florida:
 308

309 Section 1. Section 738.101, Florida Statutes, is amended
 310 to read:

311 738.101 Short title.—This chapter may be cited as the
 312 "Florida Uniform Fiduciary Income and Principal ~~and Income~~ Act."

313 Section 2. Section 738.102, Florida Statutes, is amended
 314 to read:

315 738.102 Definitions.—As used in this chapter, the term:

316 (1) "Accounting period" means a calendar year unless
 317 ~~another 12-month period is selected by a fiduciary~~ selects
 318 another period of 12 calendar months or approximately 12
 319 calendar months. The term includes a part ~~portion~~ of a calendar
 320 year or another period of 12 calendar months or approximately 12
 321 calendar months which ~~other 12-month period that begins when an~~
 322 ~~income interest~~ begins or ends when an income interest ends.

323 (2) "Asset-backed security," as provided in s. 738.415,
 324 means a security that is serviced primarily by the cash flows of
 325 a discrete pool of fixed or revolving receivables or other

326 financial assets that by their terms convert to cash within a
 327 finite time. The term includes rights or other assets that
 328 ensure the servicing or timely distribution of proceeds to the
 329 holder of the asset-backed security. The term does not include
 330 an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

331 (3) "Beneficiary" includes:

332 (a) For a trust:

333 1. A current beneficiary, including a current income
 334 beneficiary and a beneficiary that may receive only principal;

335 2. A remainder beneficiary; and

336 3. Any other successor beneficiary;

337 (b) For an estate, an heir, and a devisee; and

338 (c) For a life estate or term interest, a person who holds
 339 a life estate, a term interest, or a remainder or other interest
 340 following a life estate or term interest means, in the case of a
 341 decedent's estate, an heir or devisee and, in the case of a
 342 trust, an income beneficiary or a remainder beneficiary.

343 (4)-(3) "Carrying value" means the fair market value at the
 344 time the assets are received by the fiduciary. For an estate and
 345 for a trust the estates of decedents and trusts described in s.
 346 733.707(3), after the grantor's death, the assets are considered
 347 received as of the date of the settlor's death. If there is a
 348 change in fiduciaries, a majority of the continuing fiduciaries
 349 may elect to adjust the carrying values to reflect the fair
 350 market value of the assets at the beginning of their

351 administration. If such election is made, it must be reflected
352 on the first accounting filed after the election. For assets
353 acquired during the administration of the estate or trust, the
354 carrying value is equal to the acquisition costs of the asset.
355 Carrying value of assets should not be arbitrarily "written up"
356 or "written down." In some circumstances, including, but not
357 limited to, those described in ss. 738.410 and 738.602, carrying
358 value may be adjusted with proper disclosure to reflect changes
359 in carrying value applied in a consistent manner.

360 (5) "Court" means a circuit court of this state.

361 (6) "Current income beneficiary" means a beneficiary to
362 which a fiduciary may distribute net income, regardless of
363 whether the fiduciary also distributes principal to the
364 beneficiary.

365 (7) "Distribution," "distribute," "distributed," or
366 "distributee" means a payment or transfer by a fiduciary to a
367 beneficiary in the beneficiary's capacity as a beneficiary,
368 without consideration other than the beneficiary's right to
369 receive the payment or transfer under the terms of the trust as
370 defined in this section, or in a will, a life estate, or a term
371 interest.

372 (8) "Estate" means a decedent's estate, including the
373 property of the decedent as the estate is originally constituted
374 and the property of the estate as it exists at any time during
375 administration.

376 (9)(4) "Fiduciary" includes means a trustee, a trust
 377 director as defined in s. 736.0103, or a personal
 378 representative, and a person acting under a delegation from a
 379 fiduciary or a trustee. The term also includes a person that
 380 holds property for a successor beneficiary whose interest may be
 381 affected by an allocation of receipts and expenditures between
 382 income and principal. If there are two or more cofiduciaries,
 383 the term includes all cofiduciaries acting under the terms of
 384 the trust and applicable law an executor, administrator,
 385 successor personal representative, special administrator, or a
 386 person performing substantially the same function.

387 (10)(5) "Income" means money or other property that a
 388 fiduciary receives as current return from a principal asset. The
 389 term includes a part portion of receipts from a sale, exchange,
 390 or liquidation of a principal asset, to the extent provided in
 391 ss. 738.401-738.416 ss. 738.401-738.403 and s. 738.503.

392 ~~(6) "Income beneficiary" means a person to whom net income~~
 393 ~~of a trust is or may be payable.~~

394 (11)(7) "Income interest" means the right of a current an
 395 income beneficiary to receive all or part of net income, whether
 396 the terms of the trust require the net income to be distributed
 397 or authorize the net income to be distributed in the fiduciary's
 398 trustee's discretion. The term includes the right of a current
 399 beneficiary to use property held by a fiduciary.

400 (12) "Independent person" means a person who is not:

401 (a) For a trust:
 402 1. A qualified beneficiary as defined in s. 736.0103;
 403 2. A settlor of the trust;
 404 3. An individual whose legal obligation to support a
 405 beneficiary may be satisfied by a distribution from the trust;
 406 or
 407 4. Any trustee whom an interested distributee has the
 408 power to remove and replace with a related or subordinate party.
 409 (b) For an estate, a beneficiary;
 410 (c) A spouse, a parent, a brother, a sister, or an issue
 411 of an individual described in paragraph (a) or paragraph (b);
 412 (d) A corporation, a partnership, a limited liability
 413 company, or another entity in which persons described in
 414 paragraphs (a), (b), and (c), in the aggregate, have voting
 415 control; or
 416 (e) An employee of a person described in paragraph (a),
 417 paragraph (b), paragraph (c), or paragraph (d).
 418 (13) "Internal Revenue Code" means the Internal Revenue
 419 Code of 1986, as amended.
 420 (14)-(8) "Mandatory income interest" means the right of a
 421 current ~~an~~ income beneficiary to receive net income that the
 422 terms of the trust require the fiduciary to distribute.
 423 (15)-(9) "Net income" means the total allocations ~~receipts~~
 424 ~~allocated to income~~ during an accounting period to income under
 425 the terms of a trust and this chapter minus the disbursements

426 ~~made from income~~ during the period, other than distributions,
427 allocated to income under the terms of the trust and this
428 chapter. To the extent that the trust is a unitrust under ss.
429 738.301-738.310, the term means the unitrust amount determined
430 under ss. 738.301-738.310. The term includes the amount of an
431 adjustment from principal to income under s. 738.203. The term
432 does not include the amount of an adjustment ~~plus or minus~~
433 ~~transfers under this chapter to or~~ from income to principal
434 under s. 738.203 during the period.

435 ~~(16)-(10)~~ "Person" means an individual, a business or a
436 nonprofit entity, corporation, business trust, an estate, a
437 trust, partnership, limited liability company, association,
438 joint venture, a public corporation, or any other legal or
439 ~~commercial entity or~~ a government or governmental subdivision,
440 agency, or instrumentality, or other legal entity.

441 (17) "Personal representative" means an executor, an
442 administrator, a successor personal representative, a special
443 administrator, or a person that performs substantially the same
444 function with respect to an estate under the law governing the
445 person's status.

446 ~~(18)-(11)~~ "Principal" means property held in trust for
447 distribution to, production of income for, or use by a current
448 or successor ~~a remainder beneficiary when the trust terminates.~~

449 (19) "Record" means information inscribed on a tangible
450 medium or stored in an electronic or other medium and is

451 retrievable in perceivable form.

452 (20) "Settlor" means a person, including a testator, who
 453 creates or contributes property to a trust. If more than one
 454 person creates or contributes property to a trust, the term
 455 includes each person, to the extent of the trust property
 456 attributable to that person's contribution, except to the extent
 457 that another person has the power to revoke or withdraw that
 458 portion.

459 (21) "Special tax benefit" means:

460 (a) Exclusion of a transfer to a trust from gifts
 461 described in s. 2503(b) of the Internal Revenue Code because of
 462 the qualification of an income interest in the trust as a
 463 present interest in property;

464 (b) Status as a qualified subchapter S trust described in
 465 s. 1361(d) (3) of the Internal Revenue Code at a time the trust
 466 holds stock of an S corporation described in s. 1361(a) (1) of
 467 the Internal Revenue Code;

468 (c) An estate or gift tax marital deduction for a transfer
 469 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code
 470 which depends or depended in whole or in part on the right of
 471 the settlor's spouse to receive the net income of the trust;

472 (d) Exemption in whole or in part of a trust from the
 473 federal generation-skipping transfer tax imposed by s. 2601 of
 474 the Internal Revenue Code because the trust was irrevocable on
 475 September 25, 1985, if there is any possibility that:

476 1. A taxable distribution as defined in s. 2612(b) of the
 477 Internal Revenue Code could be made from the trust; or

478 2. A taxable termination as defined in s. 2612(a) of the
 479 Internal Revenue Code could occur with respect to the trust; or

480 (e) An inclusion ratio as defined in s. 2642(a) of the
 481 Internal Revenue Code of the trust which is less than one, if
 482 there is any possibility that:

483 1. A taxable distribution as defined in s. 2612(b) of the
 484 Internal Revenue Code could be made from the trust; or

485 2. A taxable termination as defined in s. 2612(a) of the
 486 Internal Revenue Code could occur with respect to the trust.

487 (22) "Successive interest" means the interest of a
 488 successor beneficiary.

489 (23)-(12) "Successor Remainder beneficiary" means a person
 490 entitled to receive income or principal or to use property when
 491 an income interest or other current interest ends.

492 (24)-(13) "Terms of a trust" means:

493 (a) Except as otherwise provided in paragraph (b), the
 494 manifestation of the settlor's intent regarding a trust's
 495 provisions as:

496 1. Expressed in the will or trust instrument; or

497 2. Established by other evidence that would be admissible
 498 in a judicial proceeding.

499 (b) The trust's provisions as established, determined, or
 500 amended by:

501 1. A trustee or trust director in accordance with the
 502 applicable law;
 503 2. A court order; or
 504 3. A nonjudicial settlement agreement under s. 736.0111.
 505 (c) For an estate, a will; or
 506 (d) For a life estate or term interest, the corresponding
 507 manifestation of the rights of the beneficiaries to the extent
 508 provided in s. 738.508 ~~the manifestation of the intent of a~~
 509 ~~grantor or decedent with respect to the trust, expressed in a~~
 510 ~~manner that admits of its proof in a judicial proceeding,~~
 511 ~~whether by written or spoken words or by conduct.~~
 512 (25) "Trust" includes an express trust, whether private or
 513 charitable, with additions to the trust, wherever and however
 514 created; and a trust created or determined by a judgment or
 515 decree under which the trust is to be administered. The term
 516 does not include a constructive trust; a resulting trust; a
 517 conservatorship; a custodial arrangement under the Florida
 518 Uniform Transfers to Minors Act; a business trust providing for
 519 certificates to be issued to beneficiaries; a common trust fund;
 520 a land trust under s. 689.071; a trust created by the form of
 521 the account or by the deposit agreement at a financial
 522 institution; a voting trust; a security arrangement; a
 523 liquidation trust; a trust for the primary purpose of paying
 524 debts, dividends, interest, salaries, wages, profits, pensions,
 525 retirement benefits, or employee benefits of any kind; or an

526 arrangement under which a person is a nominee, an escrowee, or
 527 an agent for another.

528 ~~(26)-(14)~~ "Trustee" means a person, other than a personal
 529 representative, that owns or holds property for the benefit of a
 530 beneficiary. The term includes an original, additional, or
 531 successor trustee, regardless of whether they are ~~or not~~
 532 appointed or confirmed by a court.

533 (27) "Will" means any testamentary instrument recognized
 534 under applicable law which makes a legally effective disposition
 535 of an individual's property, effective at the individual's
 536 death. The term includes a codicil or other amendment to a
 537 testamentary instrument.

538 Section 3. Section 738.103, Florida Statutes, is amended
 539 to read:

540 (Substantial rewording of section. See
 541 s. 738.103, F.S., for present text.)

542 738.103 Scope.—Except as otherwise provided in the terms
 543 of a trust or this chapter, this chapter applies to all of the
 544 following:

545 (1) A trust or an estate.

546 (2) A life estate or other term interest in which the
 547 interest of one or more persons will be succeeded by the
 548 interest of one or more other persons to the extent provided in
 549 s. 738.508.

550 Section 4. Section 738.104, Florida Statutes, is amended

551 to read:

552 (Substantial rewording of section. See
 553 s. 738.104, F.S., for present text.)

554 738.104 Governing law.—Except as otherwise provided in the
 555 terms of a trust or this chapter, this chapter applies when this
 556 state is the principal place of administration of a trust or
 557 estate or the situs of property that is not held in a trust or
 558 estate and is subject to a life estate or other term interest
 559 described in s. 738.103(2). By accepting the trusteeship of a
 560 trust having its principal place of administration in this state
 561 or by moving the principal place of administration of a trust to
 562 this state, the trustee submits to the application of this
 563 chapter to any matter within the scope of this chapter involving
 564 the trust.

565 Section 5. Section 738.1041, Florida Statutes, is
 566 repealed.

567 Section 6. Section 738.105, Florida Statutes, is repealed.

568 Section 7. Section 738.201, Florida Statutes, is amended

569 to read:

570 (Substantial rewording of section. See
 571 s. 738.201, F.S., for present text.)

572 738.201 Fiduciary duties; general principles.—

573 (1) In making an allocation or determination or exercising
 574 discretion under this chapter, a fiduciary shall do all of the
 575 following:

- 576 (a) Act in good faith, based on what is a fair and
577 reasonable fee to all beneficiaries;
- 578 (b) Administer a trust or estate impartially, except to
579 the extent that the terms of the trust manifest an intent that
580 the fiduciary favors one or more beneficiaries;
- 581 (c) Administer the trust or estate in accordance with the
582 terms of the trust, even if there is a different provision in
583 this chapter.
- 584 (d) Administer the trust or estate in accordance with this
585 chapter, except to the extent that the terms of the trust
586 provide otherwise or authorize the fiduciary to determine
587 otherwise.
- 588 (2) A fiduciary's allocation, determination, or exercise
589 of discretion under this chapter is presumed to be fair and
590 reasonable to all beneficiaries. A fiduciary may exercise a
591 discretionary power of administration given to the fiduciary by
592 the terms of the trust, and an exercise of the power that
593 produces a result different from a result required or permitted
594 by this chapter does not create an inference that the fiduciary
595 abused the fiduciary's discretion.
- 596 (3) A fiduciary shall:
- 597 (a) Add a receipt to principal, to the extent that the
598 terms of the trust and this chapter do not allocate the receipt
599 between income and principal;
- 600 (b) Charge a disbursement to principal, to the extent that

601 the terms of the trust and this chapter do not allocate the
 602 disbursement between income and principal; and

603 (c) Within 65 days after the fiscal year ends, add any
 604 undistributed income to principal, unless otherwise provided by
 605 the terms of the trust.

606 (4) A fiduciary may exercise the power to adjust under s.
 607 738.203(1), convert an income trust to a unitrust under ss.
 608 738.301-738.310, change the percentage or method used to
 609 calculate a unitrust amount under ss. 738.301-738.310, or
 610 convert a unitrust to an income trust under ss. 738.301-738.310
 611 if the fiduciary determines the exercise of the power will
 612 assist the fiduciary to administer the trust or estate
 613 impartially.

614 (5) The fiduciary must consider the following factors in
 615 making the determination in subsection (4), including:

616 (a) The terms of the trust.

617 (b) The nature, distribution standards, and expected
 618 duration of the trust.

619 (c) The effect of the allocation rules, including specific
 620 adjustments between income and principal, under ss. 738.301-
 621 738.416.

622 (d) The desirability of liquidity and regularity of
 623 income.

624 (e) The desirability of the preservation and appreciation
 625 of principal.

626 (f) The extent to which an asset is used or may be used by
627 a beneficiary.

628 (g) The increase or decrease in the value of principal
629 assets, reasonably determined by the fiduciary.

630 (h) Whether and to what extent the terms of the trust give
631 the fiduciary power to accumulate income or invade principal or
632 prohibit the fiduciary from accumulating income or invading
633 principal.

634 (i) The extent to which the fiduciary has accumulated
635 income or invaded principal in preceding accounting periods.

636 (j) The effect of current and reasonably expected economic
637 conditions.

638 (k) The reasonably expected tax consequences of the
639 exercise of the power.

640 (l) The identities and circumstances of the beneficiaries.

641 (6) Except as provided in ss. 738.301-738.310, this
642 chapter pertains to the administration of a trust and is
643 applicable to any trust that is administered in this state or
644 under its law. This chapter also applies to any estate that is
645 administered in this state unless the provision is limited in
646 application to a trustee, rather than a fiduciary.

647 Section 8. Section 738.202, Florida Statutes, is amended
648 to read:

649 (Substantial rewording of section. See
650 s. 738.202, F.S., for present text.)

651 738.202 Judicial review of exercise of discretionary
652 power; request for instruction.-

653 (1) As used in this section, the term "fiduciary decision"
654 means any of the following:

655 (a) A fiduciary's allocation between income and principal
656 or other determination regarding income and principal required
657 or authorized by the terms of the trust or this chapter.

658 (b) The fiduciary's exercise or nonexercise of a
659 discretionary power regarding income and principal granted by
660 the terms of the trust or this chapter, including the power to
661 adjust under s. 738.203, convert an income trust to a unitrust
662 under ss. 738.301-738.310, change the percentage of method used
663 to calculate a unitrust amount under ss. 738.301-738.310,
664 convert a unitrust to an income trust under ss. 738.301-738.310,
665 or the method used to make property productive of income under
666 s. 738.413.

667 (c) The fiduciary's implementation of a decision described
668 in paragraph (a) or paragraph (b).

669 (2) The court may not order a fiduciary to change a
670 fiduciary decision unless the court determines that the
671 fiduciary decision was an abuse of the fiduciary's discretion. A
672 court may not determine that a fiduciary abused its discretion
673 merely because the court would have exercised the discretion in
674 a different manner or would not have exercised the discretion.

675 (3) If the court determines that a fiduciary decision was

676 an abuse of the fiduciary's discretion, the court may order a
677 remedy authorized by law, including those prescribed under ss.
678 736.1001 and 736.1002. Following such a determination by the
679 court, the remedy is to place the beneficiaries in the positions
680 the beneficiaries would have occupied if the fiduciary had not
681 abused its discretion, as follows:

682 (a) The court may order the fiduciary to exercise or
683 refrain from exercising the power to adjust under s. 738.203;

684 (b) The court may order the fiduciary to exercise or
685 refrain from exercising the power to convert an income trust to
686 a unitrust under ss. 738.301-738.310, change the percentage or
687 method used to calculate a unitrust amount under ss. 738.301-
688 738.310, or convert a unitrust to an income trust under ss.
689 738.301-738.310;

690 (c) The court may compel the fiduciary to take any of the
691 actions listed under s. 738.413;

692 (d) To the extent that the abuse of discretion has
693 resulted in no distribution to a beneficiary or a distribution
694 that is too small, the court shall require the fiduciary to
695 distribute from the trust to the beneficiary an amount the court
696 determines will restore the beneficiary, in whole or in part, to
697 his or her appropriate position;

698 (e) To the extent that the abuse of discretion has
699 resulted in a distribution to a beneficiary that is too large,
700 the court shall restore the beneficiaries, the trust, or both,

701 in whole or in part, to their appropriate positions by requiring
702 the fiduciary to withhold an amount from one or more future
703 distributions to the beneficiary who received the distribution
704 that was too large or requiring that beneficiary to return some
705 or all of the distribution to the trust; or

706 (f) To the extent that the court is unable, after applying
707 paragraphs (a)-(e), to restore the beneficiaries or the trust,
708 or both, to the positions they would have occupied if the
709 fiduciary had not abused its discretion, the court may require
710 the fiduciary to pay an appropriate amount from its own funds to
711 one or more of the beneficiaries or the trust or both.

712 (4) On petition by the fiduciary for instruction, the
713 court may determine whether a proposed fiduciary decision will
714 result in an abuse of the fiduciary's discretion. If the
715 petition describes the proposed decision, contains sufficient
716 information to inform the beneficiary of the reasons for making
717 the proposed decision and the facts on which the fiduciary
718 relies, and explains how the beneficiary will be affected by the
719 proposed decision, a beneficiary who opposes the proposed
720 decision has the burden to establish that it will result in an
721 abuse of the fiduciary's discretion.

722 (5) If an action is instituted alleging an abuse of
723 discretion in the exercise or nonexercise of the fiduciary's
724 discretion under this chapter and the court determines no abuse
725 of discretion has occurred, the fiduciary's costs and attorney

726 fees incurred in defending the action shall be paid from the
727 trust assets.

728 Section 9. Section 738.203, Florida Statutes, is created
729 to read:

730 738.203 Fiduciary's power to adjust.-

731 (1) Except as otherwise provided in the terms of a trust
732 or this section, a fiduciary, in a record without court
733 approval, may adjust between income and principal if the
734 fiduciary determines that the exercise of the power to adjust
735 will assist the fiduciary in administering the trust or estate
736 impartially.

737 (2) This section does not create a duty to exercise or
738 consider the power to adjust under subsection (1) or to inform a
739 beneficiary about the applicability of this section.

740 (3) A fiduciary that in good faith exercises or fails to
741 exercise the power to adjust under subsection (1) is not liable
742 to a person affected by the exercise or failure to exercise.

743 (4) In deciding whether and to what extent to exercise the
744 power to adjust under subsection (1), a fiduciary shall consider
745 all factors the fiduciary considers relevant, including relevant
746 factors in s. 738.201(5) and ss. 738.408 and 738.413.

747 (5) A fiduciary may not exercise the power under
748 subsection (1) to make an adjustment or under s. 738.408 to make
749 a determination that an allocation is insubstantial if:

750 (a) The adjustment or determination would reduce the

751 amount payable to a current income beneficiary from a trust that
752 qualifies for a special tax benefit, except to the extent that
753 the adjustment is made to provide for a reasonable apportionment
754 of the total return of the trust between the current income
755 beneficiary and successor beneficiaries;

756 (b) The adjustment or determination would change the
757 amount payable to a beneficiary, as a fixed annuity or a fixed
758 fraction of the value of the trust assets, under the terms of
759 the trust;

760 (c) The adjustment or determination would reduce an amount
761 that is permanently set aside for a charitable purpose under the
762 terms of the trust unless both income and principal are set
763 aside for the charitable purpose;

764 (d) Possessing or exercising the power would cause a
765 person to be treated as the owner of all or part of the trust
766 for federal income tax purposes and the person would not be
767 treated as the owner if the fiduciary did not possess the power
768 to adjust;

769 (e) Possessing or exercising the power would cause all or
770 part of the value of the trust assets to be included in the
771 gross estate of an individual for federal real estate tax
772 purposes and the assets would not be included in the gross
773 estate of the individual if the fiduciary did not possess the
774 power to adjust;

775 (f) Possessing or exercising the power would cause an

776 individual to be treated as making a gift for federal gift tax
777 purposes;

778 (g) The fiduciary is not an independent person;

779 (h) The trust is irrevocable and provides for income to be
780 paid to the settlor, and possessing or exercising the power
781 would cause the adjusted principal or income to be considered an
782 available resource or available income under a public-benefit
783 program; or

784 (i) The trust is a unitrust under ss. 738.301-738.310.

785 (6) If paragraph (5)(d), paragraph (5)(e), paragraph
786 (5)(f), or paragraph (5)(g) applies to a fiduciary:

787 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not
788 apply may exercise the power to adjust, unless the exercise of
789 the power by the remaining cofiduciary or cofiduciaries is not
790 permitted by the terms of the trust or law other than this
791 chapter; or

792 (b) If there is no cofiduciary to which paragraphs (5)(d)-
793 (g) do not apply, the fiduciary may appoint a cofiduciary to
794 which paragraphs (5)(d)-(g) do not apply which may be a special
795 fiduciary with limited powers, and the appointed cofiduciary may
796 exercise the power to adjust under subsection (1), unless the
797 appointment of a cofiduciary or the exercise of the power by a
798 cofiduciary is not permitted by the terms of the trust or law
799 other than this chapter.

800 (7) A fiduciary may release or delegate to a cofiduciary

801 the power to adjust under subsection (1) if the fiduciary
 802 determines that the fiduciary's possession or exercise of the
 803 power will or may:

804 (a) Cause a result described in paragraph (5)(a),
 805 paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph
 806 (5)(e), paragraph (5)(f), or paragraph (5)(h); or

807 (b) Deprive the trust of a tax benefit or impose a tax
 808 burden not described in paragraph (5)(a), paragraph (5)(b),
 809 paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), or
 810 paragraph (5)(f).

811 (8) A fiduciary's release or delegation to a cofiduciary
 812 under subsection (7) of the power to adjust under subsection
 813 (1):

814 (a) Must be in a record;

815 (b) Applies to the entire power, unless the release or
 816 delegation provides a limitation, which may be a limitation to
 817 the power to adjust:

818 1. From income to principal;

819 2. From principal to income;

820 3. For specified property; or

821 4. In specified circumstances.

822 (c) For a delegation, may be modified by a redelegation
 823 under this subsection by the cofiduciary to which the delegation
 824 is made; and

825 (d) Subject to paragraph (c), is permanent, unless the

826 release or delegation provides a specified period, including a
827 period measured by the life of an individual or the lives of
828 more than one individual.

829 (9) Terms of a trust that deny or limit the power to
830 adjust between income and principal do not affect the
831 application of this section, unless the terms of the trust
832 expressly deny or limit the power to adjust under subsection
833 (1).

834 (10) The exercise of the power to adjust under subsection
835 (1) in any accounting period may apply to the current period,
836 the immediately preceding period, and one or more subsequent
837 periods.

838 (11) A description of the exercise of the power to adjust
839 under subsection (1) must be:

840 (a) Included in a report, if any, sent to beneficiaries
841 under s. 736.0813; or

842 (b) Communicated at least annually to the qualified
843 beneficiaries as defined in s. 736.0103 other than the Attorney
844 General.

845 (12) With respect to a trust in existence on January 1,
846 2003:

847 (a) A fiduciary may not have the power to adjust under
848 this section until the statement required in subsection (13) is
849 provided and either no objection is made or any objection which
850 is made has been terminated.

851 1. An objection is made if, within 60 days after the date
852 of the statement required in subsection (13), a super majority
853 of the eligible beneficiaries deliver to the fiduciary a written
854 objection to the application of this section to such trust. An
855 objection shall be deemed to be delivered to the fiduciary on
856 the date the objection is mailed to the mailing address listed
857 in the notice provided in subsection (13).

858 2. An objection is terminated upon the earlier of the
859 receipt of consent from a super majority of eligible
860 beneficiaries of the class that made the objection, or the
861 resolution of the objection under paragraph (c).

862 (b) An objection or consent under this section may be
863 executed by a legal representative or natural guardian of a
864 beneficiary without the filing of any proceeding or approval of
865 any court.

866 (c) If an objection is delivered to the fiduciary, then
867 the fiduciary may petition the circuit court for an order
868 quashing the objection and vesting in such fiduciary the power
869 to adjust under this section. The burden will be on the
870 objecting beneficiaries to prove that the power to adjust would
871 be inequitable, illegal, or otherwise in contravention of the
872 grantor's intent. The court may award costs and attorney fees
873 relating to the fiduciary's petition in the same manner as in
874 chancery actions. When costs and attorney fees are to be paid
875 out of the trust, the court may, in its discretion, direct from

876 which part of the trust they shall be paid.

877 (d) If no timely objection is made or if the fiduciary is
878 vested with the power to adjust by court order, the fiduciary
879 may thereafter exercise the power to adjust without providing
880 notice of its intent to do so unless, in vesting the fiduciary
881 with the power to adjust, the court determines that unusual
882 circumstances require otherwise.

883 (e)1. If a fiduciary makes a good faith effort to comply
884 with the notice provisions of subsection (13), but fails to
885 deliver notice to one or more beneficiaries entitled to such
886 notice, neither the validity of the notice required under this
887 subsection nor the fiduciary's power to adjust under this
888 section shall be affected until the fiduciary has actual notice
889 that one or more beneficiaries entitled to notice were not
890 notified. Until the fiduciary has actual notice of the notice
891 deficiency, the fiduciary shall have all of the powers and
892 protections granted a fiduciary with the power to adjust under
893 this chapter.

894 2. When the fiduciary has actual notice that one or more
895 beneficiaries entitled to notice under subsection (13) were not
896 notified, the fiduciary's power to adjust under this section
897 shall cease until all beneficiaries who are entitled to such
898 notice, including those who were previously provided with such
899 notice, are notified and given the opportunity to object as
900 provided for under this subsection.

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901 (f) The objection of a super majority of eligible
902 beneficiaries under this subsection shall be valid for a period
903 of 1 year after the date of the notice set forth in subsection
904 (13). Upon expiration of the objection, the fiduciary may
905 thereafter give a new notice under subsection (13).

906 (g) This section is not intended to create or imply a duty
907 of the fiduciary of a trust existing on January 1, 2003, to seek
908 a power to adjust under this subsection or to give the notice
909 described in subsection (13) if the fiduciary does not desire to
910 have a power to adjust under this section, and no inference of
911 impropriety shall be made as the result of a fiduciary not
912 seeking a power to adjust under this subsection.

913 (13) (a) A fiduciary of a trust in existence on January 1,
914 2003, that is not prohibited under subsection (5) from
915 exercising the power to adjust shall, any time before initially
916 exercising the power, provide to all eligible beneficiaries a
917 statement containing the following:

918 1. The name, telephone number, street address, and mailing
919 address of the fiduciary and of any person who may be contacted
920 for further information;

921 2. A statement that unless a super majority of the
922 eligible beneficiaries objects to the application of this
923 section to the trust within 60 days after the date the statement
924 pursuant to this subsection was served, this section shall apply
925 to the trust; and

926 3. A statement that, if this section applies to the trust,
 927 the fiduciary will have the power to adjust between income and
 928 principal and that such a power may have an effect on the
 929 distributions to such beneficiary from the trust.

930 (b) The statement may contain information regarding a
 931 fiduciary's obligation with respect to the power to adjust
 932 between income and principal under this section.

933 (c) The statement shall be served informally, in the
 934 manner provided in the Florida Rules of Civil Procedure relating
 935 to service of pleadings subsequent to the initial pleading. The
 936 statement may be served on a legal representative or natural
 937 guardian of a beneficiary without the filing of any proceeding
 938 or approval of any court.

939 (14) For purposes of subsections (12) and (13), the term:

940 1. "Eligible beneficiaries" means:

941 a. If at the time the determination is made there are one
 942 or more beneficiaries described in s. 736.0103(19) (c), the
 943 beneficiaries described in s. 736.0103(19) (a) and (c); or

944 b. If there is no beneficiary described in s.
 945 736.0103(19) (c), the beneficiaries described in s.
 946 736.0103(19) (a) and (b).

947 2. "Super majority of the eligible beneficiaries" means:

948 a. If at the time the determination is made there are one
 949 or more beneficiaries described in s. 736.0103(19) (c), at least
 950 two-thirds in interest of the beneficiaries described in s.

951 736.0103(19) (a) or two-thirds in interest of the beneficiaries
 952 described in s. 736.0103(19) (c), if the interests of the
 953 beneficiaries are reasonably ascertainable; otherwise, it means
 954 two-thirds in number of either such class; or

955 b. If there is no beneficiary described in s.
 956 736.0103(19) (c), at least two-thirds in interest of the
 957 beneficiaries described in s. 736.0103(19) (a) or two-thirds in
 958 interest of the beneficiaries described in s. 736.0103(19) (b),
 959 if the interests of the beneficiaries are reasonably
 960 ascertainable, otherwise, two-thirds in number of either such
 961 class.

962 (15) A trust exists on January 1, 2003, if it is not
 963 revocable on January 1, 2003. A trust is revocable if revocable
 964 by the grantor alone or in conjunction with any other person. A
 965 trust is not revocable for purposes of this section if revocable
 966 by the grantor only with the consent of all persons having a
 967 beneficial interest in the property.

968 Section 10. Section 738.301, Florida Statutes, is amended
 969 to read:

970 (Substantial rewording of section. See
 971 s. 738.301, F.S., for present text).

972 738.301 Definitions.—For purposes of this section and ss.
 973 738.302–738.310:

974 (1) "Applicable value" means the amount of the net fair
 975 market value of a trust taken into account under s. 738.307.

976 (2) "Express unitrust" means a trust for which, under the
 977 terms of the trust without regard to this section and ss.
 978 738.302-738.310, net income must be calculated as a unitrust
 979 amount.

980 (3) "Income trust" means a trust, created by an inter
 981 vivos or testamentary instrument, that directs or permits the
 982 trustee to distribute the net income of the trust to one or more
 983 persons, in fixed proportions or in amounts or proportions
 984 determined by the trustee and regardless of whether the trust
 985 directs or permits the trustee to distribute the principal of
 986 the trust to one or more such persons.

987 (4) "Net fair market value of a trust" means the fair
 988 market value of the assets of the trust, less the reasonably
 989 known noncontingent liabilities of the trust.

990 (5) "Unitrust" means a trust for which net income is a
 991 unitrust amount. The term includes an express unitrust.

992 (6) "Unitrust amount" means an amount computed by
 993 multiplying a determined value of a trust by a determined
 994 percentage. For a unitrust administered under a unitrust policy,
 995 the term means the applicable value multiplied by the unitrust
 996 rate.

997 (7) "Unitrust policy" means a policy described in ss.
 998 738.301-738.310 and adopted under s. 738.303.

999 (8) "Unitrust rate" means the rate used to compute the
 1000 unitrust amount for a unitrust administered under a unitrust

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1001 policy.

1002 Section 11. Section 738.302, Florida Statutes, is amended
1003 to read:

1004 (Substantial rewording of section. See
1005 s. 738.302, F.S., for present text.)

1006 738.302 Applications; duties and remedies.—

1007 (1) Except as otherwise provided in subsection (2), ss.
1008 738.301-738.310 apply to all of the following:

1009 (a) An income trust, unless the terms of the trust
1010 expressly prohibit the use of ss. 738.301-738.310 by a specific
1011 reference to this paragraph or corresponding provision of prior
1012 law, or an explicit expression of intent that net income not be
1013 calculated as a unitrust amount.

1014 (b) An express unitrust, except to the extent that the
1015 terms of the trust explicitly:

1016 1. Prohibit the use of ss. 738.301-738.310 by a specific
1017 reference to this paragraph or corresponding provision of prior
1018 law;

1019 2. Prohibit conversion to an income trust; or

1020 3. Limit changes to the method of calculating the unitrust
1021 amount.

1022 (c) A unitrust that had been converted from an income
1023 trust.

1024 (2) The provisions of ss. 738.301-738.310 do not apply to
1025 a trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d),

1026 s. 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
1027 Revenue Code.

1028 (3) An income trust to which ss. 738.301-738.310 apply
1029 under paragraph (1)(a) may be converted to a unitrust under ss.
1030 738.301-738.310 regardless of the terms of the trust concerning
1031 distributions. Conversion to a unitrust under ss. 738.301-
1032 738.310 does not affect other terms of the trust concerning
1033 distributions of income or principal.

1034 (4) Sections 738.301-738.310 apply to an estate only to
1035 the extent that a trust is a beneficiary of the estate. To the
1036 extent of the trust's interest in the estate, the estate may be
1037 administered as a unitrust, the administration of the estate as
1038 a unitrust may be discontinued, or the percentage or method used
1039 to calculate the unitrust amount may be changed, in the same
1040 manner as for a trust under those sections.

1041 (5) The provisions of ss. 738.301-738.310 do not create a
1042 duty to take or consider action under ss. 738.301-738.310 or to
1043 inform a beneficiary about the applicability of ss. 738.301-
1044 738.310.

1045 (6) A fiduciary that in good faith takes or fails to take
1046 an action under ss. 738.301-738.310 is not liable to a person
1047 affected by the action or inaction.

1048 Section 12. Section 738.303, Florida Statutes, is amended
1049 to read:

1050 (Substantial rewording of section. See

1051 s. 738.303, F.S., for present text.)

1052 738.303 Authority of fiduciary.—

1053 (1) By complying with subsections (2) and (6), and without
1054 court approval, a fiduciary may do any of the following:

1055 (a) Convert an income trust to a unitrust if the fiduciary
1056 adopts in a record a unitrust policy for the trust which
1057 provides:

1058 1. That in administering the trust, the net income of the
1059 trust will be a unitrust amount rather than net income
1060 determined without regard to ss. 738.301-738.310; and

1061 2. The percentage and method used to calculate the
1062 unitrust amount.

1063 (b) Change the percentage or method used to calculate a
1064 unitrust amount for a unitrust if the fiduciary adopts in a
1065 record a unitrust policy or an amendment or replacement of a
1066 unitrust policy providing charges in the percentage or method
1067 used to calculate the unitrust amount.

1068 (c) Convert a unitrust to an income trust if the fiduciary
1069 adopts in a record a determination that, in administering the
1070 trust, the net income of the trust will be net income determined
1071 without regard to ss. 738.301-738.310 rather than a unitrust
1072 amount.

1073 (2) A fiduciary may take an action under subsection (1) if
1074 all of the following apply:

1075 (a) The fiduciary determines that the action will assist

1076 the fiduciary to administer a trust impartially.

1077 (b) The fiduciary sends a notice in a record to the
 1078 qualified beneficiaries determined under ss. 736.0103 and
 1079 736.0110 in the manner required by s. 738.304, describing and
 1080 proposing to take the action.

1081 (c) The fiduciary sends a copy of the notice under
 1082 paragraph (b) to each settlor of the trust which is:

- 1083 1. If an individual, living; or
- 1084 2. If not an individual, in existence.

1085 (d) At least one member of each class of the qualified
 1086 beneficiaries determined under ss. 736.0103 and 736.0110, other
 1087 than the Attorney General, receiving the notice under paragraph
 1088 (b) is:

- 1089 1. If an individual, legally competent;
- 1090 2. If not an individual, in existence; or
- 1091 3. Represented in the manner provided in s. 738.304(2).

1092 (e) The fiduciary does not receive, by the date specified
 1093 in the notice under s. 738.304(4) (e), an objection in a record
 1094 to the action proposed under paragraph (b) from a person to
 1095 which the notice under paragraph (b) is sent.

1096 (3) If a fiduciary receives, not later than the date
 1097 stated in the notice under s. 738.304(4) (e), an objection in a
 1098 record described in s. 738.304(4) (d) to a proposed action, the
 1099 fiduciary or a beneficiary may request the court to have the
 1100 action taken as proposed, taken with modifications, or

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1101 prevented. A person described in s. 738.304(1) may oppose the
1102 proposed action in the proceeding under this subsection
1103 regardless of whether the person:

1104 (a) Consented under s. 738.304(3); or

1105 (b) Objected under s. 738.304(4) (d).

1106 (4) If, after sending a notice under paragraph (2) (b), a
1107 fiduciary decides not to take the action proposed in the notice,
1108 the fiduciary must notify in a record each person described in
1109 s. 738.304(1) of the decision not to take the action and the
1110 reasons for the decision.

1111 (5) If a beneficiary requests in a record that a fiduciary
1112 take an action described in subsection (1) and the fiduciary
1113 declines to act or does not act within 60 days after receiving
1114 the request, the beneficiary may request the court to direct the
1115 fiduciary to take the action requested.

1116 (6) In deciding whether and how to take an action
1117 authorized in subsection (1), or whether and how to respond to a
1118 request by a beneficiary under subsection (5), a fiduciary must
1119 consider all factors relevant to the trust and beneficiaries,
1120 including the relevant factors listed in s. 738.201(5).

1121 (7) A fiduciary may release or delegate the power to
1122 convert an income trust to a unitrust under paragraph (1) (a),
1123 change the percentage or method used to calculate a unitrust
1124 amount under paragraph (1) (b), or convert a unitrust to an
1125 income trust under paragraph (1) (c), for a reason described in

1126 s. 738.203(7) and in the manner described in s. 738.203(8).

1127 Section 13. Section 738.304, Florida Statutes, is created
1128 to read:

1129 738.304 Notice.—

1130 (1) A notice required by s. 738.303(2)(b) must be sent in
1131 a manner authorized under s. 736.0109 to all of the following:

1132 (a) The qualified beneficiaries as defined in s. 736.0103,
1133 other than the Attorney General.

1134 (b) Each person that is granted a power over the trust by
1135 the terms of the trust, to the extent that the power is
1136 exercisable when the person is not then serving as a trustee:

1137 1. Including all of the following:

1138 a. Power over the investment, management, or distribution
1139 of trust property or other matters of trust administration.

1140 b. Power to appoint or remove a trustee or person
1141 described in this paragraph.

1142 2. Excluding all of the following:

1143 a. Power of appointment.

1144 b. Power of a beneficiary over the trust, to the extent
1145 that the exercise or nonexercise of the power affects the
1146 beneficial interest of the beneficiary or another beneficiary
1147 represented by the beneficiary under ss. 736.0301-736.0306 with
1148 respect to the exercise or nonexercise of the power.

1149 c. Power over the trust if the terms of the trust provide
1150 that the power is held in a nonfiduciary capacity and the power

1151 must be held in a nonfiduciary capacity to achieve a tax
1152 objective under the Internal Revenue Code.

1153 (c) Each person that is granted a power by the terms of
1154 the trust to appoint or remove a trustee or person described in
1155 paragraph (b) to the extent that the power is exercisable when
1156 the person that exercises the power is not serving as a trustee
1157 or person described in paragraph (b).

1158 (2) The representation provisions of ss. 736.0301-736.0306
1159 apply to notice under this section.

1160 (3) A person may consent in a record at any time to action
1161 proposed under s. 738.303(2)(b). A notice required by s.
1162 738.303(2)(b) need not be sent to a person that consents under
1163 this subsection.

1164 (4) A notice required under s. 738.303(2)(b) must include
1165 all of the following:

1166 (a) The action proposed under s. 738.303(2)(b).

1167 (b) For a conversion of an income trust to a unitrust, a
1168 copy of the unitrust policy adopted under s. 738.303(1)(a).

1169 (c) For a change in the percentage or method used to
1170 calculate the unitrust amount, a copy of the unitrust policy or
1171 amendment or replacement of the unitrust policy adopted under s.
1172 738.303(1)(b).

1173 (d) A statement that the person to which the notice is
1174 sent may object to the proposed action by stating in a record
1175 the basis for the objection and sending or delivering the record

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1176 to the fiduciary.

1177 (e) The date by which an objection under paragraph (d)
1178 must be received by the fiduciary, which must be at least 30
1179 days after the date the notice is sent.

1180 (f) The date on which the action is proposed to be taken
1181 and the date on which the action is proposed to take effect.

1182 (g) The name and contact information of the fiduciary.

1183 (h) The name and contact information of a person that may
1184 be contacted for additional information.

1185 Section 14. Section 738.305, Florida Statutes, is created
1186 to read:

1187 738.305 Unitrust policy.—

1188 (1) In administering a unitrust under ss. 738.301-738.310,
1189 a fiduciary shall follow a unitrust policy adopted under s.
1190 738.303(1) (a) or (b) or amended or replaced under s.
1191 738.303(1) (b).

1192 (2) A unitrust policy must provide all of the following:

1193 (a) The unitrust rate or method for determining the
1194 unitrust rate under s. 738.306.

1195 (b) The method for determining the applicable value under
1196 s. 738.307.

1197 (c) The rules described in ss. 738.306-738.310 which apply
1198 in the administration of the unitrust, whether the rules are:

1199 1. Mandatory as provided in ss. 738.307(1) and (3),
1200 738.308(1), and 738.310; or

1201 2. Optional as provided in ss. 738.306, 738.307(2), and
 1202 738.308(2), to the extent that the fiduciary elects to adopt
 1203 those rules.

1204 (3) A unitrust policy may do any of the following:

1205 (a) Provide methods and standards for:

1206 1. Determining the timing of the distributions;

1207 2. Making distributions in cash or in kind or partly in
 1208 cash and partly in kind; or

1209 3. Correcting an underpayment or overpayment to a
 1210 beneficiary based on the unitrust amount if there is an error in
 1211 calculating the unitrust amount.

1212 (b) Specify sources and the order of sources, including
 1213 categories of income for federal income tax purposes, from which
 1214 distributions of a unitrust amount are paid.

1215 (c) Provide other standards and rules that the fiduciary
 1216 determines serve the interests of the beneficiaries.

1217 Section 15. Section 738.306, Florida Statutes, is created
 1218 to read:

1219 738.306 Unitrust rate.—

1220 (1) A unitrust rate must be at least 3 percent and not
 1221 more than 5 percent. Within those limits, the unitrust rate may
 1222 be:

1223 (a) A fixed unitrust rate; or

1224 (b)1. A unitrust rate that is determined for each period
 1225 using:

1226 a. A market index or other published data; or
 1227 b. A mathematical blend of market indices or other
 1228 published data over a stated number of preceding periods.
 1229 2. If the rate calculated under this paragraph would be
 1230 less than 3, the rate is 3; and if the rate calculated would be
 1231 more than 5, the rate is 5.
 1232 (2) Within the limits of subsection (1), a unitrust policy
 1233 may provide for any of the following:
 1234 (a) A limit on how much the unitrust rate determined under
 1235 paragraph (1)(b) may increase over the unitrust rate for the
 1236 preceding period or a mathematical blend of unitrust rates over
 1237 a stated number of preceding periods.
 1238 (b) A limit on how much the unitrust rate determined under
 1239 paragraph (1)(b) may decrease below the unitrust rate for the
 1240 preceding period or a mathematical blend of unitrust rates over
 1241 a stated number of preceding periods.
 1242 (c) A mathematical blend of any of the unitrust rates
 1243 determined under paragraph (1)(b) and paragraphs (a) and (b).
 1244 (3) If the fiduciary is not an independent person, the
 1245 percentage used to calculate the unitrust amount is the rate
 1246 determined under s. 7520(a)(2) of the Internal Revenue Code in
 1247 effect for the month the conversion under this section becomes
 1248 effective and for each January thereafter; however, if the rate
 1249 determined under s. 7520(a)(2) of the Internal Revenue Code
 1250 exceeds 5 percent, the unitrust rate is 5 percent, and if the

1251 rate determined under s. 7520(a) (2) of the Internal Revenue Code
1252 is less than 3 percent, the unitrust rate is 3 percent.

1253 Section 16. Section 738.307, Florida Statutes, is created
1254 to read:

1255 738.307 Applicable value.-

1256 (1) A unitrust policy must provide the method for
1257 determining the fair market value of an asset for the purpose of
1258 determining the unitrust amount, including all of the following:

1259 (a) The frequency of valuing the asset, which need not
1260 require a valuation in every period.

1261 (b) The date for valuing the asset in each period in which
1262 the asset is valued.

1263 (2) Except as otherwise provided in s. 738.309, a unitrust
1264 policy may provide methods for determining the amount of the net
1265 fair market value of the trust to take into account in
1266 determining the applicable value, including any of the
1267 following:

1268 (a) Obtaining an appraisal of an asset for which fair
1269 market value is not readily available.

1270 (b) Excluding specific assets or groups or types of assets
1271 in addition to those described in subsection (3).

1272 (c) Making other exceptions or modifications of the
1273 treatment of specific assets or groups or types of assets.

1274 (d) Including identification and treatment of cash or
1275 property held for distribution.

1276 (e) Using an average of fair market values over a stated
 1277 number of preceding periods, not to exceed 3 calendar years.

1278 (f) Determining the reasonable known liabilities of the
 1279 trust, including treatment of liabilities to conform with the
 1280 treatment of assets under paragraphs (a)-(e).

1281 (3) The following property may not be included in
 1282 determining the value of the trust:

1283 (a) Any residential property or any tangible personal
 1284 property that, as of the first business day of the current
 1285 valuation year, one or more current beneficiaries of the trust
 1286 have or have had the right to occupy or have or have had the
 1287 right to possess or control, other than in his or her capacity
 1288 as trustee of the trust. Instead, the right of occupancy or the
 1289 right to possession and control is the unitrust amount with
 1290 respect to such property; however, the unitrust amount must be
 1291 adjusted to take into account partial distributions from or
 1292 receipt into the trust of such property during the valuation
 1293 year;

1294 (b) Any asset specifically given to a beneficiary and the
 1295 return on investment on such property, which return on
 1296 investment must be distributable to the beneficiary; and

1297 (c) Any asset while held in an estate.

1298 Section 17. Section 738.308, Florida Statutes, is created
 1299 to read:

1300 738.308 Period.-

1301 (1) A unitrust policy must provide the period used under
 1302 ss. 738.306 and 738.307. The period must be the calendar year.

1303 (2) A unitrust policy may provide standards for:

1304 (a) Using fewer preceding periods under s. 738.306(1)(b)1.
 1305 or (2)(a) or (b) if:

1306 1. The trust was not in existence in a preceding period;
 1307 or

1308 2. Market indices or other published data are not
 1309 available for a preceding period;

1310 (b) Using fewer preceding periods under 738.307(2)(e) if:

1311 1. The trust was not in existence in a preceding period;
 1312 or

1313 2. Fair market values are not available for a preceding
 1314 period; and

1315 (c) Prorating a unitrust amount on a daily basis for a
 1316 part of a period in which the trust or the administration of the
 1317 trust as a unitrust or the interest of any beneficiary commences
 1318 or terminates.

1319 Section 18. Section 738.309, Florida Statutes, is created
 1320 to read:

1321 738.309 Express unitrust.—

1322 (1) This section applies to a trust that, by its governing
 1323 instrument, requires or allows income or net income to be
 1324 calculated as a unitrust amount.

1325 (2) The trustee of an express unitrust may determine the

1326 unitrust amount by reference to the net fair market value of the
 1327 unitrust's assets in 1 or more years.

1328 (3) Distribution of a unitrust amount is considered a
 1329 distribution of all of the net income of an express unitrust and
 1330 is considered to be an income interest.

1331 (4) The unitrust amount is considered to be a reasonable
 1332 apportionment of the total return of an express unitrust.

1333 (5) An express unitrust that provides or allows a
 1334 distribution based on a unitrust rate in excess of 5 percent per
 1335 year of the net fair market value of the unitrust assets is
 1336 considered a distribution of all of the income of the unitrust
 1337 to the extent that the distribution exceeds 5 percent per year
 1338 and a distribution of principal of the unitrust.

1339 (6) An express unitrust may provide a mechanism for
 1340 changing the unitrust rate, similar to the mechanism provided
 1341 under s. 738.306, based upon the factors noted in that section,
 1342 and may provide for a conversion from a unitrust to an income
 1343 trust or a reconversion of an income trust to a unitrust under
 1344 s. 738.303.

1345 (7) If an express unitrust does not specifically or by
 1346 reference to s. 738.306 prohibit a power to change the unitrust
 1347 rate or to convert to an income trust under s. 738.303, the
 1348 trustee must have such power.

1349 (8) The governing instrument of an express unitrust may
 1350 grant the trustee discretion to adopt a consistent practice of

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1351 treating capital gains as part of the unitrust amount to the
1352 extent that the unitrust amount exceeds the income determined as
1353 if the trust were not an express unitrust, or the governing
1354 instrument may specify the ordering of classes of income.

1355 (9) Unless the terms of the express unitrust specifically
1356 provide otherwise as provided in subsection (8), the
1357 distribution of a unitrust amount is considered a distribution
1358 made from the following sources, which are listed in order of
1359 priority:

1360 (a) Net accounting income determined under this chapter as
1361 if the trust were not a unitrust;

1362 (b) Ordinary income not allocable to net accounting
1363 income;

1364 (c) Net realized short-term capital gains;

1365 (d) Net realized long-term capital gains; and

1366 (e) The principal of the trust.

1367 (10) The governing instrument of an express unitrust may
1368 provide that the trustee may exclude assets used by the
1369 unitrust's beneficiary, including, but not limited to, a
1370 residence property or tangible personal property, from the net
1371 fair market value of the unitrust's assets for the purposes of
1372 computing the unitrust amount. The use of these assets may be
1373 considered equivalent to income or to the unitrust amount.

1374 Section 19. Section 738.310, Florida Statutes, is created
1375 to read:

1376 738.310 Other rules.—Following the conversion of an income
 1377 trust to a unitrust, the trustee shall consider the unitrust
 1378 amount as paid from the following sources, which are listed in
 1379 order of priority:

1380 (1) Net accounting income determined under this chapter as
 1381 if the trust were not a unitrust;

1382 (2) Ordinary income not allocable to net accounting
 1383 income;

1384 (3) Net realized short-term capital gains;

1385 (4) Net realized long-term capital gains; and

1386 (5) The principal of the trust.

1387 Section 20. Section 738.401, Florida Statutes, is amended
 1388 to read:

1389 738.401 Character of receipts from entity.—

1390 (1) For purposes of this section, the term:

1391 (a) "Capital distribution" means an entity distribution of
 1392 money which is a:

1393 1. Return of capital; or

1394 2. Distribution in total or partial liquidation of the
 1395 entity.

1396 (b) "Entity":

1397 1. Means a corporation, partnership, limited liability
 1398 company, regulated investment company, real estate investment
 1399 trust, common trust fund, or any other organization or
 1400 arrangement in which a fiduciary owns or holds ~~has~~ an interest,

1401 regardless of whether the entity is a taxpayer for federal
 1402 income tax purposes; and
 1403 2. Does not include:
 1404 a. A trust or estate to which s. 738.402 applies;
 1405 b. A business or other activity to which s. 738.403
 1406 applies which is not conducted by an entity described in
 1407 subparagraph 1.;
 1408 c. An asset-backed security; or
 1409 d. An instrument or arrangement to which s. 738.416
 1410 applies ~~other than a trust or estate to which s. 738.402~~
 1411 ~~applies, a business or activity to which s. 738.403 applies, or~~
 1412 ~~an asset-backed security to which s. 738.608 applies.~~
 1413 (c) "Entity distribution" means a payment or transfer by
 1414 an entity to a person in the person's capacity as an owner or
 1415 holder of an interest in the entity.
 1416 (d) "Lookback period" means the accounting period and the
 1417 preceding two accounting periods or, if less, the number of
 1418 accounting periods, or portion of accounting periods, that the
 1419 interest in the entity has been held by the fiduciary.
 1420 (2) In this section, an attribute or action of an entity
 1421 includes an attribute or action of any other entity in which the
 1422 initial entity owns or holds an interest, including an interest
 1423 owned or held indirectly through another entity.
 1424 (3) Except as otherwise provided in paragraphs (4) (b),
 1425 (c), and (d) this section, a fiduciary shall allocate to income:

1426 (a) Money received in an entity distribution; and
 1427 (b) Tangible personal property of nominal value received
 1428 ~~from the money received from an~~ entity.

1429 ~~(4)-(3) Except as otherwise provided in this section, A~~
 1430 ~~fiduciary shall allocate the following receipts from an entity~~
 1431 ~~to principal:~~

1432 (a) Property received in an entity distribution which is
 1433 not:

- 1434 1. other than Money; or
- 1435 2. Tangible personal property of nominal value.

1436 (b) Money received in an entity ~~one~~ distribution ~~or a~~
 1437 ~~series of related distributions in an~~ exchange for part or all
 1438 of the fiduciary's ~~a trust's or estate's~~ interest in the entity
 1439 to the extent that the entity distribution reduces the
 1440 fiduciary's interest in the entity relative to the interest of
 1441 other persons that own or hold interests in the entity.

1442 (c) Money received in an entity distribution that is a
 1443 capital distribution, to the extent not allocated to income
 1444 ~~total or partial liquidation of the entity.~~

1445 (d) Money received in an entity distribution from an
 1446 entity that is a regulated investment company or a real estate
 1447 investment trust if the money received represents short-term or
 1448 long-term capital gain realized within the entity.

1449 ~~(e) Money received from an entity listed on a public stock~~
 1450 ~~exchange during any year of the trust or estate which exceeds 10~~

1451 ~~percent of the fair market value of the trust's or estate's~~
1452 ~~interest in the entity on the first day of that year. The amount~~
1453 ~~to be allocated to principal must be reduced to the extent that~~
1454 ~~the cumulative distributions from the entity to the trust or~~
1455 ~~estate allocated to income do not exceed a cumulative annual~~
1456 ~~return of 3 percent of the fair market value of the interest in~~
1457 ~~the entity at the beginning of each year or portion of a year~~
1458 ~~for the number of years or portion of years in the period that~~
1459 ~~the interest in the entity has been held by the trust or estate.~~
1460 ~~If a trustee has exercised a power to adjust under s. 738.104~~
1461 ~~during any period the interest in the entity has been held by~~
1462 ~~the trust, the trustee, in determining the total income~~
1463 ~~distributions from that entity, must take into account the~~
1464 ~~extent to which the exercise of that power resulted in income to~~
1465 ~~the trust from that entity for that period. If the income of the~~
1466 ~~trust for any period has been computed under s. 738.1041, the~~
1467 ~~trustee, in determining the total income distributions from that~~
1468 ~~entity for that period, must take into account the portion of~~
1469 ~~the unitrust amount paid as a result of the ownership of the~~
1470 ~~trust's interest in the entity for that period.~~

1471 (5)~~(4)~~ If a fiduciary elects, or continues an election
1472 made by its predecessor, to reinvest dividends in shares of
1473 stock of a distributing corporation or fund, whether evidenced
1474 by new certificates or entries on the books of the distributing
1475 entity, the new shares retain their character as income.

1476 (6)-(5) Except as otherwise provided in subsections (10)
 1477 and (11), money received in an entity distribution is a capital
 1478 distribution ~~Money is received in partial liquidation:~~

1479 (a) To the extent that the entity, at or near the time of
 1480 the entity a distribution, indicates that such money is a
 1481 capital distribution ~~in partial liquidation; or~~

1482 (b) To the extent that the total amount of money and
 1483 property received by the fiduciary in the entity ~~in a~~
 1484 distribution or a series of related entity distributions is or
 1485 will be greater than ~~from an entity that is not listed on a~~
 1486 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's
 1487 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
 1488 as shown by the entity's year-end financial statements
 1489 immediately preceding the initial receipt.

1490
 1491 ~~This subsection does not apply to an entity to which subsection~~
 1492 ~~(7) applies.~~

1493 (7)-(6) In the case of a capital distribution, the amount
 1494 received in an entity distribution allocated to principal must
 1495 be reduced to the extent that the cumulative distributions from
 1496 the entity to the fiduciary ~~Money may not be taken into account~~
 1497 ~~in determining any excess under paragraph (5) (b), to the extent~~
 1498 ~~that the cumulative distributions from the entity to the trust~~
 1499 ~~or the estate~~ allocated to income do not exceed the greater of:

1500 (a) A cumulative annual return of 3 percent of the

1501 entity's carrying value computed at the beginning of each
 1502 accounting period, or portion of an accounting period, during
 1503 the lookback period ~~for the number of years or portion of years~~
 1504 ~~that the entity was held by the fiduciary.~~ If a fiduciary
 1505 ~~trustee~~ has exercised a power to adjust under s. 738.203 during
 1506 the lookback period, the fiduciary ~~s. 738.104~~ during any period
 1507 ~~the interest in the entity has been held by the trust, the~~
 1508 ~~trustee,~~ in determining the total income distributions from that
 1509 entity, must take into account the extent to which the exercise
 1510 of the power resulted in income to the fiduciary ~~trust~~ from that
 1511 entity for that period. If the income of a fiduciary during the
 1512 lookback ~~trust for any period~~ has been computed under ss.
 1513 738.301-738.310, the fiduciary ~~pursuant to s. 738.1041, the~~
 1514 ~~trustee,~~ in determining the total income distributions from the
 1515 entity for that period, must take into account the portion of
 1516 the unitrust amount paid as a result of the ownership of the
 1517 trust's interest in the entity for that period; or
 1518 (b) In ~~If~~ the case of an entity ~~is~~ treated as a
 1519 partnership, subchapter S corporation, or ~~a~~ disregarded entity
 1520 under ~~pursuant to~~ the Internal Revenue Code ~~of 1986, as amended,~~
 1521 the amount of income tax attributable to the fiduciary's ~~trust's~~
 1522 ~~or estate's~~ ownership share of the entity, based on its pro rata
 1523 share of the taxable income of the entity that distributes the
 1524 money, during the lookback period ~~for the number of years or~~
 1525 ~~portion of years that the interest in the entity was held by the~~

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1526 ~~fiduciary~~, calculated as if all of the ~~that~~ tax was incurred by
1527 the fiduciary.

1528 (8) If a fiduciary receives additional information about
1529 the application of this section to an entity distribution before
1530 the fiduciary has paid part of the entity distribution to a
1531 beneficiary, the fiduciary may consider the additional
1532 information before making the payment to the beneficiary and may
1533 change a decision to make the payment to the beneficiary.

1534 (9) If a fiduciary receives additional information about
1535 the application of this section to an entity distribution after
1536 the fiduciary has paid part of the entity distribution to a
1537 beneficiary, the fiduciary is not required to change or recover
1538 the payment to the beneficiary but may consider that information
1539 in determining whether to exercise its other powers, including
1540 but not limited to the power to adjust under s. 738.203.

1541 (10)-(7) The following applies to money or property
1542 received by a private trustee as a distribution from an
1543 investment entity described in this subsection:

1544 (a) The trustee shall first treat as income of the trust
1545 all of the money or property received from the investment entity
1546 in the current accounting period ~~year~~ which would be considered
1547 income under this chapter if the trustee had directly held the
1548 trust's pro rata share of the assets of the investment entity.
1549 For this purpose, all distributions received in the current
1550 accounting period ~~year~~ must be aggregated.

1551 (b) The trustee shall next treat as income of the trust
 1552 any additional money or property received in the current
 1553 accounting period ~~year~~ which would have been considered income
 1554 in the prior 2 accounting periods ~~years~~ under paragraph (a) if
 1555 additional money or property had been received from the
 1556 investment entity in any of those prior 2 accounting periods
 1557 ~~years~~. The amount to be treated as income must ~~shall~~ be reduced
 1558 by any distributions of money or property made by the investment
 1559 entity to the trust during the current and the prior 2
 1560 accounting periods ~~years~~ which were treated as income under this
 1561 paragraph.

1562 (c) The remainder of the distribution, if any, is treated
 1563 as principal.

1564 (d) As used in this subsection, the term:

1565 1. "Investment entity" means an entity, other than a
 1566 business activity conducted by the trustee described in s.
 1567 738.403 or an entity that is listed on a public stock exchange,
 1568 which is treated as a partnership, subchapter S corporation, or
 1569 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
 1570 ~~of 1986, as amended,~~ and which normally derives 50 percent or
 1571 more of its annual cumulative net income from interest,
 1572 dividends, annuities, royalties, rental activity, or other
 1573 passive investments, including income from the sale or exchange
 1574 of such passive investments.

1575 2. "Private trustee" means a trustee who is a natural

1576 person, but is not an independent person as set forth in s.
1577 738.102 ~~only if the trustee is unable to use the power to adjust~~
1578 ~~between income and principal with respect to receipts from~~
1579 ~~entities described in this subsection pursuant to s. 738.104. A~~
1580 ~~bank, trust company, or other commercial trustee is not~~
1581 ~~considered a private trustee.~~

1582 (11) A fiduciary shall allocate to principal any money and
1583 property the fiduciary receives in a distribution or series of
1584 related distributions from a public entity which are greater
1585 than 10 percent of the fair market value of the fiduciary's
1586 interest in the public entity on the first day of the accounting
1587 period. The amount to be allocated to principal must be reduced
1588 to the extent that the cumulative distributions from the entity
1589 to the fiduciary allocated to income do not exceed a cumulative
1590 annual return of 3 percent of the fair market value of the
1591 interest in the entity at the beginning of each accounting
1592 period, or portion of an accounting period, during the lookback
1593 period. If a fiduciary has exercised a power to adjust under s.
1594 738.203 during the lookback period, the fiduciary, in
1595 determining the total income distributions from that entity,
1596 must take into account the extent to which the exercise of that
1597 power resulted in income to the fiduciary from that entity for
1598 that period. If the income of the fiduciary during the lookback
1599 period has been computed under ss. 738.301-738.310, the
1600 fiduciary, in determining the total income distribution from

1601 that entity for that period, must take into account the portion
 1602 of the unitrust amount paid as a result of the ownership of the
 1603 trust's interest in the entity for that period. As used in this
 1604 subsection, the term "public entity" means an entity listed on a
 1605 public stock exchange.

1606 (12)(8) This section must ~~shall~~ be applied before ss.
 1607 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
 1608 or change any of the provisions of those sections.

1609 Section 21. Section 738.402, Florida Statutes, is amended
 1610 to read:

1611 738.402 Distribution from trust or estate.—A fiduciary
 1612 shall allocate to income an amount received as a distribution of
 1613 income, including a unitrust distribution under ss. 738.301-
 1614 738.310, from a trust or an estate in which the fiduciary trust
 1615 has an interest, other than an interest a purchased in a trust
 1616 that is an investment entity, and shall ~~interest and~~ allocate to
 1617 principal an amount received as a distribution of principal from
 1618 the such a trust or estate. If a fiduciary purchases, or
 1619 receives from a settlor, an interest in a trust that is an
 1620 investment entity, ~~or a decedent or donor transfers an interest~~
 1621 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
 1622 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1623 Section 22. Section 738.403, Florida Statutes, is amended
 1624 to read:

1625 738.403 Business and other activity ~~activities~~ conducted

1626 | by fiduciary.—

1627 | (1) This section applies to ~~If a fiduciary who conducts a~~
 1628 | business or other activity conducted by a fiduciary if the
 1629 | fiduciary determines that it is in the best interests of
 1630 | ~~interest of all~~ the beneficiaries to account separately for the
 1631 | business or other activity instead of:

1632 | (a) Accounting for the business or other activity as part
 1633 | of the fiduciary's ~~trust's or estate's~~ general accounting
 1634 | records; or

1635 | (b) Conducting the business or other activity through an
 1636 | entity described in s. 738.401(1)(b). ~~the~~

1637 | (2) A fiduciary may account separately under this section
 1638 | ~~maintain separate accounting records~~ for the transactions of a
 1639 | ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~
 1640 | ~~not the~~ assets of the ~~such~~ business or other activity are
 1641 | segregated from other ~~trust or estate~~ assets held by the
 1642 | fiduciary.

1643 | (3)~~(2)~~ A fiduciary who accounts separately under this
 1644 | section for a business or other activity:

1645 | (a) May determine:

1646 | 1. The extent to which the net cash receipts of the
 1647 | business or other activity must be retained for:

1648 | a. Working capital;

1649 | b. The acquisition or replacement of fixed assets; and

1650 | c. Other reasonably foreseeable needs of the business or

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1651 other activity; and working capital, the acquisition or
1652 replacement of fixed assets, and other reasonably foreseeable
1653 needs of the business or activity, and

1654 2. The extent to which the remaining net cash receipts are
1655 accounted for as principal or income in the fiduciary's trust's
1656 or estate's general accounting records for the trust.

1657 (b) May make a determination under paragraph (a)
1658 separately and differently from the fiduciary's decisions
1659 concerning distributions of income or principal; and

1660 (c) Shall account for the net amount received from the
1661 sale of an asset of ~~If a fiduciary sells assets of~~ the business
1662 or other activity, other than a sale in the ordinary course of
1663 the business or other activity, ~~the fiduciary must account for~~
1664 ~~the net amount received~~ as principal in the fiduciary's trust's
1665 or estate's general accounting records for the trust, to the
1666 extent the fiduciary determines that the net amount received is
1667 no longer required in the conduct of the business or other
1668 activity.

1669 (4) ~~(3)~~ Activities for which a fiduciary may account
1670 separately under this section ~~maintain separate accounting~~
1671 ~~records~~ include:

1672 (a) Retail, manufacturing, service, and other traditional
1673 business activities.

1674 (b) Farming.

1675 (c) Raising and selling livestock and other animals.

1676 (d) Managing ~~Management~~ of rental properties.

1677 (e) Extracting ~~Extraction~~ of minerals and other natural
 1678 resources.

1679 (f) Growing and cutting timber ~~operations~~.

1680 (g) An activity ~~Activities~~ to which s. 738.414, s.
 1681 738.415, or s. 738.416 ~~s. 738.607~~ applies.

1682 (h) Any other business conducted by the fiduciary.

1683 Section 23. Section 738.404, Florida Statutes, is created
 1684 to read:

1685 738.404 Principal receipts.—A fiduciary shall allocate to
 1686 principal:

1687 (1) To the extent not allocated to income under this
 1688 chapter, an asset received from any of the following:

1689 (a) An individual during the individual's lifetime.

1690 (b) An estate.

1691 (c) A trust on termination of an income interest.

1692 (d) A payor under a contract naming the fiduciary as
 1693 beneficiary.

1694 (2) Except as otherwise provided in ss. 738.401-738.416,
 1695 money or other property received from the sale, exchange,
 1696 liquidation, or change in the form of a principal asset.

1697 (3) An amount recovered from a third party to reimburse
 1698 the fiduciary because of a disbursement described in s.
 1699 738.502(1) or for another reason to the extent not based on the
 1700 loss of income.

1701 (4) Proceeds of property taken by eminent domain except
 1702 that proceeds awarded for loss of income in an accounting period
 1703 are income if a current income beneficiary had a mandatory
 1704 income interest during the period.

1705 (5) Net income received in an accounting period during
 1706 which there is no beneficiary to which a fiduciary may or must
 1707 distribute income.

1708 (6) Other receipts as provided in ss. 738.408-738.416.

1709 Section 24. Section 738.405, Florida Statutes, is created
 1710 to read:

1711 738.405 Rental property.—To the extent that a fiduciary
 1712 does not account for the management of rental property as a
 1713 business under s. 738.403, the fiduciary shall allocate to
 1714 income an amount received as rent of real or personal property,
 1715 including an amount received for cancellation or renewal of a
 1716 lease. An amount received as a refundable deposit, including a
 1717 security deposit or a deposit that is to be applied as rent for
 1718 future periods:

1719 (1) Must be added to principal and held subject to the
 1720 terms of the lease, except as otherwise provided by law other
 1721 than this chapter; and

1722 (2) Is not allocated to income or available for
 1723 distribution to a beneficiary until the fiduciary's contractual
 1724 obligations have been satisfied with respect to that amount.

1725 Section 25. Section 738.406, Florida Statutes, is created

1726 | to read:

1727 | 738.406 Receipt on obligation to be paid in money.-

1728 | (1) This section does not apply to an obligation to which
 1729 | s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
 1730 | 738.415, or s. 738.416 applies.

1731 | (2) A fiduciary shall allocate to income, without
 1732 | provision for amortization of premium, an amount received as
 1733 | interest on an obligation to pay money to the fiduciary,
 1734 | including an amount received as consideration for prepaying
 1735 | principal.

1736 | (3) A fiduciary shall allocate to principal an amount
 1737 | received from the sale, redemption, or other disposition of an
 1738 | obligation to pay money to the fiduciary.

1739 | (4) A fiduciary shall allocate to income the increment in
 1740 | value of a bond or other obligation for the payment of money
 1741 | bearing no stated interest but payable or redeemable, at
 1742 | maturity or another future time, in an amount that exceeds the
 1743 | amount in consideration of which it was issued. If the increment
 1744 | in value accrues and becomes payable pursuant to a fixed
 1745 | schedule of appreciation, it may be distributed to the
 1746 | beneficiary who was the income beneficiary at the time of
 1747 | increment from the first principal cash available or, if none is
 1748 | available, when the increment is realized by sale, redemption,
 1749 | or other disposition. If unrealized increment is distributed as
 1750 | income but out of principal, the principal must be reimbursed

1751 for the increment when realized. If, in the reasonable judgment
1752 of the fiduciary, exercised in good faith, the ultimate payment
1753 of the bond principal is in doubt, the fiduciary may withhold
1754 the payment of incremental interest to the income beneficiary.

1755 Section 26. Section 738.407, Florida Statutes, is created
1756 to read:

1757 738.407 Insurance policy or contract.—

1758 (1) This section does not apply to a contract to which s.
1759 738.409 applies.

1760 (2) Except as otherwise provided in subsection (3), a
1761 fiduciary shall allocate to principal the proceeds of a life
1762 insurance policy or other contract received by the fiduciary as
1763 beneficiary, including a contract that insures against damage
1764 to, destruction of, or loss of title to an asset. The fiduciary
1765 shall allocate dividends on an insurance policy to income to the
1766 extent that premiums on the policy are paid from income and to
1767 principal to the extent premiums on the policy are paid from
1768 principal.

1769 (3) A fiduciary shall allocate to income proceeds of a
1770 contract that insures the fiduciary against loss of:

1771 (a) Occupancy or other use by a current income
1772 beneficiary;

1773 (b) Income; or

1774 (c) Subject to s. 738.403, profits from a business.

1775 Section 27. Section 738.408, Florida Statutes, is created

1776 to read:

1777 738.408 Insubstantial allocation not required.-

1778 (1) If a fiduciary determines that an allocation between

1779 income and principal required by s. 738.409, s. 738.410, s.

1780 738.411, s. 738.412, or s. 738.415 is insubstantial, the

1781 fiduciary may allocate the entire amount to principal, unless s.

1782 738.203(5) applies to the allocation.

1783 (2) A fiduciary may presume an allocation is insubstantial

1784 under subsection (1) if:

1785 (a) The amount of the allocation would increase or

1786 decrease net income in an accounting period, as determined

1787 before the allocation, by less than 10 percent; and

1788 (b) The asset producing the receipt to be allocated has a

1789 carrying value less than 10 percent of the total carrying value

1790 of the assets owned or held by the fiduciary at the beginning of

1791 the accounting period.

1792 (3) The power to make a determination under subsection (1)

1793 may be:

1794 (a) Exercised by a cofiduciary in the manner described in

1795 s. 738.203(6); or

1796 (b) Released or delegated for a reason described in s.

1797 738.203(7) and in the manner described in s. 738.203(8).

1798 Section 28. Section 738.409, Florida Statutes, is created

1799 to read:

1800 738.409 Deferred compensation, annuity, or similar

1801 payment.—

1802 (1) As used in this section, the term:

1803 (a) "Internal income of the separate fund" means the

1804 amount determined under subsection (2).

1805 (b) "Marital trust" means a trust:

1806 1. Of which the settlor's surviving spouse is the only

1807 current income beneficiary and is entitled to a distribution of

1808 all the current net income of the trust; and

1809 2. That qualifies for a marital deduction with respect to

1810 the settlor's estate under the Internal Revenue Code or

1811 comparable law of any state because:

1812 a. An election to qualify for a marital deduction under s.

1813 2056(b) (7) of the Internal Revenue Code has been made;

1814 b. The trust qualified for a marital deduction under s.

1815 2056(b) (5) of the Internal Revenue Code; or

1816 c. The trust otherwise qualifies for a marital deduction.

1817 (c) "Nonseparate fund" means an annuity, a deferred

1818 compensation plan, a pension plan, or other fund for which the

1819 value of the participant's or account owner's right to receive

1820 benefits can be determined only by the occurrence of a date or

1821 event as defined in the instrument governing the fund.

1822 (d) "Payment" means an amount a fiduciary may receive over

1823 a fixed number of years or during the life of one or more

1824 individuals because of services rendered or property transferred

1825 to the payor in exchange for future amounts the fiduciary may

1826 receive. The term includes an amount received in money or
1827 property from the payor's general assets or from a separate fund
1828 created by the payor.

1829 (e) "Percent calculated" means a percent equal to the rate
1830 determined under s. 7520 of the Internal Revenue Code in effect
1831 for the month preceding the beginning of the accounting period;
1832 however, if the percent calculated exceeds 5 percent, it must be
1833 reduced to 5 percent, and if the percent calculated is less than
1834 3 percent, it must be increased to 3 percent. Notwithstanding
1835 the preceding sentence, a fiduciary who is an independent person
1836 as defined in s. 738.102 may set the percent calculated at a
1837 percentage no less than 3 percent and no greater than 5 percent.

1838 (f) "Separate fund" includes a private or commercial
1839 annuity, an individual retirement account, and a pension,
1840 profit-sharing, stock-bonus, stock ownership plan, or other
1841 deferred compensation fund holding assets exclusively for the
1842 benefit of a participant or account owner.

1843 (2) For each accounting period, the following rules apply
1844 to a separate fund:

1845 (a) The fiduciary may determine the internal income of the
1846 separate fund as if the separate fund were a trust subject to
1847 this chapter.

1848 (b) Alternatively, the fiduciary may deem the internal
1849 income of the separate fund to equal the percent calculated of
1850 the value of the separate fund according to the most recent

1851 statement of value preceding the beginning of the accounting
1852 period. The fiduciary is not liable for good faith reliance upon
1853 any valuation supplied by the person or persons in possession of
1854 the fund. If the fiduciary makes or terminates an election under
1855 this paragraph, the fiduciary must make such disclosure in a
1856 trust disclosure document that satisfies the requirements of s.
1857 736.1008(4)(c).

1858 (c) If the fiduciary cannot determine the value of the
1859 separate fund under paragraph (b), the value of the separate
1860 fund is deemed to equal the present value of s. 7520 of the
1861 Internal Revenue Code for the month preceding the beginning of
1862 the accounting period for which the computation is made.

1863 (d) The fiduciary may elect the method of determining the
1864 income of the fund pursuant to this subsection and may change
1865 the method of determining income of the fund for any future
1866 accounting period.

1867 (3) A fiduciary shall allocate a payment received from a
1868 separate fund during an accounting period to income, to the
1869 extent of the internal income of the separate fund during the
1870 period, and allocate the balance to principal.

1871 (4) The fiduciary of a marital trust shall:

1872 (a) Withdraw from a separate fund the amount the current
1873 income beneficiary of the trust requests the fiduciary to
1874 withdraw, not greater than the amount by which the internal
1875 income of the separate fund during the accounting period exceeds

1876 the amount the fiduciary otherwise receives from the separate
1877 fund during the period.

1878 (b) Transfer from principal to income the amount the
1879 current income beneficiary requests the fiduciary to transfer,
1880 but not greater than the amount by which the internal income of
1881 the separate fund during the period exceeds the amount the
1882 fiduciary receives from the separate fund during the period
1883 after the application of paragraph (a).

1884 (c) Distribute to the current income beneficiary as
1885 income:

1886 1. The amount of the internal income of the separate fund
1887 received or withdrawn during the period; and

1888 2. The amount transferred from principal to income under
1889 paragraph (b).

1890 (5) For a trust, other than a marital trust, of which one
1891 or more current income beneficiaries are entitled to a
1892 distribution of all the current net income, the fiduciary shall
1893 transfer from principal to income the amount by which the
1894 internal income of the separate fund during the accounting
1895 period exceeds the amount the fiduciary receives from the
1896 separate fund during the period.

1897 (6) The fiduciary of a nonseparate fund shall calculate
1898 internal income of the fund as the percent calculated of the
1899 present value of the right to receive the remaining payments as
1900 determined under s. 7520(a)(2) of the Internal Revenue Code for

1901 the month preceding the beginning of the accounting period.

1902 (7) If a fiduciary owns a separate fund or a nonseparate
 1903 fund before January 1, 2025, the fiduciary may determine
 1904 internal income, allocate payments, and account for unwithdrawn
 1905 internal income as provided in this section or in the manner
 1906 used by the fiduciary before January 1, 2025. Such fiduciary is
 1907 not required to consider subsection (5). If the fiduciary
 1908 acquires a separate fund or a nonseparate fund on or after
 1909 January 1, 2025, the fiduciary must calculate internal income,
 1910 allocate payments, and account for unwithdrawn internal income
 1911 as provided in this section.

1912 Section 29. Section 738.603, Florida Statutes, is
 1913 transferred, renumbered as section 738.410, Florida Statutes,
 1914 and amended to read:

1915 738.410 ~~738.603~~ Liquidating asset.—

1916 (1) As used in ~~For purposes of~~ this section, the term
 1917 "liquidating asset" means an asset whose value ~~the value of~~
 1918 ~~which~~ will diminish or terminate because the asset is expected
 1919 to produce receipts for a ~~period of~~ limited time duration. The
 1920 term includes a leasehold, patent, copyright, royalty right, and
 1921 right to receive payments during a period of ~~for~~ more than 1
 1922 year under an arrangement that does not provide for the payment
 1923 of interest on the unpaid balance. ~~The term does not include a~~
 1924 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
 1925 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~

1926 ~~an asset subject to s. 738.608, or any asset for which the~~
 1927 ~~fiduciary establishes a reserve for depreciation under s.~~
 1928 ~~738.703.~~

1929 (2) This section does not apply to a receipt that is
 1930 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
 1931 738.414, s. 738.415, s. 738.416, or s. 738.503.

1932 (3) A fiduciary shall allocate to income a receipt
 1933 produced by a liquidating asset to the extent that the receipt
 1934 does not exceed 5 percent of the receipts from the carrying
 1935 value of the asset at the beginning of the accounting period and
 1936 allocate a liquidating asset and the balance to principal the
 1937 balance of the receipt.

1938 (4) The amount ~~Amounts~~ allocated to principal shall reduce
 1939 the carrying value of the liquidating asset, but not below zero.
 1940 Amounts received in excess of the remaining carrying value must
 1941 be allocated to principal.

1942 Section 30. Section 738.604, Florida Statutes, is
 1943 transferred, renumbered as section 738.411, Florida Statutes,
 1944 and amended to read:

1945 738.411 ~~738.604~~ Minerals, water, and other natural
 1946 resources.-

1947 (1) To the extent that ~~If~~ a fiduciary does not account for
 1948 a receipt ~~accounts for receipts~~ from an interest in minerals,
 1949 water, or other natural resources as a business under s. 738.403
 1950 ~~pursuant to this section,~~ the fiduciary shall allocate the

1951 receipt such receipts as follows:

1952 (a) To income, to the extent received:

1953 1. ~~If received~~ As ~~nominal~~ delay rental or ~~nominal~~ annual

1954 rent on a lease;

1955 2. As a factor for interest or the equivalent of interest

1956 under an agreement creating a production payment; or

1957 3. On account of an interest in renewable water;~~a~~

1958 ~~receipt shall be allocated to income.~~

1959 (b) To principal, if received from a production payment, a

1960 ~~receipt shall be allocated to income if and to the extent that~~

1961 subparagraph (a)2. does not apply; or the agreement creating the

1962 production payment provides a factor for interest or its

1963 equivalent. The balance shall be allocated to principal.

1964 (c) Between income and principal equitably, to the extent

1965 received:

1966 1. On account of an interest in nonrenewable water;

1967 2. ~~If an amount received~~ As a royalty, shut-in-well

1968 payment, take-or-pay payment, or bonus; or,~~or delay rental is~~

1969 ~~more than nominal, 90 percent shall be allocated to principal~~

1970 ~~and the balance to income.~~

1971 3.~~(d)~~ ~~If an amount is received~~ From a working interest or

1972 any other interest not provided for in paragraph (a) or,

1973 paragraph (b) or subparagraph 1. or subparagraph 2.,~~or~~

1974 ~~paragraph (c), 90 percent of the net amount received shall be~~

1975 ~~allocated to principal and the balance to income.~~

1976 (2) ~~An amount received on account of an interest in water~~
 1977 ~~that is renewable shall be allocated to income. If the water is~~
 1978 ~~not renewable, 90 percent of the amount shall be allocated to~~
 1979 ~~principal and the balance to income.~~

1980 ~~(3) This~~ section chapter ~~applies to an interest owned or~~
 1981 held by a fiduciary regardless of whether ~~or not~~ a settlor
 1982 ~~decedent or donor~~ was extracting minerals, water, or other
 1983 natural resources before the fiduciary owned or held the
 1984 ~~interest became subject to the trust or estate.~~

1985 (3) An allocation of a receipt under paragraph (1)(c) is
 1986 presumed to be equitable if the amount allocated to principal is
 1987 equal to the amount allowed by the Internal Revenue Code as a
 1988 deduction for depletion of the interest.

1989 (4) If a fiduciary ~~trust or estate~~ owns or holds an
 1990 interest in minerals, water, or other natural resources before
 1991 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
 1992 receipts from the interest as provided in this section ~~chapter~~
 1993 or in the manner used by the fiduciary before January 1, 2025
 1994 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an
 1995 interest in minerals, water, or other natural resources on or
 1996 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
 1997 allocate receipts from the interest as provided in this section
 1998 ~~chapter~~.

1999 Section 31. Section 738.605, Florida Statutes, is
 2000 transferred, renumbered as section 738.412, Florida Statutes,

2001 and amended to read:

2002 738.412 ~~738.605~~ Timber.—

2003 (1) To the extent that ~~If~~ a fiduciary does not account
 2004 ~~accounts~~ for receipts from the sale of timber and related
 2005 products as a business under s. 738.403 ~~pursuant to this~~
 2006 ~~section,~~ the fiduciary shall allocate the ~~such~~ net receipts ~~as~~
 2007 ~~follows:~~

2008 (a) To income, to the extent that the amount of timber cut
 2009 ~~removed~~ from the land does not exceed the rate of growth of the
 2010 timber ~~during the accounting periods in which a beneficiary has~~
 2011 ~~a mandatory income interest;~~

2012 (b) To principal, to the extent that the amount of timber
 2013 cut ~~removed~~ from the land exceeds the rate of growth of the
 2014 timber or the net receipts are from the sale of standing timber;

2015 (c) ~~To or~~ Between income and principal if the net receipts
 2016 are from the lease of land used for growing and cutting timber
 2017 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
 2018 ~~trust or estate~~ by determining the amount of timber cut ~~removed~~
 2019 from the land under the lease or contract and applying the rules
 2020 in paragraphs (a) and (b); or

2021 (d) To principal, to the extent that advance payments,
 2022 bonuses, and other payments are not allocated under ~~pursuant to~~
 2023 paragraph (a), paragraph (b), or paragraph (c).

2024 (2) In determining net receipts to be allocated under
 2025 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and

2026 transfer to principal a reasonable amount for depletion.

2027 (3) This section ~~chapter~~ applies to land owned or held by
 2028 a fiduciary regardless of whether ~~or not~~ a settlor decedent or
 2029 ~~donor~~ was cutting harvesting timber from the land property
 2030 before the fiduciary owned or held the property ~~became subject~~
 2031 ~~to the trust or estate.~~

2032 (4) If a fiduciary ~~trust or estate~~ owns or holds an
 2033 interest in land used for growing and cutting timber before
 2034 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
 2035 allocate net receipts from the sale of timber and related
 2036 products as provided in this section ~~chapter~~ or in the manner
 2037 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
 2038 the fiduciary ~~trust or estate~~ acquires an interest in land used
 2039 for growing and cutting timber on or after January 1, 2025
 2040 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
 2041 allocate net receipts from the sale of timber and related
 2042 products as provided in this section ~~chapter~~.

2043 Section 32. Section 738.606, Florida Statutes, is
 2044 transferred, renumbered as section 738.413, Florida Statutes,
 2045 and amended to read:

2046 738.413 ~~738.606~~ Marital deduction property not productive
 2047 of income.—

2048 (1) If a trust received property for which a gift or
 2049 estate tax marital deduction was under the Internal Revenue Code
 2050 ~~or comparable law of any state is allowed,~~ for all or if part of

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2051 a trust ~~received property satisfying, or if assets are~~
2052 ~~transferred to a trust that satisfies~~ the requirements of s.
2053 732.2025(2)(a) and (c), and such property has ~~assets have~~ been
2054 used in whole or in part to satisfy an election by a surviving
2055 spouse under s. 732.2125, and the settlor's spouse holds a
2056 mandatory income interest in the trust, the spouse may require
2057 the trustee, to the extent that the trust assets otherwise do
2058 ~~consist of property that, in the aggregate, does not~~ provide the
2059 spouse with sufficient income from or use of the trust assets to
2060 qualify for the deduction, or to satisfy an election by a
2061 surviving spouse under s. 732.2125, to make the property
2062 productive of income within a reasonable time. The trustee may:
2063 (a) Convert property to property productive of income
2064 within a reasonable time;
2065 (b) Exercise the power to adjust under s. 738.203;
2066 (c) Exercise the power to convert to or from a unitrust
2067 under s. 738.303; or
2068 (d) Exercise the fiduciary's authority under the terms of
2069 the trust to otherwise provide the surviving spouse with
2070 sufficient income from the trust assets, or the use of the trust
2071 assets, to qualify for the marital deduction, or to satisfy an
2072 election by a surviving spouse under s. 732.2125.
2073 (2) The trustee may decide which action or combination of
2074 actions listed in subsection (1) to take.
2075 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~

2076 ~~transfers from principal to income under s. 738.104 and~~
 2077 ~~distributes to the spouse from principal pursuant to the terms~~
 2078 ~~of the trust are insufficient to provide the spouse with the~~
 2079 ~~beneficial enjoyment required to obtain the marital deduction,~~
 2080 ~~even though, in the case of an elective share trust under s.~~
 2081 ~~732.2025(2), a marital deduction is not made or is only~~
 2082 ~~partially made, the spouse may require the trustee of such~~
 2083 ~~marital trust or elective share trust to make property~~
 2084 ~~productive of income, convert property within a reasonable time,~~
 2085 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

2086 (4) The terms of a trust as defined in s. 738.102 may not
 2087 supersede this section unless such terms explicitly reference
 2088 this section ~~The trustee may decide which action or combination~~
 2089 ~~of actions to take.~~

2090 ~~(2) In cases not governed by subsection (1), proceeds from~~
 2091 ~~the sale or other disposition of an asset are principal without~~
 2092 ~~regard to the amount of income the asset produces during any~~
 2093 ~~accounting period.~~

2094 Section 33. Section 738.607, Florida Statutes, is
 2095 transferred, renumbered as section 738.414, Florida Statutes,
 2096 and amended to read:

2097 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

2098 (1) As used in ~~For purposes of~~ this section, the term
 2099 "derivative" means a contract, an ~~or~~ financial instrument, or
 2100 other arrangement, or a combination of contracts, and ~~financial~~

2101 instruments, or other arrangements, of which the value, rights,
 2102 and obligations are, in whole or in part, dependent on or
 2103 derived from an underlying ~~which gives a trust the right or~~
 2104 ~~obligation to participate in some or all changes in the price of~~
 2105 ~~a tangible or intangible asset, a~~ ~~or~~ group of tangible or
 2106 intangible assets, an index, or an occurrence of an event. The
 2107 term includes stocks, fixed income securities, and financial
 2108 instruments and arrangements based on indices, commodities,
 2109 interest rates, weather-related events, and credit-default
 2110 events ~~assets, or changes in a rate, an index of prices or~~
 2111 ~~rates, or other market indicator for an asset or a group of~~
 2112 ~~assets.~~

2113 (2) To the extent that a fiduciary does not account for a
 2114 transaction in derivatives as a business under s. 738.403 ~~for~~
 2115 ~~transactions in derivatives,~~ the fiduciary shall allocate 10
 2116 percent of ~~to principal~~ receipts from the transaction and 10
 2117 percent of ~~and~~ disbursements made in connection with the
 2118 transaction to income and allocate the balance to principal
 2119 ~~those transactions.~~

2120 (3) Subsection (4) applies if:

2121 (a) A fiduciary:

2122 1. If a fiduciary Grants an option to buy property from a
 2123 ~~the trust,~~ regardless of ~~or~~ ~~estate~~ whether ~~or not~~ the trust ~~or~~
 2124 ~~estate~~ owns the property when the option is granted;;

2125 2. Grants an option that permits another person to sell

2126 | property to the trust; or
 2127 | 3. ~~estate, or~~ Acquires an option to buy property for the
 2128 | trust or ~~estate or~~ an option to sell an asset owned by the trust
 2129 | ~~or estate;~~ and
 2130 | (b) The fiduciary or other owner of the asset is required
 2131 | to deliver the asset if the option is exercised, ~~an amount~~
 2132 | ~~received for granting the option shall be allocated to~~
 2133 | ~~principal. An amount paid to acquire the option shall be paid~~
 2134 | ~~from principal.~~
 2135 | (4) If this subsection applies, the fiduciary must
 2136 | allocate 10 percent to income and allocate the balance to
 2137 | principal of the following amounts:
 2138 | (a) An amount received for granting the option;
 2139 | (b) An amount paid to acquire the option; and
 2140 | (c) A Gain or loss realized on ~~upon~~ the exercise,
 2141 | exchange, settlement, offset, closing, or expiration of the
 2142 | option of an option, including an option granted to a grantor of
 2143 | the trust or estate for services rendered, shall be allocated to
 2144 | principal.
 2145 | Section 34. Section 738.608, Florida Statutes, is
 2146 | transferred, renumbered as section 738.415, Florida Statutes,
 2147 | and amended to read:
 2148 | 738.415 738.608 Asset-backed securities.-
 2149 | (1) Except as otherwise provided in subsection (2), a
 2150 | fiduciary shall allocate to income a receipt from or related to

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2151 an asset-backed security, as defined in s. 738.102, to the
2152 extent that the payor identifies the payment as being from ~~For~~
2153 ~~purposes of this section, "asset-backed security" means an asset~~
2154 ~~the value of which is based upon the right given the owner to~~
2155 ~~receive distributions from the proceeds of financial assets that~~
2156 ~~provide collateral for the security. The term includes an asset~~
2157 ~~that gives the owner the right to receive from the collateral~~
2158 ~~financial assets only the interest or other current return and~~
2159 allocate to principal the balance of the receipt ~~or only the~~
2160 ~~proceeds other than interest or current return. The term does~~
2161 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

2162 (2) If a fiduciary receives one or more payments in
2163 exchange for part or all of the fiduciary's interest in an
2164 asset-backed security, including a liquidation or redemption of
2165 the fiduciary's interest in the security ~~trust or estate~~
2166 ~~receives a payment from interest or other current return and~~
2167 ~~from other proceeds of the collateral financial assets, the~~
2168 ~~fiduciary must shall~~ allocate to income 10 percent of receipts
2169 from the transaction and 10 percent of disbursements made in
2170 connection with the transaction, and allocate to principal the
2171 ~~portion of the payment which the payor identifies as being from~~
2172 ~~interest or other current return and allocate the balance of the~~
2173 receipts and disbursements ~~payment to principal.~~

2174 ~~(3) If a trust or estate receives one or more payments in~~
2175 ~~exchange for the trust's or estate's entire interest in an~~

2176 ~~asset-backed security during a single accounting period, the~~
 2177 ~~fiduciary shall allocate the payments to principal. If a payment~~
 2178 ~~is one of a series of payments that will result in the~~
 2179 ~~liquidation of the trust's or estate's interest in the security~~
 2180 ~~over more than a single accounting period, the fiduciary shall~~
 2181 ~~allocate 10 percent of the payment to income and the balance to~~
 2182 ~~principal.~~

2183 Section 35. Section 738.416, Florida Statutes, is created
 2184 to read:

2185 738.416 Other financial instrument or arrangement.—A
 2186 fiduciary shall allocate receipts from or related to a financial
 2187 instrument or arrangement not otherwise addressed by this
 2188 chapter. The allocation must be consistent with ss. 738.414 and
 2189 738.415.

2190 Section 36. Section 738.501, Florida Statutes, is amended
 2191 to read:

2192 (Substantial rewording of section. See
 2193 s. 738.501, F.S., for present text.)

2194 738.501 Disbursement from income.—Subject to s. 738.504,
 2195 and except as otherwise provided in s. 738.601(3)(b) or (c), a
 2196 fiduciary shall disburse from income:

2197 (1) One-half of:

2198 (a) The regular compensation of the fiduciary and of any
 2199 person providing investment advisory, custodial, or other
 2200 services to the fiduciary to the extent that income is

2201 sufficient; and

2202 (b) An expense for an accounting, judicial or nonjudicial

2203 proceeding, or other matter that involves both income and

2204 successive interests to the extent income is sufficient.

2205 (2) The balance of the disbursements described in

2206 subsection (1), to the extent that a fiduciary who is an

2207 independent person determines that making those disbursements

2208 from income would be in the interests of the beneficiaries.

2209 (3) Any other ordinary expense incurred in connection with

2210 administration, management, or preservation of property and

2211 distribution of income, including interest, an ordinary repair,

2212 a regularly recurring tax assessed against principal, and an

2213 expense of an accounting, judicial or nonjudicial proceeding, or

2214 other matter that involves primarily an income interest, to the

2215 extent that income is sufficient.

2216 (4) A premium on insurance covering loss of a principal

2217 asset or income from or use of the asset.

2218 Section 37. Section 738.502, Florida Statutes, is amended

2219 to read:

2220 (Substantial rewording of section. See

2221 s. 738.502, F.S., for present text.)

2222 738.502 Disbursement from principal.-

2223 (1) Subject to s. 738.505, and except as otherwise

2224 provided in s. 738.601(3)(b), a fiduciary shall disburse all of

2225 the following from principal:

- 2226 (a) The balance of the disbursements described in s.
 2227 738.501(1) and (3), after application of s. 738.501(2).
- 2228 (b) The fiduciary's compensation calculated on principal
 2229 as a fee for acceptance, distribution, or termination.
- 2230 (c) A payment of an expense to prepare for or execute a
 2231 sale or other disposition of property.
- 2232 (d) A payment on the principal of a trust debt.
- 2233 (e) A payment of an expense of an accounting, judicial or
 2234 nonjudicial proceeding, or other matter that involves primarily
 2235 principal, including a proceeding to construe the terms of the
 2236 trust or protect property.
- 2237 (f) A payment of a premium for insurance, including title
 2238 insurance, not described in s. 738.501(4) of which the fiduciary
 2239 is the owner and beneficiary.
- 2240 (g) A payment of estate, inheritance, and other transfer
 2241 taxes, including penalties, apportioned to the trust.
- 2242 (h) A payment related to environmental matters including:
 2243 1. Reclamation;
 2244 2. Assessing environmental conditions;
 2245 3. Remedying and removing environmental contamination;
 2246 4. Monitoring remedial activities and the release of
 2247 substances;
 2248 5. Preventing future releases of substances;
 2249 6. Collecting amounts from persons liable or potentially
 2250 liable for the costs of the activities described in

2251 subparagraphs 1.-5.;

2252 7. Penalties imposed under environmental laws or
 2253 regulations;

2254 8. Other actions to comply with environmental laws or
 2255 regulations;

2256 9. Statutory or common law claims by third parties; and

2257 10 Defending claims based on environmental matters.

2258 (i) A payment of a premium for insurance for matters
 2259 described in paragraph (h).

2260 (2) If a principal asset is encumbered with an obligation
 2261 that requires income from the asset to be paid directly to a
 2262 creditor, the fiduciary must transfer from principal to income
 2263 an amount equal to the income paid to the creditor in reduction
 2264 of the principal balance of the obligation.

2265 Section 38. Section 738.503, Florida Statutes, is amended
 2266 to read:

2267 (Substantial rewording of section. See
 2268 s. 738.503, F.S., for present text.)

2269 738.503 Transfers from income to principal for
 2270 depreciation.—

2271 (1) For purposes of this section, "depreciation" means a
 2272 reduction in value due to wear, tear, decay, corrosion, or
 2273 gradual obsolescence of a tangible asset having a useful life of
 2274 more than 1 year.

2275 (2) A fiduciary may transfer to principal a reasonable

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2276 amount of the net cash receipts from a principal asset that is
 2277 subject to depreciation but may not transfer any amount for
 2278 depreciation:

2279 (a) Of the part of real property used or available for use
 2280 by a beneficiary as a residence;

2281 (b) Of tangible personal property held or made available
 2282 for the personal use or enjoyment of a beneficiary; or

2283 (c) Under this section, to the extent that the fiduciary
 2284 accounts:

2285 1. Under s. 738.410 for the asset; or

2286 2. Under s. 738.403 for the business or other activity in
 2287 which the asset is used.

2288 (3) An amount transferred to principal under this section
 2289 need not be separately held.

2290 Section 39. Section 738.504, Florida Statutes, is amended
 2291 to read:

2292 (Substantial rewording of section. See
 2293 s. 738.504, F.S., for present text.)

2294 738.504 Reimbursement of income from principal.—

2295 (1) If a fiduciary makes or expects to make an income
 2296 disbursement described in subsection (2), the fiduciary may
 2297 transfer an appropriate amount from principal to income in one
 2298 or more accounting periods to reimburse income.

2299 (2) To the extent that the fiduciary has not been and does
 2300 not expect to be reimbursed by a third party, income

2301 disbursements to which subsection (1) applies include:
 2302 (a) An amount chargeable to principal but paid from income
 2303 because principal is illiquid;
 2304 (b) A disbursement made to prepare property for sale,
 2305 including improvements and commissions; and
 2306 (c) A disbursement described in s. 738.502(1).
 2307 (3) If an asset whose ownership gives rise to an income
 2308 disbursement becomes subject to a successive interest after an
 2309 income interest ends, the fiduciary may continue to make
 2310 transfers under subsection (1).

2311 Section 40. Section 738.704, is transferred, renumbered as
 2312 section 738.505, Florida Statutes, and amended to read:

2313 738.505 ~~738.704~~ Reimbursement of principal from income
 2314 ~~Transfers from income to reimburse principal.-~~

2315 (1) If a fiduciary makes or expects to make a principal a
 2316 ~~principal~~ disbursement described in subsection (2) ~~this section~~,
 2317 the fiduciary may transfer an appropriate amount from income to
 2318 principal in one or more accounting periods to reimburse
 2319 principal or to provide a reserve for future principal
 2320 disbursements.

2321 (2) ~~Principal disbursements to which subsection (1)~~
 2322 ~~applies include the following, but only~~ To the extent that a the
 2323 fiduciary has not been and does not expect to be reimbursed by a
 2324 third party, principal disbursements to which subsection (1)
 2325 applies include:

2326 (a) An amount chargeable to income but paid from principal
 2327 because income is not sufficient; ~~the amount is unusually large.~~

2328 (b) The cost of an improvement to principal, whether a
 2329 change to an existing asset or the construction of a new asset,
 2330 including a special assessment; ~~Disbursements made to prepare~~
 2331 ~~property for rental, including tenant allowances, leasehold~~
 2332 ~~improvements, and broker's commissions.~~

2333 (c) A disbursement made to prepare property for rental,
 2334 including tenant allowances, leasehold improvements, and
 2335 commissions; ~~Disbursements described in s. 738.702(1)(g).~~

2336 (d) A periodic payment on an obligation secured by a
 2337 principal asset, to the extent the amount transferred from
 2338 income to principal for depreciation is less than the periodic
 2339 payment; and

2340 (e) A disbursement described in s. 738.502(1).

2341 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives
 2342 rise to a principal disbursement ~~the disbursements~~ becomes
 2343 subject to a successive ~~income~~ interest after an income interest
 2344 ends, the ~~a~~ fiduciary may continue to make transfers under
 2345 ~~transfer amounts from income to principal as provided in~~
 2346 ~~subsection (1).~~

2347 (4) ~~To the extent principal cash is not sufficient to pay~~
 2348 ~~the principal balance of payments due on mortgaged property,~~
 2349 ~~income may be applied to such payment in order to avoid a~~
 2350 ~~default on any mortgage or security interest securing the~~

2351 ~~property. Income shall be reimbursed for such payments out of~~
 2352 ~~the first available principal cash. If the asset the ownership~~
 2353 ~~of which gives rise to the disbursements described in this~~
 2354 ~~subsection becomes subject to a successive income interest after~~
 2355 ~~an income interest ends, all rights of the initial income~~
 2356 ~~interest shall lapse, and amounts remaining due from principal~~
 2357 ~~shall not be a lien on the assets of the trust.~~

2358 Section 41. Section 738.705, Florida Statutes, is
 2359 transferred, renumbered as section 738.506, Florida Statutes,
 2360 and amended to read:

2361 738.506 ~~738.705~~ Income taxes.—

2362 (1) A tax required to be paid by a fiduciary which is
 2363 based on receipts allocated to income must ~~shall~~ be paid from
 2364 income.

2365 (2) A tax required to be paid by a fiduciary which is
 2366 based on receipts allocated to principal must ~~shall~~ be paid from
 2367 principal, even if the tax is called an income tax by the taxing
 2368 authority.

2369 (3) Subject to subsection (4) and ss. 738.504, 738.505,
 2370 and 738.507, a tax required to be paid by a fiduciary on a the
 2371 ~~trust's or estate's~~ share of an entity's taxable income in an
 2372 accounting period must ~~shall~~ be paid from ~~proportionately~~:

2373 (a) ~~From~~ Income and principal proportionately to the
 2374 allocation between income and principal of ~~to the extent~~
 2375 receipts from the entity in the period ~~are allocated to~~ income.

2376 (b) ~~From principal to the extent receipts from the entity~~
 2377 ~~are allocated to principal.~~

2378 ~~(c) From Principal to the extent that the tax exceeds the~~
 2379 ~~income taxes payable by the trust or estate exceed the total~~
 2380 ~~receipts from the entity in the period.~~

2381 (4) After applying subsections (1), (2), and (3), a
 2382 fiduciary shall adjust income or principal receipts, to the
 2383 extent the taxes that the fiduciary pays are reduced because of
 2384 a deduction for a payment made to a beneficiary.

2385 (5) Subject to the limitations and excluded assets
 2386 provided under s. 736.08145, a reimbursement of state or federal
 2387 income tax elected to be made by a fiduciary pursuant to s.
 2388 736.08145 must be allocated and paid under paragraphs (3)(a) and
 2389 ~~(b) After applying subsections (1)-(3), the fiduciary shall~~
 2390 ~~adjust income or principal receipts to the extent that the~~
 2391 ~~trust's or estate's income taxes are reduced, but not~~
 2392 ~~eliminated, because the trust or estate receives a deduction for~~
 2393 ~~payments made to a beneficiary. The amount distributable to that~~
 2394 ~~beneficiary as income as a result of this adjustment shall be~~
 2395 ~~equal to the cash received by the trust or estate, reduced, but~~
 2396 ~~not below zero, by the entity's taxable income allocable to the~~
 2397 ~~trust or estate multiplied by the trust's or estate's income tax~~
 2398 ~~rate. The reduced amount shall be divided by the difference~~
 2399 ~~between 1 and the trust's or estate's income tax rate in order~~
 2400 ~~to determine the amount distributable to that beneficiary as~~

2401 ~~income before giving effect to other receipts or disbursements~~
 2402 ~~allocable to that beneficiary's interest.~~

2403 Section 42. Section 738.706, Florida Statutes, is
 2404 transferred, renumbered as section 738.507, Florida Statutes,
 2405 and amended to read:

2406 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal
 2407 and income because of taxes.—

2408 (1) A fiduciary may make an adjustment ~~adjustments~~ between
 2409 ~~principal and income~~ and principal to offset the shifting of
 2410 economic interests or tax benefits between current income
 2411 beneficiaries and successor ~~remainder~~ beneficiaries which arises
 2412 ~~arise~~ from:

2413 (a) An election or decision ~~Elections and decisions, other~~
 2414 ~~than those described in paragraph (b), that~~ the fiduciary makes
 2415 ~~from time to time~~ regarding a tax matter, other than a decision
 2416 to claim an income tax deduction to which subsection (2) applies
 2417 ~~matters;~~

2418 (b) An income tax or ~~any~~ other tax ~~that is imposed on~~ upon
 2419 the fiduciary or a beneficiary as a result of a transaction
 2420 involving the fiduciary or a distribution by ~~from~~ the fiduciary
 2421 ~~estate or trust; or~~

2422 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of
 2423 an interest in an entity a part of whose taxable income,
 2424 regardless of whether ~~or not~~ distributed, is includable in the
 2425 taxable income of the fiduciary ~~estate, trust,~~ or a beneficiary;

2426 or
 2427 (d) An election or decision a fiduciary makes to reimburse
 2428 any tax under s. 736.08145.

2429 (2) If the amount of an estate tax marital ~~deduction~~ or
 2430 charitable ~~contribution~~ deduction is reduced because a fiduciary
 2431 deducts an amount paid from principal for income tax purposes
 2432 instead of deducting it ~~such amount~~ for estate tax purposes,
 2433 and, as a result, estate taxes paid from principal are increased
 2434 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~
 2435 beneficiary are decreased, the fiduciary shall charge each
 2436 ~~estate, trust, or~~ beneficiary that benefits from the decrease in
 2437 income tax to ~~shall~~ reimburse the principal from which the
 2438 increase in estate tax is paid. The total reimbursement must
 2439 ~~shall~~ equal the increase in the estate tax, to the extent that
 2440 the principal used to pay the increase would have qualified for
 2441 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for
 2442 the payment. The ~~proportionate~~ share of the reimbursement for
 2443 each fiduciary estate, trust, or beneficiary whose income taxes
 2444 are reduced must ~~shall~~ be the same as its ~~such estate's,~~
 2445 ~~trust's, or beneficiary's~~ ~~proportionate~~ share of the total
 2446 decrease in income tax. ~~An estate or trust shall reimburse~~
 2447 ~~principal from income.~~

2448 (3) A fiduciary that charges a beneficiary under
 2449 subsection (2) may offset the charge by obtaining payment from
 2450 the beneficiary, withholding an amount from future distributions

2451 to the beneficiary, or adopting another method or combination of
2452 methods.

2453 Section 43. Section 738.508, Florida Statutes, is created
2454 to read:

2455 738.508 Apportionment of property expenses between tenant
2456 and remainderman.—

2457 (1) For purposes of this section, the term:

2458 (a) "Remainderman" means the holder of the remainder
2459 interests after the expiration of a tenant's estate in property.

2460 (b) "Tenant" means the holder of an estate for life or
2461 term of years in real property or personal property, or both.

2462 (2) If a trust has not been created, expenses shall be
2463 apportioned between the tenant and remainderman as follows:

2464 (a) The following expenses are allocated to and shall be
2465 paid by the tenant:

2466 1. All ordinary expenses incurred in connection with the
2467 administration, management, or preservation of the property,
2468 including interest, ordinary repairs, regularly recurring taxes
2469 assessed against the property, and expenses of a proceeding or
2470 other matter that concerns primarily the tenant's estate or use
2471 of the property.

2472 2. Recurring premiums on insurance covering the loss of
2473 the property or the loss of income from or use of the property.

2474 3. Any of the expenses described in subparagraph (b) 3.
2475 which are attributable to the use of the property by the tenant.

2476 (b) The following expenses are allocated to and shall be
2477 paid by the remainderman:

2478 1. Payments on the principal of a debt secured by the
2479 property, except to the extent that the debt is for expenses
2480 allocated to the tenant.

2481 2. Expenses of a proceeding or other matter that concerns
2482 primarily the title to the property, other than title to the
2483 tenant's estate.

2484 3. Except as provided in subparagraph (a)3., expenses
2485 related to environmental matters, including reclamation,
2486 assessing environmental conditions, remedying and removing
2487 environmental contamination, monitoring remedial activities and
2488 the release of substances, preventing future releases of
2489 substances, collecting amounts from persons liable or
2490 potentially liable for the costs of such activities, penalties
2491 imposed under environmental laws or regulations and other
2492 payments made to comply with those laws or regulations,
2493 statutory or common law claims by third parties, and defending
2494 claims based on environmental matters.

2495 4. Extraordinary repairs.

2496 (c) If the tenant or remainderman incurred an expense for
2497 the benefit of his or her own estate without consent or
2498 agreement of the other, he or she must pay such expense in full.

2499 (d) Except as provided in paragraph (c), the cost of, or
2500 special taxes or assessments for, an improvement representing an

2501 addition of value to property forming part of the principal
2502 shall be paid by the tenant if the improvement is not reasonably
2503 expected to outlast the estate of the tenant. In all other
2504 cases, only a part shall be paid by the tenant while the
2505 remainder shall be paid by the remainderman. The part payable by
2506 the tenant is ascertainable by taking that percentage of the
2507 total that is found by dividing the present value of the
2508 tenant's estate by the present value of an estate of the same
2509 form as that of the tenant, except that it is limited for a
2510 period corresponding to the reasonably expected duration of the
2511 improvement. The computation of present values of the estates
2512 shall be made by using the rate determined under s. 7520(a)(2)
2513 of the Internal Revenue Code then in effect and, in the case of
2514 an estate for life, the official mortality tables then in effect
2515 under s. 7520 of the Internal Revenue Code. Other evidence of
2516 duration or expectancy may not be considered.

2517 (3) This section does not apply to the extent that it is
2518 inconsistent with the instrument creating the estates, the
2519 agreement of the parties, or the specific direction of the
2520 Internal Revenue Code taxing or other applicable law.

2521 (4) The common law applicable to tenants and remaindermen
2522 supplements this section, except as modified by this section or
2523 other laws.

2524 Section 44. Section 738.601, Florida Statutes, is amended
2525 to read:

2526 (Substantial rewording of section. See
2527 s. 738.601, F.S., for present text.)
2528 738.601 Determination and distribution of net income.—
2529 (1) This section applies when:
2530 (a) The death of an individual results in the creation of
2531 an estate or trust; or
2532 (b) An income interest in a trust terminates, whether the
2533 trust continues or is distributed.
2534 (2) A fiduciary of an estate or trust with an income
2535 interest that terminates shall determine, under subsection (6)
2536 and ss. 738.401-738.508 and 738.701-738.703, the amount of net
2537 income and net principal receipts received from property
2538 specifically given to a beneficiary. The fiduciary shall
2539 distribute the net income and net principal receipts to the
2540 beneficiary who is to receive the specific property.
2541 (3) A fiduciary shall determine the income and net income
2542 of an estate or income interest in a trust which terminates,
2543 other than the amount of net income determined under subsection
2544 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:
2545 (a) Including in net income all income from property used
2546 or sold to discharge liabilities.
2547 (b) Paying from income or principal, in the fiduciary's
2548 discretion, fees of attorneys, accountants, and fiduciaries;
2549 court costs and other expenses of administration; and interest
2550 on estate and inheritance taxes and other taxes imposed because

2551 of the decedent's death, but the fiduciary may pay the expenses
2552 from income of property passing to a trust for which the
2553 fiduciary claims an estate tax marital or charitable deduction
2554 under the Internal Revenue Code or comparable law of any state
2555 only to the extent that:

2556 1. The payment of the those expenses from income will not
2557 cause the reduction or loss of the deduction; or

2558 2. The fiduciary makes an adjustment under s. 738.507(2);
2559 and

2560 (c) Paying from principal other disbursements made or
2561 incurred in connection with the settlement of the estate or the
2562 winding up of an income interest that terminates, including:

2563 1. To the extent authorized by the decedent's will, the
2564 terms of the trust, or applicable law, debts, funeral expenses,
2565 disposition of remains, family allowances, estate and
2566 inheritance taxes, and other taxes imposed because of the
2567 decedent's death; and

2568 2. Related penalties apportioned by the decedent's will,
2569 the terms of the trust, or applicable law to the estate or
2570 income interest that terminates.

2571 (4) If a decedent's will or the terms of a trust provide
2572 for the payment of interest or the equivalent of interest to a
2573 beneficiary who receives a pecuniary amount outright, the
2574 fiduciary shall make the payment from net income determined
2575 under subsection (3) or from principal to the extent that net

2576 income is insufficient.

2577 (5) A fiduciary shall distribute net income remaining
2578 after payments required by subsection (4) in the manner
2579 described in s. 738.602 to all other beneficiaries, including a
2580 beneficiary who receives a pecuniary amount in trust, even if
2581 the beneficiary holds an unqualified power to withdraw assets
2582 from the trust or other presently exercisable general power of
2583 appointment over the trust.

2584 (6) A fiduciary may not reduce principal or income
2585 receipts from property described in subsection (2) because of a
2586 payment described in s. 738.501 or s. 738.502 to the extent that
2587 the decedent's will, the terms of the trust, or applicable law
2588 requires the fiduciary to make the payment from assets other
2589 than the property or that the fiduciary recovers or expects to
2590 recover the payment from a third party. The net income and
2591 principal receipts from the property must be determined by
2592 including the amount the fiduciary receives or pays regarding
2593 the property, whether the amount accrued or became due before,
2594 on, or after the date of the decedent's death or an income
2595 interest's terminating event, and making a reasonable provision
2596 for an amount the estate or income interest may become obligated
2597 to pay after the property is distributed.

2598 Section 45. Section 738.602, Florida Statutes, is amended
2599 to read:

2600 (Substantial rewording of section. See

2601 s. 738.602, F.S., for present text.)
 2602 738.602 Distribution to successor beneficiary.-
 2603 (1) Except to the extent that ss. 738.301-738.310 apply
 2604 for a beneficiary that is a trust, each beneficiary described in
 2605 s. 738.601(5) is entitled to receive a share of the net income
 2606 equal to the beneficiary's fractional interest in undistributed
 2607 principal assets, using carrying values as of the distribution
 2608 date. If a fiduciary makes more than one distribution of assets
 2609 to beneficiaries to which this section applies, each
 2610 beneficiary, including a beneficiary who does not receive part
 2611 of the distribution, is entitled, as of each distribution date,
 2612 to a share of the net income the fiduciary received after the
 2613 decedent's death, an income interest's other terminating event,
 2614 or the preceding distribution by the fiduciary.
 2615 (2) In determining a beneficiary's share of net income
 2616 under subsection (1), the following rules apply:
 2617 (a) The beneficiary is entitled to receive a share of the
 2618 net income equal to the beneficiary's fractional interest in the
 2619 undistributed principal assets immediately before the
 2620 distribution date.
 2621 (b) The beneficiary's fractional interest under paragraph
 2622 (a) must be calculated:
 2623 1. On the aggregate carrying value of the assets as of the
 2624 distribution date; and
 2625 2. Reduced by:

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- 2626 a. Any liabilities of the estate or trust;
2627 b. Property specifically given to a beneficiary under the
2628 decedent's will or the terms of the trust; and
2629 c. Property required to pay pecuniary amounts not in
2630 trust.
- 2631 (c) If a disproportionate distribution of principal is
2632 made to any beneficiary, the respective fractional interests of
2633 all beneficiaries in the undistributed principal assets must be
2634 recomputed by:
- 2635 1. Adjusting the carrying value of the principal assets to
2636 their fair market value before the distribution;
- 2637 2. Reducing the fractional interest of the recipient of
2638 the disproportionate distribution in the remaining principal
2639 assets by the fair market value of the principal distribution;
2640 and
- 2641 3. Recomputing the fractional interests of all
2642 beneficiaries in the remaining principal assets based upon the
2643 now restated carrying values.
- 2644 (d) The distribution date under paragraph (a) may be the
2645 date as of which the fiduciary calculates the value of the
2646 assets if that date is reasonably near the date on which the
2647 assets are distributed. All distributions to a beneficiary must
2648 be valued based on the assets' fair market value on the date of
2649 the distribution.
- 2650 (3) To the extent that a fiduciary does not distribute

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2651 under this section all the collected but undistributed net
2652 income to each beneficiary as of a distribution date, the
2653 fiduciary shall maintain records showing the interest of each
2654 beneficiary in the net income.

2655 (4) If this section applies to income from an asset, a
2656 fiduciary may apply the requirements in this section to net gain
2657 or loss realized from the disposition of the asset after the
2658 decedent's date of death, an income interest's terminating
2659 event, or the preceding distribution by the fiduciary.

2660 (5) The carrying value or fair market value of trust
2661 assets shall be determined on an asset-by-asset basis and is
2662 conclusive if reasonable and determined in good faith.
2663 Determinations of fair market value based on appraisals
2664 performed within 2 years before or after the valuation date are
2665 presumed reasonable. The values of trust assets are conclusively
2666 presumed to be reasonable and determined in good faith unless
2667 proven otherwise in a proceeding commenced by or on behalf of a
2668 person interested in the trust within the time provided in s.
2669 736.1008.

2670 Section 46. Section 738.701, Florida Statutes, is amended
2671 to read:

2672 (Substantial rewording of section. See
2673 s. 738.701, F.S., for present text.)

2674 738.701 When right to income begins and ends.—

2675 (1) An income beneficiary is entitled to net income in

2676 accordance with the terms of the trust from the date an income
2677 interest begins. The income interest begins on the date
2678 specified in the terms of the trust or, if no date is specified,
2679 on the date an asset becomes subject to:

2680 (a) The trust for the current income beneficiary; or

2681 (b) A successive interest for a successor beneficiary.

2682 (2) An asset becomes subject to a trust under paragraph

2683 (1) (a):

2684 (a) For an asset that is transferred to the trust during
2685 the settlor's life, on the date the asset is transferred;

2686 (b) For an asset that becomes subject to the trust because
2687 of a decedent's death, on the date of the decedent's death, even
2688 if there is an intervening period of administration of the
2689 decedent's estate; or

2690 (c) For an asset that is transferred to a fiduciary by a
2691 third party because of a decedent's death, on the date of the
2692 decedent's death.

2693 (3) An asset becomes subject to a successive interest
2694 under paragraph (1) (b) on the day after the preceding income
2695 interest ends, as determined under subsection (4), even if there
2696 is an intervening period of administration to wind up the
2697 preceding income interest.

2698 (4) An income interest ends on the day before an income
2699 beneficiary dies or another terminating event occurs, or on the
2700 last day of a period during which there is no beneficiary to

2701 which a fiduciary may or must distribute income.

2702 Section 47. Section 738.702, Florida Statutes, is amended
2703 to read:

2704 (Substantial rewording of section. See
2705 s. 738.702, F.S., for present text.)

2706 738.702 Apportionment of receipts and disbursements when
2707 decedent dies or income interest begins.—

2708 (1) A fiduciary shall allocate an income receipt or
2709 disbursement, other than a receipt to which s. 738.601(2)
2710 applies, to principal if its due date occurs before the date on
2711 which:

2712 (a) For an estate, the decedent died; or

2713 (b) For a trust or successive interest, an income interest
2714 begins.

2715 (2) If the due date of a periodic income receipt or
2716 disbursement occurs on or after the date on which a decedent
2717 died or an income interest begins, a fiduciary must allocate the
2718 receipt or disbursement to income.

2719 (3) If an income receipt or disbursement is not periodic
2720 or has no due date, a fiduciary must treat the receipt or
2721 disbursement under this section as accruing from day to day. The
2722 fiduciary shall allocate to principal the portion of the receipt
2723 or disbursement accruing before the date on which a decedent
2724 died or an income interest begins, and shall allocate to income
2725 the balance.

2726 (4) A receipt or disbursement is periodic under
 2727 subsections (2) and (3) if:
 2728 (a) The receipt or disbursement must be paid at regular
 2729 intervals under an obligation to make payments; or
 2730 (b) The payor customarily makes payments at regular
 2731 intervals.
 2732 (5) An item of income or an obligation is due under this
 2733 section on the date the payor is required to make a payment. If
 2734 a payment date is not stated, there is no due date.
 2735 (6) Distributions to shareholders or other owners from an
 2736 entity to which s. 738.401 applies are due:
 2737 (a) On the date fixed by or on behalf of the entity for
 2738 determining the persons entitled to receive the distribution;
 2739 (b) If no date is fixed, on the date of the decision by or
 2740 on behalf of the entity to make the distribution; or
 2741 (c) If no date is fixed and the fiduciary does not know
 2742 the date of the decision by or on behalf of the entity to make
 2743 the distribution, on the date the fiduciary learns of the
 2744 decision.
 2745 (7) Section 733.817 controls over any provision of this
 2746 chapter to the contrary.
 2747 Section 48. Section 738.703, Florida Statutes, is amended
 2748 to read:
 2749 (Substantial rewording of section. See
 2750 s. 738.703, F.S., for present text.)

2751 738.703 Apportionment when income interest ends.—
 2752 (1) As used in this section, the term "undistributed
 2753 income" means net income received on or before the date on which
 2754 an income interest ends. The term does not include an item of
 2755 income or expense which is due or accrued or net income that has
 2756 been added or is required to be added to principal under the
 2757 terms of the trust.
 2758 (2) Except as otherwise provided in subsection (3), when a
 2759 mandatory income interest of a beneficiary ends, the fiduciary
 2760 shall pay the beneficiary's share of the undistributed income
 2761 that is not disposed of under the terms of the trust to the
 2762 beneficiary or, if the beneficiary does not survive the date the
 2763 interest ends, to the beneficiary's estate.
 2764 (3) If a beneficiary has an unqualified power to withdraw
 2765 more than 5 percent of the value of a trust immediately before
 2766 an income interest ends:
 2767 (a) The fiduciary shall allocate to principal the
 2768 undistributed income from the portion of the trust which may be
 2769 withdrawn; and
 2770 (b) Subsection (2) applies only to the balance of the
 2771 undistributed income.
 2772 (4) When a fiduciary's obligation to pay a fixed annuity
 2773 or a fixed fraction of the value of assets ends, the fiduciary
 2774 shall prorate the final payment as required to preserve income
 2775 tax, gift tax, estate tax, or other tax benefits.

2776 Section 49. Section 738.801, Florida Statutes, is amended
 2777 to read:

2778 (Substantial rewording of section. See
 2779 s. 738.801, F.S., for present text.)

2780 738.801 Uniformity of application and construction.—In
 2781 applying and construing this act, consideration shall be given
 2782 to the need to promote uniformity of the law with respect to its
 2783 subject matter among states that enact it.

2784 Section 50. Section 738.802, Florida Statutes, is amended
 2785 to read:

2786 (Substantial rewording of section. See
 2787 s. 738.802, F.S., for present text.)

2788 738.802 Relation to Electronic Signatures in Global and
 2789 National Commerce Act.—This chapter modifies, limits, or
 2790 supersedes the Electronic Signatures in Global and National
 2791 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 2792 limit, or supersede section 101(c) of that act, 15 U.S.C. s.
 2793 7001(c), or authorize electronic delivery of any of the notices
 2794 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This
 2795 chapter does not modify, limit, or supersede s. 117.285.

2796 Section 51. Section 738.803, Florida Statutes, is amended
 2797 to read:

2798 738.803 Severability.—If any provision of this chapter or
 2799 its application to any person or circumstance is held invalid,
 2800 the invalidity does ~~shall~~ not affect other provisions or

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2801 applications of this chapter which can be given effect without
2802 the invalid provision or application, and to this end the
2803 provisions of this chapter are severable.

2804 Section 52. Section 738.804, Florida Statutes, is amended
2805 to read:

2806 738.804 Application.—Except as provided in the terms of
2807 the trust ~~instrument, the will,~~ or this chapter, this chapter
2808 shall apply to any receipt or expense received or incurred and
2809 any disbursement made after January 1, 2025 ~~January 1, 2003,~~ by
2810 any trust or ~~decedent's~~ estate, whether established before or
2811 after January 1, 2025 ~~January 1, 2003,~~ and whether the asset
2812 involved was acquired by the trustee or personal representative
2813 before or after January 1, 2025 ~~January 1, 2003.~~ Receipts or
2814 expenses received or incurred and disbursements made before
2815 January 1, 2025, ~~must January 1, 2003,~~ shall be governed by the
2816 law of this state in effect at the time of the event, except as
2817 otherwise expressly provided in the ~~will or~~ terms of the trust
2818 or in this chapter.

2819 Section 53. This act shall take effect January 1, 2025.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1111 Fines and Fees
SPONSOR(S): Rizo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1310

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

SUMMARY ANALYSIS

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerks collect court fines, fees, service charges, and court costs related to court dispositions and are authorized to charge fees to perform various functions. A portion of these fines, fees, charges, and costs collected are retained by the clerks for the purpose of funding the court-related functions of the clerk. A person who owes such fines, fees, charges, and costs and who qualifies as indigent, may apply to enter into a payment plan.

Under ss. 318.15 and 322.245, F.S., a person's driver license and driving privilege may be suspended for various reasons, including failing to comply with civil penalties or other court directives within a specified time period; failing to enter into or comply with the terms of a penalty payment plan; or failing to pay child support.

A person's driver license and privilege may not be reinstated until the person:

- Complies with all obligations and penalties imposed or with other specified court directives; and
- Presents a certificate of compliance to a driver license office along with a nonrefundable service charge of \$60.

HB 1111 amends ss. 28.24 and 28.246, F.S., relating to clerk of circuit court payment plans, to:

- Require a one-time administrative processing charge of \$25.00 to be collected for every payment plan.
- Authorize a clerk to accept monthly payments electronically, by mail, or in person and to send notices regarding upcoming or missed payments electronically or by mail.
- Require a payment plan to provide a grace period.
- Allow any down payment to be paid in monthly increments.
- Authorize a court to review and modify a payment plan or reduce, waive, or convert any outstanding amounts owed to community service on its own motion or by petition.
- Require a payment plan to include all outstanding amounts owed in all open cases for a person in that county.
- Prohibit a clerk from referring an incarcerated person's account to collections or from notifying DHSMV that an incarcerated person has failed to pay or otherwise comply with the terms of a payment plan.
- Authorize specified persons to petition a court to terminate his or her payment plan.

The bill also amends s. 322.29, F.S., to require a person applying for the return of his or her license to present to DHSMV a certificate of compliance issued by the clerk of the court instead of by the court and to clarify that such a person is only required to pay a single nonrefundable \$60 service fee to DHSMV.

The bill may have a negative indeterminate impact on state and local governments. See Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerk may also serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.¹ As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.² Such duties include the performance of court-related functions, such as:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing case assignment, reopening, reassignment, and appeals;
- Processing of bond forfeiture payments;
- Data collection and reporting;
- Determination of indigent status; and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.³

Payment Plans

Court costs, fines, and other dispositional assessments are enforced by court order and collected by clerks.⁴ A person may apply to the clerk of court to enter into a payment plan if that person is "indigent," which means he or she:

- Has an income equal to or below 200 percent of the federal poverty guidelines; or
- Is receiving:
 - Temporary Assistance for Needy Families-Cash Assistance;
 - Poverty-related veterans' benefits; or
 - Supplemental Security Income.^{5, 6}

A monthly payment amount is presumed to correspond to the indigent person's ability to pay if the amount does not exceed the greater of:

- Two percent of an indigent person's annual net income divided by 12; or
- Twenty-five dollars.⁷

A clerk is required to charge a fee of \$5 per month for receipt or disbursement of all partial payments, with the exception of restitution payments, that are not subject to an administrative processing service charge.⁸ However, a clerk is authorized to accept a one-time administrative processing charge of \$25.00 for setting up a payment plan in lieu of the \$5.00 monthly fee.⁹

¹ The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and Art. VIII, s. 1, Fla. Const.

² "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

³ S. 28.35(3)(a), F.S.

⁴ S. 28.246(3), F.S.

⁵ S. 27.52(2)(a), F.S.

⁶ A person who is released from incarceration and has outstanding court obligations must contact the clerk within 30 days after release to pay fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan. S. 28.246(4)(b), F.S.

⁷ S. 28.246(4)(b), F.S.

⁸ S. 28.24(27), F.S.

⁹ S. 28.24(27)(c), F.S.

Moreover, clerks may require a down payment to establish a payment plan in an amount that is the lesser of 10 percent of the total amount owed or \$100. This down payment amount does not include the one-time administrative processing charge.¹⁰

A clerk shall establish all terms of a payment plan, however, a court may review the reasonableness of a payment plan.¹¹

Driver License Suspension in Florida

Section 318.15, F.S., requires a clerk to notify the Department of Highway Safety and Motor Vehicles (DHSMV) if a person fails to:

- Comply with civil penalties within a specified time period;
- Enter into or comply with the terms of a penalty payment plan;
- Attend driver improvement school; or
- Appear at a scheduled hearing.¹²

Section 322.245, F.S., requires a clerk to notify DHSMV if a person fails to:

- Comply with all directives of a court, imposed based on a violation of a criminal offense, within the time allotted by the court; or
- Pay child support.¹³

Upon receipt of such notice from a clerk, pursuant to either ss. 318.15 or 322.245, F.S., DHSMV must immediately issue an order suspending the driver license and driving privilege of such person. The order must inform the person that he or she may contact the clerk to establish a payment plan to make partial payments for court-related fines, fees, service charges, and court costs.¹⁴

A person's driver license and privilege may not be reinstated until the person:

- Complies with the terms of a periodic payment plan or a revised payment plan with the clerk; complies with all obligations and penalties imposed; or complies with all court directives including payment of a delinquency fee; and
- Presents a certificate of compliance issued by the court to a driver license office along with a nonrefundable service charge of \$60.^{15, 16}

Effect of Proposed Changes

The bill amends s. 28.24, F.S., to remove a clerk's authorization to collect a \$5.00 monthly fee for accepting and disbursing partial payments, instead requiring a one-time administrative processing charge of \$25.00 to be collected for every payment plan which may be paid in five equal monthly payments of \$5.00.

The bill amends s. 28.246, F.S., to:

- Allow a clerk to accept monthly payments electronically, by mail, or in person in accordance with the terms of an established uniform payment plan form.
- Require a payment plan to provide an individual who is not in custody with a 30-day grace period within which to make the first payment.
- Require a payment plan to provide an individual released from incarceration a 90-day grace period within which to make the first payment.
- Allow any down payment required by a clerk to establish a payment plan to be paid in monthly increments.

¹⁰ S. 28.246(4)(b), F.S.

¹¹ *Id.*

¹² S. 318.15(1)(a), F.S.

¹³ S. 322.245(1-2), F.S.

¹⁴ Ss. 318.15(1) and 322.245(3), F.S.

¹⁵ S. 318.15(2), F.S.

¹⁶ S. 322.29(2), F.S.

- Authorize a court to review and modify a payment plan or reduce, waive, or convert any outstanding fees, service charges, costs, or fines to community service on its own motion or by petition. However, the bill prohibits a court from waiving restitution or child support.
- Require a payment plan to include all fines, service charges, fees, or court costs assessed in all open cases for a person in that county.
- Prohibit a clerk from referring an incarcerated person's account to collections or from notifying DHSMV that an incarcerated person has failed to pay or otherwise comply with the terms of a payment plan.
- Authorize a person who is indigent, receives public assistance, or whose income is below 200 percent of the federal poverty level to petition a court to declare that financial obligations under his or her payment plan have been met and to terminate the payment plan if, up to the date of the petition, the person made timely payments for:
 - Twelve consecutive months for any financial obligation that was \$500 or less;
 - Twenty-four consecutive months for any financial obligation that was more than \$500, but less than or equal to \$1,000; or
 - Thirty-six consecutive months for any financial obligation that was more than \$1,000.
- Authorize a clerk to send notices regarding upcoming or missed payments electronically or by mail.
- Prohibit a clerk from pursuing collection of any fees, service charges, fines, court costs, and liens for the payment of attorney fees from an individual who is incarcerated.

The bill amends s. 322.29, F.S., to require a person applying for the return of his or her license suspended under ss. 318.15 or 322.245, F.S., to present to DHSMV a certificate of compliance issued by the clerk of the court instead of by the court. The bill also clarifies that such a person is only required to pay a single nonrefundable \$60 service fee to DHSMV in order to obtain the return of his or her license.

The bill makes other conforming and technical changes.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 28.24, F.S., relating to service charges.

Section 2: Amends s. 28.246, F.S., relating to payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.

Section 3: Amends s. 318.15, F.S., relating to failure to comply with civil penalty or to appear; penalty.

Section 4: Amends s. 322.245, F.S., relating to suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.

Section 5: Amends s. 322.29, F.S., relating to surrender and return of license.

Section 6: Amends s. 27.52, F.S., relating to determination of indigent status.

Section 7: Amends s. 34.191, F.S., relating to fines and forfeitures; dispositions.

Section 8: Amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 9: Reenacts s. 318.20, F.S., relating to notification; duties of department.

Section 10: Reenacts s. 775.083, F.S., relating to fines.

Section 11: Reenacts s. 938.27, F.S., relating to judgment for costs of prosecution and investigation.

Section 12: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have a negative indeterminate impact on state and local governments as the bill potentially reduces revenue generation in several ways, by:

- Prohibiting an on-going collection of \$5 monthly fees for accepting and disbursing partial payments.
- Authorizing a court to reduce or waive fees, service charges, costs, or fines, or convert such fees, charges, costs, or fines to community service.
- Authorizing a court to terminate a payment plan before it is completed.

The bill may have a positive indeterminate impact on private parties as they may be required to pay less fees, service charges, costs, or fines as described above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce a clerk's ability to raise revenue; however, an exemption may apply as the bill may have only an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to fines and fees; amending s. 28.24,
3 F.S.; authorizing the clerk of the circuit court to
4 accept monthly installment payments for a certain
5 administrative processing charge; conforming
6 provisions to changes made by the act; amending s.
7 28.246, F.S.; revising the methods by which the clerk
8 of the circuit court may accept payments for certain
9 fees, charges, costs, and fines; providing
10 requirements for the payment plan; authorizing the
11 court to modify the payment plan or reduce, waive, or
12 convert to community service the outstanding fees,
13 service charges, costs, or fines; providing
14 construction; requiring payment plans to reflect all
15 fines, fees, and court costs incurred by an
16 individual; prohibiting the clerk from sending an
17 incarcerated individual's account to a collection
18 agency for collection or sending a notice to the
19 Department of Highway Safety and Motor Vehicles to
20 suspend an incarcerated individual's driver license;
21 providing for the early termination of a payment plan
22 for an indigent individual if certain conditions
23 exist; authorizing the clerk to send certain notices;
24 conforming a cross-reference; conforming provisions to
25 changes made by the act; amending ss. 318.15 and

26 | 322.245, F.S.; conforming provisions to changes made
 27 | by the act; amending s. 322.29, F.S.; specifying that
 28 | a single service fee should be collected when a
 29 | license is reinstated after certain conditions are
 30 | met; making technical changes; amending ss. 27.52,
 31 | 34.191, and 57.082, F.S.; conforming cross-references;
 32 | making technical changes; reenacting ss. 318.20,
 33 | 775.083(3), and 938.27(2)(a), F.S., relating to
 34 | notification, fines, and judgments for costs of
 35 | prosecution and investigation, respectively, to
 36 | incorporate the amendments made to s. 28.246, F.S., in
 37 | references thereto; providing an effective date.

38 |

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

40 |

41 | Section 1. Subsection (27) of section 28.24, Florida
 42 | Statutes, is amended to read:

43 | 28.24 Service charges.—The clerk of the circuit court
 44 | shall charge for services rendered manually or electronically by
 45 | the clerk's office in recording documents and instruments and in
 46 | performing other specified duties. These charges may not exceed
 47 | those specified in this section, except as provided in s.
 48 | 28.345.

49 | (27) (a) For receiving and disbursing all restitution
 50 | payments, per payment: 3.50, from which the clerk shall remit

51 0.50 per payment to the Department of Revenue for deposit into
 52 the General Revenue Fund.

53 ~~(b) For receiving and disbursing all partial payments,~~
 54 ~~other than restitution payments, for which an administrative~~
 55 ~~processing service charge is not imposed pursuant to s. 28.246,~~
 56 ~~per month: 5.00.~~

57 ~~(e)~~ For setting up a payment plan, a one-time
 58 administrative processing charge of in lieu of a per month
 59 charge under paragraph (b): 25.00. The charge may be paid in
 60 five equal monthly payments of 5.00.

61 Section 2. Section 28.246, Florida Statutes, is amended to
 62 read:

63 28.246 Payment of court-related fines or other monetary
 64 penalties, fees, charges, and costs; monthly partial payments;
 65 community service; distribution of funds.-

66 (1) The clerk of the circuit court shall report the
 67 following information to the Legislature and the Florida Clerks
 68 of Court Operations Corporation on a form, and using guidelines
 69 developed by the clerks of court, through their association and
 70 in consultation with the Office of the State Courts
 71 Administrator:

72 (a) The total amount of mandatory fees, service charges,
 73 and costs assessed; the total amount underassessed, if any,
 74 which is the amount less than the minimum amount required by law
 75 to be assessed; and the total amount collected.

76 (b) The total amount of discretionary fees, service
 77 charges, and costs assessed and the total amount collected.

78 (c) The total amount of mandatory fines and other monetary
 79 penalties assessed; the total amount underassessed, if any,
 80 which is the amount less than the minimum amount required by law
 81 to be assessed; and the total amount collected.

82 (d) The total amount of discretionary fines and other
 83 monetary penalties assessed and the total amount collected.

84
 85 The clerk, in reporting to the Legislature and corporation,
 86 shall separately identify the monetary amount assessed and
 87 subsequently discharged or converted to community service, to a
 88 judgment or lien, or to time served. The form developed by the
 89 clerks must ~~shall~~ include separate entries for recording the
 90 amount discharged and the amount converted. If a court waives,
 91 suspends, or reduces an assessment as authorized by law, the
 92 portion waived, suspended, or reduced may not be deemed assessed
 93 or underassessed for purposes of the reporting requirements of
 94 this section. The clerk also shall report a collection rate for
 95 mandatory and discretionary assessments. In calculating the
 96 rate, the clerk shall deduct amounts discharged or converted
 97 from the amount assessed. The clerk shall submit the report on
 98 an annual basis 90 days after the end of the county fiscal year.
 99 The clerks and the courts shall develop by October 1, 2012, the
 100 form and guidelines to govern the accurate and consistent

101 reporting statewide of assessments as provided in this section.
 102 The clerk shall use the new reporting form and guidelines in
 103 submitting the report for the county fiscal year ending
 104 September 30, 2013, and for each year thereafter.

105 (2) The clerk of the circuit court shall establish and
 106 maintain a system of accounts receivable for court-related fees,
 107 charges, and costs.

108 (3) Court costs, fines, and other dispositional
 109 assessments shall be enforced by order of the courts, collected
 110 by the clerks of the circuit and county courts, and disbursed in
 111 accordance with authorizations and procedures as established by
 112 general law.

113 (4) (a) Each clerk of the circuit court shall accept
 114 monthly ~~partial~~ payments for each case type for court-related
 115 fees, service charges, court costs, and fines electronically, by
 116 mail, or in person in accordance with the terms of the an
 117 established uniform payment plan form ~~developed by the clerk.~~

118 (b) An individual seeking to defer payment of fees,
 119 service charges, court costs, or fines imposed by operation of
 120 law or order of the court under any provision of general law
 121 must ~~shall~~ apply to the clerk for enrollment in a payment plan.
 122 The clerk must ~~shall~~ enter into a payment plan with an
 123 individual who the court determines is indigent for costs. If an
 124 individual is not in custody, the plan must provide a 30-day
 125 grace period for the person to make the first payment. It is the

126 responsibility of an individual who is released from
 127 incarceration and has outstanding court obligations to contact
 128 the clerk within 30 days after release to pay fees, service
 129 charges, court costs, and fines in full, or to apply for
 130 enrollment in a payment plan. If an individual is released from
 131 incarceration, the plan must provide a 90-day grace period from
 132 the day of release for the person to make the first payment.

133 1. A monthly payment amount, calculated based upon all
 134 fees and all anticipated fees, service charges, court costs, and
 135 fines, is presumed to correspond to the person's ability to pay
 136 if the amount does not exceed the greater of:

137 a. Two percent of the person's annual net income, as
 138 defined in s. 27.52(1), divided by 12; or

139 b. Twenty-five dollars.

140 2. Any amount required by the clerk as down payment to
 141 initially establish a payment plan shall be the lesser of 10
 142 percent of the total amount owed or \$100. The amount does not
 143 include the imposition of a service charge pursuant to s.
 144 28.24(27)(b), and both the service charge and down payment may
 145 be paid monthly as provided in s. 28.24(27)(b) ~~or (c)~~. The clerk
 146 shall establish all terms of a payment plan, and the court may,
 147 on its own motion or by petition, review and modify the
 148 ~~reasonableness of~~ the payment plan or reduce, waive, or convert
 149 to community service the outstanding fees, service charges,
 150 costs, or fines. Nothing in this subparagraph shall be construed

151 to allow or waive restitution or child support.

152 3. If a county has more than one case open for an
153 individual against whom fines, service charges, fees, or court
154 costs have been assessed, the monthly payment plan must include
155 the amounts assessed for all of the cases.

156 (c) If an individual is incarcerated, the clerk may not
157 refer the individual's account to collections as provided in
158 subsection (7) or send a notice to the Department of Highway
159 Safety and Motor Vehicles to suspend the individual's driver
160 license for nonpayment or failure to comply with the terms of a
161 payment plan.

162 (5) An individual who is indigent as described in s.
163 27.52(2), an individual who receives public assistance as
164 defined in s. 409.2554, or an individual whose income is below
165 200 percent of the federal poverty level based on the current
166 year's federal poverty guidelines may petition the court to
167 declare that the financial obligations under the payment plan
168 have been met and to terminate the payment plan if, up to the
169 date of the petition, the individual made timely payments for:

170 (a) Twelve consecutive months for any financial obligation
171 that was \$500 or less;

172 (b) Twenty-four consecutive months for any financial
173 obligation that was more than \$500, but less than or equal to
174 \$1,000; or

175 (c) Thirty-six consecutive months for any financial

176 obligation that was greater than \$1,000.

177 (6) (a) The clerk may send notices electronically or by
 178 mail to remind an individual of an upcoming or missed payment.

179 (b) When receiving monthly ~~partial~~ payment of fees,
 180 service charges, court costs, and fines, clerks shall distribute
 181 funds according to the following order of priority:

182 1. (a) That portion of fees, service charges, court costs,
 183 and fines to be remitted to the state for deposit into the
 184 General Revenue Fund.

185 2. (b) That portion of fees, service charges, court costs,
 186 and fines required to be retained by the clerk of the court or
 187 deposited into the Clerks of the Court Trust Fund within the
 188 Department of Revenue.

189 3. (c) That portion of fees, service charges, court costs,
 190 and fines payable to state trust funds, allocated on a pro rata
 191 basis among the various authorized funds if the total collection
 192 amount is insufficient to fully fund all such funds as provided
 193 by law.

194 4. (d) That portion of fees, service charges, court costs,
 195 and fines payable to counties, municipalities, or other local
 196 entities, allocated on a pro rata basis among the various
 197 authorized recipients if the total collection amount is
 198 insufficient to fully fund all such recipients as provided by
 199 law.

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201 To offset processing costs, clerks may impose ~~either a per-month~~
202 ~~service charge pursuant to s. 28.24(27)(b) or~~ a one-time
203 administrative processing service charge at the inception of the
204 payment plan pursuant to s. 28.24(27)(b) ~~s. 28.24(27)(c)~~.

205 ~~(7)-(6)~~ A clerk of court shall pursue the collection of any
206 fees, service charges, fines, court costs, and liens for the
207 payment of attorney fees and costs pursuant to s. 938.29 which
208 remain unpaid after 90 days, except for an individual who is
209 incarcerated, by referring the account to a private attorney who
210 is a member in good standing of The Florida Bar or collection
211 agent who is registered and in good standing pursuant to chapter
212 559. In pursuing the collection of such unpaid financial
213 obligations through a private attorney or collection agent, the
214 clerk of the court must have attempted to collect the unpaid
215 amount through a collection court, collections docket, or other
216 collections process, if any, established by the court, find this
217 to be cost-effective and follow any applicable procurement
218 practices. The collection fee, including any reasonable attorney
219 ~~attorney's~~ fee, paid to any attorney or collection agent
220 retained by the clerk may be added to the balance owed in an
221 amount not to exceed 40 percent of the amount owed at the time
222 the account is referred to the attorney or agent for collection.
223 The clerk shall give the private attorney or collection agent
224 the application for the appointment of court-appointed counsel
225 regardless of whether the court file is otherwise confidential

226 | from disclosure.

227 | Section 3. Paragraph (a) of subsection (1) and subsection
228 | (2) of section 318.15, Florida Statutes, are amended to read:

229 | 318.15 Failure to comply with civil penalty or to appear;
230 | penalty.—

231 | (1)(a) If a person fails to comply with the civil
232 | penalties provided in s. 318.18 within the time period specified
233 | in s. 318.14(4), fails to enter into or comply with the terms of
234 | a penalty payment plan with the clerk of the court in accordance
235 | with ss. 318.14 and 28.246, fails to attend driver improvement
236 | school, or fails to appear at a scheduled hearing, the clerk of
237 | the court must notify the Department of Highway Safety and Motor
238 | Vehicles of such failure within 10 days after such failure. Upon
239 | receipt of such notice, the department must immediately issue an
240 | order suspending the driver license and privilege to drive of
241 | such person effective 20 days after the date the order of
242 | suspension is mailed in accordance with s. 322.251(1), (2), and
243 | (6). The order also must inform the person that he or she may
244 | contact the clerk of the court to establish a payment plan
245 | pursuant to s. 28.246(4) to make monthly ~~partial~~ payments for
246 | court-related fines, fees, service charges, and court costs. Any
247 | such suspension of the driving privilege which has not been
248 | reinstated, including a similar suspension imposed outside of
249 | this state, must remain on the records of the department for a
250 | period of 7 years from the date imposed and must be removed from

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251 the records after the expiration of 7 years from the date it is
252 imposed. The department may not accept the resubmission of such
253 suspension.

254 (2) After the suspension of a person's driver license and
255 privilege to drive under subsection (1), the license and
256 privilege may not be reinstated until the person complies with
257 the terms of a periodic payment plan or a revised payment plan
258 with the clerk of the court pursuant to ss. 318.14 and 28.246 or
259 with all obligations and penalties imposed under s. 318.18 and
260 presents to a driver license office a certificate of compliance
261 issued by the court, together with a single nonrefundable
262 service fee ~~charge~~ of \$60 imposed under s. 322.29, or presents a
263 certificate of compliance and pays the service fee ~~charge~~ to the
264 clerk of the court or a driver licensing agent authorized under
265 s. 322.135 clearing such suspension. Of the charge collected,
266 \$22.50 shall be remitted to the Department of Revenue to be
267 deposited into the Highway Safety Operating Trust Fund. Such
268 person must also be in compliance with requirements of chapter
269 322 before reinstatement.

270 Section 4. Subsections (2) and (3) and paragraphs (a) and
271 (c) of subsection (5) of section 322.245, Florida Statutes, are
272 amended to read:

273 322.245 Suspension of license upon failure of person
274 charged with specified offenses ~~offense~~ under chapter 316,
275 chapter 320, or this chapter to comply with directives ordered

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276 | by traffic court or upon failure to pay child support in non-IV-
277 | D cases as provided in chapter 61 or failure to pay any
278 | financial obligation in any other criminal case.—

279 | (2) In non-IV-D cases, if a person fails to pay child
280 | support under chapter 61 and the obligee so requests, the
281 | depository or the clerk of the court must ~~shall~~ mail in
282 | accordance with s. 61.13016 the notice specified in that
283 | section, notifying him or her that if he or she does not comply
284 | with the requirements of that section and pay a delinquency fee
285 | of \$25 to the depository or the clerk, his or her driver license
286 | and motor vehicle registration will be suspended. The
287 | delinquency fee may be retained by the depository or the office
288 | of the clerk to defray the operating costs of the office after
289 | the clerk remits \$15 to the Department of Revenue for deposit
290 | into the General Revenue Fund.

291 | (3) If the person fails to comply with the directives of
292 | the court within the 30-day period, or, in non-IV-D cases, fails
293 | to comply with the requirements of s. 61.13016 within the period
294 | specified in that statute, the depository or the clerk of the
295 | court must electronically notify the department of such failure
296 | within 10 days. Upon electronic receipt of the notice, the
297 | department shall immediately issue an order suspending the
298 | person's driver license and privilege to drive effective 20 days
299 | after the date the order of suspension is mailed in accordance
300 | with s. 322.251(1), (2), and (6). The order of suspension must

301 also contain information specifying that the person may contact
 302 the clerk of the court to establish a payment plan pursuant to
 303 s. 28.246(4) to make monthly ~~partial~~ payments for fines, fees,
 304 service charges, and court costs.

305 (5)(a) When the department receives notice from a clerk of
 306 the court that a person licensed to operate a motor vehicle in
 307 this state under ~~the provisions of~~ this chapter has failed to
 308 pay financial obligations for any criminal offense other than
 309 those specified in subsection (1), in full or in part under a
 310 payment plan pursuant to s. 28.246(4), the department must
 311 suspend the license of the person named in the notice. The
 312 department shall mail an order of suspension in accordance with
 313 s. 322.251(1), (2), and (6), which must also contain information
 314 specifying that the person may contact the clerk of the court to
 315 establish a payment plan pursuant to s. 28.246(4) to make
 316 monthly ~~partial~~ payments for fines, fees, service charges, and
 317 court costs.

318 (c) The department may ~~shall~~ not be held liable for any
 319 license suspension resulting from the discharge of its duties
 320 under this section.

321 Section 5. Subsection (2) of section 322.29, Florida
 322 Statutes, is amended to read:

323 322.29 Surrender and return of license.—

324 (2) Notwithstanding subsection (1), an examination is not
 325 required for the return of a license suspended under s. 318.15

326 or s. 322.245 unless an examination is otherwise required by
 327 this chapter. A person applying for the return of a license
 328 suspended under s. 318.15 or s. 322.245 must present to the
 329 department certification from the clerk of the court that he or
 330 she has complied with all obligations and penalties imposed
 331 pursuant to s. 318.15 or, in the case of a suspension pursuant
 332 to s. 322.245, that he or she has complied with all directives
 333 of the court and the requirements of s. 322.245 and must ~~shall~~
 334 pay to the department a single nonrefundable service fee of \$60,
 335 of which \$37.50 shall be deposited into the General Revenue Fund
 336 and \$22.50 shall be deposited into the Highway Safety Operating
 337 Trust Fund. If reinstated by the clerk of the court or tax
 338 collector, \$37.50 must ~~shall~~ be retained and \$22.50 must ~~shall~~
 339 be remitted to the Department of Revenue for deposit into the
 340 Highway Safety Operating Trust Fund. However, the service fee is
 341 not required if the person is required to pay a \$45 fee or \$75
 342 fee under s. 322.21(8).

343 Section 6. Paragraph (i) of subsection (5) of section
 344 27.52, Florida Statutes, is amended to read:

345 27.52 Determination of indigent status.—

346 (5) INDIGENT FOR COSTS.—A person who is eligible to be
 347 represented by a public defender under s. 27.51 but who is
 348 represented by private counsel not appointed by the court for a
 349 reasonable fee as approved by the court or on a pro bono basis,
 350 or who is proceeding pro se, may move the court for a

351 determination that he or she is indigent for costs and eligible
352 for the provision of due process services, as prescribed by ss.
353 29.006 and 29.007, funded by the state.

354 (i) A defendant who is found guilty of a criminal act by a
355 court or jury or enters a plea of guilty or nolo contendere and
356 who received due process services after being found indigent for
357 costs under this subsection is liable for payment of due process
358 costs expended by the state.

359 1. The attorney representing the defendant, or the
360 defendant if he or she is proceeding pro se, shall provide an
361 accounting to the court delineating all costs paid or to be paid
362 by the state within 90 days after disposition of the case
363 notwithstanding any appeals.

364 2. The court shall issue an order determining the amount
365 of all costs paid by the state and any costs for which
366 prepayment was waived under this section or s. 57.081. The clerk
367 shall cause a certified copy of the order to be recorded in the
368 official records of the county, at no cost. The recording
369 constitutes a lien against the person in favor of the state in
370 the county in which the order is recorded. The lien may be
371 enforced in the same manner prescribed in s. 938.29.

372 3. If the attorney or the pro se defendant fails to
373 provide a complete accounting of costs expended by the state and
374 consequently costs are omitted from the lien, the attorney or
375 pro se defendant may not receive reimbursement or any other form

376 of direct or indirect payment for those costs if the state has
 377 not paid the costs. The attorney or pro se defendant must ~~shall~~
 378 repay the state for those costs if the state has already paid
 379 the costs. The clerk of the court may establish a payment plan
 380 under s. 28.246 and may charge the attorney or pro se defendant
 381 a one-time administrative processing charge under s.
 382 28.24(27)(b) ~~s. 28.24(27)(c)~~.

383 Section 7. Subsection (1) of section 34.191, Florida
 384 Statutes, is amended to read:

385 34.191 Fines and forfeitures; dispositions.—

386 (1) All fines and forfeitures arising from offenses tried
 387 in the county court must ~~shall~~ be collected and accounted for by
 388 the clerk of the court and, other than the charge provided in s.
 389 318.1215, disbursed in accordance with ss. 28.2402, 34.045,
 390 142.01, and 142.03 and subject to s. 28.246(6) and (7) ~~the~~
 391 ~~provisions of s. 28.246(5) and (6)~~. Notwithstanding the
 392 provisions of this section, all fines and forfeitures arising
 393 from operation of the provisions of s. 318.1215 must ~~shall~~ be
 394 disbursed in accordance with that section.

395 Section 8. Subsection (6) of section 57.082, Florida
 396 Statutes, is amended to read:

397 57.082 Determination of civil indigent status.—

398 (6) PROCESSING CHARGE; PAYMENT PLANS.—A person who the
 399 clerk or the court determines is indigent for civil proceedings
 400 under this section must ~~shall~~ be enrolled in a payment plan

401 under s. 28.246 and must ~~shall~~ be charged a one-time
402 administrative processing charge under s. 28.24(27)(b) ~~s.~~
403 ~~28.24(27)(c)~~. ~~A monthly payment amount, calculated based upon~~
404 ~~all fees and all anticipated costs, is presumed to correspond to~~
405 ~~the person's ability to pay if it does not exceed 2 percent of~~
406 ~~the person's annual net income, as defined in subsection (1),~~
407 ~~divided by 12.~~ The person may seek review of the clerk's
408 decisions regarding a payment plan established under s. 28.246
409 in the court having jurisdiction over the matter. A case may not
410 be impeded in any way, delayed in filing, or delayed in its
411 progress, including the final hearing and order, due to
412 nonpayment of any fees or costs by an indigent person. Filing
413 fees waived from payment under s. 57.081 may not be included in
414 the calculation related to a payment plan established under this
415 section.

416 Section 9. For the purpose of incorporating the amendment
417 made by this act to section 28.246(4), Florida Statutes, in a
418 reference thereto, section 318.20, Florida Statutes, is
419 reenacted to read:

420 318.20 Notification; duties of department.—The department
421 shall prepare a notification form to be appended to, or
422 incorporated as a part of, the Florida uniform traffic citation
423 issued in accordance with s. 316.650. The notification form must
424 contain language informing persons charged with infractions to
425 which this chapter applies of the procedures available to them

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426 | under this chapter. Such notification form must contain a
427 | statement that, if the official determines that no infraction
428 | has been committed, no costs or penalties may be imposed and any
429 | costs or penalties that have been paid will be returned.
430 | Additionally, the notification form must include information on
431 | paying the civil penalty to the clerk of the court and the
432 | ability to establish a payment plan pursuant to s. 28.246(4). A
433 | uniform traffic citation that is produced electronically must
434 | also include the information required by this section.

435 | Section 10. For the purpose of incorporating the amendment
436 | made by this act to section 28.246(4), Florida Statutes, in a
437 | reference thereto, subsection (3) of section 775.083, Florida
438 | Statutes, is reenacted to read:

439 | 775.083 Fines.—

440 | (3) The clerk of the court of each county is the entity
441 | responsible for collecting payment of fines, fees, service
442 | charges, and court costs. Unless otherwise designated by the
443 | court, a person who has been ordered to pay court obligations
444 | under this section shall immediately contact the clerk to pay
445 | fines, fees, service charges, and court costs in full or to
446 | apply for enrollment in a payment plan pursuant to s. 28.246(4).

447 | Section 11. For the purpose of incorporating the amendment
448 | made by this act to section 28.246(4), Florida Statutes, in a
449 | reference thereto, paragraph (a) of subsection (2) of section
450 | 938.27, Florida Statutes, is reenacted to read:

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451 938.27 Judgment for costs of prosecution and
452 investigation.—

453 (2)(a) The court shall impose the costs of prosecution and
454 investigation notwithstanding the defendant's present ability to
455 pay. The court shall require the defendant to pay the costs
456 within a specified period or pursuant to a payment plan under s.
457 28.246(4).

458 Section 12. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1167 Attorney Fees and Costs in Property Rights Disputes

SPONSOR(S): Yarkosky

TIED BILLS: **IDEN./SIM. BILLS:** SB 702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Mawn	Jones
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
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, including shared land uses; maintenance of the character of a residential neighborhood, commercial development, or historic property; and the establishment of infrastructure and common facilities. Some of the more commonly-created servitudes convey “use rights” (that is, the rights to use a property one does not own, typically in a specified manner, for one’s own benefit) and rights of ingress and egress (that is, the legal rights to enter upon or exit from a piece of real property).

Riparian rights are rights incident to land bordering navigable waters such as rivers, channels, and streams (“riparian land”) and include rights of ingress, egress, boating, bathing, and fishing, and to an unobstructed view. Riparian rights also include the right to erect upon the bed and shores adjacent to the riparian land docks and other structures for the riparian land owner’s private use, subject to the right of the public to use the navigable waters and applicable regulatory and environmental approval schemes. Riparian rights, which inure to the riparian land owner, are appurtenant to and inseparable from the riparian land. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running with the land, whether or not such rights are mentioned in the deed or lease.

The traditional “English rule” entitled a prevailing party in civil litigation to attorney fees 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. In Florida, several such fee-shifting statutes entitle the prevailing party to have his or her fees paid by the other party.

HB 1167 provides that, in a civil action brought against the owner of a parcel of real property to resolve a property rights dispute, the court must award reasonable attorney fees and costs to the prevailing defendant if the improvements made to the property by the defendant property owner were made in substantial compliance with, or in reliance on, environmental or regulatory approvals or permits issued by a political subdivision of the state or a state agency. Under the bill, “property rights” includes, but is not limited to, use rights, ingress and egress rights, and those rights incident to land bordering on navigable waters.

The bill may have a fiscal impact on state or local governments. See Fiscal Comments.

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.¹ Within this institution, different ownership principles define the existence and limits of private property rights.² One such set of principles concerns the enforcement of private land use arrangements, known as “servitudes.”³

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.⁴ 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,⁵ 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; the maintenance of the character of a residential neighborhood, commercial development, or historic property; and the establishment of infrastructure and common facilities.⁶

Some of the more commonly-created servitudes convey “use rights” (that is, the rights to use a property one does not own, typically in a specified manner, for one’s own benefit) and rights of ingress and egress (that is, the legal rights to enter upon or exit a piece of real property). Servitudes typically come in the form of:

- Easements, which give a person a nonpossessory right of use or enjoyment in another person’s property for a specific purpose not inconsistent with the property owner’s general rights;⁷
- Real covenants, which limit a property owner’s use of his or her own property, typically for the benefit of other property owners in the community; or
- Profits à prendre, which give a person a non-possessory right to enter upon and remove natural resources (such as minerals, timber, produce, wildlife, or grass) from the property of another.

Riparian Rights

Upon attaining statehood in 1845, Florida “assumed title to and sovereignty over the navigable waters in the state and the lands thereunder” from the submerged bed up to the “ordinary high water mark.”⁸ Under the common law Public Trust Doctrine, which recognizes the public’s right to natural resources, navigable rivers, lakes, and tidelands are held in the public trust, and the state has a legal duty to preserve and control such waters for public navigation and other lawful uses.⁹

¹ 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. 22, 2024).

² *Id.*

³ *Id.*

⁴ Susan French, *Servitude*, The Encyclopaedia Britannica, Dec. 19, 2003, <https://www.britannica.com/topic/servitude-property-law> (last visited Jan. 22, 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. 22, 2024).

⁵ 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 (last visited Jan. 22, 2024); Legal Information Institute, *Servient Estate*, https://www.law.cornell.edu/wex/servient_estate (last visited Jan. 22, 2024).

⁶ *Id.*

⁷ 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. 22, 2024).

⁸ Art. X, s. 11, Fla. Const.; *Merrill-Stevens Co. v. Durkee*, 57 So. 428 (Fla. 1912).

⁹ Art. X, s. 11, Fla. Const.; *Coastal Petroleum Co. v. Am. Cyanamid Co.*, 492 So. 2d 339, 342 (Fla. 1986); *State ex rel. Ellis v. Gerbing*, 56 Fla. 603 (1908).

Riparian rights are rights incident to land bordering navigable waters¹⁰ such as rivers, channels, and streams¹¹ (“riparian land”) and include rights of ingress, egress, boating, bathing, and fishing, and to an unobstructed view.¹² Riparian rights also include the right to erect upon the bed and shores adjacent to the riparian land docks and other structures for the riparian land owner’s private use, subject to the right of the public to use the navigable waters and applicable regulatory and environmental approval schemes.¹³ Riparian rights, which inure to the riparian land owner, are appurtenant to and inseparable from the riparian land.¹⁴ Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running with the land, whether or not such rights are mentioned in the deed or lease.¹⁵

In order for riparian rights to attach, the riparian land must extend to the ordinary high water mark of the navigable water.¹⁶ However, courts have acknowledged that there is no one proper method for establishing riparian rights boundaries, and such rights do not necessarily extend into the waters according to riparian land boundaries.¹⁷ Instead, such boundaries must be apportioned and riparian rights determined in accordance with equitable principles, with consideration given to the lay of the shore line, the direction of the water body, and the co-relative rights of adjoining riparian land owners.¹⁸

Land Use Regulation

Local Government Regulation

Florida law requires each county and municipality to plan for future development and growth by adopting, implementing, and amending as necessary a comprehensive plan.¹⁹ All elements of a plan or plan amendment must be based on relevant, appropriate data,²⁰ and an analysis by the local government may include surveys, studies, aspirational goals, and other data available at the time of adopting the plan or amendment.²¹ The data supporting a plan or amendment must be taken from professionally accepted sources and must be based on permanent and seasonal population estimates and projections published by the Office of Economic and Demographic Research or generated by the local government based upon a professionally acceptable methodology.²²

Comprehensive plans adopted by local governments provide the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area.²³ A key purpose of such plans is to establish meaningful and predictable standards for land use and development.²⁴ Accordingly, each county and municipality must adopt and enforce land use regulations (such as zoning ordinances) that are consistent with and implement their adopted comprehensive plan.²⁵ Furthermore, all public and private development must be consistent

¹⁰ The test to determine whether water is “navigable water” is whether, at the time Florida joined the United States in 1845, the waterbody was, in its ordinary and natural state, used or capable of being used by any watercraft for a sufficient part of the year as a public highway for commerce. “Navigable waters” in the state do not extend to any permanent or transient waters in the form of so-called lakes, ponds, swamps, or overflowed lands lying over and upon areas which have heretofore been conveyed to private individuals by the United States or by the state without reservation of public rights in and to said waters. *Odum v. Deltona Corp.*, 341 So. 2d 977 (Fla. 1976); s. 253.141(2), F.S.

¹¹ Riparian rights should not be confused with littoral rights, which are rights incident to land bordering non-flowing waterbodies, such as lakes, ponds, seas, oceans, and gulfs.

¹² S. 253.141, F.S.; *Hayes v. Bowman*, 91 So. 2d 795 (Fla. 1957).

¹³ The right to build such a structure does not include the right to use the structure for commercial purposes. Further, the Florida Department of Environmental Protection has established a regulatory approval scheme and setback requirements for structures built over submerged sovereign lands, including docks. *Ferry Pass Inspectors’ & Shippers’ Ass’n v. White’s River Inspectors’ & Shippers’ Ass’n*, 48 So. 643 (Fla. 1909); *Belvedere Dev. Corp. v. Dept of Transp.*, 476 So. 2d 649 (Fla. 1985); Fla. Admin. Code R. 18-21.

¹⁴ S. 253.141, F.S.

¹⁵ *Id.*

¹⁶ *Id.*; *Thiesen v. Gulf, Fla. & Alabama Railway Co.*, 78 So. 491 (Fla. 1917).

¹⁷ *Hayes*, 91 So. 2d at 801, 802 (Fla. 1957); *Lake Conway Shores HOA, Inc. v. Driscoll*, 476 So. 2d 1306 (Fla. 5th DCA 1985).

¹⁸ *Id.*

¹⁹ Ss. 163.3167(2), 163.3177(2), F.S.

²⁰ “To be based on data means to react to it in an appropriate way and to the extent necessary indicated by the data available on that particular subject at the time of adoption of the plan or plan amendment at issue.” S. 163.3177(1)(f), F.S.

²¹ S. 163.3177(1)(f), F.S.

²² *Id.*

²³ S. 163.3177(1), F.S.

²⁴ S. 163.3167(1)(a-c) and (2), F.S.

²⁵ S. 163.3202, F.S.

with the local comprehensive plan and all applicable land use regulations; to accomplish this, local governments implement an approval and permitting scheme for property owners wishing to make specified improvements to their properties.²⁶

State Regulation

Like local governments, the State establishes standards for land use and development through the enactment of laws and the implementation of land use regulations promulgated by state agencies; many such laws and regulations focus on state-level environmental protection and natural resource conservation.²⁷ In many instances, a state-level approval and permitting scheme governs property owners wishing to make specified improvements to their properties, thereby ensuring compliance with applicable state land use laws and regulations.²⁸

Attorney Fees

The traditional “English rule” entitled a prevailing party in civil litigation to attorney fees 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. In Florida, several such fee-shifting statutes entitle the prevailing party to have his or her fees paid by the other party.²⁹

Effect of Proposed Changes

HB 1167 creates s. 57.106, F.S., to provide that, in a civil action brought against the owner of a parcel of real property to resolve a property rights dispute, the court must award reasonable attorney fees and costs to the prevailing defendant if the improvements made to the property by the defendant property owner were made in substantial compliance with, or in reliance on, environmental or regulatory approvals or permits issued by a political subdivision of the state or a state agency. Under the bill:

- “Improvement” includes, but is not limited to, anything done to increase the value, use, or benefit of real property, whether physical, material, legal, or otherwise.
- “Property rights” includes, but is not limited to, use rights, ingress and egress rights, and those rights incident to land bordering on navigable waters.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 57.106, F.S., relating to recovery of attorney fees and costs in certain disputes regarding property rights.

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

²⁶ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

²⁷ See, e.g., Florida Department of Environmental Protection, *About DEP*, <https://floridadep.gov/about-dep> (last visited Jan. 22, 2024).

²⁸ *Id.*

²⁹ See, e.g., s. 400.023, F.S. (nursing home resident); s. 440.34, F.S. (claimant in a workers’ compensation case in certain situations); s. 501.2105, F.S. (plaintiff in specified FDUTPA actions); ss. 626.9373 and 627.428, F.S. (prevailing insured party in a case brought against an insurer); s. 790.33, F.S. (plaintiff in a suit to enforce his or her firearm rights); see also 42 U.S.C. s. 1988(b) (federal fee-shifting statute for prevailing parties in actions to enforce certain civil rights statutes).

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:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill may have a positive fiscal impact on prevailing defendants in the types of property rights disputes contemplated by the bill to the extent that such defendants recover their attorney fees and costs where they would not otherwise have been able to do so. However, the bill may have a negative fiscal impact on non-prevailing plaintiffs in such disputes, which may be state or local government entities, to the extent that such plaintiffs have to pay a prevailing defendant's attorney fees and costs where they would not have otherwise had to do so.

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

HB 1167

2024

1 A bill to be entitled
2 An act relating to attorney fees and costs in property
3 rights disputes; creating s. 57.106, F.S.; defining
4 terms; requiring courts to award reasonable attorney
5 fees and costs to a prevailing defendant in certain
6 civil actions under specified circumstances; providing
7 an effective date.
8

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

11 Section 1. Section 57.106, Florida Statutes, is created to
12 read:

13 57.106 Recovery of attorney fees and costs in certain
14 disputes regarding property rights.-

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

16 (a) "Improvement" includes, but is not limited to,
17 anything done to increase the value, use, or benefit of real
18 property, whether physical, material, legal, or otherwise.

19 (b) "Property rights" includes, but is not limited to, use
20 rights, ingress and egress rights, and those rights incident to
21 land bordering upon navigable waters as described in s. 253.141.

22 (2) In a civil action brought against the owner of a
23 parcel of real property to resolve a dispute concerning property
24 rights, the court must award reasonable attorney fees and costs
25 to the prevailing defendant if the improvements made to the

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2024

26 | property by the defendant property owner were made in
27 | substantial compliance with, or in reliance on, environmental or
28 | regulatory approvals or permits issued by a political
29 | subdivision of the state or a state agency.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1179 Litigation Financing
SPONSOR(S): Gregory and others
TIED BILLS: IDEN./SIM. BILLS: SB 1276

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

SUMMARY ANALYSIS

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded to the party. Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital. An unscrupulous litigation financier may invest in lawsuits for reasons other than a return on investment, and may impermissibly attempt to control or direct the lawsuit to maximize the potential return or to further a goal unrelated to the right of financial recovery. Reputable litigation financiers, on the other hand, may implement a demanding due diligence process to ensure their investment in a particular lawsuit is financially sound. Unlike with a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to pay, a litigation financier typically weighs the strength of the claim underlying the civil action, considering the likelihood that the party seeking funding will prevail and the potential damages which may be awarded. In doing so, a litigation financier typically reviews the evidence available in the lawsuit for which litigation financing is sought; depending on the lawsuit's nature, this could result in the litigation financier obtaining proprietary information or information affecting national security interests.

HB 1179 defines litigation financing as an agreement to provide financing to an attorney or party in a civil action in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action or of any matter within a portfolio that includes such action and involves the same counsel or affiliated counsel, and regulates its practice by:

- Exempting from regulation certain specified types of financing, including financing provided to or for a party to a civil action to pay the party's personal expenses during the pendency of the action.
- Prohibiting a litigation financier from engaging in specified conduct, including making or directing any decision with respect to the funded civil action or recovering more than the plaintiff recovers.
- Requiring that certain parties to a funded civil action make certain disclosures to specified parties, generally including the court, opposing counsel, and the opposing parties, in specified situations.
- Requiring a litigation financing agreement to indemnify the plaintiff to the civil action for certain costs.
- Providing that a litigation financing agreement executed in violation of the bill is void and unenforceable, and providing enforcement mechanisms.

The bill may have an indeterminate fiscal impact on the offices of the state attorney and the Department of Legal Affairs within the Office of the Attorney General. The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Litigation Financing

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded; in other words, the litigation financier only gets paid if the case resolves in the funded party's favor.¹ This can be a powerful tool for a party to a civil action who, without such funding, might have been forced to abandon the lawsuit or else find an attorney with sufficient financial reserves to front the costs of litigation.² Where the opposing party or his or her attorney has significant financial resources, litigation financing may level the playing field.³

Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital.⁴ An unscrupulous litigation financier may invest in lawsuits for reasons other than a pure return on investment, and may impermissibly attempt to control or direct the lawsuit to maximize the potential return or to further a goal unrelated to the right to financial recovery.⁵ Reputable litigation financiers, on the other hand, may implement a demanding due diligence process to ensure their investment in a particular lawsuit is financially sound.⁶ Unlike with a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to repay the loan, a litigation financier typically looks at the strength of the claim underlying the civil action, considering the likelihood that the party or attorney seeking funding will prevail and the potential damages which may be awarded.⁷

In weighing the strength of the claim, a litigation financier typically reviews the evidence available in the lawsuit for which litigation financing is sought.⁸ Depending on the lawsuit's nature, this could result in a litigation financier obtaining proprietary information or information affecting national security interests. Concern has been expressed that:

- Where the litigation financier is a foreign actor, the foreign actor could use such information to advance its strategic interests against the United States.⁹
- Where a foreign actor provides litigation financing, the foreign actor obtains a financial interest in the financed lawsuit's outcome, which interest may be used to attempt to influence the

¹ Giugi Carminati, *Litigation Finance: A Modern Financial Tool for Corporate Counsel*, *American Bar Association: Business Law Today* (Dec. 2022), https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-december/a-modern-financial-tool-for-corporate-counsel/ (last visited Jan. 22, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See, e.g., *Bollea v. Gawker Media, LLC*, 913 F. Supp.2d 1325 (M.D. Fla. 2012). Therein, Terry Bollea (known professionally as Hulk Hogan) sued Gawker Media for publishing on its website a video of Bollea engaging in sexual relations with a married woman. The lawsuit gained national attention for several reasons, among them the fact that billionaire and PayPal co-founder Peter Thiel had secretly funded Bollea's lawsuit; significantly, Gawker had published a piece outing Thiel as gay in 2007, and, many viewed Thiel's decision to fund Bollea's lawsuit as Thiel's revenge against Gawker (a charge which Thiel denied). The jury ultimately found Gawker liable and awarded Bollea \$115 million in compensatory damages and \$25 million in punitive damages; a few months later, Gawker filed for Chapter 11 bankruptcy and sold several of its media outlets before settling with Bollea for \$31 million. John Freund, *The 6th Anniversary of the Peter Thiel/Hulk Hogan/Gawker Case: What Have We Learned*, *Litigation Finance Journal* (Mar. 17, 2022), <https://litigationfinancejournal.com/the-6th-anniversary-of-the-peter-thiel-hulk-hogan-gawker-case-what-have-we-learned/> (last visited Jan. 22, 2024).

⁶ Carminati, *supra* note 1.

⁷ Paige Marta Skiba and Jean Xiao, *Consumer Litigation Funding: Just Another Form of Payday Lending?*, *Law and Contemporary Problems* Vol. 80 No. 117 (Nov. 3, 2017), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4840&context=lcp> (last visited Jan. 22, 2020).

⁸ Carminati, *supra* note 1.

⁹ U.S. Chamber of Commerce, *Institute for Legal Reform, Bipartisan Federal Legislation Tackles Foreign Influence in Third Party Litigation Funding*, <https://instituteforlegalreform.com/blog/bipartisan-federal-legislation-tackles-foreign-influence-in-third-party-litigation-funding/> (last visited Jan. 22, 2024).

lawsuit's direction and other decisions related thereto for purposes which may be adverse to the interests of the United States.¹⁰

Class Action Lawsuits

A "class action" is a procedural device that allows one or more plaintiffs to file and prosecute a lawsuit on behalf of a large group of individuals (the "class") who have suffered the same wrong at the hands of the defendant.¹¹ Practically speaking, a class action allows courts to manage lawsuits that would be otherwise unmanageable if each class member were required to join in the lawsuit as a named plaintiff.¹² Such actions also protect the defendant from inconsistent judgments and facilitate the spreading of litigation costs among numerous litigants.¹³

A class action lawsuit may be brought in federal court and, in certain instances, in state court; in either case, the judgment or any settlement is binding on all class members, who are thereafter generally prohibited from filing their own individual lawsuits raising the same claim.¹⁴ However, a defined class, rather uniquely, may include a person harmed by the defendant in the same manner as the other class members without such person ever receiving notice of the action.¹⁵ Thus, courts must be particularly careful to ensure that a lawsuit can be fairly adjudicated as a class action.¹⁶

Consolidated Actions

When civil actions involving a common question of law or fact are pending before a Florida court, the Florida Rules of Civil Procedure authorize the court to order a joint hearing or trial of any or all of the matters in issue in the actions; to consolidate all the actions into one action; and to make such orders about proceedings therein to avoid unnecessary costs or delay.¹⁷ However, in determining whether to consolidate civil actions, the court must consider whether:

- The trial process will be accelerated due to the consolidation;
- Unnecessary costs and delays can be avoided by consolidation;
- There is otherwise the possibility for inconsistent verdicts;
- Consolidation would eliminate duplicative trials involving substantially the same operative facts and questions of law; and
- Consolidation would deprive a party of a substantive right.¹⁸

¹⁰ *Id.*

¹¹ Class actions are often appropriate to address environmental harms (such as for oil spills or the release of toxic chemicals); large-scale consumer fraud (such as for misleading or false advertising); anti-trust violations (such as the artificial raising or fixing of prices for goods or services); product defects (where the entire line is defective, such as for defective airbags or contaminated food items); data breaches (such as those for the release of personal and payment information); civil rights violations (such as was evidenced in the *Brown v. Board of Education* lawsuit) and dangerous pharmaceuticals (such as was evidenced in the opioid crisis litigation). Legal Information Institute, *Class Action*, https://www.law.cornell.edu/wex/class_action (last visited Jan. 22, 2024).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; see Fed. R. Civ. P. 23.; s. 768.734, F.S.

¹⁵ Legal Information Institute, *supra* note 12.

¹⁶ *Id.*

¹⁷ Fla. R. Civ. Pro. 1.270(a).

¹⁸ *State Farm Fla. Ins. Co. v. Bonham*, 886 So. 2d 1072 (Fla. 5th DCA 2004).

Indemnification

“Indemnification” occurs when one person compensates (that is, “indemnifies”) another person for damages or losses the indemnified person incurred or will incur related to a particular event or incident.¹⁹ Typically, indemnification is voluntarily provided for in a written contract executed between the person who will indemnify and the person who will be indemnified.²⁰ However, indemnification may also be required by law in certain circumstances.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) prohibits unfair methods of competition, and unconscionable, unfair, or deceptive acts or practices in the conduct of any trade or commerce.²¹ FDUTPA operates for the purposes of:²²

- Simplifying, clarifying, and modernizing the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protecting the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA provides investigative and enforcement authority to a state attorney if a violation occurs in or affects the judicial circuit under the office’s jurisdiction, and to the Department of Legal Affairs (“DLA”) within the Office of the Attorney General if a violation occurs in or affects more than one judicial circuit, or if a state attorney defers to DLA.²³ An enforcing authority may, within four years after a violation occurs or within two years after the last payment in a transaction involved in a violation, bring an action:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.²⁴

Additionally, an enforcing authority may collect a civil penalty of up to \$10,000 per violation plus reasonable attorney fees and costs for a willful violation and up to a \$15,000 penalty plus reasonable attorney fees and costs for a willful violation involving a senior citizen, a disabled person, a military servicemember, or the spouse or dependent child of a military servicemember.²⁵ DLA may also issue a cease and desist order if such order would be in the public’s interest.²⁶

FDUTPA also creates a private cause of action for any person aggrieved by a violation of FDUTPA to:

- Obtain a declaratory judgement that an act or practice violates FDUTPA;
- Enjoin a person who has violated, is violating, or is otherwise likely to violate this part; and
- Recover actual damages plus reasonable attorney fees and costs.²⁷

¹⁹ Legal Information Institute, *Indemnify*, <https://www.law.cornell.edu/wex/indemnify> (last visited Jan. 22, 2024).

²⁰ *Id.*

²¹ The term “trade or commerce” is defined as advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. The term includes the conduct of any trade or commerce including any nonprofit or not-for-profit person or activity. Ss. 501.203(8) and 501.204(1), F.S.

²² S. 501.202, F.S.

²³ Ss. 501.203(2), 501.206, and 501.207, F.S.

²⁴ S. 501.207(1) and (5), F.S.

²⁵ Ss. 501.2075, 501.2077, and 501.2105, F.S.

²⁶ S. 501.208(1), F.S.

²⁷ Ss. 501.2105 and 501.211, F.S.

Effect of Proposed Changes

HB 1179 creates the Litigation Investment Safeguards and Transparency Act in Part II of Chapter 69, F.S., to regulate certain types of litigation financing in Florida.

Definitions

The bill creates s. 69.101, F.S., to provide definitions. Specifically, the bill defines “litigation financing agreement” or “litigation financing” as a transaction in which a litigation financier agrees to provide financing to an attorney or party in a civil action in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action or on the outcome of any matter within a portfolio that includes such action and involves the same counsel or affiliated counsel. However, under the bill, the terms do not apply to:

- An agreement in which funds are provided for or to a party to a civil action for such person’s use in paying his or her costs of living or other personal or familial expenses while the action is pending, if such funds are not used to finance the action itself or other legal costs.
- An agreement in which an attorney consents to provide legal services on a contingency fee basis or to advance his or her client’s legal costs.
- An entity (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to a civil action.
- A health insurer that has paid, or is obligated to pay, any sums for health care for an injured person under the terms of a health insurance plan or agreement.
- The repayment of a financial institution for loans made to a party to a civil action, when repayment of the loan is not contingent upon such lawsuit’s outcome.
- Funding provided to a nonprofit legal organization funded by private donors that represents clients on a pro bono basis, if the nonprofit legal organization seeks only injunctive relief on behalf of its clients.

The bill also defines:

- “Foreign person” to mean a person that is not:
 - A United States citizen;
 - An alien lawfully admitted for permanent United States residence;
 - An unincorporated association, a majority of members of which are United States citizens or aliens lawfully admitted for permanent United States residence; or
 - A corporation that is incorporated in the United States.
- “Foreign principal” to mean:
 - The government or a government official of a foreign country;
 - A political subdivision or political party of a foreign country; or
 - A partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country whose shares or other ownership interest is owned by the government, a government official, a political subdivision, or a political party of a foreign country.
- “Health care practitioner” to mean any person licensed under any of the following chapters of the Florida Statutes: 457; 458; 459; 460; 461; 462; 463; 464; 465; 466; 467; part I, part II, part III, part V, part X, part XIII, or part XIV of 468; 478; 480; part I, part II, or part III of 483; 484; 486; 490; or 491.
- “Litigation financier” to mean a person engaged in the business of providing litigation financing.
- “National security interest” to mean those interests relating to the national defense, foreign intelligence and counterintelligence, international and domestic security, and foreign relations.
- “Proprietary information” to mean information developed, created, or discovered by a person, or which became known by or was conveyed to the person, which has commercial value in the person’s business (such as trade secrets, schematics, algorithms, or business research).
- “Sovereign wealth fund” to mean an investment fund owned or controlled by a foreign principal or an agent thereof.

Representation of Client Interests

The bill creates s. 69.103, F.S., to authorize a court to take a litigation financing agreement's existence into account in the following situations:

- In a class action lawsuit brought in Florida courts when determining whether a class representative or class counsel would adequately and fairly represent the class's interests.
- In actions involving a common question of law or fact pending before the court which may be or have been consolidated when determining whether the lead counsel or any co-lead counsel would adequately and fairly represent the interests of the parties to such actions.

Prohibited Conduct

The bill creates s. 69.105, F.S., to prohibit a litigation financier from:

- Directing, or making any decision with respect to, the course of any civil action for which the litigation financier has provided financing, or any settlement or other disposition thereof. Under the bill, all rights to make decisions with respect to the course and settlement or other disposition of the subject civil action remain solely with the parties thereto and their attorneys.
- Contracting for or receiving a larger share of the proceeds of a financed civil action than the share of the proceeds collectively recovered by the plaintiffs to any such action after the payment of attorney fees and costs.
- Paying or offering to pay a commission, referral fee, or other consideration to any person for referring someone to the litigation financier.
- Assigning or securitizing a litigation financing agreement in whole or in part.
- Being assigned rights to or in a civil action, other than the right to receive a share of the proceeds thereof under the litigation financing agreement.

Required Disclosures

Disclosure of Litigation Financing Agreements

The bill creates s. 69.107, F.S., to provide that a litigation financing agreement is discoverable and to require that specified disclosures relating to a litigation financing agreement be made to certain parties. Specifically, the bill requires:

- An attorney who obtains litigation financing to disclose the financing agreement's existence and deliver a copy thereof to his or her client within 30 days after being retained as counsel by such client or entering into the agreement, whichever is earlier.
- A party to a civil action or the attorney thereof who obtains litigation financing to, except as otherwise stipulated to by the parties to the action or as otherwise ordered by a court of competent jurisdiction, disclose the financing agreement's existence and deliver a copy thereof within 30 days after the action's commencement to:
 - All parties to the civil action;
 - The court in which the action is pending; and
 - Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the action.
- The class counsel of a putative class for which litigation financing is obtained to disclose any legal, financial, or other relationship between the class counsel and the litigation financier that exists separate and apart from the litigation financing agreement itself within 30 days after commencement of such action or the litigation financing agreement's execution, whichever is earlier, to:
 - All parties to the civil action;
 - The court in which the civil action is pending; and
 - Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the civil action.
- The class counsel in a class action or putative class action lawsuit for which litigation financing is obtained to, upon a class member's request, disclose and deliver a copy of the litigation financing agreement to the class member.
- The lead counsel and co-lead counsel, if any, for civil actions consolidated in Florida courts to disclose the existence of a litigation financing agreement entered into in connection with any of the consolidated actions and deliver a copy thereof to:

- All parties to the civil actions;
- The court in which the civil actions are pending; and
- Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the civil actions.

Disclosure of Foreign Financial Interests

The bill also creates s. 69.107, F.S., to require that specified disclosures of certain foreign financial and related interests be made to certain parties. Specifically, the bill requires a party to a civil action or his or her attorney to, except as otherwise stipulated to by the parties to the action or as otherwise ordered by a court of competent jurisdiction, disclose the name, address, and citizenship or country of incorporation or registration of any foreign person, foreign principal, or sovereign wealth fund that, with respect to the civil action:

- Obtained or will obtain a right to receive payment that is contingent upon the action's outcome or on the outcome of any matter within a portfolio that includes the action and involves the same counsel or affiliated counsel;
- Provided or will provide funds, whether directly or indirectly, which funds have been or will be used to satisfy any term of a litigation financing agreement into which the party or his or her attorney has entered to finance the action; or
- Has received or is entitled to receive proprietary information or information affecting national security interests obtained as a result of the financing of the action by a litigation financing agreement entered into by the party or his or her attorney.

Under the bill, such a disclosure must be made to the following persons:

- All parties to the civil action;
- The court in which the action is pending;
- Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the action;
- The Florida Department of Financial Services; and
- The Office of the Florida Attorney General.

Nature of Disclosure Obligations

Under the bill, the disclosure obligations described above are ongoing obligations. Thus, where a party to a civil action or his or her attorney:

- Enters into or amends a litigation financing agreement after commencing the action, the party or attorney has 30 days after the date of agreement execution or amendment to comply with any applicable disclosure obligations.
- Obtains information relating to the interests of a foreign person, foreign principal, or sovereign wealth fund after commencing the action, the party or attorney has 30 days from the date of obtaining such information to comply with any applicable disclosure obligations.

Indemnification by Litigation Financiers

The bill creates s. 69.109, F.S., to require a litigation financier to agree, in any litigation financing agreement, to indemnify the plaintiffs to the funded civil action or their attorneys against any adverse costs, attorney fees, damages, or sanctions that may be ordered or awarded against such persons in such action. However, under the bill, indemnification is not required for those adverse costs, attorney fees, damages, or sanctions which the litigation financier can show resulted from the intentional misconduct of such plaintiffs or their attorneys.

Violations and Enforcement

The bill creates s. 69.111, F.S., to provide that a litigation financing agreement executed in violation of the Litigation Investment Safeguards and Transparency Act is void and unenforceable. Further, under the bill:

- A violation of the bill's prohibited conduct or indemnification provisions is a FDUTPA violation.

- A court may impose fines or any other sanction it deems appropriate upon any person who violates the bill's disclosure obligations.

Severability

The bill provides for severability. Specifically, the bill provides that, if any portion of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provisions.

Applicability

The bill generally applies to a litigation financing agreement entered into on or after July 1, 2024. However, the disclosure obligations created by the bill apply to any civil action pending or commenced on or after July 1, 2024. The bill gives any party to a civil action or the attorney thereof who would have been required to make a disclosure under s. 69.107, F.S., had it been in effect at the time the relevant action occurred, 30 days from July 1, 2024, to comply with the disclosure obligations or else face the possibility of court-imposed sanctions.

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Provides a short title.

Section 2: Designates ss. 69.011-69.081, F.S., as Part I of chapter 69, F.S., relating to general provisions.

Section 3: Creates ss. 69.101-69.109, F.S., relating to litigation financing.

Section 4: Provides for severability.

Section 5: Provides applicability of the disclosure obligations.

Section 6: Provides general applicability.

Section 7: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it shields persons from specified actions of unscrupulous litigation financiers, which actions would have had a negative financial impact on such persons, or allows a person to recover his or her actual damages resulting from a litigation financier's violation of the Act.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the offices of the state attorney and on the DLA to the extent that it increases the number of FDUTPA claims which such entities thereafter enforce. However, to the extent that such entities can absorb the costs of enforcing any additional FDUTPA claims resulting from the bill within existing resources and recover the civil fine and attorney fees and costs permitted by FDUTPA, the fiscal impact to such entities may be insignificant.

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:

Equal Protection

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that “[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws.” Though the Constitution does distinguish between citizens and non-citizens in certain respects, this clause, known as the Equal Protection Clause, makes no such distinction; thus, the United States Supreme Court has long interpreted it to apply to all persons within the territorial jurisdiction of the United States, without regard to their national origin.²⁸ Where a law discriminates between persons on the basis of national origin or other “suspect classifications,” courts assess the law under a heightened scrutiny standard, requiring the enacting government to have a compelling interest justifying the discrimination, which discrimination must be carefully tailored to serve such interest.²⁹

The bill creates additional disclosure requirements where a foreign person, foreign principal, or sovereign wealth fund has a specified financial interest in or obtains certain information as a result of a civil action, which requirements do not apply where the litigation financier or the entity that obtains such information is a domestic entity. Whether or not the imposition of such additional requirements in this manner violates the Equal Protection Clause is for the courts to decide; however, the State may have a compelling interest in requiring disclosures related to a foreign person, foreign principal, or sovereign wealth fund as contemplated by the bill.

²⁸ *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

²⁹ The National Constitution Center, *The Equal Protection Clause*, <https://constitutioncenter.org/the-constitution/amendments/amendment-xiv/clauses/702> (last visited Jan. 22, 2024).

B. RULE-MAKING AUTHORITY:

The bill requires that certain disclosures be made to DFS and the OAG but does not provide either agency with rule-making authority related to such disclosures.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to litigation financing; providing a
3 short title; designating ss. 69.011-69.081, F.S., as
4 part I of ch. 69, F.S.; creating part II of ch. 69,
5 F.S., relating to litigation financing; creating s.
6 69.101, F.S.; providing definitions; creating s.
7 69.103, F.S.; requiring a court's consideration of
8 potential conflicts of interest which may arise from
9 the existence of a litigation financing agreement in
10 specified circumstances; creating s. 69.105, F.S.;
11 prohibiting specified acts by litigation financiers;
12 creating s. 69.107, F.S.; requiring certain
13 disclosures related to litigation financing agreements
14 and the involvement of foreign persons, foreign
15 principals, or sovereign wealth funds; providing for
16 discovery related to litigation financing agreements;
17 creating s. 69.109, F.S.; requiring the
18 indemnification of specified fees, costs, and
19 sanctions by a litigation financier in specified
20 circumstances; creating s. 69.111, F.S.; providing
21 that a litigation financing agreement is void in
22 specified circumstances; providing for enforcement of
23 specified violations under the Florida Deceptive and
24 Unfair Trade Practices Act; providing severability;
25 providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "Litigation Investment Safeguards and Transparency Act."

Section 2. Sections 69.011, 69.021, 69.031, 69.041, 69.051, 69.061, 69.071, and 69.081, Florida Statutes, are designated as part I of chapter 69, Florida Statutes, and entitled "General Provisions."

Section 3. Part II of chapter 69, Florida Statutes, consisting of ss. 69.101, 69.103, 69.105, 69.107, 69.109, and 69.111, Florida Statutes, is created to read:

PART II

LITIGATION FINANCING

69.101 Definitions.—As used in this part, the term:

(1) "Foreign person" means a person or an entity that is not:

(a) A citizen of the United States;

(b) An alien lawfully admitted for permanent residence in the United States;

(c) An unincorporated association, a majority of members of which are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(d) A corporation that is incorporated in the United

51 States.

52 (2) "Foreign principal" means:

53 (a) The government or a government official of any country
54 other than the United States;

55 (b) A political subdivision or political party of a
56 country other than the United States; or

57 (c) A partnership, association, corporation, organization,
58 or other combination of persons organized under the laws of or
59 having its principal place of business in a country other than
60 the United States whose shares or other ownership interest is
61 owned by the government or a government official of a country
62 other than the United States or owned by a political subdivision
63 or political party of a country other than the United States.

64 (3) "Health care practitioner" has the same meaning as
65 provided in s. 456.001.

66 (4) "Litigation financier" means a person engaged in the
67 business of providing litigation financing.

68 (5) "Litigation financing agreement" or "litigation
69 financing" means a transaction in which a litigation financier
70 agrees to provide financing to a person who is a party to or
71 counsel of record for a civil action, administrative proceeding,
72 claim, or other legal proceeding in exchange for a right to
73 receive payment, which right is contingent in any respect on the
74 outcome of such action, claim, or proceeding or on the outcome
75 of any matter within a portfolio that includes such action,

76 claim, or proceeding and involves the same counsel or affiliated
77 counsel. However, the terms do not apply to:

78 (a) An agreement wherein funds are provided for or to a
79 party to a civil action, administrative proceeding, claim, or
80 other legal proceeding for such person's use in paying his or
81 her costs of living or other personal or familial expenses
82 during the pendency of such action, claim, or proceeding and
83 where such funds are not used to finance any litigation or other
84 legal costs.

85 (b) An agreement wherein an attorney consents to provide
86 legal services on a contingency fee basis or to advance his or
87 her client's legal costs, and where such services or costs are
88 provided by the attorney in accordance with the Florida Rules of
89 Professional Conduct.

90 (c) An entity with a preexisting contractual obligation to
91 indemnify or defend a party to a civil action, administrative
92 proceeding, claim, or other legal proceeding.

93 (d) A health insurer that has paid, or is obligated to
94 pay, any sums for health care for an injured person under the
95 terms of a health insurance plan or agreement.

96 (e) The repayment of a financial institution, as defined
97 in s. 655.005, for loans made directly to a party to a civil
98 action, administrative proceeding, claim, or other legal
99 proceeding or such party's attorney when repayment of the loan
100 is not contingent upon the outcome of such action, claim, or

101 proceeding or on the outcome of any matter within a portfolio
102 that includes such action, claim, or proceeding and involves the
103 same counsel or affiliated counsel.

104 (f) Funding provided to a nonprofit legal organization
105 funded by private donors that represents clients on a pro bono,
106 no-cost basis, if the nonprofit legal organization seeks only
107 injunctive relief on behalf of its clients. This part does not
108 affect the award of costs or attorney fees to a nonprofit legal
109 organization in the pro bono, no-cost pursuit of injunctive
110 relief.

111 (6) "National security interests" means those interests
112 relating to the national defense, foreign intelligence and
113 counterintelligence, international, and domestic security, and
114 foreign relations.

115 (7) "Proprietary information" means information developed,
116 created, or discovered by a person, or which became known by or
117 was conveyed to the person, which has commercial value in the
118 person's business. The term includes, but is not limited to,
119 domain names, trade secrets, copyrights, ideas, techniques,
120 inventions, regardless of whether patentable, and other
121 information of any type relating to designs, configurations,
122 documentation, recorded data, schematics, circuits, mask works,
123 layouts, source code, object code, master works, master
124 databases, algorithms, flow charts, formulae, works of
125 authorship, mechanisms, research, manufacture, improvements,

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126 assembly, installation, intellectual property including patents
127 and patent applications, and information concerning the person's
128 actual or anticipated business, research, or development or
129 received in confidence by or for the person from any other
130 source.

131 (8) "Sovereign wealth fund" means an investment fund owned
132 or controlled by a foreign principal or an agent thereof.

133 69.103 Litigation financing agreement; representation of
134 client interests.—A court may take the existence of a litigation
135 financing agreement into account:

136 (1) In a class action lawsuit brought in the courts of
137 this state when determining whether a class representative or
138 class counsel would adequately and fairly represent the
139 interests of the class.

140 (2) In actions involving a common question of law or fact
141 pending before the court which may be or have been consolidated
142 when determining whether the lead counsel or any co-lead counsel
143 would adequately and fairly represent the interests of the
144 parties to such actions.

145 69.105 Prohibited conduct.—A litigation financier may not:

146 (1) Direct, or make any decisions with respect to, the
147 course of any civil action, administrative proceeding, claim, or
148 other legal proceeding for which the litigation financier has
149 provided financing, or any settlement or other disposition
150 thereof. This prohibition includes, but is not limited to,

151 decisions in appointing or changing counsel, choice or use of
152 expert witnesses, and litigation strategy. All rights to make
153 decisions with respect to the course and settlement or other
154 disposition of the subject civil action, administrative
155 proceeding, claim, or other legal proceeding remain solely with
156 the parties to such action, claim, or proceeding and their
157 counsel of record.

158 (2) Contract for or receive, whether directly or
159 indirectly, a larger share of the proceeds of a civil action,
160 administrative proceeding, claim, or other legal proceeding
161 financed by a litigation financing agreement than the share of
162 the proceeds collectively recovered by the plaintiffs to any
163 such action, claim, or proceeding after the payment of any
164 attorney fees and costs owed in connection to such action,
165 claim, or proceeding.

166 (3) Pay or offer to pay a commission, referral fee, or
167 other consideration to any person, including an attorney, law
168 firm, or health care practitioner, for referring a person to the
169 litigation financier.

170 (4) Assign or securitize a litigation financing agreement
171 in whole or in part.

172 (5) Be assigned rights to or in a civil action,
173 administrative proceeding, claim, or other legal proceeding for
174 which the litigation financier provided financing, other than
175 the right to receive a share of the proceeds of such action,

176 claim, or proceeding pursuant to the litigation financing
 177 agreement.

178 69.107 Required disclosures; discovery obligations.—

179 (1) An attorney who enters into a litigation financing
 180 agreement must disclose the existence and deliver a copy of the
 181 agreement to the client he or she represents in the civil
 182 action, administrative proceeding, claim, or other legal
 183 proceeding financed by the agreement within 30 days after being
 184 retained as counsel by such client, or within 30 days after
 185 entering into the litigation financing agreement, whichever is
 186 earlier.

187 (2) Except as otherwise stipulated to by the parties to a
 188 civil action, administrative proceeding, claim, or other legal
 189 proceeding, or as otherwise ordered by a court of competent
 190 jurisdiction, a party to or counsel of record for a civil
 191 action, administrative proceeding, claim, or other legal
 192 proceeding who enters into a litigation financing agreement with
 193 respect to such action, claim, or proceeding must, without
 194 awaiting a discovery request and within 30 days after
 195 commencement of such action, claim, or proceeding, disclose the
 196 existence and deliver to the following parties a copy of the
 197 litigation financing agreement:

198 (a) All parties to the civil action, administrative
 199 proceeding, claim, or other legal proceeding.

200 (b) The court, agency, or tribunal in which the civil

201 action, administrative proceeding, claim, or other legal
202 proceeding is pending.

203 (c) Any known person, including an insurer, with a
204 preexisting contractual obligation to indemnify or defend a
205 party to the civil action, administrative proceeding, claim, or
206 other legal proceeding.

207 (3) In addition to complying with subsections (1) and (2),
208 the class counsel of a putative class in a class action lawsuit
209 for which litigation financing is obtained must disclose to the
210 following persons the existence of any legal, financial, or
211 other relationship between the class counsel and the litigation
212 financier that exists separate and apart from the litigation
213 financing agreement itself within 30 days after commencement of
214 such action or of the execution of the litigation financing
215 agreement, whichever is earlier:

216 (a) All parties to the civil action, administrative
217 proceeding, claim, or other legal proceeding.

218 (b) The court, agency, or tribunal in which the civil
219 action, administrative proceeding, claim, or other legal
220 proceeding is pending.

221 (c) Any known person, including an insurer, with a
222 preexisting contractual obligation to indemnify or defend a
223 party to the civil action, administrative proceeding, claim, or
224 other legal proceeding.

225 (4) The class counsel in a class action or putative class

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226 action lawsuit for which litigation financing is obtained must,
227 upon the request of a class member, disclose and deliver a copy
228 of the litigation financing agreement to the class member.

229 (5) In addition to complying with subsections (1) and (2),
230 the lead counsel and co-lead counsel, if any, for civil actions
231 consolidated in the courts of this state must disclose to the
232 following parties the existence of and deliver a copy of any
233 litigation financing agreement entered into in connection with
234 any of the consolidated actions:

235 (a) All parties to the consolidated civil actions.

236 (b) The court, agency, or tribunal in which the civil
237 actions are pending.

238 (c) Any known person, including an insurer, with a
239 preexisting contractual obligation to indemnify or defend a
240 party to the civil actions.

241 (6)(a) A party to a civil action, administrative
242 proceeding, claim, or other legal proceeding, or such party's
243 counsel of record, must, except as otherwise stipulated to by
244 the parties to such action, claim, or proceeding, or as
245 otherwise ordered by a court of competent jurisdiction, disclose
246 as prescribed in paragraph (b) the name, address, and
247 citizenship or country of incorporation or registration of any
248 foreign person, foreign principal, or sovereign wealth fund
249 that, with respect to the action, claim, or proceeding:

250 1. Obtained or will obtain a right to receive any payment

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251 that is contingent in any respect on the outcome of such civil
252 action, administrative proceeding, claim, or other legal
253 proceeding, or on the outcome of any matter within a portfolio
254 that includes such civil action, administrative proceeding,
255 claim, or other legal proceeding and involves the same counsel
256 or affiliated counsel;

257 2. Provided or will provide funds, whether directly or
258 indirectly, which funds have been or will be used to satisfy any
259 term of a litigation financing agreement into which the party or
260 the party's counsel of record has entered to finance such civil
261 action, administrative proceeding, claim, or other legal
262 proceeding; or

263 3. Has received or is entitled to receive proprietary
264 information or information affecting national security interests
265 obtained as a result of the financing of such civil action,
266 administrative proceeding, claim, or other legal proceeding by a
267 litigation financing agreement entered into by the party or the
268 party's counsel of record.

269 (b) The disclosures required in paragraph (a) must be made
270 to the following persons:

271 1. All parties to the civil action, administrative
272 proceeding, claim, or other legal proceeding.

273 2. The court, agency, or tribunal in which the civil
274 action, administrative proceeding, claim, or other legal
275 proceeding is pending.

276 3. Any known person, including an insurer, with a
 277 preexisting contractual obligation to indemnify or defend a
 278 party to the civil action, administrative proceeding, claim, or
 279 other legal proceeding.

280 4. The Department of Financial Services.

281 5. The Office of the Attorney General.

282 (7) The fact of the existence of a litigation financing
 283 agreement and the identities of all parties to the agreement are
 284 discoverable in any civil action, administrative proceeding,
 285 claim, or other legal proceeding financed by such an agreement,
 286 unless the court, for good cause shown, determines otherwise.

287 (8) The disclosure obligations in this section are ongoing
 288 obligations. Thus, when a party to a civil action,
 289 administrative proceeding, claim, or other legal proceeding, or
 290 his or her counsel of record:

291 (a) Enters into or amends a litigation financing agreement
 292 after the commencement of such action, claim, or proceeding, the
 293 party or attorney has 30 days after the date of entering into or
 294 amending the litigation financing agreement to comply with the
 295 disclosure obligations established herein.

296 (b) Obtains information on the involvement of a foreign
 297 person, foreign principal, or sovereign wealth fund after the
 298 commencement of such action, claim, or proceeding, which
 299 involvement would require disclosure under this section, the
 300 party or attorney has 30 days after the date of obtaining the

301 information to comply with the disclosure obligations
 302 established herein.

303 69.109 Indemnification by litigation financiers.—In any
 304 litigation financing agreement, the litigation financier must
 305 agree to indemnify the plaintiffs to the civil action,
 306 administrative proceeding, claim, or other legal proceeding
 307 funded in the agreement and such plaintiffs' counsel of record
 308 against any adverse costs, attorney fees, damages, or sanctions
 309 that may be ordered or awarded against such persons in such
 310 action, claim, or proceeding. However, indemnification is not
 311 required for those adverse costs, attorney fees, damages, or
 312 sanctions that the litigation financier can show resulted from
 313 the intentional misconduct of such plaintiffs or plaintiffs'
 314 counsel of record.

315 69.111 Violations; enforcement.—

316 (1) A litigation financing agreement executed in violation
 317 of this part is void and unenforceable.

318 (2) A violation of s. 69.105 or s. 69.109 is a deceptive
 319 and unfair trade practice actionable under part II of chapter
 320 501.

321 (3) A court, agency, or tribunal of competent jurisdiction
 322 may impose fines or any other sanction it deems appropriate upon
 323 any person who violates s. 69.107.

324 Section 4. If any provision of this act or its application
 325 to any person or circumstance is held invalid, the invalidity

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326 does not affect other provisions or applications of the act
327 which can be given effect without the invalid provision or
328 application, and to this end the provisions of this act are
329 severable.

330 Section 5. The disclosure requirements in s. 69.107,
331 Florida Statutes, as created by this act apply to any civil
332 action, administrative proceeding, claim, or other legal
333 proceeding pending or commenced on or after July 1, 2024. Any
334 party to or counsel of record for a civil action, administrative
335 proceeding, claim, or other legal proceeding pending on July 1,
336 2024, who would have been required to make a disclosure under s.
337 69.107, Florida Statutes, had it been in effect at the time the
338 relevant action occurred must make the disclosure under that
339 section within 30 days after July 1, 2024. Failure to do so is
340 sanctionable as provided in s. 69.111, Florida Statutes.

341 Section 6. Except as otherwise provided herein, this act
342 applies to a litigation financing agreement entered into on or
343 after July 1, 2024.

344 Section 7. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1229 Termination of Easements and Related Rights or Interests for Affordable Housing Development

SPONSOR(S): Civil Justice Subcommittee

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

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

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; they include easements (which give a person a nonpossessory right of use or enjoyment in another person’s land for a specific purpose) and real covenants (which limit use of property, typically for the benefit of other property owners in the community).

Where a question arises as to who owns a piece property, or the extent of such person’s ownership interest, an interested party may file a lawsuit asking the court to quiet title to the property – that is, determine who is the property’s true owner. In such a lawsuit, known as a quiet title action, the plaintiff must generally prove his or her title (that is, right of ownership) from the original source for a period of at least seven years before filing the complaint and set forth in the complaint the official records book and page number of the instrument allegedly affecting the plaintiff’s title. If, based on the evidence, it appears that the plaintiff is the property’s rightful owner, or if a default is entered against the defendant (in which case no evidence need be presented), the court must enter judgment removing the alleged cloud from the title and quieting title in the plaintiff. Such final judgment is then recorded in the official records of the county where the property lies.

It is the intent of Florida to articulate a state housing strategy that will carry the state toward the goal of ensuring that each Floridian has safe, decent, and affordable housing. To that end, the State Housing Strategy Act (“SHSA”) requires each local government participating in the State Housing Initiatives Partnership Program to develop and implement a local housing assistance plan (“LHAP”) to make affordable residential units available to very low, low, or moderate-income persons and to persons with special housing needs (such as persons experiencing homelessness, the elderly, migrant farmworkers, and persons with disabilities). Such plans should increase the availability of affordable residential units by combining local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce housing costs.

PCS for HB 1229 requires an LHAP to authorize the termination of recorded and unrecorded easements or rights, or servitudes in the nature of easements, for use of or access to a lake with respect to up to no more than one-third of the area of such lake and its upland banks for purposes of redeveloping the land to create affordable housing under the SHSA and s. 196.1978, F.S. (providing an ad valorem tax exemption for affordable housing development). Under the PCS:

- The termination of such interests must be achieved through the filing of a quiet title action;
- Specified notice of such an action must be recorded in the public records where the land lies; and
- Required that any final order issued in such action be recorded in the public records where the land lies, along with an instrument describing all extinguished interests and providing a legal description of the newly-established boundaries of the lake.

The PCS may have an indeterminate fiscal impact on state and local governments. See Fiscal Comments. The PCS provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Servitudes

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

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.⁴ 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,⁵ by court order, by operation of the Marketable Record Title Act, 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.⁶

Florida law recognizes several types of servitudes, including easements and real covenants. 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.⁷ 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.⁸ 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.⁹

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

¹ 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. 23, 2024).

² *Id.*

³ *Id.*

⁴ Susan French, *Servitude*, The Encyclopaedia Britannica, Dec. 19, 2003, <https://www.britannica.com/topic/servitude-property-law> (last visited Jan. 22, 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. 23, 2024).

⁵ 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 (last visited Jan. 22, 2024); Legal Information Institute, *Servient Estate*, https://www.law.cornell.edu/wex/servient_estate (last visited Jan. 22, 2024).

⁶ *Id.*

⁷ 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. 23, 2024).

⁸ 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. 23, 2024).

⁹ *Id.*

specific property.¹⁰ 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.¹¹

A real covenant, meanwhile, 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.¹² 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 (sometimes called a "restriction").¹³ 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.¹⁴

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.¹⁵ Such recording puts all subsequent purchasers of the property to which the real covenant applies on constructive notice of the covenant's existence.¹⁶

Quiet Title Action

Where a question arises as to who owns a piece of property, or the extent of such person's ownership interest, an interested party may file a lawsuit asking the court to quiet title to the property – that is, determine who is the property's true owner.¹⁷ In such a lawsuit, known as a quiet title action, the plaintiff must generally prove his or her title (that is, right of ownership) from the original source for a period of at least seven years before filing the complaint and set forth in the complaint the official records book and page number of the instrument allegedly affecting the plaintiff's title.¹⁸ If, based on the evidence, it appears that the plaintiff is the property's rightful owner, or if a default is entered against the defendant (in which case no evidence need be presented), the court must enter judgment removing the alleged cloud from the title and quieting title in the plaintiff.¹⁹ Such final judgment is then recorded in the official records of the county where the property lies.²⁰

Affordable Housing

The Safe Housing Strategies Act ("SHSA"), codified in chapter 420, F.S., declares that it is the intent of Florida to articulate a state housing strategy that will carry the state toward the goal of ensuring that each Floridian has safe, decent, and affordable housing.²¹ Such strategy must involve state and local

¹⁰ 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, use 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).

¹¹ Maloney, *supra* note 8.

¹² Legal Information Institute, *Covenant that Runs with the Land*, https://www.law.cornell.edu/wex/covenant_that_runs_with_the_land (last visited Jan. 23, 2024).

¹³ *Id.*

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

¹⁵ 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. 23, 2024).

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

¹⁷ Ch. 65, F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ S. 420.0003, F.S.

governments working in partnership with communities and the private sector and must involve financial, as well as regulatory, commitment to accomplish this goal.²²

Furthermore, programs to encourage housing production or rehabilitation under the SHSA must be guided by the following general policies:²³

- State and local governments must provide incentives to encourage the private sector to be the primary delivery vehicle for the development of affordable housing.
- State and local governments should consider and implement innovative solutions to housing issues where appropriate. Innovative solutions include, but are not limited to:
 - Utilizing publicly held land to develop affordable housing through state or local land purchases, long-term land leasing, and school district affordable housing programs. To the maximum extent possible, state-owned lands that are appropriate for the development of affordable housing must be made available for that purpose.
 - Community-led planning that focuses on urban infill, flexible zoning, redevelopment of commercial property into mixed-use property, resiliency, and furthering development in areas with preexisting public services, such as wastewater, transit, and schools.
 - Project features that maximize efficiency in land and resource use, such as high density, high rise, and mixed use.
 - Mixed-income projects that facilitate more diverse and successful communities.
 - Modern housing concepts such as manufactured homes, tiny homes, 3D-printed homes, and accessory dwelling units.
- State funds should be available only to local governments that provide incentives or financial assistance for housing. State funding for housing should not be made available to local governments whose comprehensive plans²⁴ have been found not in compliance with chapter 163 and who have not entered into a stipulated settlement agreement with the department to bring the plans into compliance. State funds should be made available only for projects consistent with the local government's comprehensive plan.
- Local governments are encouraged to enter into interlocal agreements, as appropriate, to coordinate strategies and maximize the use of state and local funds.
- State-funded development should emphasize use of developed land, urban infill, and the transformation of existing infrastructure in order to minimize sprawl, separation of housing from employment, and effects of increased housing on ecological preservation areas. Housing available to the state's workforce should prioritize proximity to employment and services.

Local Housing Assistance Plans

The SHSA requires each county or eligible municipality participating in the State Housing Initiatives Partnership Program²⁵ ("SHIP") to establish, by ordinance, a local housing assistance program, and to develop and implement a local housing assistance plan ("LHAP") to make affordable residential units available to very-low-, low-, or moderate-income persons²⁶ and to persons with special housing needs (such as persons experiencing homelessness, the elderly, migrant farmworkers, and persons with disabilities).²⁷ Such plans should increase the availability of affordable residential units by combining

²² *Id.*

²³ *Id.*

²⁴ A local government comprehensive plan provides the principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements. S. 163.3177(1), F.S.

²⁵ The SHIP provides funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. It also provides very-low-, low-, and moderate-income families with housing-related assistance, including money to buy, repair, or replace a home. Currently, SHIP funds are distributed on an entitlement basis to all 67 counties and 55 Community Development Block Grant entitlement cities in Florida, with a minimum allocation of \$350,000. Florida Housing Coalition, *State Housing Initiatives Partnership Program (SHIP)*, <https://www.floridahousing.org/programs/special-programs/ship---state-housing-initiatives-partnership-program> (last visited Jan. 23, 2024);

²⁶ See s. 420.0004, F.S., for definitions of these and related income classifications.

²⁷ Current LHAPs may be viewed at Florida Housing Finance Corporation, *Local Housing Assistance Plans (LHAP)*, [https://www.floridahousing.org/programs/special-programs/local-housing-assistance-plan-\(lhap\)/current-local-government-lhaps](https://www.floridahousing.org/programs/special-programs/local-housing-assistance-plan-(lhap)/current-local-government-lhaps) (last visited Jan. 23, 2024).

local resources and cost-saving measures into a local housing partnership and using private and public funds to reduce housing costs.²⁸

In furtherance of the SHSA's housing goals, LHAPs may allocate SHIP funds to do any of the following:²⁹

- Implement local housing assistance strategies for the provision of affordable housing;
- Supplement the funds available to the Florida Housing Finance Corporation ("corporation") to provide enhanced funding of state housing programs within the local government's jurisdiction.
- Provide the local matching share of federal affordable housing grants or programs.
- Fund emergency repairs.
- Further the housing element of the local government comprehensive plan specific to affordable housing.

However, each LHAP is governed by the following criteria and administrative procedures:³⁰

- Each local government must develop a qualification system and selection criteria for funding award applications, adopt criteria for recipient selection, and adopt a maximum award schedule or system of amounts consistent with the intent and budget of its LHAP and with corporation rule.
- The local government must advertise the notice of funding availability in a newspaper of general circulation and periodicals serving ethnic and diverse neighborhoods at least 30 days before the application period begins.
- It is unlawful to discriminate on the basis of race, creed, religion, color, age, sex, marital status, familial status, national origin, or handicap in the award application process for eligible housing.
- As a condition of receipt of an award, the award sponsor or recipient must contractually commit to comply with the affordable housing criteria specified in law applicable to the awards' affordable housing objective.
- The staff or entity with administrative authority for implementing a LHAP assisting rental developments must annually monitor and determine tenant eligibility or, to the extent another governmental entity or corporation program provides periodic monitoring and determination, a local government may rely on such monitoring and determination, with an exception.

Affordable Housing Property Tax Exemption

Section 196.1978, F.S., provides an ad valorem tax³¹ exemption related to affordable housing development. Specifically, this section provides that property used to provide affordable housing to eligible persons³² and natural persons or families meeting the extremely-low-, very-low-, low-, or moderate-income limits, and which is owned entirely by a qualifying nonprofit entity,³³ is considered property owned by an exempt entity and used for a charitable purpose. Under this section, those portions of the affordable housing property that provide housing to extremely-low-, very-low-, low-, or moderate-income persons or families are exempt from ad valorem taxation to the extent authorized under s. 196.196, F.S., which establishes criteria for determining whether property is entitled to an ad valorem tax exemption due to its use for charitable or other purposes.

²⁸ S. 420.9075(1)(a), F.S.

²⁹ S. 420.9075(1)(b), F.S.

³⁰ S. 420.9075(4), F.S.

³¹ "Ad valorem taxes" are property taxes. Florida real property is assessed annually by the property appraiser for the county in which it lies, and such assessment determines the amount of ad valorem taxes owed each year on the property before any available exemptions are applied. Florida Department of Revenue, *Tax Information for New Residents*, https://floridarevenue.com/Forms_library/current/gt800025.pdf (last visited Jan. 23, 2024).

³² "Eligible persons" means one or more natural persons or a family, irrespective of race, creed, national origin, or sex, determined by the housing finance authority to be of low, moderate, or middle income. Such determination does not preclude any person or family earning up to 150 percent of the state or county median family income from participating in programs. Persons 65 years of age or older shall be defined as eligible persons regardless of their incomes. In determining the income standards of eligible persons for its various programs, the housing finance authority may consider the following factors: requirements mandated by federal law; variations in circumstances in different areas of the state; whether the determination is for rental housing or homeownership purposes; and the need for family-size adjustments to accomplish the purposes set forth in Chapter 159, F.S. S. 159.603, F.S.

³³ A qualifying non-profit entity is an entity that is a corporation not for profit, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717. S. 196.1978(1), F.S.

Further, s. 196.1978, F.S., provides that property in a multifamily project that meets specified criteria is considered property used for a charitable purpose and shall receive a 50 percent discount from the amount of ad valorem tax otherwise owed beginning with the January 1 assessment after the 15th completed year of the term of the recorded agreement on those portions of the affordable housing property that provide housing to persons or families meeting the extremely-low-, very-low-, and low-income limits. To qualify for the tax discount, the multifamily project must:

- Have more than 70 units that are used to provide affordable housing to persons or families meeting the extremely-low-, very-low-, or low-income limits; and
- Be subject to an agreement with the Florida Housing Finance Corporation recorded in the official records of the county in which the property lies to provide affordable housing to persons or families meeting the extremely-low-, very-low-, or low-income limits.

However, this discount terminates if the property no longer serves extremely-low, very-low-, or low-income persons pursuant to the recorded agreement.

Effect of Proposed Changes

PCS for HB 1229 amends s. 420.0003, F.S., to require LHAPs to authorize the termination of recorded and unrecorded easements or rights, interests, or servitudes in the nature of easements for use of or access to a lake with respect to up to no more than one-third of the area of such lake and its upland banks for purposes of redeveloping the land to create affordable housing under the SHSA and s. 196.1978, F.S., within 90 days from the date of “such authorization request.” Under the PCS, the authorization may apply to easements, interests, and servitudes in favor of the public or any other party, other than a public utility or governmental body or agency.

Termination of interests as contemplated by the PCS must be achieved through the filing of a quiet title action, for which service of process may be made to a party by certified mail, return receipt requested. At the time of filing such a quiet title action, the PCS requires that a notice be recorded in the public records in the county in which the land is located, which notice must identify the action seeking to terminate easements, rights, or servitudes; the interests to be so terminated; and the names of the record owners of such interests. The notice must also identify the owners of the land underlying the affected lake and its banks, and provide a legal description of such lake and its banks. Further, upon issuance of a final order quieting title to any interest as contemplated by the PCS, that order, together with an instrument describing all interests that have been extinguished and providing a legal description of the newly established boundaries of the lake, must also be recorded in the public records in the county in which the land is located.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 420.0003, F.S., relating to state housing strategy.

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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may have a positive economic impact on the private sector to the extent that it promotes the development of affordable housing but may have a negative economic impact on persons whose property rights are terminated as provided for in the PCS.

D. FISCAL COMMENTS:

The PCS may have a negative fiscal impact on state and local governments to the extent such entities are directed by a court to pay compensation to a property owner whose property rights are terminated as provided for in the PCS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCS does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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:

Private Property Rights

The State Constitution guarantees that “[n]o private property shall be taken except for a public purpose and with full compensation therefor paid to each owner.”³⁴ The Florida Supreme Court has recognized servitudes, including easements, covenants, and other use rights, as private property, for which the owner has a compensation right.³⁵

The PCS amends s. 420.0003, F.S., to require LHAPs to authorize the termination of specified servitudes for purposes of redeveloping specified land to create affordable housing. Though the PCS does not provide for compensation of the property owners impacted by such terminations, the PCS

³⁴ Fla. Const. art. X, s. 6(a).

³⁵ *Palm Beach Cnty v. Cove Club Investors Ltd.*, 734 So. 2d 379 (Fla. 1999).

requires that a quiet title action be filed to accomplish such terminations, which action should give the impacted property owners the ability to litigate whether they are entitled to compensation.

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 termination of easements and
 3 related rights or interests for affordable housing
 4 development; amending s. 420.0003, F.S.; requiring
 5 local assistance plans to authorize the termination of
 6 easements or rights, interests, or servitudes in the
 7 nature of easements for use of or access to a lake and
 8 its upland banks in specified circumstances to develop
 9 affordable housing; providing a termination method;
 10 requiring specified notice; requiring the recording of
 11 such notice in the public records; requiring the
 12 recording of specified final orders in the public
 13 records; providing an effective date.

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

16
 17 Section 1. New paragraph (f) of subsection (3) of section
 18 420.0003, Florida Statutes, is created to read:

19 420.0003 State housing strategy.—

20 (3) IMPLEMENTATION.—The state, in carrying out the
 21 strategy articulated in this section, shall have the following
 22 duties:

23 (a) State fiscal resources must be directed to achieve the
 24 following programmatic objectives:

25 1. Effective technical assistance and capacity-building

26 | programs must be established at the state and local levels.

27 | 2. The Shimberg Center for Housing Studies at the
 28 | University of Florida shall develop and maintain statewide data
 29 | on housing needs and production, provide technical assistance
 30 | relating to real estate development and finance, operate an
 31 | information clearinghouse on housing programs, and coordinate
 32 | state housing initiatives with local government and federal
 33 | programs.

34 | 3. The corporation shall maintain a consumer-focused
 35 | website for connecting tenants with affordable housing.

36 | (b) The long-range program plan of the department must
 37 | include specific goals, objectives, and strategies that
 38 | implement the housing policies in this section.

39 | (c) The Shimberg Center for Housing Studies at the
 40 | University of Florida, in consultation with the department and
 41 | the corporation, shall perform functions related to the research
 42 | and planning for affordable housing. Functions must include
 43 | quantifying affordable housing needs, documenting results of
 44 | programs administered, and inventorying the supply of affordable
 45 | housing units made available in this state. The recommendations
 46 | required in this section and a report of any programmatic
 47 | modifications made as a result of these policies must be
 48 | included in the housing report required by s. 420.6075. The
 49 | report must identify the needs of specific populations,
 50 | including, but not limited to, elderly persons, persons with

51 disabilities, and persons with special needs, and may recommend
 52 statutory modifications when appropriate.

53 (d) The Office of Program Policy Analysis and Government
 54 Accountability (OPPAGA) shall evaluate affordable housing issues
 55 pursuant to the schedule set forth in this paragraph. OPPAGA may
 56 coordinate with and rely upon the expertise and research
 57 activities of the Shimberg Center for Housing Studies in
 58 conducting the evaluations. The analysis may include relevant
 59 reports prepared by the Shimberg Center for Housing Studies, the
 60 department, the corporation, and the provider of the Affordable
 61 Housing Catalyst Program; interviews with the agencies,
 62 providers, offices, developers, and other organizations related
 63 to the development and provision of affordable housing at the
 64 state and local levels; and any other relevant data. When
 65 appropriate, each report must recommend policy and statutory
 66 modifications for consideration by the Legislature. Each report
 67 must be submitted to the President of the Senate and the Speaker
 68 of the House of Representatives pursuant to the schedule. OPPAGA
 69 shall review and evaluate:

70 1. By December 15, 2023, and every 5 years thereafter,
 71 innovative affordable housing strategies implemented by other
 72 states, their effectiveness, and their potential for
 73 implementation in this state.

74 2. By December 15, 2024, and every 5 years thereafter,
 75 affordable housing policies enacted by local governments, their

76 effectiveness, and which policies constitute best practices for
 77 replication across this state. The report must include a review
 78 and evaluation of the extent to which interlocal cooperation is
 79 used, effective, or hampered.

80 3. By December 15, 2025, and every 5 years thereafter,
 81 existing state-level housing rehabilitation, production,
 82 preservation, and finance programs to determine their
 83 consistency with relevant policies in this section and
 84 effectiveness in providing affordable housing. The report must
 85 also include an evaluation of the degree of coordination between
 86 housing programs of this state, and between state, federal, and
 87 local housing activities, and shall recommend improved program
 88 linkages when appropriate.

89 (e) The department and the corporation should conform the
 90 administrative rules for each housing program to the policies
 91 stated in this section, provided that such changes in the rules
 92 are consistent with the statutory intent or requirements for the
 93 program. This authority applies only to programs offering loans,
 94 grants, or tax credits and only to the extent that state
 95 policies are consistent with applicable federal requirements.

96 (f) Local assistance plans shall authorize the termination
 97 of recorded and unrecorded easements or rights, interests, or
 98 servitudes in the nature of easements for use of or access to a
 99 lake with respect to up to no more than one-third of the area of
 100 such lake and its upland banks for purposes of redeveloping the

101 land to create affordable housing under this Chapter and
 102 pursuant to s. 196.1978 within 90 days from the date of such
 103 authorization request. The authorization may apply to easements,
 104 interests, and servitudes in favor of the public or any other
 105 party, other than a public utility or governmental body or
 106 agency. Termination of interests shall be achieved through a
 107 quiet title action, for which service of process may be made to
 108 a party by certified mail, return receipt requested. At the time
 109 of filing a quiet title action, a notice must be recorded in the
 110 public records in the county in which the land is located. Said
 111 notice shall identify the action seeking to terminate easements,
 112 rights, or servitudes to use or access the specified lake; the
 113 interests to be terminated; the names of the record owners of
 114 those interests and the owners of the land underlying the lake
 115 and its banks, and a legal description of the lake and its
 116 banks. Upon issuance of a final order quieting title to any
 117 interest, that order together with an instrument describing all
 118 interests that have been extinguished and providing a legal
 119 description of the newly established boundaries of the lake
 120 shall also be recorded in the public records in the county in
 121 which the land is located.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1231 Limited Liability Companies

SPONSOR(S): Jacques

TIED BILLS: **IDEN./SIM. BILLS:** SB 1346

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

SUMMARY ANALYSIS

A limited liability company (“LLC”) is a type of business entity recognized by and regulated under ch. 605, F.S., the Florida Revised Limited Liability Company Act (“LLC Act”). Benefits to forming a business as an LLC include a flexible tax structure and a “vertical liability shield,” which limits the personal liability of the LLC’s members and managers for company obligations.

In 1996, Delaware enacted legislation providing for the formation of a “protected series limited liability company” (“protected series LLC”), which offers both the traditional, vertical liability shield of an LLC and a new, horizontal liability shield for any protected series of the LLC. In other words, the assets of any one protected series of an LLC are not available to satisfy the claims of creditors of the LLC or of any other protected series of the LLC. Since then, 20 other states and the District of Columbia have enacted legislation providing for the formation of some type of protected series LLC.

In response to the growing popularity of this type of business entity, the Uniform Law Commission promulgated the Uniform Protected Series Act (“UPSA”) in 2017, intended as a model law that could be inserted into a state’s existing LLC statutes. The UPSA contains definitions; a description of the nature and purpose of a protected series LLC, as well as its powers, purpose, and duration; a description of how a protected series is governed by the LLC’s operating agreement; and rules for applying certain provisions of a state’s existing LLC act to a protected series.

A protected series LLC formed in another state (a “foreign series LLC”) is currently authorized to do business in Florida if it meets all applicable statutory requirements for an LLC formed under the laws of another jurisdiction wishing to do business in Florida. However, Florida law does not currently recognize the protected series LLC model; thus, each series in a foreign series LLC must qualify to do business in Florida as if each series were a separate legal entity. Moreover, there is no guidance for lawyers and judges being asked to address a foreign series LLC with respect to contracts, claims, and disputes. In 2020, the Business Law Section of the Florida Bar formed the Protected Series LLC Task Force (“Task Force”) to analyze the UPSA and consider its adoption in Florida. The Task Force ultimately proposed that the LLC Act be modified to authorize the formation of a protected series LLC under Florida law, using model language borrowed from the UPSA and language which deviates from the UPSA to address unique aspects of Florida law.

HB 1231 adopts the Task Force’s recommendations, creating ss. 605.2101-605.2802, F.S., to allow for the formation of a protected series LLC under Florida law. Practically speaking, this may encourage a business wishing to organize as a protected series LLC to organize under Florida law; will recognize the structure of existing protected series LLCs wishing to do business in Florida; and will provide clarity for lawyers and judges engaging with a business organized as a protected series LLC.

The bill may have an indeterminate fiscal impact on state government but does not appear to have a fiscal impact on local governments. The bill provides an effective date of January 1, 2025.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Limited Liability Companies

A limited liability company (“LLC”) is a type of business entity recognized by and regulated under ch. 605, F.S., the Florida Revised Limited Liability Company Act (“LLC Act”). Benefits to forming a business as an LLC include a flexible tax structure¹ and a “vertical liability shield,” which limits the personal liability of the LLC’s members² and managers³ for company obligations.⁴

Forming a Florida LLC

To form an LLC in Florida, the authorized representatives⁵ must first choose a name, which name must be distinguishable from the names of all other business entity names in the records of the Department of State (“DOS”) and include the words “limited liability company” or the abbreviation “LLC” or “L.L.C.”⁶ The authorized representatives must also designate a registered agent to accept legal notices and service of process on behalf of the LLC at a registered office located in Florida.⁷

Once these steps are completed, the authorized representatives must sign and deliver to the DOS for filing articles of organization stating the LLC’s name; the street and mailing addresses of the LLC’s principal office; and the name, street address in Florida, and written acceptance of the LLC’s registered agent.⁸ An LLC is formed when the LLC’s articles of organization become effective⁹ and when at least one person becomes a member at the time the articles of organization become effective.¹⁰

Once formed, the members of the LLC may establish an operating agreement to lay the groundwork for the company, which agreement governs the:

- Relations among the members as members and between the members and the LLC;
- Rights and duties of a person serving in the capacity of manager;
- LLC’s activities and affairs; and

¹ Depending on elections made by an LLC’s members, the IRS will treat an LLC as either a corporation, a partnership, or a disregarded entity. This last option allows for what is known as “pass-through taxation,” in which the LLC’s members claim the LLC’s profits or losses as part of their personal taxes, alleviating the LLC of needing to file its own tax return and preventing the profits and losses from being taxed twice. IRS, *Limited Liability Company (LLC)*, <https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc> (last visited Jan. 22, 2024).

² “Member” means a person who: (a) is a member of an LLC under s. 605.0401, F.S., or was a member in a company when the company became subject to the Act; and (b) has not dissociated from the LLC under s. 605.0602, F.S. S. 605.0102(40), F.S.

³ “Manager” means a person who, under the operating agreement of a manager-managed LLC, is responsible, alone or in concert with others, for performing the management functions stated in ss. 605.0407(3) and 605.04073(2), F.S.

⁴ Exceptions to the liability shield include a member’s or manager’s written consent to be liable for an obligation; a statutory claw-back provision for improper distributions; provisions in agreements signed before the LLC’s organization; a member’s or manager’s tortious conduct; a member’s or manager’s action or inaction that results in a violation of criminal law or improper personal gain; liability arising under federal tax laws of the Florida sales and use tax laws; and a violation of fiduciary duties to creditors. S. 605.0304, F.S. Daniel S. Kleinberger, *Limited Liability Limited* (Aug. 28, 2019),

https://www.americanbar.org/groups/business_law/publications/blt/2019/09/limited-liability/ (last visited Jan. 22, 2024).

⁵ One or more persons may act as authorized representatives to form an LLC. S. 605.0201, F.S.

⁶ S. 605.0112, F.S.

⁷ The registered agent must be an individual who resides in Florida and whose business address is identical to the address of the registered office; another domestic entity that is an authorized entity and whose business address is identical to the address of the registered office; or a foreign entity authorized to transact business in Florida that is an authorized entity and whose business address is identical to the address of the registered office. S. 605.0113, F.S.

⁸ The articles of organization may contain statements on additional matters as specified in statute. S. 605.0201, F.S.

⁹ Except as otherwise provided, any document delivered to the DOS for filing under the LLC Act may specify an effective time and a delayed effective date. In the case of initial articles of organization, a prior effective date may be specified in the articles of organization if such date is within five business days before the date of filing. If the record does not specify an effective time or a prior or delayed effective date, the record is effective on the date and at the time the record is accepted, as evidenced by the DOS’s endorsement of the date and time on the filing. S. 605.0207, F.S.

¹⁰ S. 605.0201, F.S.

- Means and conditions for amending the operating agreement.¹¹

An LLC must also deliver to the DOS for filing an annual report stating:

- The LLC's name;
- The LLC's principal office and mailing addresses;
- The date of the LLC's organization;
- The LLC's federal employer identification number¹² or, if none exists, whether one has been applied for;
- The name, title or capacity, and address of at least one person with the authority to manage the LLC; and
- Any additional information that is necessary or appropriate to enable the DOS to carry out the LCC Act.¹³

Foreign LLCs Doing Business in Florida

An entity organized as an LLC under the laws of another jurisdiction (a "foreign LLC") that wishes to do business in Florida must, through an authorized representative, first apply for a certificate of authority to transact business in Florida by delivering an application for such a certificate to the DOS, which application must contain:

- The foreign LLC's name;
- The name of the foreign LLC's jurisdiction of formation;
- The foreign LLC's principal office and mailing addresses;
- The name and street address in Florida of, and the written acceptance by, the foreign LLC's initial registered agent in Florida;
- The name, title or capacity, and address of at least one person with the authority to manage the foreign LLC; and
- Additional information as may be necessary or appropriate in order to enable the DOS to determine whether the foreign LLC is entitled to file an application for a certificate of authority and to determine and assess applicable fees.¹⁴

Unless the DOS determines that such an application does not comply with the LLC Act's filing requirements, the DOS must, upon the payment of all filing fees, file the certificate of authority application.¹⁵ The filing of the application means the foreign LLC has obtained a certificate of authority and is authorized to do business in Florida.¹⁶ Such an LLC must file annual reports as required of a domestic LLC, which reports must include additional information pertinent to a foreign LLC as specified in the LLC Act.¹⁷

Protected Series Limited Liability Companies

In 1996, Delaware enacted legislation providing for the formation of a "protected series limited liability company" ("protected series LLC"), which offers both the traditional, vertical liability shield of an LLC and a new, horizontal liability shield for any protected series of the LLC; in other words, the assets of any one protected series of an LLC are not available to satisfy the claims of creditors of the LLC or of

¹¹ S. 605.0105, F.S.

¹² The federal employer identification number, also known as a federal tax identification number, is issued by the IRS and used to identify a business for federal tax purposes. IRS, *Employer ID Numbers*, <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers> (last visited Jan. 22, 2024)

¹³ S. 605.0212, F.S.

¹⁴ S. 605.0903, F.S.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ S. 605.0212, F.S.

any other protected series of the LLC.¹⁸ Since then, 20 other states and the District of Columbia have enacted legislation providing for the formation of some type of protected series LLC.¹⁹

In response to the growing popularity of this type of business entity, the Uniform Law Commission promulgated the Uniform Protected Series Act (“UPSA”) in 2017, intended as a model law that could be inserted into a state’s existing LLC statutes.²⁰ The UPSA contains definitions; a description of the nature and purpose of a protected series LLC, as well as its powers, purpose, and duration; a description of how a protected series is governed by the LLC’s operating agreement; and rules for applying certain provisions of a state’s existing LLC act to a protected series.²¹

Florida

A protected series LLC formed in another state (a “foreign series LLC”) is currently authorized to do business in Florida if it meets all applicable statutory requirements for a foreign LLC and registers with the DOS.²² However, Florida law does not currently recognize the protected series LLC model; thus, each series in a foreign series LLC must qualify to do business in Florida as if each series were a separate legal entity. Moreover, there is no guidance for lawyers and judges being asked to address a foreign series LLC with respect to contracts, claims, and disputes.²³

In 2020, the Business Law Section of the Florida Bar formed the Protected Series LLC Task Force (“Task Force”) to analyze the UPSA and consider its adoption in Florida.²⁴ The Task Force ultimately proposed that new sections be added to the LLC Act to authorize the formation of a protected series LLC under Florida law, using model language borrowed from the UPSA and language which deviates from the UPSA to address unique aspects of Florida law.²⁵

Effect of Proposed Changes

HB 1231 adopts the Business Law Section Task Force’s recommendations, creating The Uniform Protected Series Provisions in ss. 605.2101-605.2802, F.S., within the LLC Act to allow for the formation of a protected series LLC under Florida law. The bill refers to a protected series LLC as a “series LLC” and defines the term to mean a domestic LLC with at least one protected series established under s. 605.2201, F.S.

Practically speaking, this may encourage a business wishing to organize as a protected series LLC to organize under Florida law. The bill also recognizes the structure of existing foreign series LLCs wishing to do business in Florida and provides clarity for lawyers and judges engaging with a business organized as a series LLC.

¹⁸ Protected Series LLC Task Force of the Florida Bar Business Law Section, *White Paper: Analysis of Proposed Additions to Chapter 605* (Jan. 14, 2024).

¹⁹ These states are: Wisconsin, Oklahoma, Illinois, Nevada, Tennessee, Iowa, Texas, Kansas, Missouri, Montana, Utah, Alabama, Indiana, Arkansas, Nebraska, North Dakota, South Dakota, Virginia, Wyoming, and Ohio. Puerto Rico also recognizes a protected series LLC. *Id.*

²⁰ Uniform Law Commission, *The Uniform Protected Series Act*, https://higherlogicdownload.s3-external-1.amazonaws.com/UNIFORMLAWS/36953c44-f8c8-04e4-33b4-7217f4c94aa1_file.pdf?AWSAccessKeyId=AKIAVRDO7IEREB57R7MT&Expires=1680018971&Signature=sTvqf2axyQzxEO16hsFUBH9KNgc%3D (last visited Jan. 22, 2024).

²¹ *Id.*

²² See Business Law Section, *supra* note 18.

²³ *Id.*; See s. 605.0902, F.S., authorizing the DOS to require each individual series of a foreign series LLC to make a separate application for a certificate of authority, and to make such other filings as maybe required for purposes of complying with the requirements of the LLC Act as if such series was a separate foreign LLC.

²⁴ See Business Law Section, *supra* note 18.

²⁵ *Id.*

Series LLC Formation

The bill specifies that the provisions of the LLC Act applicable to the formation of an LLC generally also apply to the formation of a series LLC or protected series, except as otherwise provided. The bill also establishes provisions specific to the formation of a series LLC or protected series.

Designation of Protected Series

The bill creates s. 605.2201, F.S., to provide that, with the affirmative vote or consent of all members of an LLC, the LLC may establish a protected series. To establish a protected series after such a vote, the bill requires an LLC to deliver to the DOS for filing a protected series designation, signed by the LLC, stating the names of the LLC and of the protected series to be established, and any other information the DOS requires for filing.

Under the bill, a protected series is established when the protected series designation takes effect. To amend such a designation, a series LLC must deliver to the DOS for filing a statement of designation change, signed by the company, that sets forth:

- The names of the series LLC and of the protected series to which the designation applies;
- Each change to the protected series designation; and
- A statement that the change was approved by the affirmative vote or consent of the members of the series LLC required to make the designated change.

The amendment takes effect when the statement of designation change takes effect.

Protected Series Name

The bill creates s. 605.2202, F.S., to specify that a protected series' name generally must meet the statutory requirements for LLC names. However, under the bill, a protected series' name must also:

- Begin with the series LLC's name, including any word or abbreviation required by the LLC Act; and
- Contain the phrase "protected series" or the abbreviation "P.S." or "PS."

If a series LLC changes its name, the LLC must deliver to the DOS for filing a statement of designation change for each of the LLC's protected series, changing the name of each such series to comply with this section.

Nature of a Protected Series

The bill creates s. 605.2103, F.S. to provide that a protected series is a person²⁶ distinct from all of the following:

- The series LLC, generally.
- Another protected series of the series LLC.
- A member of the series LLC, regardless of whether the member is an associated member²⁷ of the protected series.
- A protected-series transferee²⁸ of a protected series of the series LLC.
- A transferee of a transferrable interest²⁹ of the series LLC.

Powers and Duties of a Protected Series

²⁶ "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, LLC, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity.

²⁷ An "associated member" is a member of a series LLC that meets statutory requirements and is associated with a protected series.

²⁸ "Protected-series transferee" means a person to which all or part of a protected-series transferable interest of a protected series has been transferred, other than the series LLC company, and includes a person that owns a protected-series transferable interest as a result of ceasing to be an associated member of a protected series.

²⁹ "Protected series transferrable interest" means a right to receive a distribution from a protected series.

The bill creates s. 605.2104, F.S., to provide that a protected series:

- Can sue and be sued in its own name.
- Generally has the same powers and purposes as the series LLC.
- Ceases to exist not later than when the series LLC completes its winding up.
- May not:
 - Be a member of the series LLC;
 - Establish a protected series; or
 - Except as otherwise authorized by Florida law, have a purpose or power, or take an action, that Florida law prohibits an LLC from having or taking.

Liability Limitations

The bill recognizes both the traditional, vertical liability shield of an LLC and the new, horizontal liability shield of a series LLC, and establishes the limitations of such shields as applied to a series LLC.

Liability Shield

The bill creates s. 605.2401, F.S., to provide that the following concepts generally apply:

- A series LLC's debt, obligation, or other liability is solely the debt, obligation, or liability of the series LLC.
- A protected series' debt, obligation, or other liability is solely the debt, obligation, or liability of the protected series.
- A series LLC is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of its protected series solely by reason of the protected series being a protected series of the series LLC, or the series LLC:
 - Being or acting as a protected-series manager of the protected series;
 - Having the protected series manage the series LLC; or
 - Owning a protected-series transferrable interest of the protected series.
- A protected series is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the series LLC or another protected series of the series LLC, solely by reason of:
 - Being a protected series of the series LLC;
 - Being or acting as a manager of the series LLC or a protected-series manager of another protected series of the company; or
 - Having the series LLC or another protected series of the company be or act as a protected-series manager of the protected series.

Further, the bill specifies that a person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

- A protected series of a series LLC solely by reason of being or acting as:
 - An associated member, protected-series manager, or protected-series transferee of the protected series; or
 - A member, manager, or a transferee of the series LLC.
- A series LLC solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the such LLC.

Claim Seeking to Disregard Liability Limitation

The bill creates s. 605.2402, F.S., to provide that a claim seeking to disregard a liability limitation pertaining to a series LLC, a protected series, or persons connected thereto, including a principal providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, is governed by the principles of law and equity which would apply if each protected series were an LLC formed separately from the series LLC and distinct from the series LLC and any other protected series of such LLC. The bill also specifies that:

- Failure of an LLC or a protected series to observe the formalities of its activities and affairs is not grounds to disregard a limitation in s. 605.2401(1), F.S., relating to the liability of persons

acting in specified roles, but may be grounds to disregard a limitation in s. 605.2401(2), F.S., relating to the liability of a protected series or series LLC.

- This section applies to a claim seeking to disregard a liability limitation applicable to a foreign series LLC³⁰ or a foreign protected series³¹ and comparable to a limitation stated in s. 605.2401, F.S., if:
 - The claimant is a Florida resident, transacting business in Florida, or authorized to transact business in Florida; or
 - The claim is to establish or enforce a liability arising under Florida law other than the LLC Act or from an act or omission in Florida.

Remedies of Certain Judgment Creditors

The bill creates s. 605.2403, F.S., to specify that the provisions of s. 605.0503, F.S., which provide or restrict remedies available to a judgment creditor³² of a member or transferee of an LLC, apply to a judgment creditor of:

- An associated member or protected-series transferee of a protected series; and
- A series LLC, to the extent the LLC owns a protected-series transferable interest of a protected series.

Enforcement of Claim Against Non-Associated Assets

The bill creates s. 605.2404, F.S., to specify that, if a claim against a series LLC or a protected series of the LLC has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following:

- A judgment against a series LLC may be enforced against an asset³³ of a protected series of the LLC if the asset:
 - Was a non-associated asset³⁴ of the protected series on the incurrence date;³⁵ or
 - Is a non-associated asset of the protected series on the enforcement date.³⁶
- A judgment against a protected series may be enforced against the series LLC if the asset:
 - Was a non-associated asset of the series LLC on the incurrence date; or
 - Is a non-associated asset of the series LLC on the enforcement date.
- A judgment against a protected series may be enforced against an asset of another protected series of the series LLC if the asset:
 - Was a non-associated asset of the other protected series on the incurrence date; or
 - Is a non-associated asset of the other protected series on the enforcement date.

Further, under the bill:

- If a claim against a series LLC or a protected series has not been reduced to a judgment, and a law other than the LLC Act authorizes a prejudgment remedy by attachment,³⁷ levy,³⁸ or the like, the court may apply the foregoing as a prejudgment remedy.

³⁰ A "foreign series LLC" is a foreign LLC that has at least one foreign series or protected series.

³¹ A "foreign protected series" means an arrangement, configuration, or other structure established by a foreign LLC which has attributes comparable to a protected series established under ch. 605, F.S., regardless of whether the law under which such company is organized refers to "series" or "protected series."

³² A "judgment creditor" is a person with the right to demand the payment of monetary damages awarded as part of a judgment rendered in a civil action. Legal Information Institute, *Judgment Creditor*, https://www.law.cornell.edu/wex/judgment_creditor (last visited Jan. 22, 2024).

³³ "Asset" means property: (a) in which a series LLC or a protected series has rights; or (b) as to which the series LLC or protected series has the power to transfer rights.

³⁴ A "non-associated asset" means: (a) an asset of a series LLC which is not an associated asset of such LLC; or (b) an asset of a protected series which is not an associated asset of the protected series. "Associated asset," meanwhile, means an asset that meets the requirements of s. 605.2301, F.S. In other words, associated assets have only one owner (that is, either the series LLC or the protected series), while non-associated assets are available to the creditors of both the series LLC and the protected series.

³⁵ "Incurrence date" means the date on which a series LLC or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under s. 605.2404, F.S.

³⁶ "Enforcement date" means 12:01 a.m. on the date on which a claimant first serves process on a series LLC or protected series in an action seeking to enforce a claim against an asset of the LLC or protected series by attachment, levy, or the like under s. 605.2404, F.S.

- The party asserting that an asset is or was an associated asset of a series LLC or a protected series has the burden of proof on the issue.
- Newly-created s. 605.2404, F.S., applies to an asset of a foreign series LLC or foreign protected series under specified circumstances, including that the asset is real or tangible property located in Florida.

Protected Series LLC Operations and Governance

The bill specifies that the provisions of the LLC Act applicable to LLCs in general, and their members and managers, including, but not limited to, provisions relating to LLC operation, existence, and management; court proceedings; and filings with the DOS and other state or local government agencies, generally apply to each series LLC and to each protected series established under s. 605.2201, F.S. The bill also creates provisions of the LLC Act applicable only to the operation and governance of a series LLC and a protected series.

Protected Series Governing Law

The bill creates ss. 605.2105 and 605.2701, F.S., to provide that Florida law governs:

- The internal affairs of a protected series or foreign protected series.
- The relations between a protected series or foreign protected series and specified parties, including the series LLC or foreign series LLC and another protected series of such LLC.
- The liability of a person for a debt, obligation, or other liability of a protected series or foreign protected series arising under specified circumstances.
- The liability of a series LLC or foreign series LLC for a debt, obligation, or other liability of its protected series arising under specified circumstances.
- The liability of a protected series or foreign protected series for a debt, obligation, or other liability of the series LLC or foreign series LLC arising under specified circumstances.

Operating Agreements

The bill creates s. 605.2106, F.S., to provide that a series LLC's operating agreement generally governs the internal affairs of a protected series and relations between a protected series and specified parties. The bill also specifies:

- How such matters are determined if the operating agreement of a series LLC does not provide for such matters in an authorized manner.
- How certain restrictions on operating agreements imposed by the LLC Act or other laws apply.

Further, the bill creates s. 605.2107, F.S., to provide that an operating agreement for a series LLC may not vary the effect of specified provisions of law created by the bill, except to the extent otherwise specified therein. Under the bill, an operating agreement may not unreasonably restrict the duties and rights of a person who is not an associated member of a protected series to information concerning the protected series, but may impose reasonable restrictions on the availability and use of such information, and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on such use.

Registered Agent

The bill creates s. 605.2203, F.S., to provide that the registered agent in Florida for a series LLC is the registered agent in Florida for each protected series of that LLC, but a series LLC must agree with a registered agent that the agent will serve as the registered agent in Florida for the LLC and for each protected series of the LLC before delivering a protected series designation to the DOS for filing. Further, under the bill, a person that ceases to be the registered agent for a:

³⁷ An "attachment" is a court order directing the freezing or seizure of specific assets belonging to a debtor, pending the outcome of a civil matter involving a creditor who may obtain a judgment in his or her favor that could be satisfied by the sale or application of the assets. Legal Information Institute, *Attachment*, <https://www.law.cornell.edu/wex/attachment> (last visited Jan. 22, 2024).

³⁸ A "levy" is the court-ordered seizure and sale of property to satisfy a delinquent debt or judgment. Legal Information Institute, *Levy*, <https://www.law.cornell.edu/wex/levy> (last visited Jan. 22, 2024).

- Series LLC ceases to be the registered agent for each protected series of such LLC.
- Protected series, other than as a result of the termination of the protected series, ceases to be the registered agent of the series LLC and any other protected series of such LLC.

Finally, the bill provides that, except as otherwise agreed upon by a series LLC and its registered agent, the registered agent is not obligated to distinguish between a process, notice, demand, or other record concerning the series LLC and a process, notice, demand, or other record concerning a protected series of the series LLC.

Service of Process, Notice, Demand, or Other Record

The bill creates s. 605.2204, F.S., to provide that process against a series LLC, a protected series, a registered foreign series LLC, or a registered foreign protected series may be serviced in the same manner as service is made on such entity under s. 48.062 and chapters 48 or 49, F.S. Under the bill, any notice or demand on a series LLC or protected series may be given or made to any member of a member-managed series LLC or to any manager of a manager-managed LLC; to the registered agent of a series LLC at the registered office of the series LLC in Florida; or to any other address in Florida which is the principal Florida office of the series LLC. Similarly, any notice or demand on a registered foreign series LLC or a registered foreign protected series may be given or made to any member of a member-managed foreign series LLC or to any manager of a manager-managed foreign series LLC; the registered agent of the registered foreign series LLC at the registered office of the foreign series LLC; or to the principal office address, or any other Florida address, which is the principal Florida office of the registered foreign series LLC. However, the bill does not affect the right to serve process on, give notice to, or make a demand on a series LLC or a protected series thereof, or on a foreign series LLC or a protected series thereof, in any other manner provided by law.

The bill also amends s. 48.062, F.S., to define “registered foreign protected series of a foreign series LLC” and “registered foreign series LLC” and to provide that:

- Service on a series LLC is notice to each protected series thereof.
- Service on a protected series is notice to the series LLC thereof.
- Service on a registered foreign series LLC is notice to each protected series thereof.
- Service on a registered foreign protected series is notice to each registered foreign series LLC thereof.

Foreign Series LLCs and Foreign Protected Series

The bill creates s. 605.2703, F.S., to require that an application by a foreign protected series for a certificate of authority to do business in Florida must include specified information, including the name and jurisdiction of formation of the foreign series LLC and the foreign protected series seeking the certificate and, if the foreign series LLC has other foreign protected series, the name, title, capacity, and street and mailing address of at least one person who has the authority to manage the foreign series LLC and who knows specified information about the protected series. The bill also specifies which provisions of the LLC Act apply to the application for a certificate of authority by a foreign series LLC, which provisions include the naming requirements and provisions relating to required information.

Further, the bill creates s. 605.2702, F.S., to provide that, in determining whether a foreign series LLC or foreign protected series is transacting business in Florida or is subject to the personal jurisdiction of Florida courts, the activities and affairs of the:

- Foreign series LLC are not attributable to a foreign protected series of such LLC solely by reason of the foreign protected series being a foreign protected series of the LLC.
- Foreign protected series are not attributable to a foreign series LLC or another foreign protected series of the LLC solely by reason of the foreign protected series being a foreign protected series of the foreign series LLC.

Finally, the bill creates s. 605.2704, F.S., to provide that, not later than 30 days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in Florida, or a tribunal of the United States located in Florida:³⁹

- A foreign series LLC must disclose to each other party the name and street and mailing address of:
 - Each of its foreign protected series; and
 - Each foreign protected series manager of and a registered agent for service of process for each foreign protected series.
- A foreign protected series must disclose to each other party the name and street and mailing address of:
 - The foreign series LLC;
 - An agent for service of process for the foreign series LLC;
 - Any other foreign protected series of the foreign series LLC; and
 - Each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

Under the bill, where a foreign series LLC or foreign protected series does not comply with the disclosure requirements under s. 605.2704, F.S., a party to the proceeding may ask the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules or bring a separate proceeding to the court to enforce compliance.

Issuance of Certificate of Status or Authority

The bill creates s. 605.2205, F.S., to provide that, upon the satisfaction of specified requirements, the DOS must issue a certificate of status for a protected series, or a certificate of authority for a foreign protected series, if:

- In the case of a protected series, the records show that the DOS has accepted and filed articles of organization for the series LLC and a protected series designation for the protected series.
- In the case of a foreign protected series, the records show that the DOS has filed a certificate of authority for the foreign series LLC and a certificate of authority for the foreign protected series.

A certificate issued under this section must contain specified information, including:

- In the case of a protected series, the name of the protected series, the series LLC's name, the date the protected series designation took effect, and other information.
- In the case of a foreign protected series, the foreign protected series' name, the foreign series LLC's name, the fact that the foreign series LLC is authorized to do business in Florida, and other information.

Under the bill, the certificate may be relied on as conclusive evidence of the facts stated therein, subject to any qualifications stated by the DOS in the certificate.

Annual Report Information

The bill creates s. 605.2206, F.S., to require that, in its annual report, a series LLC must include the name of each its protected series:

- For which the series LLC has previously delivered to the DOS for filing a protected series designation; and
- Which has not dissolved and completed winding up.

Under the bill, a series LLC's failure to comply with this requirement with regard to a protected series prevents issuance of a certificate of status pertaining to the protected series, but does not otherwise affect the protected series.

³⁹ The disclosure requirements are tolled under the bill if a foreign series LLC or foreign protected series challenges the personal jurisdiction of the tribunal, until the tribunal determines whether it has personal jurisdiction.

Similarly, the bill requires that, in its annual report, a registered foreign series LLC include the name of each registered foreign protected series of the registered foreign series LLC:

- For which the registered foreign series LLC has previously delivered to the DOS for filing an application for a certificate of authority to do business in Florida, which the DOS has accepted; and
- Which has not withdrawn its certificate of authority.

Under the bill, the failure of a registered foreign series LLC to comply with this requirement with regard to a registered foreign protected series prevents issuance of a certificate of status pertaining to the foreign protected series.

Associated Assets

The bill creates s. 605.2301, F.S., to provide that only an asset of a protected series may be an associated asset of the protected series, while only an asset of a series LLC may be an associated asset of the series LLC. Further, the bill specifies that an asset of a protected series is an associated asset of the protected series, and an asset of a series LLC is an associated asset of the series LLC, only if the protected series or series LLC creates and maintains specified records that state the name of the protected series or series LLC and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to make specified determinations about the asset. Such records may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

Further, under the bill, a series LLC or protected series may, to the extent authorized by law, hold an associated asset directly or indirectly, except that:

- A protected series may not hold an associated asset in the name of the series LLC or another protected series of such LLC; and
- The series LLC may not hold an associated asset in the name of its protected series.

The bill also provides for the effect of a deed or other instrument granting an interest in real property to or from a series LLC or one or more protected series of a series LLC, or any other instrument otherwise affecting an interest in real property held by such entity, in each case to the extent such deed or other instrument is recorded in the office for recording transfers or other matters affecting real property and specified records are maintained.

Associated Member

The bill creates s. 605.2302, F.S., to specify that only a member of a series LLC may be an associated member of a protected series of such LLC. Under the bill, a member of a series LLC becomes an associated member of a protected series of such LLC if the operating agreement or a procedure established therein states:

- That the member is an associated member of the protected series;
- The date on which the member became an associated member of the protected series; and
- Any protected-series transferable interest the associated member has in connection with becoming or being an associated member of the protected series.

Further, the bill specifies:

- That if a person that is an associated member of a protected series is dissociated from the series LLC, the person ceases to be an associated member of the protected series.
- The rights of an associated member of a protected series to vote on or consent to an amendment to the series LLC's operating agreement or any other matter being decided by the members or to maintain a derivative action to enforce a right of the LLC.
- That an associated member of a protected series is an agent of the protected series with certain powers to bind the protected series.

Protected-Series Transferrable Interest

The bill creates s. 605.2303, F.S., to provide that a protected-series transferrable interest of a protected series must be owned initially by an associated member of the protected series or the series LLC. Under the bill, if a protected series has no associated members when established, the series LLC owns the protected-series transferable interests in the protected series. A series LLC may also acquire a protected-series transferable interest through a transfer from another person or as provided in the operating agreement.

Further, except as otherwise specified, a provision of the:

- LLC Act which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferable interest of the protected series.
- Operating agreement of a series LLC which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferrable interest of the protected series.

Management

The bill creates s. 605.2304, F.S., to specify that a protected series may have more than one protected-series manager and, if a protected series has no associated members, the series LLC is the protected-series manager. The bill also provides for the determination of any duties of a protected-series manager to:

- The protected series;
- Any associated member of the protected series; and
- Any protected-series transferee of the protected series.

However, the bill provides that, solely by reason of being or acting as a protected-series manager, a person owes no duty to:

- The series LLC;
- Another protected series of the series LLC; or
- Another person in that person's capacity as:
 - A member of the series LLC which is not an associated member of the protected series;
 - A protected-series transferee or protected-series manager of another protected series; or
 - A transferee of the series LLC.

Right of Non-Associated Members to Specified Information

The bill creates s. 605.2305, F.S., to specify the rights to information concerning the protected series of a member of a series LLC which is not an associated member of a protected series of such LLC; a person who was formerly an associated member of a protected series; the legal representative of a deceased associated member of a protected series; and a protected-series manager of a protected series. Such rights generally correspond to the current rights of the counterparts of such persons under

the LLC Act. The bill also provides that the court-ordered inspection provisions of s. 605.0411, F.S.,⁴⁰ apply to such information rights.

Entity Transactions

The bill provides for the role of, and in some instance prohibits the participation of, a series LLC or a protected series in certain entity transactions, including conversions,⁴¹ domestications,⁴² interest exchanges,⁴³ and mergers.⁴⁴

Entity Transaction Restrictions

The bill creates ss. 605.2602 and 605.2603, F.S., to provide that a protected series and a series LLC, respectively, may not be a party to, be formed, organized, established, or created in, or result from:

- A conversion, domestication, or an interest exchange under the LLC Act or the law of a foreign jurisdiction; or
- A transaction with the same substantive effect as a conversion, domestication, or interest exchange.

The bill also specifies that a:

- Protected series may not be a party to, be formed, organized, established, or created in, or result from a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.
- Series LLC may not, except as otherwise provided by law, be a party to or the surviving company⁴⁵ of a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.

Mergers Authorized

The bill creates s. 605.2604, F.S., to authorize a series LLC to be party to a merger only if:

- Each other party to the merger is an LLC; and
- The surviving company is not created in the merger.

The bill also creates s. 605.2605, F.S., to require that the plan of merger:

- Comply with the requirements for the contents of a plan of merger for an LLC; and
- State specified information in a record, which information depends on whether the protected series is a protected series of a non-surviving company,⁴⁶ a protected series of a surviving company, a relocated protected series,⁴⁷ a continuing protected series,⁴⁸ or a protected series to be established by the surviving company.

⁴⁰ S. 605.0411, F.S., applies if an LLC does not allow a member, manager, or other person who complies with applicable law to inspect and copy any records required to be available for inspection. Under this section, the circuit court may summarily order inspection and copying of the records demanded under specified circumstances, and may order the LLC to pay the costs, including reasonable attorney fees, incurred by the member, manager, or other person seeking the records to obtain the order and enforce its rights.

⁴¹ A "conversion" is a transaction authorized under ss. 605.1041-605.1046, F.S.

⁴² A "domestication" is a transaction authorized under ss. 605.1051-605.1056, F.S.

⁴³ An "interest exchange" is a transaction authorized under ss. 605.1031-605.1036, F.S.

⁴⁴ A "merger" is a transaction authorized under ss. 605.1021-605.1026, F.S.

⁴⁵ "Surviving company" means a merging company that continues in existence after a merger.

⁴⁶ "Non-surviving company" means a merging company that does not continue in existence after a merger.

⁴⁷ "Relocated protected series" means a protected series of a non-surviving company which, after a merger, continues in uninterrupted existence as a protected series of the surviving company.

⁴⁸ "Continuing protected series" means a protected series of a surviving series LLC which continues in uninterrupted existence after a merger.

Further, the bill creates s. 605.2606, F.S., to require that the articles of merger:

- Comply with the requirements for the articles of merger for an LLC;⁴⁹ and
- Include specified attachments, including, as appropriate, a signed statement of designation cancellation and termination; a signed statement of relocation and a statement of protected series designation; or a signed protected series designation.

Effect of Merger

The bill creates s. 605.2607, F.S., to establish the effects of a merger which occur in addition to the effects stated in s. 605.1026, F.S., relating to the merger of an LLC. Under this section:

- As provided in the plan of merger, each protected series of each merging series LLC which was established before the merger is a relocated or continuing protected series or is dissolved, wound up, and terminated.
- Any protected series to be established due to the merger is established.
- Any relocated or continuing protected series is the same person it was before the merger.
- All property of a relocated or continuing protected series continues to be vested in such protected series.
- All debts, obligations, and other liabilities of a relocated or continuing protected series continue as debts, obligations, and other liabilities of such protected series.
- Except as otherwise provided by law or the plan of merger, all rights, privileges, immunities, powers, and purposes of a relocated or continuing protected series remain in such protected series.
- The new name of a relocated protected series may be substituted for its former name in any pending action or proceeding.
- To the extent provided in the plan of merger:
 - A person becomes an associated member or a protected-series transferee or a relocated protected series or continuing protected series.
 - A person becomes an associated member of a protected series established by the surviving company due to the merger.
 - Any change in a person's rights or obligations in the person's capacity as an associated member or a protected series or continuing protected series takes effect.
 - Any consideration to be paid to a person that before the merger was an associated member or a protected-series transferee of a relocated protected series or continuing protected series is due.
- Any person that is an associated member of a relocated protected series becomes a member of the surviving company, if not already a member.

The bill also creates s. 605.2608, F.S., to specify how creditors' rights existing under s. 605.2404, F.S., immediately before a merger may be enforced.

Protected Series Dissolution and Reinstatement

The bill establishes the methods by which a protected series may be voluntarily or is automatically dissolved under the LLC Act.

Events Causing Protected Series Dissolution

The bill creates s. 605.2501, F.S., to provide that a protected series is dissolved, and its activities and affairs must be wound up, upon the occurrence of specified events, including:

- Dissolution of the series LLC;
- Occurrence of an event which the operating agreement states causes dissolution;
- Affirmative vote or consent of all members of the protected series;

⁴⁹ Under s. 605.1025, F.S., after a plan of merger is approved, articles of merger must be signed by each merging entity and delivered to the DOS for filing. The articles must also contain specified information, including the merger's effective date and the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity and of each entity that is the surviving entity.

- Entry of a court order dissolving the protected series under specified circumstances;
- Automatic or involuntary dissolution of the series LLC that established the protected series; and
- The filing of a statement of administrative dissolution⁵⁰ by the DOS.

Winding Up Dissolved Protected Series

The bill creates s. 605.2502, F.S., to provide the manner in which a dissolved protected series must wind up its activities and affairs, including by filing with the DOS articles of protected series dissolution and a statement of designation cancellation, and the extent to which judicial supervision or another judicial remedy is available in such a winding up. Further, the bill specifies that a series LLC does not complete its winding up until each of its protected series has completed its winding up.

Effect of Reinstatement or Voluntary Dismissal Revocation

The bill creates s. 605.2503, F.S., to provide that, if a series LLC that has been administratively dissolved is reinstated, or a series LLC that voluntarily dissolved revokes its articles of dissolution, before filing a statement of termination:

- Each protected series of the series LLC ceases winding up; and
- The provisions of s. 605.0708, F.S., relating to revocation of articles of dissolution, apply to the series LLC and to each protected series as specified in law.

Effective Date and Application

The bill creates s. 605.2801, F.S., to provide that s. 605.1102, F.S., relating to the applicability of the Electronic Signatures in Global and National Commerce Act, applies to the Uniform Protected Series Provisions. The bill also creates s. 605.2802, F.S., to provide that:

- Beginning July 1, 2025, Chapter 605, F.S., governs all domestic and foreign series LLCs, all domestic protected series, and all foreign series that do business in Florida.
- A domestic LLC formed before January 1, 2025, may not create or designate any protected series before the bill's effective date.

The bill provides an effective date of January 1, 2025.

B. SECTION DIRECTORY:

Section 1: Amends s. 48.062, F.S., relating to service on a domestic limited liability company or registered foreign limited liability company.

Section 2: Amends s. 605.0103, F.S., relating to knowledge; notice.

Section 3: Amends s. 605.0117, F.S., relating to serving process, giving notice, or making a demand.

Section 4: Amends s. 605.0211, F.S., relating to certificate of status.

Section 5: Provides a short title.

Section 6: Creates s. 605.2102, F.S., relating to definitions.

Section 7: Creates s. 605.2103, F.S., relating to nature of protected status.

Section 8: Creates s. 605.2104, F.S., relating to powers and duration of protected series.

Section 9: Creates s. 605.2105, F.S., relating to protected series governing law.

Section 10: Creates s. 605.2106, F.S., relating to relation of operating agreement and the protected series provisions of this chapter.

Section 11: Creates s. 605.2107, F.S., relating to additional limitations on operating agreements.

Section 12: Creates s. 605.2108, F.S., relating to application of this chapter to specified provisions of protected series.

Section 13: Creates s. 605.2201, F.S., relating to protected series designation; amendment.

Section 14: Creates s. 605.2202, F.S., relating to protected series name.

Section 15: Creates s. 605.2203, F.S., relating to registered agent.

Section 16: Creates s. 605.2204, F.S., relating to service of process, notice, demand, or other record.

Section 17: Creates s. 605.2205, F.S., relating to certificate of status for protected series.

⁵⁰ Administrative dissolution is governed by s. 605.0714, F.S.

- Section 18:** Creates s. 605.2206, F.S., relating to information required in annual report; effect of failure to provide such information.
- Section 19:** Creates s. 605.2301, F.S., relating to associated asset.
- Section 20:** Creates s. 605.2302, F.S., relating to associated member.
- Section 21:** Creates s. 605.2302, F.S., relating to protected-series transferable interest.
- Section 22:** Creates s. 605.2304, F.S., relating to management.
- Section 23:** Creates s. 605.2305, F.S., relating to right of a person who is not an associated member of protected series to information concerning protected series.
- Section 24:** Creates s. 605.2401, F.S., relating to limitations on liability.
- Section 25:** Creates s. 604.2402, F.S., relating to claim seeking to disregard limitation of liability.
- Section 26:** Creates s. 605.2403, F.S., relating to remedies of judgment creditor of associated member or protected-series transferee.
- Section 27:** Creates s. 605.2404, F.S., relating to enforcement of claim against non-associated asset.
- Section 28:** Creates s. 605.2501, F.S., relating to events causing dissolution of protected series.
- Section 29:** Creates s. 605.2502, F.S., relating to winding up dissolved protected series.
- Section 30:** Creates s. 605.2503, F.S., relating to effect of reinstatement of series limited liability company or revocation of voluntary dismissal.
- Section 31:** Creates s. 605.2601, F.S., relating to entity transactions involving a series limited liability company or a protected series restricted; definitions.
- Section 32:** Creates s. 605.2602, F.S., relating to protected series may not be party to entity transaction.
- Section 33:** Creates s. 605.2603, F.S., relating to restriction on entity transaction involving series limited liability company.
- Section 34:** Creates s. 605.2604, F.S., relating to merger authorized; parties restricted.
- Section 35:** Creates s. 605.2605, F.S., relating to plan of merger.
- Section 36:** Creates s. 605.2606, F.S., relating to articles of merger.
- Section 37:** Creates s. 605.2607, F.S., relating to effect of merger.
- Section 38:** Creates s. 605.2608, F.S., relating to application of s. 605.2404 after merger.
- Section 39:** Creates s. 605.2701, F.S., relating to governing law; foreign series limited liability companies and foreign protected series.
- Section 40:** Creates s. 605.2702, F.S., relating to no attribution of activities constituting transacting business or for establishing jurisdiction.
- Section 41:** Creates s. 605.2703, F.S., relating to certificate of authority for a foreign series limited liability company and foreign protected series; amendment of application.
- Section 42:** Creates s. 605.2704, F.S., relating to disclosure required when a foreign series limited liability company or foreign protected series is a party to a proceeding.
- Section 43:** Creates s. 605.2801, F.S., relating to relation to Electronic Signatures in Global and National Commerce Act.
- Section 44:** Creates s. 605.2802, F.S., relating to transitional provisions.
- Section 45:** Amends s. 605.0103, F.S., relating to knowledge; notice.
- Section 46:** Provides an effective date of July 1, 2023, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See Fiscal Comments.
2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will affect how business entities, both foreign and domestic, may organize or register and do business in the state, which will have an indeterminate economic impact on such entities. To the extent that a business entity obtains a financial benefit from organizing or registering as a series LLC under Florida law, the economic impact may be positive.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the DOS as it may attract foreign series LLCs, and newly-forming businesses wishing to organize as a series LLC, to register in or organize under Florida law, which, in turn, may increase the workload of the DOS. To the extent that the DOS can absorb any such increase within existing resources, the bill will have an insignificant fiscal impact on the DOS.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. The bill does not appear to affect county or municipal governments.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

S. 605.0214, F.S., already vests the DOS with the authority reasonably necessary to administer the LLC Act efficiently, to perform the duties imposed upon it, and to adopt reasonable rules necessary to carry out its duties and functions under this chapter. Thus, additional rulemaking authority is likely unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

26 applicability with regard to certain restrictions on
27 limited liability companies; creating s. 605.2107,
28 F.S.; providing prohibitions and authorizations
29 relating to operating agreements; creating s.
30 605.2108, F.S.; providing applicability; creating s.
31 605.2201, F.S.; authorizing domestic limited liability
32 companies to establish protected series; specifying
33 requirements for establishing protected series and
34 amending protected series designations; creating s.
35 605.2202, F.S.; specifying requirements for naming a
36 protected series; creating s. 605.2203, F.S.;
37 providing specifications and requirements for the
38 registered agent for a protected series; specifying
39 requirements relating to protected series
40 designations; specifying that a registered agent is
41 not required to distinguish between certain processes,
42 notices, demands, and records unless otherwise agreed
43 upon; creating s. 605.2204, F.S.; authorizing service
44 on, and provision of notice and demand to, certain
45 limited liability companies and protected series in a
46 specified manner; providing that certain notice is
47 effective regardless of whether any notice or demand
48 identify a person if certain requirements are met;
49 providing authorizations relating to certain services
50 and notices; providing construction; creating s.

51 605.2205, F.S.; requiring the Department of State to
52 issue a certificate of status under certain
53 circumstances; specifying requirements for
54 certificates of status; providing that a certificate
55 of status may be relied upon as conclusive evidence of
56 the facts stated in the certificate; creating s.
57 605.2206, F.S.; requiring series limited liability
58 companies and registered foreign series limited
59 liability companies to include specified information
60 in a required annual report; specifying that failure
61 to include such information prevents a certificate of
62 status from being issued; creating s. 605.2301, F.S.;
63 specifying that only certain assets may be considered
64 associated assets; specifying requirements for an
65 asset to be considered an associated asset;
66 authorizing that certain records and recordkeeping be
67 organized in a specified manner; authorizing series
68 limited liability companies or protected series of
69 such companies to hold an associated asset in a
70 specified manner; providing exceptions; creating s.
71 605.2302, F.S.; specifying requirements for becoming
72 an associated member of a protected series of a series
73 limited liability company; creating s. 605.2303, F.S.;
74 requiring that protected-series transferable interests
75 be owned initially by an associated member of the

76 | protected series or the series limited liability
77 | company; providing for ownership when a protected
78 | series of a series limited liability company does not
79 | have associated members upon establishment under
80 | certain circumstances; authorizing series limited
81 | liability companies to acquire such interests by
82 | transfer; providing applicability; creating s.
83 | 605.2304, F.S.; authorizing a protected series to have
84 | one or more protected-series managers; specifying that
85 | if a protected series does not have associated
86 | members, the series limited liability company is the
87 | protected-series manager; providing applicability;
88 | specifying that a person does not owe a duty to
89 | specified entities for certain reasons; providing
90 | rights of associated members; providing applicability;
91 | specifying that an associated member of a member-
92 | managed protected series, or a protected-series
93 | manager of a manager-managed protected series, is an
94 | agent for the protected series and has a specified
95 | power; creating s. 605.2305, F.S.; providing rights
96 | for certain persons relating to information concerning
97 | protected series; providing applicability; creating s.
98 | 605.2401, F.S.; providing limitations on liability for
99 | certain persons; creating s. 605.2402, F.S.;
100 | specifying that certain claims are governed by

101 specified provisions; specifying that the failure of
 102 limited liability companies or protected series to
 103 observe certain formalities is not a ground to
 104 disregard a specified limitation; providing
 105 applicability; creating s. 605.2403, F.S.; specifying
 106 that certain provisions relating to the provision or
 107 restriction of remedies apply to certain judgment
 108 creditors; creating s. 605.2404, F.S.; defining the
 109 terms "enforcement date" and "incurrence date";
 110 authorizing that certain judgments be enforced in
 111 accordance with specified provisions; authorizing
 112 courts to provide a specified prejudgment remedy;
 113 providing that a party making a certain assertion has
 114 the burden of proof in specified proceedings;
 115 providing applicability; creating s. 605.2501, F.S.;
 116 providing events causing the dissolution of protected
 117 series of series limited liability companies; creating
 118 s. 605.2502, F.S.; specifying requirements and
 119 authorizations relating to dissolved protected series;
 120 specifying that a series limited liability company has
 121 not completed winding up until each of the protected
 122 series of the company has done so; creating s.
 123 605.2503, F.S.; providing for the effect of
 124 reinstatements of series limited liability companies
 125 and revocations of voluntary dissolutions; creating s.

126 605.2601, F.S.; defining terms; creating s. 605.2602,
 127 F.S.; prohibiting protected series from involvement in
 128 certain transactions; creating s. 605.2603, F.S.;
 129 prohibiting series limited liability companies from
 130 involvement in certain transactions; creating s.
 131 605.2604, F.S.; authorizing series limited liability
 132 companies to be a party to a merger under certain
 133 circumstances; creating s. 605.2605, F.S.; requiring
 134 that plans of merger meet certain requirements;
 135 creating s. 605.2606, F.S.; requiring articles of
 136 merger to meet certain requirements; creating s.
 137 605.2607, F.S.; providing for effects of mergers of
 138 protected series; creating s. 605.2608, F.S.;
 139 providing the means for enforcement of creditors'
 140 rights; providing applicability of certain provisions
 141 after a merger; creating s. 605.2701, F.S.; providing
 142 that the law of the jurisdiction of a foreign series
 143 limited liability company's formation governs certain
 144 aspects of the internal affairs of the foreign series
 145 limited liability company; providing applicability;
 146 creating s. 605.2702, F.S.; specifying requirements
 147 for making a specified determination relating to
 148 certain companies transacting business in this state
 149 or being subject to the personal jurisdiction of the
 150 courts in this state; creating s. 605.2703, F.S.;

151 providing applicability of laws of this state relating
152 to certificates of authority for foreign series
153 limited liability companies and foreign protected
154 series of such companies; requiring an application by
155 a foreign protected series for a certificate of
156 authority to include certain information and comply
157 with specified provisions; providing applicability;
158 creating s. 605.2704, F.S.; requiring foreign series
159 limited liability companies and foreign protected
160 series of such companies to make specified
161 disclosures; tolling such requirements under certain
162 circumstances; authorizing certain parties to make a
163 specified request or bring a separate proceeding if
164 such company or series fails to make the disclosures;
165 creating s. 605.2801, F.S.; providing applicability of
166 provisions relating to electronic signatures; creating
167 s. 605.2802, F.S.; providing construction; prohibiting
168 domestic limited liability companies from creating or
169 designating any protected series before a specified
170 date; providing an effective date.

171

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

173

174 Section 1. Present subsection (7) of section 48.062,
175 Florida Statutes, is redesignated as subsection (11), a new

176 subsection (7) and subsections (8), (9), and (10) are added to
177 that section, and subsections (1) and (6) of that section are
178 amended, to read:

179 48.062 Service on a domestic limited liability company or
180 registered foreign limited liability company.—

181 (1) As used in this section, the term:

182 (a) "Registered foreign limited liability company" means a
183 foreign limited liability company that has an active certificate
184 of authority to transact business in this state pursuant to a
185 record filed with the Department of State.

186 (b) "Registered foreign protected series of a foreign
187 series limited liability company" means a protected series of a
188 foreign series limited liability company that has an active
189 certificate of authority to transact business in this state
190 pursuant to a record filed with the Department of State.

191 (c) "Registered foreign series limited liability company"
192 means a foreign series limited liability company that has an
193 active certificate of authority to transact business in this
194 state pursuant to a record filed with the Department of State.

195 (6) A foreign limited liability company, foreign series
196 limited liability company, or foreign protected series of a
197 foreign series limited liability company engaging in business in
198 this state which is not registered is considered, for purposes
199 of service of process, a nonresident engaging in business in
200 this state and may be served pursuant to s. 48.181 or by order

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201 of the court under s. 48.102.

202 (7) Service of a summons and complaint on a series limited
203 liability company is notice to each protected series of the
204 series limited liability company of service of the summons and
205 complaint and the contents of the complaint.

206 (8) Service of a summons and complaint on a protected
207 series of a series limited liability company is notice to the
208 series limited liability company and any other protected series
209 of the series limited liability company of service of the
210 summons and complaint and the contents of the complaint.

211 (9) Service of a summons and complaint on a registered
212 foreign series limited liability company is notice to each
213 registered foreign protected series of the registered foreign
214 series limited liability company of service of the summons and
215 complaint and the contents of the complaint.

216 (10) Service of a summons and complaint on a registered
217 foreign protected series of a foreign series limited liability
218 company is notice to the foreign series limited liability
219 company and to any other registered foreign protected series of
220 the foreign series limited liability company of service of the
221 summons and complaint and the contents of the complaint.

222 (11) This section does not apply to service of process on
223 insurance companies.

224 Section 2. Subsection (1) of section 605.0103, Florida
225 Statutes, is amended to read:

226 605.0103 Knowledge; notice.—

227 (1) A person knows a fact if the person:

228 (a) Has actual knowledge of the fact; or

229 (b) Is deemed to know the fact under paragraph (4) (a)

230 ~~(4) (b)~~, or a law other than this chapter.

231 Section 3. Subsection (3) of section 605.0117, Florida
232 Statutes, is amended to read:

233 605.0117 Serving process, giving notice, or making a
234 demand.—

235 ~~(3) A registered series of a foreign series limited
236 liability company may be served in the same manner as a
237 registered limited liability company.~~

238 Section 4. Paragraphs (c) through (f) of subsection (1)
239 and subsection (2) of section 605.0211, Florida Statutes, are
240 amended to read:

241 605.0211 Certificate of status.—

242 (1) The department, upon request and payment of the
243 requisite fee, shall issue a certificate of status for a limited
244 liability company if the records filed in the department show
245 that the department has accepted and filed the company's
246 articles of organization. A certificate of status must state the
247 following:

248 (c) Whether all fees and penalties due to the department
249 under this chapter have been paid.

250 (d) Whether ~~if~~ the company's most recent annual report

251 required under s. 605.0212 has ~~not~~ been filed by the department.

252 (e) Whether ~~if~~ the department has administratively
253 dissolved the company or received a record notifying the
254 department that the company has been dissolved by judicial
255 action pursuant to s. 605.0705.

256 (f) Whether ~~if~~ the department has filed articles of
257 dissolution for the company.

258 (2) The department, upon request and payment of the
259 requisite fee, shall furnish a certificate of status for a
260 foreign limited liability company if the filed records ~~filed~~
261 show that the department has filed a certificate of authority
262 for that company. A certificate of status for a foreign limited
263 liability company must state the following:

264 (a) The foreign limited liability company's name and any
265 current alternate name adopted under s. 605.0906(1) for use in
266 this state.

267 (b) That the foreign limited liability company is
268 authorized to transact business in this state.

269 (c) Whether all fees and penalties due to the department
270 under this chapter or other law have been paid.

271 (d) Whether ~~if~~ the foreign limited liability company's
272 most recent annual report required under s. 605.0212 has ~~not~~
273 been filed by the department.

274 (e) Whether ~~if~~ the department has:

275 1. Revoked the foreign limited liability company's

276 certificate of authority; or

277 2. Filed a notice of withdrawal of certificate of
278 authority of the foreign limited liability company.

279 Section 5. Section 605.2101, Florida Statutes, is created
280 to read:

281 605.2101 Short title.—Sections 605.2101-605.2802 may be
282 cited as the "Uniform Protected Series Provisions."

283 Section 6. Section 605.2102, Florida Statutes, is created
284 to read:

285 605.2102 Definitions.—As used in ss. 605.2101-605.2802,
286 the term:

287 (1) "Asset" means either of the following:

288 (a) Property in which a series limited liability company
289 or a protected series has rights; or

290 (b) Property as to which the series limited liability
291 company or protected series has the power to transfer rights.

292 (2) "Associated asset" means an asset that meets the
293 requirements of s. 605.2301.

294 (3) "Associated member" means a member that meets the
295 requirements of s. 605.2302.

296 (4) "Foreign protected series" means an arrangement, a
297 configuration, or another structure established by a foreign
298 limited liability company which has attributes comparable to a
299 protected series established under this chapter, regardless of
300 whether the law under which the foreign company is organized

301 refers to "series" or "protected series."

302 (5) "Foreign series limited liability company" means a
303 foreign limited liability company that has at least one foreign
304 series or protected series.

305 (6) "Non-associated asset" means either of the following:

306 (a) An asset of a series limited liability company which
307 is not an associated asset of the company; or

308 (b) An asset of a protected series of a series limited
309 liability company which is not an associated asset of the
310 protected series.

311 (7) "Person" has the same meaning as in s. 605.0102 and
312 includes a protected series and a foreign protected series.

313 (8) "Protected series," except in the phrase "foreign
314 protected series," means a protected series established under s.
315 605.2201.

316 (9) "Protected-series manager" means a person under whose
317 authority the powers of a protected series are exercised and
318 under whose direction the activities and affairs of the
319 protected series are managed under the operating agreement and
320 this chapter.

321 (10) "Protected-series transferable interest" means a
322 right to receive a distribution from a protected series.

323 (11) "Protected-series transferee" means a person other
324 than the series limited liability company to which all or part
325 of a protected-series transferable interest of a protected

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326 series of a series limited liability company has been
327 transferred. The term includes a person that owns a protected-
328 series transferable interest as a result of ceasing to be an
329 associated member of a protected series.

330 (12) "Registered foreign protected series" means a
331 protected series of a foreign series limited liability company
332 that has an active certificate of authority to transact business
333 in this state pursuant to a record filed with the department.

334 (13) "Registered foreign series limited liability company"
335 means a foreign series limited liability company that has an
336 active certificate of authority to transact business in this
337 state pursuant to a record filed with the department.

338 (14) "Series limited liability company," except in the
339 phrase "foreign series limited liability company," means a
340 domestic limited liability company that has at least one
341 protected series.

342 Section 7. Section 605.2103, Florida Statutes, is created
343 to read:

344 605.2103 Nature of protected status.—A protected series of
345 a series limited liability company is a person distinct from all
346 of the following:

347 (1) The series limited liability company, subject to ss.
348 605.2104(3), 605.2501(1), and 605.2502(4).

349 (2) Another protected series of the series limited
350 liability company.

351 (3) A member of the series limited liability company,
 352 regardless of whether the member is an associated member of the
 353 protected series of the series limited liability company.

354 (4) A protected-series transferee of a protected series of
 355 the series limited liability company.

356 (5) A transferee of a transferable interest of the series
 357 limited liability company.

358 Section 8. Section 605.2104, Florida Statutes, is created
 359 to read:

360 605.2104 Powers and duration of protected series.-

361 (1) A protected series of a series limited liability
 362 company has the capacity to sue and be sued in its own name.

363 (2) Except as otherwise provided in subsections (3) and
 364 (4), a protected series of a series limited liability company
 365 has the same powers and purposes as the series limited liability
 366 company.

367 (3) A protected series of a series limited liability
 368 company ceases to exist not later than when the series limited
 369 liability company completes its winding up.

370 (4) A protected series of a series limited liability
 371 company may not be or do, as applicable, any of the following:

372 (a) Be a member of the series limited liability company;

373 (b) Establish a protected series; or

374 (c) Except as permitted by the laws of this state other
 375 than this chapter, have a purpose or power, or take an action,

376 that the laws of this state other than this chapter prohibit a
377 limited liability company from having or doing.

378 Section 9. Section 605.2105, Florida Statutes, is created
379 to read:

380 605.2105 Protected series governing law.—The laws of this
381 state govern the following:

382 (1) The internal affairs of a protected series of a series
383 limited liability company, including all of the following:

384 (a) Relations among any associated members of the
385 protected series.

386 (b) Relations between the protected series and:

387 1. Any associated member;

388 2. Any protected-series manager; or

389 3. Any protected-series transferee.

390 (c) Relations between any associated member and:

391 1. Any protected-series manager; or

392 2. Any protected-series transferee.

393 (d) The rights and duties of a protected-series manager.

394 (e) Governance decisions affecting the activities and

395 affairs of the protected series and the conduct of those

396 activities and affairs.

397 (f) Procedures and conditions for becoming an associated
398 member or a protected-series transferee.

399 (2) The relations between a protected series of a series
400 limited liability company and each of the following:

- 401 (a) The series limited liability company.
- 402 (b) Another protected series of the series limited
403 liability company.
- 404 (c) A member of the series limited liability company which
405 is not an associated member of the protected series of the
406 series limited liability company.
- 407 (d) A protected-series manager that is not a protected-
408 series manager of the protected series.
- 409 (e) A protected-series transferee that is not a protected-
410 series transferee of the protected series.
- 411 (3) The liability of a person for a debt, an obligation,
412 or another liability of a protected series of a series limited
413 liability company if the debt, obligation, or liability is
414 asserted solely by reason of the person being or acting as any
415 of the following:
- 416 (a) An associated member, protected-series transferee, or
417 protected-series manager of the protected series;
- 418 (b) A member of the series limited liability company which
419 is not an associated member of the protected series;
- 420 (c) A protected-series manager that is not a protected-
421 series manager of the protected series;
- 422 (d) A protected-series transferee that is not a protected-
423 series transferee of the protected series;
- 424 (e) A manager of the series limited liability company; or
- 425 (f) A transferee of a transferable interest of the series

426 limited liability company.

427 (4) The liability of a series limited liability company
 428 for a debt, an obligation, or another liability of a protected
 429 series of the series limited liability company if the debt,
 430 obligation, or liability is asserted solely in connection with
 431 any of the following on the part of the series limited liability
 432 company:

433 (a) Having delivered to the department for filing under s.
 434 605.2201(2) a protected series designation pertaining to the
 435 protected series or under s. 605.2201(4) or s. 605.2202(3) a
 436 statement of designation change pertaining to the protected
 437 series;

438 (b) Being or acting as a protected-series manager of the
 439 protected series;

440 (c) Having the protected series be or act as a manager of
 441 the series limited liability company; or

442 (d) Owning a protected-series transferable interest of the
 443 protected series.

444 (5) The liability of a protected series of a series
 445 limited liability company for a debt, an obligation, or another
 446 liability of the series limited liability company or of another
 447 protected series of the series limited liability company if the
 448 debt, obligation, or liability is asserted solely by reason of
 449 any of the following:

450 (a) The protected series:

451 1. Being a protected series of the series limited
 452 liability company or having as a protected-series manager the
 453 series limited liability company or another protected series of
 454 the series limited liability company; or

455 2. Being or acting as a protected-series manager of
 456 another protected series of the series limited liability company
 457 or a manager of the series limited liability company; or

458 (b) The series limited liability company owning a
 459 protected-series transferable interest of the protected series.

460 Section 10. Section 605.2106, Florida Statutes, is created
 461 to read:

462 605.2106 Relation of a protected series operating
 463 agreement and the protected series provisions of this chapter.-

464 (1) Except as otherwise provided in this section, and
 465 subject to ss. 605.2107 and 605.2108, the operating agreement of
 466 a series limited liability company governs the following:

467 (a) The internal affairs of a protected series, including
 468 all of the following:

469 1. Relations among any associated members of the protected
 470 series.

471 2. Relations between the protected series and:

472 a. Any associated member of the protected series;

473 b. Any protected-series manager; or

474 c. Any protected-series transferee.

475 3. Relations between any associated member and:

476 a. Any protected-series manager; or
 477 b. Any protected-series transferee.
 478 4. The rights and duties of a protected-series manager.
 479 5. Governance decisions affecting the activities and
 480 affairs of the protected series and the conduct of those
 481 activities and affairs.
 482 6. Procedures and conditions for becoming an associated
 483 member or a protected-series transferee.
 484 (b) Relations between a protected series of the series
 485 limited liability company and each of the following:
 486 1. The series limited liability company.
 487 2. Another protected series of the series limited
 488 liability company.
 489 3. The protected series, any of its protected-series
 490 managers, any associated member of the protected series, or any
 491 protected-series transferee of the protected series.
 492 4. A person in the person's capacity as:
 493 a. A member of the series limited liability company which
 494 is not an associated member of the protected series;
 495 b. A protected-series transferee or protected-series
 496 manager of another protected series; or
 497 c. A transferee of the series limited liability company.
 498 (2) If this chapter restricts the power of an operating
 499 agreement to affect a matter, the restriction applies to a
 500 matter under ss. 605.2101-605.2802 in accordance with s.

501 605.0105.

502 (3) If a law of this state other than this chapter imposes
 503 a prohibition, limitation, requirement, condition, obligation,
 504 liability, or other restriction on a limited liability company;
 505 a member, a manager, or another agent of a limited liability
 506 company; or a transferee of a limited liability company, except
 507 as otherwise provided in the laws of this state other than this
 508 chapter, the restriction applies in accordance with s. 605.2108.

509 (4) Except as otherwise provided in s. 605.2107, if the
 510 operating agreement of a series limited liability company does
 511 not provide for a matter described in subsection (1) in a manner
 512 authorized by ss. 605.2101-605.2802, the matter is determined in
 513 accordance with the following:

514 (a) To the extent that ss. 605.2101-605.2802 address the
 515 matter, ss. 605.2101-605.2802 govern.

516 (b) To the extent that ss. 605.2101-605.2802 do not
 517 address the matter, this chapter governs the matter in
 518 accordance with s. 605.2108.

519 Section 11. Section 605.2107, Florida Statutes, is created
 520 to read:

521 605.2107 Additional limitations on operating agreements.-

522 (1) An operating agreement may not vary the effect of:

523 (a) This section;

524 (b) Section 605.2103;

525 (c) Section 605.2104(1);

- 526 (d) Section 605.2104(2), to provide a protected series a
- 527 power beyond those provided in this chapter to a limited
- 528 liability company;
- 529 (e) Section 605.2104(3) or (4);
- 530 (f) Section 605.2105;
- 531 (g) Section 605.2106;
- 532 (h) Section 605.2108;
- 533 (i) Section 605.2201, except to vary the manner in which a
- 534 series limited liability company approves establishing a
- 535 protected series;
- 536 (j) Section 605.2202;
- 537 (k) Section 605.2301;
- 538 (l) Section 605.2302;
- 539 (m) Section 605.2303(1) or (2);
- 540 (n) Section 605.2304(3) or (6);
- 541 (o) Section 605.2401, except to decrease or eliminate a
- 542 limitation of liability stated in that section;
- 543 (p) Section 605.2402;
- 544 (q) Section 605.2403;
- 545 (r) Section 605.2404;
- 546 (s) Section 605.2501(1), (4), and (5);
- 547 (t) Section 605.2502, except to designate a different
- 548 person to manage winding up;
- 549 (u) Section 605.2503;
- 550 (v) Sections 605.2601-605.2608;

551 (w) Sections 605.2701-605.2704;
 552 (x) Sections 605.2801-605.2802, except to vary the person
 553 that has the right to sign and deliver to the department for
 554 filing a record under this chapter; or
 555 (y) A provision of this chapter pertaining to:
 556 1. A registered office or registered agents; or
 557 2. The department, including provisions relating to
 558 records authorized or required to be delivered to the department
 559 for filing under this chapter.
 560 (2) An operating agreement may not unreasonably restrict
 561 the duties and rights conferred under s. 605.2305 but may impose
 562 reasonable restrictions on the availability and use of
 563 information obtained under that section and may provide
 564 appropriate remedies, including liquidated damages, for a breach
 565 of any reasonable restriction on use.
 566 Section 12. Section 605.2108, Florida Statutes, is created
 567 to read:
 568 605.2108 Application of this chapter to protected series.—
 569 (1) Except as otherwise provided in subsection (2) and s.
 570 605.2107, the following provisions apply in the application of
 571 ss. 605.2106, 605.2304(3) and (6), 605.2501(4)(a), 605.2502(1),
 572 and 605.2503(2):
 573 (a) A protected series of a series limited liability
 574 company is deemed to be a limited liability company that is
 575 formed separately from the series limited liability company and

576 is distinct from the series limited liability company and any
577 other protected series of the series limited liability company;

578 (b) An associated member of the protected series of a
579 series limited liability company is deemed to be a member of the
580 series limited liability company deemed to exist under paragraph
581 (a);

582 (c) A protected-series transferee of the protected series
583 is deemed to be a transferee of the series limited liability
584 company deemed to exist under paragraph (a);

585 (d) A protected-series transferable interest of the
586 protected series is deemed to be a transferable interest of the
587 series limited liability company deemed to exist under paragraph
588 (a);

589 (e) A protected-series manager is deemed to be a manager
590 of the series limited liability company deemed to exist under
591 paragraph (a);

592 (f) An asset of the protected series is deemed to be an
593 asset of the series limited liability company deemed to exist
594 under paragraph (a), regardless of whether the asset is an
595 associated asset of the protected series; or

596 (g) Any creditor or other obligee of the protected series
597 is deemed to be a creditor or obligee of the series limited
598 liability company deemed to exist under paragraph (a).

599 (2) Subsection (1) does not apply if its application would
600 do either of the following:

601 (a) Contravene s. 605.0105; or
 602 (b) Authorize or require the department to:
 603 1. Accept for filing a type of record which this chapter
 604 does not authorize or require a person to deliver to the
 605 department for filing; or
 606 2. Make or deliver a record that this chapter does not
 607 authorize or require the department to make or deliver.
 608 (3) Except to the extent otherwise specified in ss.
 609 605.2101-605.2802, the provisions of this chapter applicable to
 610 limited liability companies in general and their managers,
 611 members, and transferees, including, but not limited to,
 612 provisions relating to formation, powers, operation, existence,
 613 management, court proceedings, and filings with the department
 614 and other state or local government agencies, are applicable to
 615 each series limited liability company and to each protected
 616 series established pursuant to s. 605.2201.
 617 Section 13. Section 605.2201, Florida Statutes, is created
 618 to read:
 619 605.2201 Establishment of protected series; change of
 620 designation.—
 621 (1) With the affirmative vote or consent of all members of
 622 a limited liability company, the company may establish a
 623 protected series.
 624 (2) To establish a protected series, a limited liability
 625 company shall deliver to the department for filing a protected

626 series designation, signed by the company, stating the name of
627 the company and the name of the protected series to be
628 established, and any other information the department requires
629 for filing.

630 (3) A protected series is established when the protected
631 series designation takes effect under s. 605.0207.

632 (4) To amend a protected series designation, a series
633 limited liability company shall deliver to the department for
634 filing a statement of designation change, signed by the company,
635 that sets forth the following:

636 (a) The name of the series limited liability company and
637 the name of the protected series to which the change to the
638 protected series designation applies;

639 (b) Each change to the protected series designation; and

640 (c) A statement that each designation change was approved
641 by the affirmative vote or consent of the members of the series
642 limited liability company required to make each change to the
643 protected series designation.

644 (5) Each designation change made pursuant to subsection
645 (4) takes effect when the statement of designation change takes
646 effect under s. 605.0207.

647 Section 14. Section 605.2202, Florida Statutes, is created
648 to read:

649 605.2202 Protected series name.—

650 (1) Except as otherwise provided in subsection (2), the

651 name of a protected series must comply with s. 605.0112.

652 (2) The name of a protected series of a series limited
 653 liability company must:

654 (a) Begin with the name of the series limited liability
 655 company, including any word or abbreviation required by s.
 656 605.0112; and

657 (b) Contain the phrase "protected series" or the
 658 abbreviation "P.S." or "PS."

659 (3) If a series limited liability company changes its
 660 name, the company must deliver to the department for filing a
 661 statement of designation change for each of the company's
 662 protected series, changing the name of each protected series to
 663 comply with this section.

664 Section 15. Section 605.2203, Florida Statutes, is created
 665 to read:

666 605.2203 Registered agent.—

667 (1) The registered agent in this state for a series
 668 limited liability company is the registered agent in this state
 669 for each protected series of that company.

670 (2) Before delivering a protected series designation to
 671 the department for filing, a series limited liability company
 672 must agree with a registered agent specifying that the agent
 673 will serve as the registered agent in this state for that
 674 company and for each protected series of that company.

675 (3) A person that signs a protected series designation

676 delivered to the department for filing affirms as a fact that
 677 the series limited liability company on whose behalf the
 678 designation is delivered has complied with subsection (2).

679 (4) A person that ceases to be the registered agent for a
 680 series limited liability company ceases to be the registered
 681 agent for each protected series of that company.

682 (5) A person that ceases to be the registered agent for a
 683 protected series of a series limited liability company, other
 684 than as a result of the termination of the protected series,
 685 ceases to be the registered agent of that company and any other
 686 protected series of that company.

687 (6) Except as otherwise agreed upon by a series limited
 688 liability company and its registered agent, the registered agent
 689 is not obligated to distinguish between a process, notice,
 690 demand, or other record concerning the company and a process,
 691 notice, demand, or other record concerning a protected series of
 692 the company.

693 Section 16. Section 605.2204, Florida Statutes, is created
 694 to read:

695 605.2204 Series limited liability company; service of
 696 process; giving notice or making demand.-

697 (1) Process against a series limited liability company, a
 698 protected series of a series limited liability company, a
 699 registered foreign series limited liability company, or a
 700 registered foreign protected series of a registered foreign

701 series limited liability company, respectively, may be served in
702 the same manner as service is made on each such entity under s.
703 48.062 and chapter 48 or chapter 49.

704 (2) Any notice or demand on a series limited liability
705 company or a protected series of a series limited liability
706 company under this chapter may be given or made to any member of
707 a member-managed series limited liability company or to any
708 manager of a manager-managed series limited liability company;
709 to the registered agent of a series limited liability company at
710 the registered office of the series limited liability company in
711 this state; or to any other address in this state which is the
712 principal office in this state of the series limited liability
713 company.

714 (3) Any notice or demand on a registered foreign series
715 limited liability company or a registered foreign protected
716 series of a registered foreign series limited liability company
717 under this chapter may be given or made to any member of a
718 member-managed foreign series limited liability company or to
719 any manager of a manager-managed foreign series limited
720 liability company; to the registered agent of the registered
721 foreign series limited liability company at the registered
722 office of the registered foreign series limited liability
723 company in this state; or to the principal office address, or
724 any other address in this state which is, in fact, the principal
725 office in this state of the registered foreign series limited

726 liability company.

727 (4) This section does not affect the right to serve
728 process on, give notice to, or make a demand on a series limited
729 liability company or any protected series of a series limited
730 liability company, or to or on any foreign series limited
731 liability company or any protected series of the foreign series
732 limited liability company, in any other manner provided by law.

733 Section 17. Section 605.2205, Florida Statutes, is created
734 to read:

735 605.2205 Certificate of status for domestic or foreign
736 protected series.-

737 (1) The department, upon request, payment of the requisite
738 fee, and compliance with any other filing requirements of the
739 department, shall issue a certificate of status for a protected
740 series of a series limited liability company if the records
741 filed in the department show that the department has accepted
742 and filed articles of organization for the series limited
743 liability company and a protected series designation for the
744 protected series. A certificate of status for a protected series
745 of a series limited liability company must state all of the
746 following:

747 (a) The series limited liability company's name.

748 (b) The name of the protected series.

749 (c) That the series limited liability company was
750 organized under the laws of this state and the date of

751 organization.

752 (d) That the protected series was designated under the
753 laws of this state and the date of designation.

754 (e) Whether all fees and penalties due to the department
755 under this chapter or other law by the series limited liability
756 company and the protected series have been paid.

757 (f) Whether the series limited liability company's most
758 recent annual report required by s. 605.0212 has been filed by
759 the department.

760 (g) Whether the series limited liability company's most
761 recent annual report includes the name of the protected series,
762 unless:

763 1. When the series limited liability company delivered the
764 annual report for filing, the protected series designation
765 pertaining to the protected series had not yet taken effect; or

766 2. After the series limited liability company delivered
767 the annual report for filing, the company delivered to the
768 department for filing a statement of designation change, which
769 changes the name of the protected series.

770 (h) Whether the department has administratively dissolved
771 the series limited liability company or received a record
772 notifying the department that the company has been dissolved by
773 judicial action pursuant to s. 605.0705.

774 (i) Whether the department has administratively dissolved
775 the protected series or received a record notifying the

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776 department that the protected series has been dissolved by
777 judicial action pursuant to s. 605.2501(4) or (5).

778 (j) Whether the department has filed articles of
779 dissolution for the series limited liability company.

780 (k) Whether the department has filed a statement of
781 dissolution, termination, or relocation for the protected
782 series.

783 (2) The department, upon request, payment of the requisite
784 fee, and compliance with any other filing requirements of the
785 department, shall issue a certificate of status for a foreign
786 protected series of a foreign series limited liability company
787 if the records filed in the department show that the department
788 has filed a certificate of authority for the foreign series
789 limited liability company and a certificate of authority for the
790 foreign protected series. A certificate of status for a
791 registered foreign protected series of a registered foreign
792 series limited liability company must state all of the
793 following:

794 (a) The foreign series limited liability company's name
795 and any current alternative name adopted under s. 605.0906(1)
796 for use in this state.

797 (b) The name of the foreign protected series and any
798 current alternative name adopted under s. 605.0906(1) for use in
799 this state.

800 (c) That the foreign series limited liability company is

801 authorized to transact business in this state.

802 (d) That the foreign protected series is authorized to
 803 transact business in this state.

804 (e) Whether all fees and penalties due to the department
 805 under this chapter or other law by the foreign series limited
 806 liability company and the foreign protected series have been
 807 paid.

808 (f) Whether the foreign series limited liability company's
 809 most recent annual report required by s. 605.0212 has been filed
 810 by the department.

811 (g) Whether the foreign series limited liability company's
 812 most recent annual report includes the name of the foreign
 813 protected series, unless:

814 1. When the foreign series limited liability company
 815 delivered the annual report for filing, the foreign protected
 816 series designation pertaining to the foreign protected series
 817 had not yet taken effect; or

818 2. After the foreign series limited liability company
 819 delivered the annual report for filing, the foreign series
 820 limited liability company delivered to the department for filing
 821 a statement of designation change which changes the name of the
 822 foreign protected series.

823 (h) Whether the department has:

824 1. Revoked the foreign series limited liability company's
 825 certificate of authority or revoked the foreign protected series

826 certificate of authority; or

827 2. Filed a notice of withdrawal of the certificate of
 828 authority for the foreign series limited liability company or
 829 for the foreign protected series.

830 (3) Subject to any qualification stated by the department
 831 in a certificate of status, a certificate of status issued by
 832 the department may be relied upon as conclusive evidence of the
 833 facts stated in the certificate of status as to the active
 834 status of the domestic or foreign series limited liability
 835 company and any protected series of the domestic or foreign
 836 limited liability company authorized to transact business in
 837 this state.

838 Section 18. Section 605.2206, Florida Statutes, is created
 839 to read:

840 605.2206 Information required in annual report; failure to
 841 comply.-

842 (1) In the annual report required by s. 605.0212, a series
 843 limited liability company shall include the name of each
 844 protected series of the company:

845 (a) For which the series limited liability company has
 846 previously delivered to the department for filing a protected
 847 series designation; and

848 (b) Which has not dissolved and completed winding up.

849 (2) The failure of a series limited liability company to
 850 comply with subsection (1) with regard to a protected series

851 prevents issuance of a certificate of status pertaining to the
852 protected series, but does not otherwise affect the protected
853 series.

854 (3) In the annual report required by s. 605.0212, a
855 registered foreign series limited liability company shall
856 include the name of each registered foreign protected series of
857 the registered foreign series limited liability company:

858 (a) For which the registered foreign series limited
859 liability company has previously delivered to the department for
860 filing an application for a certificate of authority to transact
861 business in this state, which has been accepted by the
862 department; and

863 (b) Which has not withdrawn its certificate of authority
864 to transact business in this state.

865 (4) The failure of a registered foreign series limited
866 liability company to comply with subsection (3) with regard to a
867 registered foreign protected series prevents issuance of a
868 certificate of status pertaining to the registered foreign
869 protected series.

870 Section 19. Section 605.2301, Florida Statutes, is created
871 to read:

872 605.2301 Associated asset.—

873 (1) Only an asset of a protected series may be an
874 associated asset of the protected series. Only an asset of a
875 series limited liability company may be an associated asset of

876 the company.

877 (2) (a) An asset of a protected series of a series limited
878 liability company is an associated asset of the protected series
879 only if the protected series creates and maintains records that
880 state the name of the protected series and describe the asset
881 with sufficient specificity to permit a disinterested,
882 reasonable individual to:

883 1. Identify the asset and distinguish it from any other
884 asset of the protected series, any asset of the series limited
885 liability company, and any asset of any other protected series
886 of the company;

887 2. Determine when and from which person the protected
888 series acquired the asset or how the asset otherwise became an
889 asset of the protected series; and

890 3. If the protected series acquired the asset from the
891 series limited liability company or another protected series of
892 the company, determine any consideration paid, the payor, and
893 the payee.

894 (b) A deed or other instrument granting an interest in
895 real property to or from one or more protected series of a
896 series limited liability company, or any other instrument
897 otherwise affecting an interest in real property held by one or
898 more protected series of a series limited liability company, in
899 each case to the extent such deed or other instrument is in
900 favor of a person who gives value without knowledge of the lack

901 of authority of the person signing and delivering a deed or
902 other instrument and is recorded in the office for recording
903 transfers or other matters affecting real property, is
904 conclusive of the authority of the person signing and
905 constitutes a record that such interest in real property is an
906 associated asset or liability, as applicable, of the protected
907 series.

908 (3) (a) An asset of a series limited liability company is
909 an associated asset of the company only if the company creates
910 and maintains records that state the name of the company and
911 describe the asset with sufficient specificity to permit a
912 disinterested, reasonable individual to:

913 1. Identify the asset and distinguish it from any other
914 asset of the series limited liability company and any asset of
915 any protected series of the company;

916 2. Determine when and from which person the series limited
917 liability company acquired the asset or how the asset otherwise
918 became an asset of the company; and

919 3. If the series limited liability company acquired the
920 asset from a protected series of the company, determine any
921 consideration paid, the payor, and the payee.

922 (b) A deed or other instrument granting an interest in
923 real property to or from a series limited liability company, or
924 any other instrument otherwise affecting an interest in real
925 property held by a series limited liability company, in each

926 case to the extent such deed or other instrument is in favor of
927 a person who gives value without knowledge of the lack of
928 authority of the person signing and delivering a deed or other
929 instrument and is recorded in the office for recording transfers
930 or other matters affecting real property, is conclusive of the
931 authority of the person signing and constitutes a record that
932 such interest in real property is an associated asset or
933 liability, as applicable, of the series limited liability
934 company.

935 (4) The records and recordkeeping required by subsections
936 (2) and (3) may be organized by specific listing, category,
937 type, quantity, or computational or allocative formula or
938 procedure, including a percentage or share of any asset, or in
939 any other reasonable manner.

940 (5) To the extent authorized by this chapter and the laws
941 of this state other than this chapter, a series limited
942 liability company or protected series of a series limited
943 liability company may hold an associated asset directly or
944 indirectly, through a representative, nominee, or similar
945 arrangement, except for the following:

946 (a) A protected series may not hold an associated asset in
947 the name of the series limited liability company or another
948 protected series of the company; and

949 (b) A series limited liability company may not hold an
950 associated asset in the name of a protected series of the

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951 company.

952 Section 20. Section 605.2302, Florida Statutes, is created
953 to read:

954 605.2302 Associated member.—

955 (1) Only a member of a series limited liability company
956 may be an associated member of a protected series of the
957 company.

958 (2) A member of a series limited liability company becomes
959 an associated member of a protected series of the company if the
960 operating agreement or a procedure established by the operating
961 agreement states all of the following:

962 (a) That the member is an associated member of the
963 protected series.

964 (b) The date on which the member became an associated
965 member of the protected series.

966 (c) Any protected-series transferable interest the
967 associated member has in connection with becoming or being an
968 associated member of the protected series.

969 (3) If a person that is an associated member of a
970 protected series of a series limited liability company is
971 dissociated from the company, the person ceases to be an
972 associated member of the protected series.

973 Section 21. Section 605.2303, Florida Statutes, is created
974 to read:

975 605.2303 Protected-series transferable interest.—

976 (1) A protected-series transferable interest of a
977 protected series of a series limited liability company must be
978 owned initially by an associated member of the protected series
979 or the series limited liability company.

980 (2) If a protected series of a series limited liability
981 company has no associated members when established, the company
982 owns the protected-series transferable interests in the
983 protected series.

984 (3) In addition to acquiring a protected-series
985 transferable series interest under subsection (2), a series
986 limited liability company may acquire a protected-series
987 transferable interest through a transfer from another person or
988 as provided in the operating agreement.

989 (4) Except for s. 605.2108(1)(c), any provision of this
990 chapter which applies to a protected-series transferee of a
991 protected series of a series limited liability company applies
992 to the company in its capacity as an owner of a protected-series
993 transferable interest of the protected series. Any provision of
994 the operating agreement of a series limited liability company
995 which applies to a protected-series transferee of a protected
996 series of the company applies to the company in its capacity as
997 an owner of a protected-series transferable interest of the
998 protected series.

999 Section 22. Section 605.2304, Florida Statutes, is created
1000 to read:

1001 605.2304 Management.—

1002 (1) A protected series may have one or more protected-

1003 series managers.

1004 (2) If a protected series has no associated members, the

1005 series limited liability company is the protected-series

1006 manager.

1007 (3) Section 605.2108 applies to the determination of any

1008 duties of a protected-series manager of a protected series to

1009 each of the following:

1010 (a) The protected series.

1011 (b) Any associated member of the protected series.

1012 (c) Any protected-series transferee of the protected

1013 series.

1014 (4) Solely by reason of being or acting as a protected-

1015 series manager of a protected series, a person owes no duty to

1016 any of the following:

1017 (a) The series limited liability company.

1018 (b) Another protected series of the series limited

1019 liability company.

1020 (c) Another person in that person's capacity as:

1021 1. A member of the series limited liability company which

1022 is not an associated member of the protected series;

1023 2. A protected-series transferee or protected-series

1024 manager of another protected series; or

1025 3. A transferee of the series limited liability company.

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1026 (5) An associated member of a protected series of a series
1027 limited liability company has the same rights as any other
1028 member of the company to vote on or consent to an amendment to
1029 the company's operating agreement or any other matter being
1030 decided by the members, regardless of whether the amendment or
1031 matter affects the interests of the protected series or the
1032 associated member.

1033 (6) The right of a member to maintain a derivative action
1034 to enforce a right of a limited liability company pursuant to s.
1035 605.0802 applies to each of the following:

1036 (a) An associated member of a protected series, in
1037 accordance with s. 605.2108.

1038 (b) A member of a series limited liability company, in
1039 accordance with s. 605.2108.

1040 (7) An associated member of a member-managed protected
1041 series is an agent for the protected series with power to bind
1042 the protected series to the same extent that a member of a
1043 member-managed limited liability company is an agent for the
1044 company with power to bind the company under s. 605.04074(1)(a).
1045 A protected-series manager of a manager-managed protected series
1046 is an agent for the protected series with power to bind the
1047 protected series to the same extent that a manager of a manager-
1048 managed limited liability company is an agent for the company
1049 with power to bind the company under s. 605.04074(2)(b).

1050 Section 23. Section 605.2305, Florida Statutes, is created

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1051 to read:

1052 605.2305 Right of a person that is not an associated
1053 member of a protected series to information of a protected
1054 series.-

1055 (1) A member of a series limited liability company which
1056 is not an associated member of a protected series of the company
1057 has a right to information concerning the protected series to
1058 the same extent, in the same manner, and under the same
1059 conditions that a member that is not a manager of a manager-
1060 managed limited liability company has a right to information of
1061 the company under s. 605.0410(1) and (3) (b).

1062 (2) A person that was formerly an associated member of a
1063 protected series has a right to information concerning the
1064 protected series to the same extent, in the same manner, and
1065 under the same conditions that a person dissociated as a member
1066 of a manager-managed limited liability company has a right to
1067 information concerning the limited liability company under s.
1068 605.0410(4) or other applicable law.

1069 (3) If an associated member of a protected series dies,
1070 the legal representative of the deceased associated member has a
1071 right to information concerning the protected series to the same
1072 extent, in the same manner, and under the same conditions that
1073 the legal representative of a deceased member of a limited
1074 liability company has a right to information concerning the
1075 company under ss. 605.0410(9) and 605.0504.

1076 (4) A protected-series manager of a protected series has a
 1077 right to information concerning the protected series to the same
 1078 extent, in the same manner, and under the same conditions that a
 1079 manager of a manager-managed limited liability company has a
 1080 right to information concerning the company under s.
 1081 605.0410(3)(a).

1082 (5) The court-ordered inspection provisions of s. 605.0411
 1083 apply to the information rights regarding series limited
 1084 liability companies and protected series of such companies.

1085 Section 24. Section 605.2401, Florida Statutes, is created
 1086 to read:

1087 605.2401 Limitations on liability.-

1088 (1) A person is not liable, directly or indirectly, by way
 1089 of contribution or otherwise, for a debt, an obligation, or
 1090 another liability of either of the following:

1091 (a) A protected series of a series limited liability
 1092 company solely by reason of being or acting as:

1093 1. An associated member, protected-series manager, or
 1094 protected-series transferee of the protected series; or

1095 2. A member, manager, or transferee of the company; or

1096 (b) A series limited liability company solely by reason of
 1097 being or acting as an associated member, protected-series
 1098 manager, or protected-series transferee of a protected series of
 1099 the company.

1100 (2) Subject to s. 605.2404, the following apply:

1101 (a) A debt, an obligation, or another liability of a
 1102 series limited liability company is solely the debt, obligation,
 1103 or liability of the company.

1104 (b) A debt, an obligation, or another liability of a
 1105 protected series is solely the debt, obligation, or liability of
 1106 the protected series.

1107 (c) A series limited liability company is not liable,
 1108 directly or indirectly, by way of contribution or otherwise, for
 1109 a debt, an obligation, or another liability of a protected
 1110 series of the company solely by reason of the protected series
 1111 being a protected series of the company, or the series limited
 1112 liability company:

1113 1. Being or acting as a protected-series manager of the
 1114 protected series;

1115 2. Having the protected series manage the series limited
 1116 liability company; or

1117 3. Owning a protected-series transferable interest of the
 1118 protected series.

1119 (d) A protected series of a series limited liability
 1120 company is not liable, directly or indirectly, by way of
 1121 contribution or otherwise, for a debt, an obligation, or another
 1122 liability of the company or another protected series of the
 1123 company solely by reason of:

1124 1. Being a protected series of the series limited
 1125 liability company;

1126 2. Being or acting as a manager of the series limited
 1127 liability company or a protected-series manager of another
 1128 protected series of the company; or

1129 3. Having the series limited liability company or another
 1130 protected series of the company be or act as a protected-series
 1131 manager of the protected series.

1132 Section 25. Section 605.2402, Florida Statutes, is created
 1133 to read:

1134 605.2402 Claim seeking to disregard limitation of
 1135 liability.-

1136 (1) Except as otherwise provided in subsection (2), a
 1137 claim seeking to disregard a limitation in s. 605.2401 is
 1138 governed by the principles of law and equity, including a
 1139 principle providing a right to a creditor or holding a person
 1140 liable for a debt, an obligation, or another liability of
 1141 another person, which would apply if each protected series of a
 1142 series limited liability company were a limited liability
 1143 company formed separately from the series limited liability
 1144 company and distinct from the series limited liability company
 1145 and any other protected series of the series limited liability
 1146 company.

1147 (2) The failure of a limited liability company or a
 1148 protected series to observe formalities relating to the exercise
 1149 of its powers or management of its activities and affairs is not
 1150 a ground to disregard a limitation in s. 605.2401(1) but may be

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1151 a ground to disregard a limitation in s. 605.2401(2).

1152 (3) This section applies to a claim seeking to disregard a
1153 limitation of liability applicable to a foreign series limited
1154 liability company or foreign protected series and comparable to
1155 a limitation stated in s. 605.2401, if either of the following
1156 applies:

1157 (a) The claimant is a resident of this state, transacting
1158 business in this state, or authorized to transact business in
1159 this state; or

1160 (b) The claim is to establish or enforce a liability
1161 arising under law of this state other than this chapter or from
1162 an act or omission in this state.

1163 Section 26. Section 605.2403, Florida Statutes, is created
1164 to read:

1165 605.2403 Remedies of judgment creditor of associated
1166 member or protected-series transferee.—The provisions of s.
1167 605.0503 providing or restricting remedies available to a
1168 judgment creditor of a member or transferee of a limited
1169 liability company apply to a judgment creditor of either or both
1170 of the following:

1171 (1) An associated member or a protected-series transferee
1172 of a protected series.

1173 (2) A series limited liability company, to the extent the
1174 company owns a protected-series transferable interest of a
1175 protected series.

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1176 Section 27. Section 605.2404, Florida Statutes, is created
1177 to read:

1178 605.2404 Enforcement of claim against non-associated
1179 asset.-

1180 (1) For the purposes of this section, the term:

1181 (a) "Enforcement date" means 12:01 a.m. on the date on
1182 which a claimant first serves process on a series limited
1183 liability company or protected series in an action seeking to
1184 enforce a claim against an asset of the company or protected
1185 series by attachment, levy, or similar means under this section.

1186 (b) "Incurrence date," subject to s. 605.2608(2), means
1187 the date on which a series limited liability company or
1188 protected series of the company incurred the liability giving
1189 rise to a claim that a claimant seeks to enforce under this
1190 section.

1191 (2) If a claim against a series limited liability company
1192 or a protected series of the company has been reduced to
1193 judgment, in addition to any other remedy provided by law or
1194 equity, the judgment may be enforced in accordance with the
1195 following:

1196 (a) A judgment against the series limited liability
1197 company may be enforced against an asset of a protected series
1198 of the company if the asset:

1199 1. Was a non-associated asset of the protected series on
1200 the incurrence date; or

1201 2. Is a non-associated asset of the protected series on
 1202 the enforcement date.

1203 (b) A judgment against a protected series may be enforced
 1204 against an asset of the series limited liability company if the
 1205 asset:

1206 1. Was a non-associated asset of the series limited
 1207 liability company on the incurrence date; or

1208 2. Is a non-associated asset of the series limited
 1209 liability company on the enforcement date.

1210 (c) A judgment against a protected series may be enforced
 1211 against an asset of another protected series of the series
 1212 limited liability company if the asset:

1213 1. Was a non-associated asset of the other protected
 1214 series on the incurrence date; or

1215 2. Is a non-associated asset of the other protected series
 1216 on the enforcement date.

1217 (3) In addition to any other remedy provided by law or
 1218 equity, if a claim against a series limited liability company or
 1219 a protected series has not been reduced to a judgment, and law
 1220 other than this chapter permits a prejudgment remedy by
 1221 attachment, levy, or similar means, the court may apply
 1222 subsection (2) as a prejudgment remedy.

1223 (4) In a proceeding under this section, the party
 1224 asserting that an asset is or was an associated asset of a
 1225 series limited liability company or a protected series of the

1226 series limited liability company has the burden of proof on the
 1227 issue.

1228 (5) This section applies to an asset of a foreign series
 1229 limited liability company or foreign protected series if all of
 1230 the following apply:

1231 (a) The asset is real or tangible property located in this
 1232 state.

1233 (b) The claimant is a resident of this state or
 1234 transacting business or authorized to transact business in this
 1235 state, or the claim under this section is to enforce a judgment,
 1236 or to seek a prejudgment remedy, pertaining to a liability
 1237 arising from the law of this state other than this chapter or an
 1238 act or omission in this state.

1239 (c) The asset is not identified in the records of the
 1240 foreign series limited liability company or foreign protected
 1241 series in a manner comparable to the manner required by s.
 1242 605.2301.

1243 Section 28. Section 605.2501, Florida Statutes, is created
 1244 to read:

1245 605.2501 Events causing dissolution of protected series.—A
 1246 protected series of a series limited liability company is
 1247 dissolved, and its activities and affairs must be wound up, upon
 1248 the occurrence of any of the following:

1249 (1) Dissolution of the series limited liability company.

1250 (2) Occurrence of an event or a circumstance that the

1251 operating agreement states causes dissolution of the protected
1252 series.

1253 (3) Affirmative vote or consent of all associated members
1254 of the protected series.

1255 (4) Entry by the court of an order dissolving the
1256 protected series on application by an associated member or a
1257 protected-series manager of the protected series:

1258 (a) In accordance with s. 605.2108; and

1259 (b) To the same extent, in the same manner, and on the
1260 same grounds the court would enter an order dissolving a limited
1261 liability company on application by a member or manager of the
1262 limited liability company pursuant to s. 605.0702.

1263 (5) Entry by the court of an order dissolving the
1264 protected series on application by the series limited liability
1265 company or a member or manager of the series limited liability
1266 company:

1267 (a) In accordance with s. 605.2108; and

1268 (b) To the same extent, in the same manner, and on the
1269 same grounds the court would enter an order dissolving a limited
1270 liability company on application by a member or manager of the
1271 limited liability company pursuant to s. 605.0702.

1272 (6) Automatic or involuntary dissolution of the series
1273 limited liability company that established the protected series.

1274 (7) The filing of a statement of administrative
1275 dissolution of the limited liability company or a protected

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1276 series of the company by the department pursuant to s. 605.0714.

1277 Section 29. Section 605.2502, Florida Statutes, is created
1278 to read:

1279 605.2502 Winding up dissolved protected series.—

1280 (1) Subject to subsections (2) and (3) and in accordance
1281 with s. 605.2108, the following apply:

1282 (a) A dissolved protected series shall wind up its
1283 activities and affairs in the same manner that a dissolved
1284 limited liability company winds up its activities and affairs
1285 under s. 605.0709, subject to the same requirements and
1286 conditions, and with the same effects.

1287 (b) Judicial supervision or another judicial remedy is
1288 available in the winding up of the protected series to the same
1289 extent, in the same manner, under the same conditions, and with
1290 the same effects that apply under s. 605.0709(5).

1291 (2) When a protected series of a series limited liability
1292 company dissolves, the company may deliver to the department for
1293 filing its articles of protected series dissolution stating the
1294 name of the series limited liability company and the protected
1295 series and that the protected series is dissolved. The filing of
1296 the articles of dissolution by the department has the same
1297 effect with regard to the protected series as the filing by a
1298 limited liability company of articles of dissolution with the
1299 department under s. 605.0707.

1300 (3) When a protected series of a series limited liability

1301 company has completed winding up in accordance with s. 605.0709,
 1302 the company that established the protected series may deliver to
 1303 the department for filing a statement of designation
 1304 cancellation, stating all of the following:

1305 (a) The name of the company and the protected series.

1306 (b) That the protected series is terminated with the
 1307 effective date of the termination if that date is not the date
 1308 of filing of the statement of designation cancellation.

1309 (c) Any other information required by the department.

1310 (4) The filing of the statement of designation
 1311 cancellation by the department has the same effect as the filing
 1312 by the department of a statement of termination under s.
 1313 605.0709(7).

1314 (5) A series limited liability company has not completed
 1315 its winding up until each of the protected series of the company
 1316 has completed its winding up.

1317 Section 30. Section 605.2503, Florida Statutes, is created
 1318 to read:

1319 605.2503 Effects of reinstatement of series limited
 1320 liability company; revocation of voluntary dissolution.—If a
 1321 series limited liability company that has been administratively
 1322 dissolved is reinstated, or if a series limited liability
 1323 company that voluntarily dissolved revokes its articles of
 1324 dissolution before filing a statement of termination, both of
 1325 the following apply:

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1326 (1) Each protected series of the series limited liability
1327 company ceases winding up.

1328 (2) Section 605.0708 applies to the series limited
1329 liability company and to each protected series of the company,
1330 in accordance with s. 605.2108.

1331 Section 31. Section 605.2601, Florida Statutes, is created
1332 to read:

1333 605.2601 Entity transactions involving a series limited
1334 liability company or a protected series of the company
1335 restricted; definitions.—As used in ss. 605.2601-605.2608, the
1336 term:

1337 (1) "After a merger" or "after the merger" means when a
1338 merger under s. 605.2604 becomes effective and any time
1339 thereafter.

1340 (2) "Before a merger" or "before the merger" means before
1341 a merger under s. 605.2604 becomes effective.

1342 (3) "Continuing protected series" means a protected series
1343 of a surviving series limited liability company which continues
1344 in uninterrupted existence after a merger under s. 605.2604.

1345 (4) "Merging company" means a limited liability company
1346 that is party to a merger under s. 605.2604.

1347 (5) "Non-surviving company" means a merging company that
1348 does not continue in existence after a merger under s. 605.2604.

1349 (6) "Relocated protected series" means a protected series
1350 of a non-surviving company which, after a merger under s.

1351 605.2604, continues in uninterrupted existence as a protected
 1352 series of the surviving company.

1353 (7) "Surviving company" means a merging company that
 1354 continues in existence after a merger under s. 605.2604.

1355 Section 32. Section 605.2602, Florida Statutes, is created
 1356 to read:

1357 605.2602 Restrictions on entity transactions involving
 1358 protected series.—Except as provided in ss. 605.2605(2),
 1359 605.2606(2), and 605.2607(1), a protected series may not be a
 1360 party to; be formed, organized, established, or created in; or
 1361 result from either of the following:

1362 (1) A conversion, domestication, interest exchange, or
 1363 merger under this chapter or the law of a foreign jurisdiction,
 1364 however the transaction is denominated under such law; or

1365 (2) A transaction with the same substantive effect as a
 1366 conversion, domestication, interest exchange, or merger.

1367 Section 33. Section 605.2603, Florida Statutes, is created
 1368 to read:

1369 605.2603 Restrictions on entity transactions involving
 1370 series limited liability company.—A series limited liability
 1371 company may not be:

1372 (1) A party to, formed, organized, created in, or result
 1373 from either of the following:

1374 (a) A conversion, domestication, or interest exchange,
 1375 under this chapter or the law of a foreign jurisdiction, however

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1376 the transaction is denominated under such law; or

1377 (b) A transaction with the same substantive effect as a
1378 conversion, domestication, or interest exchange.

1379 (2) Except as otherwise provided in s. 605.2604, a party
1380 to or the surviving company of either of the following:

1381 (a) A merger under this chapter or the law of a foreign
1382 jurisdiction, however a merger is denominated under such law; or

1383 (b) A transaction with the same substantive effect as a
1384 merger.

1385 Section 34. Section 605.2604, Florida Statutes, is created
1386 to read:

1387 605.2604 Restrictions on merger.—A series limited
1388 liability company may be a party to a merger in accordance with
1389 ss. 605.1021-605.1026, this section, and ss. 605.2605-605.2608
1390 only if both of the following apply:

1391 (1) Each other party to the merger is a limited liability
1392 company.

1393 (2) The surviving company is not created in the merger.

1394 Section 35. Section 605.2605, Florida Statutes, is created
1395 to read:

1396 605.2605 Plan of merger.—In a merger under s. 605.2604,
1397 the plan of merger must do all of the following:

1398 (1) Comply with s. 605.1022 relating to the contents of a
1399 plan of merger of a limited liability company.

1400 (2) State in a record:

1401 (a) For any protected series of a non-surviving company,
1402 whether, after the merger, the protected series will be a
1403 relocated protected series or be dissolved, wound up, and
1404 terminated.

1405 (b) For any protected series of the surviving company
1406 which exists before the merger, whether, after the merger, the
1407 protected series will be a continuing protected series or be
1408 dissolved, wound up, and terminated.

1409 (c) For each relocated protected series or continuing
1410 protected series:

1411 1. The name of any person that becomes an associated
1412 member or a protected-series transferee of the protected series
1413 after the merger, any consideration to be paid by, on behalf of,
1414 or in respect of the person, the name of the payor, and the name
1415 of the payee;

1416 2. The name of any person which rights or obligations in
1417 the person's capacity as an associated member or a protected-
1418 series transferee will change after the merger;

1419 3. Any consideration to be paid to a person that before
1420 the merger was an associated member or a protected-series
1421 transferee of the protected series and the name of the payor;
1422 and

1423 4. If, after the merger, the protected series will be a
1424 relocated protected series, its new name.

1425 (d) For any protected series to be established by the

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1426 surviving company as a result of the merger:

1427 1. The name of the protected series and the address of its
1428 principal office;

1429 2. Any protected-series transferable interest to be owned
1430 by the surviving company when the protected series is
1431 established; and

1432 3. The name of and any protected-series transferable
1433 interest owned by any person that will be an associated member
1434 of the protected series when the protected series is
1435 established.

1436 (e) For any person that is an associated member of a
1437 relocated protected series and will remain a member after the
1438 merger, any amendment to the operating agreement of the
1439 surviving limited liability company which:

1440 1. Is or is proposed to be in a record; and

1441 2. Is necessary or appropriate to state the rights and
1442 obligations of the person as a member of the surviving limited
1443 liability company.

1444 Section 36. Section 605.2606, Florida Statutes, is created
1445 to read:

1446 605.2606 Articles of merger.—In a merger under s.
1447 605.2604, the articles of merger must do all of the following:

1448 (1) Comply with s. 605.1025 relating to the articles of
1449 merger.

1450 (2) Include as an attachment all of the following records,

1451 each to become effective when the merger becomes effective:

1452 (a) For a protected series of a merging company being
 1453 terminated as a result of the merger, a statement of designation
 1454 cancellation and termination signed by the non-surviving merging
 1455 company.

1456 (b) For a protected series of a non-surviving company
 1457 which after the merger will be a relocated protected series:

1458 1. A statement of relocation signed by the non-surviving
 1459 company which contains the name of the series limited liability
 1460 company and the name of the protected series before and after
 1461 the merger; and

1462 2. A statement of protected series designation signed by
 1463 the surviving company.

1464 (c) For a protected series being established by the
 1465 surviving company as a result of the merger, a protected series
 1466 designation signed by the surviving company.

1467 Section 37. Section 605.2607, Florida Statutes, is created
 1468 to read:

1469 605.2607 Effect of merger.—When a merger of a protected
 1470 series under s. 605.2604 becomes effective, in addition to the
 1471 effects stated in s. 605.1026, all of the following apply:

1472 (1) As provided in the plan of merger, each protected
 1473 series of each merging series limited liability company which
 1474 was established before the merger is either a relocated
 1475 protected series or continuing protected series, or is

1476 dissolved, wound up, and terminated.

1477 (2) Any protected series to be established as a result of
1478 the merger is established.

1479 (3) Any relocated protected series or continuing protected
1480 series is the same person without interruption as it was before
1481 the merger.

1482 (4) All property of a relocated protected series or
1483 continuing protected series continues to be vested in the
1484 protected series without transfer, reversion, or impairment.

1485 (5) All debts, obligations, and other liabilities of a
1486 relocated protected series or continuing protected series
1487 continue as debts, obligations, and other liabilities of the
1488 relocated protected series or continuing protected series.

1489 (6) Except as otherwise provided by law or the plan of
1490 merger, all the rights, privileges, immunities, powers, and
1491 purposes of a relocated protected series or continuing protected
1492 series remain in the protected series.

1493 (7) The new name of a relocated protected series may be
1494 substituted for the former name of the relocated protected
1495 series in any pending action or proceeding.

1496 (8) To the extent provided in the plan of merger, the
1497 following apply:

1498 (a) A person becomes an associated member or a protected-
1499 series transferee of a relocated protected series or continuing
1500 protected series.

1501 (b) A person becomes an associated member of a protected
 1502 series established by the surviving company as a result of the
 1503 merger.

1504 (c) Any change in the rights or obligations of a person in
 1505 the person's capacity as an associated member or a protected-
 1506 series transferee of a relocated protected series or continuing
 1507 protected series takes effect.

1508 (d) Any consideration to be paid to a person that before
 1509 the merger was an associated member or a protected-series
 1510 transferee of a relocated protected series or continuing
 1511 protected series is due.

1512 (9) Any person that is an associated member of a relocated
 1513 protected series becomes a member of the surviving company, if
 1514 not already a member.

1515 Section 38. Section 605.2608, Florida Statutes, is created
 1516 to read:

1517 605.2608 Application of s. 605.2404 after merger.-

1518 (1) A creditor's right that existed under s. 605.2404
 1519 immediately before a merger under that section may be enforced
 1520 after the merger in accordance with the following provisions:

1521 (a) A creditor's right that existed immediately before the
 1522 merger against the surviving company, a continuing protected
 1523 series, or a relocated protected series continues without change
 1524 after the merger.

1525 (b) A creditor's right that existed immediately before the

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1526 merger against a non-surviving company:

1527 1. May be asserted against an asset of the non-surviving
1528 company which vested in the surviving company as a result of the
1529 merger; and

1530 2. Does not otherwise change.

1531 (c) Subject to subsection (2), the following provisions
1532 apply:

1533 1. In addition to the remedy stated in paragraph (b), a
1534 creditor with a right conferred under s. 605.2404 which existed
1535 immediately before the merger against a non-surviving company or
1536 a relocated protected series may assert the right against:

1537 a. An asset of the surviving company, other than an asset
1538 of the non-surviving company which vested in the surviving
1539 company as a result of the merger;

1540 b. An asset of a continuing protected series;

1541 c. An asset of a protected series established by the
1542 surviving company as a result of the merger;

1543 d. If the creditor's right was against an asset of the
1544 non-surviving company, an asset of a relocated protected series;

1545 or

1546 e. If the creditor's right was against an asset of a
1547 relocated protected series, an asset of another relocated
1548 protected series.

1549 2. In addition to the remedy stated in paragraph (b), a
1550 creditor with a right that existed immediately before the merger

1551 against the surviving company or a continuing protected series
 1552 may assert the right against:

- 1553 a. An asset of a relocated protected series; or
- 1554 b. An asset of a non-surviving company which vested in the
 1555 surviving company as a result of the merger.

1556 (2) For the purposes of paragraph (1)(c) and s.
 1557 605.2404(2)(a)1., (b)1., and (c)1., the incurrence date is
 1558 deemed to be the date on which the merger becomes effective.

1559 (3) A merger under s. 605.2604 does not affect the manner
 1560 in which s. 605.2404 applies to a liability incurred after the
 1561 merger becomes effective.

1562 Section 39. Section 605.2701, Florida Statutes, is created
 1563 to read:

1564 605.2701 Governing law; foreign series limited liability
 1565 companies and foreign protected series.—The law of the
 1566 jurisdiction of formation of a foreign series limited liability
 1567 company governs all of the following:

1568 (1) The internal affairs of a foreign protected series of
 1569 the foreign series limited liability company, including the
 1570 following:

1571 (a) Relations among any associated members of the foreign
 1572 protected series.

1573 (b) Relations between the foreign protected series and:

- 1574 1. Any associated member;
- 1575 2. Any protected-series manager; or

1576 | 3. Any protected-series transferee.

1577 | (c) Relations between any associated member and:

1578 | 1. Any protected-series manager; or

1579 | 2. Any protected-series transferee.

1580 | (d) The rights and duties of a protected-series manager.

1581 | (e) Governance decisions affecting the activities and

1582 | affairs of the foreign protected series and the conduct of those

1583 | activities and affairs.

1584 | (f) Procedures and conditions for becoming an associated

1585 | member or a protected-series transferee.

1586 | (2) Relations between the foreign protected series and the

1587 | following:

1588 | (a) The foreign series limited liability company.

1589 | (b) Another foreign protected series of the foreign series

1590 | limited liability company.

1591 | (c) A member of the foreign series limited liability

1592 | company which is not an associated member of the foreign

1593 | protected series.

1594 | (d) A foreign protected-series manager that is not a

1595 | protected-series manager of the foreign protected series.

1596 | (e) A foreign protected-series transferee that is not a

1597 | foreign protected-series transferee of the foreign protected

1598 | series.

1599 | (f) A transferee of a transferable interest of the foreign

1600 | series limited liability company.

1601 (3) Except as otherwise provided in ss. 605.2402 and
1602 605.2404, the liability of a person for a debt, an obligation,
1603 or another liability of a foreign protected series of a foreign
1604 series limited liability company if the debt, obligation, or
1605 liability is asserted solely by reason of the person being or
1606 acting as any of the following:

1607 (a) An associated member, a protected-series transferee,
1608 or a protected-series manager of the foreign protected series.

1609 (b) A member of the foreign series limited liability
1610 company which is not an associated member of the foreign
1611 protected series.

1612 (c) A protected-series manager of another foreign
1613 protected series of the foreign series limited liability
1614 company.

1615 (d) A protected-series transferee of another foreign
1616 protected series of the foreign series limited liability
1617 company.

1618 (e) A manager of the foreign series limited liability
1619 company.

1620 (f) A transferee of a transferable interest of the foreign
1621 series limited liability company.

1622 (4) Except as otherwise provided in ss. 605.2402 and
1623 605.2404, the following apply:

1624 (a) The liability of the foreign series limited liability
1625 company for a debt, an obligation, or another liability of a

1626 foreign protected series of the foreign series limited liability
1627 company if the debt, obligation, or liability is asserted solely
1628 by reason of the foreign protected series being a foreign
1629 protected series of the foreign series limited liability
1630 company, or the foreign protected series limited liability
1631 company:

1632 1. Being or acting as a foreign protected-series manager
1633 of the foreign protected series;

1634 2. Having the foreign protected series manage the foreign
1635 series limited liability company; or

1636 3. Owning a protected-series transferable interest of the
1637 foreign protected series.

1638 (b) The liability of a foreign protected series for a
1639 debt, an obligation, or another liability of the foreign series
1640 limited liability company or another foreign protected series of
1641 the foreign series limited liability company, if the debt,
1642 obligation, or liability is asserted solely by reason of the
1643 foreign protected series:

1644 1. Being a foreign protected series of the foreign series
1645 limited liability company or having the foreign series limited
1646 liability company or another foreign protected series of the
1647 foreign series limited liability company be or act as a foreign
1648 protected-series manager of the foreign protected series; or

1649 2. Managing the foreign series limited liability company
1650 or being or acting as a foreign protected-series manager of

1651 another foreign protected series of the foreign series limited
 1652 liability company.

1653 Section 40. Section 605.2702, Florida Statutes, is created
 1654 to read:

1655 605.2702 No attribution of activities constituting
 1656 transacting business or for establishing jurisdiction.—In
 1657 determining whether a foreign series limited liability company
 1658 or foreign protected series of the foreign series limited
 1659 liability company is transacting business in this state or is
 1660 subject to the personal jurisdiction of the courts in this
 1661 state, the following apply:

1662 (1) The activities and affairs of the foreign series
 1663 limited liability company are not attributable to a foreign
 1664 protected series of the foreign series limited liability company
 1665 solely by reason of the foreign protected series being a foreign
 1666 protected series of the foreign series limited liability
 1667 company.

1668 (2) The activities and affairs of a foreign protected
 1669 series are not attributable to the foreign series limited
 1670 liability company or another foreign protected series of the
 1671 foreign series limited liability company, solely by reason of
 1672 the foreign protected series being a foreign protected series of
 1673 the foreign series limited liability company.

1674 Section 41. Section 605.2703, Florida Statutes, is created
 1675 to read:

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1676 605.2703 Certificate of authority for foreign series
1677 limited liability company and foreign protected series;
1678 amendment of application.—

1679 (1) Except as otherwise provided in this section and
1680 subject to ss. 605.2402 and 605.2404, the laws of this state
1681 governing application by a foreign limited liability company to
1682 obtain a certificate of authority to transact business in this
1683 state as required under s. 605.0902, including the effect of
1684 obtaining a certificate of authority under s. 605.0903, and the
1685 effect of failure to have a certificate of authority as
1686 described in s. 605.0904, apply to a foreign series limited
1687 liability company and to a foreign protected series of a foreign
1688 series limited liability company, as if the foreign protected
1689 series was a foreign limited liability company formed separately
1690 from the foreign series limited liability company, and distinct
1691 from the foreign series limited liability company and any other
1692 foreign protected series of the foreign series limited liability
1693 company.

1694 (2) An application by a foreign protected series of a
1695 foreign series limited liability company for a certificate of
1696 authority to transact business in this state must include all of
1697 the following:

1698 (a) The name and jurisdiction of formation of the foreign
1699 series limited liability company and the foreign protected
1700 series seeking a certificate of authority, and all of the other

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1701 information required under s. 605.0902, and any other
1702 information required by the department.

1703 (b) If the company has other foreign protected series, the
1704 name, title, capacity, and street and mailing address of at
1705 least one person that has the authority to manage the foreign
1706 limited liability company and who knows the name and street and
1707 mailing address of:

1708 1. Each other foreign protected series of the foreign
1709 series limited liability company; and

1710 2. The foreign protected-series manager of, and the
1711 registered agent for service of process on, each other foreign
1712 protected series of the foreign series limited liability
1713 company.

1714 (3) The name of a foreign protected series applying for a
1715 certificate of authority to transact business in this state must
1716 comply with ss. 605.0112 and 605.2202, which may be accomplished
1717 by using an alternate name pursuant to ss. 605.0906 and 865.09,
1718 if the alternate name complies with ss. 605.0112, 605.0906, and
1719 605.2202.

1720 (4) The requirements in s. 605.0907 relating to required
1721 information and amending of a certificate of authority apply to
1722 the information required by subsection (2).

1723 (5) Sections 605.0903-605.0912 apply to a foreign limited
1724 liability company and to a protected series of a foreign series
1725 limited liability company applying for, amending, or withdrawing

1726 | a certificate of authority to transact business in this state.

1727 | Section 42. Section 605.2704, Florida Statutes, is created
 1728 | to read:

1729 | 605.2704 Disclosure required when a foreign series limited
 1730 | liability company or foreign protected series becomes a party to
 1731 | proceeding.-

1732 | (1) Not later than 30 days after becoming a party to a
 1733 | proceeding before a civil, administrative, or other adjudicative
 1734 | tribunal of or located in this state, or a tribunal of the
 1735 | United States located in this state:

1736 | (a) A foreign series limited liability company shall
 1737 | disclose to each other party the name and street and mailing
 1738 | address of:

1739 | 1. Each foreign protected series of the foreign series
 1740 | limited liability company; and

1741 | 2. Each foreign protected-series manager of and a
 1742 | registered agent for service of process for each foreign
 1743 | protected series of the foreign series limited liability
 1744 | company.

1745 | (b) A foreign protected series of a foreign series limited
 1746 | liability company shall disclose to each other party the name
 1747 | and street and mailing address of:

1748 | 1. The foreign series limited liability company and each
 1749 | manager of the foreign series limited liability company and an
 1750 | agent for service of process for the foreign series limited

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1751 liability company; and

1752 2. Any other foreign protected series of the foreign
1753 series limited liability company and each foreign protected-
1754 series manager of and an agent for service of process for the
1755 other foreign protected series.

1756 (2) If a foreign series limited liability company or
1757 foreign protected series challenges the personal jurisdiction of
1758 the tribunal, the requirement that the foreign series limited
1759 liability company or foreign protected series make disclosure
1760 under subsection (1) is tolled until the tribunal determines
1761 whether it has personal jurisdiction.

1762 (3) If a foreign series limited liability company or
1763 foreign protected series does not comply with subsection (1), a
1764 party to the proceeding may do one or both of the following:

1765 (a) Request the tribunal to treat the noncompliance as a
1766 failure to comply with the tribunal's discovery rules.

1767 (b) Bring a separate proceeding in the court to enforce
1768 subsection (1).

1769 Section 43. Section 605.2801, Florida Statutes, is created
1770 to read:

1771 605.2801 Relation to Electronic Signatures in Global and
1772 National Commerce Act.—Section 605.1102 applies to ss. 605.2101-
1773 605.2802.

1774 Section 44. Section 605.2802, Florida Statutes, is created
1775 to read:

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1776 605.2802 Effective date.-
 1777 (1) Beginning January 1, 2025, this chapter governs all
 1778 domestic and foreign protected series limited liability
 1779 companies and all domestic protected series and all foreign
 1780 series that transact business in this state.
 1781 (2) A domestic limited liability company formed before
 1782 January 1, 2025, may not create or designate any protected
 1783 series before the effective date of this act.
 1784 Section 45. This act shall take effect January 1, 2025.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1255 Notaries Public

SPONSOR(S): Civil Justice Subcommittee

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

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

SUMMARY ANALYSIS

The law considers many documents to be of such importance that they must be signed in the presence of a notary public to prevent fraud. A notary public is a public officer appointed and commissioned by the Governor whose function is, in addition to taking acknowledgements, to administer oaths (or affirmations); to attest to the trueness of photocopies of certain documents; and to perform other duties as specified by Florida law.

A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument. A notary public must produce a notarial certificate for each notarial act performed, and must certify in the notarial certificate the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying to verify the principal's identity. In the case of an online notarization, the online notary public must also comply with the requirements set forth in part II of chapter 117, F.S.

A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public; who falsely or fraudulently makes a notarial certificate as a notary public; or who falsely takes or receives an acknowledgment of the signature on a written instrument commits a third-degree felony. A notary public is also prohibited from engaging in specified conduct, including notarizing a signature on a document if the person whose signature is being notarized does not appear before the notary public either in person or by means of audio-video communication technology at the time the signature is notarized. Any notary public who violates this prohibition commits a civil infraction, punishable by a fine of up to \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties. Further, it is no defense to the civil infraction that the notary public acted without intent to defraud; however, a notary public who commits such infraction with the intent to defraud makes a false or fraudulent acknowledgement and commits a third-degree felony.

PCS for HB 1255:

- Increases the criminal penalties associated with a false or fraudulent acknowledgement by a notary public where the document notarized pertains to a real estate transaction or other real property transfer.
- Creates criminal penalties for the commission of a prohibited act by a notary public, which penalties are increased where the document notarized is committed with an intent to defraud or pertains to a real estate transaction or other real property transfer.
- Removes a provision providing a civil penalty for the commission of a specified prohibited act by a notary public.

The PCS may have an indeterminate fiscal impact on state and local governments. See Fiscal Comments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Notary Public: General Provisions

The law considers many documents to be of such importance that they must be signed in the presence of a notary public to prevent fraud. A notary public is a public officer appointed and commissioned by the Governor whose function is, in addition to taking acknowledgements, to administer oaths (or affirmations); to attest to the trueness of photocopies of certain documents; and to perform other duties specified by Florida law.¹

Appointment

The Governor is authorized to appoint as many notaries public as he deems necessary; however, a person so appointed must be at least 18 years of age, a legal Florida resident, and have the ability to read, write, and understand English.² An application for appointment as a notary public must be signed and sworn to by the applicant and accompanied by specified fees.³

An applicant must also, before executing the duties of the office and throughout the term of office, give bond, payable to any individual harmed as a result of the notary's breach of duty while acting in his or her official capacity, in the amount of \$7,500, conditioned for the due discharge of the office.⁴ The bond must be approved and filed with the Department of State ("DOS") and executed by a surety company authorized to do business in Florida.⁵ Further, an applicant must take an oath that he or she will honestly, diligently, and faithfully discharge the duties of the notary public; as part of the oath, the applicant must also swear that he or she has read chapter 117, F.S., and knows the duties, responsibilities, limitations, and powers of a notary public.⁶

Once appointed, a notary may serve for four years, and no person may be automatically reappointed as a notary; instead, the application process must be completed regardless of whether an applicant has previously served as a notary.⁷ Further, the Governor may suspend a notary public on the grounds of any malfeasance, misfeasance, or neglect of duty, which grounds include, but are not limited to:⁸

- A material false statement on the application.
- A complaint found to have merit by the Governor.
- Failure to cooperate in or respond to an investigation regarding a complaint about a notary.
- Official misconduct.
- False or misleading advertising of notary public services.
- Unauthorized practice of law.
- Failure to timely report a change in business or home address or telephone number, or failure to timely submit documentation to request an amended commission after a lawful name change.
- Commission of fraud, misrepresentation, or any intentional violation of chapter 117, F.S.
- Charging fees in excess of the statutorily-authorized fees.
- Failure to maintain the required bond.

Duties of a Notary Public

¹ Executive Office of the Governor, *Governor's Reference Manual for Notaries Public*, https://www.flgov.com/wp-content/uploads/Notary_Reference_Manual_12.13.16.pdf (last visited Jan. 22, 2024).

² S. 117.01, F.S.

³ S. 117.01, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Florida law specifies the duties of a notary public. Specifically, a notary public may:

- Administer oaths and affirmations;
- Take acknowledgments;
- Attest to photocopies of certain documents;
- Solemnize marriages;
- Verify vehicle identification numbers; and
- Certify the contents of a safe-deposit box.⁹

However, a notary public may not charge a fee of more than \$10 for any one notarial act.¹⁰

Notarial Certificates

When notarizing a signature, a notary public must complete a notarial certificate.¹¹ Such certificate must identify:

- The location of the notarization;
- The type of notarial act performed;
- A statement that the signer personally appeared physically before the notary public or by online notarization at the time of the notarization;
- The exact date of the notarial act;
- The name of the person whose signature is being notarized;
- The type of identification the notary public relied upon;
- The notary's official signature;
- The notary's name, which must be typed, printed, or stamped below the signature; and
- The notary's official seal¹² affixed below or to either side of the notary's signature.¹³

A notary public may not notarize a signature on a document unless he or she personally knows, or has satisfactory evidence, that the person whose signature is to be notarized is the individual who is described in and who is executing the instrument.¹⁴ A notary public must certify in the notarial certificate the type of identification, either based on personal knowledge or other form of identification, upon which the notary public is relying to verify the signatory's identity, and, in the case of an online notarization, the online notary public must comply with the requirements set forth in part II of chapter 117, F.S.¹⁵

Electronic Notarizations

Any document requiring notarization may be notarized electronically.¹⁶ When notarizing a document electronically, a notary public must use an electronic signature that is:

- Unique to the notary public;
- Capable of independent verification;
- Retained under the notary public's sole control; and
- Attached to or logically associated with the electronic document so that any subsequent alteration to the electronic document displays alteration evidence.¹⁷

When a signature must be accompanied by a notary public's seal, the seal requirement is satisfied when the electronic signature of the notary public contains the minimum information required.¹⁸ An electronic signature may be any letters, characters, or symbols, manifested by electronic means,

⁹ Executive Office of the Governor, *supra* note 1; ch. 117, F.S.

¹⁰ S. 117.05(2), F.S.

¹¹ S. 117.05(4), F.S.

¹² The notary seal must be a rubber stamp that includes the words "Notary Public – State of Florida." It must also include the name of the notary public, the date of expiration of the notary's commission, and the notary's commission number. S. 117.05(3), F.S.

¹³ S. 117.05(12), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ S. 117.021, F.S.

¹⁷ *Id.*

¹⁸ *Id.*

executed or adopted by a party with an intent to authenticate a writing; and a writing is electronically signed if an electronic signature is logically associated with such writing.¹⁹

However, in performing electronic notarizations, a notary must reasonably ensure the security, reliability, and uniformity of such notarizations.²⁰ To this end, the notary may use an authentication procedure (such as a password, token, card, or biometric) to protect access to the notary's electronic signature or the means for affixing the signature.²¹

False or Fraudulent Acknowledgements

A notary public who falsely or fraudulently takes an acknowledgment of an instrument as a notary public; who falsely or fraudulently makes a certificate as a notary public; or who falsely takes or receives an acknowledgment of the signature on a written instrument commits a third-degree felony.²²

Prohibited Acts

Florida law prohibits a notary public from:²³

- Using a name or initial in signing certificates other than that by which the notary public is commissioned.
- Signing notarial certificates using a facsimile signature stamp unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to DOS with an exemplar of the facsimile signature stamp.
- Affixing his or her signature to a blank form of affidavit or certificate of acknowledgment and delivering that form to another person with the intent that it be used as an affidavit or acknowledgment.
- Taking the acknowledgment of or administering an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed pursuant to s. 744.3215(2) or (3), F.S., pertaining to the rights of persons deems incapacitated, and where the person has not been restored to capacity as a matter of record.
- Notarizing a signature on a document if it appears that the person is mentally incapable of understanding the nature and effect of the document at the time of notarization.
- Taking the acknowledgment of a person who does not speak or understand the English language, unless the nature and effect of the instrument to be notarized is translated into a language which the person does understand.
- Changing anything in a written instrument after it has been signed by anyone.
- Amending a notarial certificate after the notarization is complete.
- Notarizing a signature on a document if the document is incomplete or blank.
- Notarizing a signature on a document if the person whose signature is to be notarized is the spouse, son, daughter, mother, or father of the notary public.
- Notarizing a signature on a document if the notary public has a financial interest in or is a party to the underlying transaction.

Further, Florida law prohibits a notary from notarizing a signature on a document if the person whose signature is being notarized does not appear before the notary public either in person or by means of audio-video communication technology at the time the signature is notarized.²⁴ Any notary public who violates this prohibition commits a civil infraction, punishable by penalty not exceeding \$5,000, and such violation constitutes malfeasance and misfeasance in the conduct of official duties.²⁵ Further, it is

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.; S. 117.105, F.S.

²³ S. 117.107, F.S.

²⁴ *Id.*

²⁵ *Id.*

no defense to the civil infraction that the notary public acted without intent to defraud.²⁶ However, a notary public who violates this prohibition with the intent to defraud makes a false or fraudulent acknowledgement and commits a third-degree felony.²⁷

Online Notarization

Registration

A notary public may register as an online notary public with DOS if he or she:

- Holds a current commission as a notary public;
- Submits a copy of such commission with the registration;
- Certifies that the notary public registering as an online notary public has completed a course covering the online notary public duties, obligations, and technology requirements;
- Pays a notary public registration fee;²⁸
- Identifies the Remote Online Notary (“RON”) service provider²⁹ whose audio-video communication and identity proofing technologies the registrant intends to use for online notarizations, and confirms that such technology and processes satisfy statutory requirements;
- Provides evidence that the registrant has obtained a \$25,000 bond, payable to any individual harmed as a result of the registrant’s breach of duty as an online notary public; and
- Provides evidence that the registrant acting in his or her capacity as an online notary public is covered by a minimum \$25,000 errors and omissions insurance policy.³⁰

Once registered, an online notary public may perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, as long as the notary public is physically located in Florida while performing the online notarization and the online notary public complies with both the general notarization and electronic notarization requirements provided in law.³¹ Further, an online notary public may perform any function as an online notarization authorized under chapter 117, F.S., with the exception of solemnizing matrimony rites,³² and if a notarization requires a principal³³ to appear before the online notary public, the principal may appear by means of audio-video communication technology.³⁴

Technology Standards for Online Notarization

Florida law establishes minimum requirements for online notarization technology standards, as follows:

- *Identity proofing.*³⁵ The security characteristics, at a minimum, must present the principal with five or more questions with a minimum of five possible answer choices per question. Each question must be:
 - Drawn from a third-party provider of public and proprietary data sources;
 - Identifiable to the principal; and
 - Subjected to a two-minute time constraint, with the principal answering at least 80 percent correct.³⁶

²⁶ *Id.*

²⁷ *Id.*; s. 117.105, F.S.

²⁸ S. 113.01, F.S.

²⁹ A RON service provider is a person that provides audio-video communication technology and related processes, services, software, data storage, or other services to online notaries public for the purpose of directly facilitating their performance of online notarizations.

³⁰ S. 117.225, F.S.

³¹ S. 117.209, F.S.

³² S. 117.209, F.S.

³³ A principal is an individual whose electronic signature is acknowledged, witnessed, or attested to in an online notarization or who takes an oath or affirmation from the online notary public.

³⁴

³⁵ Identity proofing is a process by which a third party confirms the identity of an individual through use of public or proprietary data sources, which may include knowledge-based authentication or biometric verification. S. 117.201, F.S.

³⁶ S. 117.295, F.S.

- *Credential analysis*.³⁷ An online notary must use commercially available credential analysis automated software or a hardware process that:
 - Is consistent with sound commercial practices;
 - Aids the notary public in verifying the authenticity of the credential to ensure it is not fraudulent or inappropriately modified; and
 - Uses information held by the issuing or authoritative agency to confirm the validity of credential details.³⁸
- *Audio-video communication technology*.³⁹ The technology must:
 - Be secure from interception or access by anyone other than the participants communicating; and
 - Provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal.⁴⁰

With respect to online notarization, a notary must protect an electronic signature through the use of passwords or codes under the notary's control.⁴¹ The notary may not allow another person to use the notary's electronic journal, seal, or signature, and notaries must also reasonably ensure that any device used to create their electronic signature is current and secure.⁴²

Online Notarization Procedures

In performing an online notarization, an online notary public must verify the identity of a principal at the time the signature is taken through the use of audio-video communication technology.⁴³ The notary must record the entire audio-video conference session between the notary public and the principal and any subscribing witnesses, and a principal may not serve as a witness for an online notarization.⁴⁴

In performing an online notarization for a principal not located in Florida, an online notary public must confirm that the principal desires for the notarial act to be performed by a Florida notary public and under Florida law. An online notary public must confirm the identity of the principal and any witness by personal knowledge, or by:

- Remote presentation of a government-issued identification credential by each individual;
- Credential analysis of each government-issued identification credential; and
- The identity proofing of each individual, in the form of knowledge-based authentication or another legal method of identity proofing.⁴⁵

If an online notary fails to comply with the online notarization procedures, such failure does not automatically impair the validity of the notarial act or the electronic record.⁴⁶ However, such failure may be introduced as evidence to establish violations of chapter 117, F.S., or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.⁴⁷

Electronic Journal and Electronic Records

An online notary public must keep a secure electronic journal of electronic records he or she has notarized.⁴⁸ For each online notarization, the electronic journal entry must contain the:

- Date and time of the notarization;

³⁷ Credential analysis is a process by which a third party aids a public notary in affirming the validity of a government-issued identification credential and data thereon through review of public or proprietary data sources. S. 117.201, F.S.

³⁸ S. 117.295, F.S.

³⁹ Audio-video communication technology is technology in compliance with applicable law which enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another. S. 117.201, F.S.

⁴⁰ S. 117.295, F.S.

⁴¹ S. 117.021, F.S.

⁴² *Id.*; s. 117.225, F.S.

⁴³ S. 117.265, F.S.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ S. 117.245, F.S.

- Type of notarial act;
- Type, title, or description of the electronic record or proceeding;
- Identity evidence for each principal involved in the transaction or proceeding;
- Indication that the principal passed the identity proofing;
- Indication that the government-issued identity credential satisfied the credential analysis; and
- Fee charged for the online notarization.⁴⁹

Identity evidence for each principal may be a:

- Statement that the person is personally known to the online notary public; or
- Notation of the type of identification document provided to the online notary public.⁵⁰

An online notary public must also retain an unedited and uninterrupted recording of a remote notarization audio-video communication, which recording must include:

- Appearances by the principal and each witness before the online notary public;
- Identity confirmation of the principal and each witness;
- A general description of the records to be signed;
- A principal's declaration that his or her signature is knowingly and voluntarily made; and
- All of the actions and spoken words of the principal, notary public, and each required witness during the entire online notarization.⁵¹

The notary must attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner capable of independent verification using tamper-evident technology.⁵² The electronic journal and a backup record thereof must be maintained for at least ten years after the date of the notarial act, and a notary must immediately notify an appropriate law enforcement agency and DOS of the electronic journal's, electronic signature's, or electronic seal's unauthorized use.⁵³

Effect of Proposed Changes

False or Fraudulent Acknowledgements

PCS for HB 1255 amends s. 117.105, F.S., to make any false or fraudulent acknowledgement under this section a second-degree felony⁵⁴ where the document notarized pertains to a real estate transaction or any other real property transfer.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² S. 117.255, F.S.

⁵³ *Id.*

⁵⁴ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

Prohibited Acts

The PCS amends s. 117.07, F.S., to provide that a notary public who knowingly and willfully commits a prohibited act under this section commits a first-degree misdemeanor;⁵⁵ or, if the act is committed knowingly and willfully and with an intent to defraud, a third-degree felony. However, if the act is committed knowingly and willfully and with an intent to defraud, and pertains to a real estate transaction or any other real property transfer, the PCS provides that the notary public commits a second-degree felony.

The PCS also removes language providing a civil penalty for one of the prohibited acts, which under the PCS is now at least a misdemeanor.

Effective Date

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

B. SECTION DIRECTORY:

Section 1: Amends s. 117.105, F.S., relating to false or fraudulent acknowledgement; penalty.

Section 2: Amends s. 117.07, F.S., relating to prohibited acts.

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:

The PCS may have an indeterminate fiscal impact on the state court system to the extent that it increases criminal prosecutions for notarial misconduct as specified in the PCS and thereby reduces the availability of prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The PCS may have an indeterminate fiscal impact on local governments to the extent that it increases criminal prosecutions for notarial misconduct as specified in the PCS and thereby reduces the availability of county jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may have a positive economic impact on the private sector to the extent that it reduces fraudulent real estate transactions or other fraudulent real estate transfers. However, the PCS may have a negative economic impact on the private sector to the extent that it subjects to criminal prosecution notaries who would previously have faced only civil penalties for certain actions, or increases the criminal penalties associated with certain other notarial actions.

⁵⁵ A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The PCS 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 notaries public; amending s.
 3 117.105, F.S.; modifying criminal penalties; making
 4 technical changes; amending s. 117.107, F.S.; deleting
 5 civil penalties associated with a provision
 6 prohibiting a notary public from notarizing a
 7 signature on a document of a person who is not, at the
 8 time of the notarial act, physically present or
 9 present by means of audio-video communication
 10 technology; providing criminal penalties applicable to
 11 this section; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Section 117.105, Florida Statutes, is amended
 16 to read:

17 117.105 False or fraudulent acknowledgments; penalties for
 18 prohibited acts ~~penalty~~.—

19 (1) A notary public may not: ~~who~~

20 (a) Falsely or fraudulently take ~~takes~~ an acknowledgment
 21 of an instrument as a notary public. ~~or~~

22 (b) ~~Who~~ Falsely or fraudulently make ~~makes~~ a certificate
 23 as a notary public. ~~or~~

24 (c) ~~Who~~ Falsely or fraudulently take or receive ~~takes or~~
 25 ~~receives~~ an acknowledgment of the signature on a written or

26 electronic document instrument is guilty of a felony of the
 27 third degree, punishable as provided in s. 775.082, s. 775.083,
 28 or s. 775.084.

29 (2) A notary public who knowingly and willfully violates
 30 subsection (1) commits a felony of the third degree, punishable
 31 as provided in s. 775.082, s. 775.083, or s. 775.084. A notary
 32 public who knowingly and willfully violates subsection (1)
 33 commits a felony of the second degree, punishable as provided in
 34 s. 775.082, s. 775.083, or s. 775.084, if the document notarized
 35 pertains to a real estate transaction or any other transfer of
 36 real property.

37 Section 2. Section 117.107, Florida Statutes, is amended
 38 to read:

39 117.107 Prohibited acts; penalty.—

40 (1) A notary public may not use a name or initial in
 41 signing certificates other than that by which the notary public
 42 is commissioned.

43 (2) A notary public may not sign notarial certificates
 44 using a facsimile signature stamp unless the notary public has a
 45 physical disability that limits or prohibits his or her ability
 46 to make a written signature and unless the notary public has
 47 first submitted written notice to the Department of State with
 48 an exemplar of the facsimile signature stamp. This subsection
 49 does not apply to or prohibit the use of an electronic signature
 50 and seal by a notary public who is registered as an online

51 notary public to perform an electronic or online notarization in
 52 accordance with this chapter.

53 (3) A notary public may not affix his or her signature to
 54 a blank form of affidavit or certificate of acknowledgment and
 55 deliver that form to another person with the intent that it be
 56 used as an affidavit or acknowledgment.

57 (4) A notary public may not take the acknowledgment of or
 58 administer an oath to a person whom the notary public actually
 59 knows to have been adjudicated mentally incapacitated by a court
 60 of competent jurisdiction, where the acknowledgment or oath
 61 necessitates the exercise of a right that has been removed
 62 pursuant to s. 744.3215(2) or (3), and where the person has not
 63 been restored to capacity as a matter of record.

64 (5) A notary public may not notarize a signature on a
 65 document if it appears that the person is mentally incapable of
 66 understanding the nature and effect of the document at the time
 67 of notarization.

68 (6) A notary public may not take the acknowledgment of a
 69 person who does not speak or understand the English language,
 70 unless the nature and effect of the instrument to be notarized
 71 is translated into a language which the person does understand.

72 (7) A notary public may not change anything in a written
 73 instrument after it has been signed by anyone.

74 (8) A notary public may not amend a notarial certificate
 75 after the notarization is complete.

76 (9) A notary public may not notarize a signature on a
 77 document if the person whose signature is being notarized does
 78 not appear before the notary public either by means of physical
 79 presence or by means of audio-video communication technology as
 80 authorized under part II of this chapter at the time the
 81 signature is notarized. ~~Any notary public who violates this~~
 82 ~~subsection is guilty of a civil infraction, punishable by~~
 83 ~~penalty not exceeding \$5,000, and such violation constitutes~~
 84 ~~malfeasance and misfeasance in the conduct of official duties.~~
 85 ~~It is no defense to the civil infraction specified in this~~
 86 ~~subsection that the notary public acted without intent to~~
 87 ~~defraud. A notary public who violates this subsection with the~~
 88 ~~intent to defraud is guilty of violating s. 117.105.~~

89 (10) A notary public may not notarize a signature on a
 90 document if the document is incomplete or blank. However, an
 91 endorsement or assignment in blank of a negotiable or
 92 nonnegotiable note and the assignment in blank of any instrument
 93 given as security for such note is not deemed incomplete.

94 (11) A notary public may not notarize a signature on a
 95 document if the person whose signature is to be notarized is the
 96 spouse, son, daughter, mother, or father of the notary public.

97 (12) A notary public may not notarize a signature on a
 98 document if the notary public has a financial interest in or is
 99 a party to the underlying transaction; however, a notary public
 100 who is an employee may notarize a signature for his or her

101 employer, and this employment does not constitute a financial
 102 interest in the transaction nor make the notary a party to the
 103 transaction under this subsection as long as he or she does not
 104 receive a benefit other than his or her salary and the fee for
 105 services as a notary public authorized by law. For purposes of
 106 this subsection, a notary public who is an attorney does not
 107 have a financial interest in and is not a party to the
 108 underlying transaction evidenced by a notarized document if he
 109 or she notarizes a signature on that document for a client for
 110 whom he or she serves as an attorney of record and he or she has
 111 no interest in the document other than the fee paid to him or
 112 her for legal services and the fee authorized by law for
 113 services as a notary public.

114 (13) A notary public who knowingly and willfully violates
 115 this section commits a misdemeanor of the first degree,
 116 punishable as provided in s. 775.082 or s. 775.083. A notary
 117 public who knowingly and willfully violates this section with
 118 the intent to defraud commits a felony of the third degree,
 119 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 120 A notary public who knowingly and willfully violates this
 121 section with the intent to defraud commits a felony of the
 122 second degree, punishable as provided in s. 775.082, s. 775.083,
 123 or s. 775.084, if the violation pertains to a real estate
 124 transaction or any other transfer of real property.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1393 Court Interpreter Services

SPONSOR(S): Tuck

TIED BILLS: IDEN./SIM. BILLS: SB 468

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 Article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions shall be provided by adequate and appropriate filing fees for judicial proceedings and services charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state shall provide those funds as determined by the legislature.

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency ("LEP individual") can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI's prohibition against national origin discrimination; this is often true of failing to ensure that an LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods. To promote such access, the Florida Evidence Code and the Florida Rules of Judicial Administration require an interpreter's appointment for judicial proceedings in specified situations. An interpreter may also be necessary for depositions, mediations, and other case-related proceedings and to give an LEP individual access to points of public contact for the court system, which may include the offices of the clerks of the circuit court.

HB 1393 amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals. Such funds may be used if they are available in the fiscal year appropriation for due process services and if such interpreting services are provided as prescribed by the Supreme Court.

The bill also amends s. 29.0195, F.S., to remove the requirement that a trial court administrator recover funds utilized for court interpreter services from those individuals who have the present ability to pay.

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

The bill is effective upon becoming law.

FULL ANALYSIS

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

STORAGE NAME: h1393.CJS

DATE: 1/24/2024

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Court Funding

Pursuant to Article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions shall be provided by adequate and appropriate filing fees for judicial proceedings and services charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state shall provide those funds as determined by the legislature.¹

Further, pursuant to s. 29.001, F.S., for the purpose of interpreting Art. V, sec. 14 of the Florida Constitution, the state courts system includes the Supreme Court, district courts of appeal, circuit courts, county courts, and certain supports thereto.² Funding for the state courts system is provided from state revenues.³ Additionally, section 29.004(5), F.S., provides that funding for court foreign language services and translators essential to comply with constitutional requirements be provided from state revenues.⁴

Interpretation and Translation Services

Although the terms “interpreter” and “translator” are often used interchangeably, there are significant differences between the two roles. An interpreter works with spoken language, by listening to a speaker speak in one language and repeating what the speaker said in another language.⁵ Interpreters use one of two modes interpreting, consecutive⁶ or simultaneous,⁷ depending on the context.⁸ Translators work with written documents and take text written in the source language and translate it into text in the target language (i.e. taking a document written in Spanish and translating the document into English).⁹

According to data from the United States Census Bureau, over 60,000,000 people living in the United States who are over the age of five speak a language other than English at home.¹⁰ Of these, over 25,000,000 speak English “less than very well.”¹¹ In Florida alone, nearly 30 percent of the state’s population over the age of five speaks a language other than English at home.¹²

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency (“LEP individual”) can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI’s prohibition against national origin discrimination;

¹ Art. 5, sec. 14(b), Fla. Const.

² S. 29.001(1), F.S.

³ *Id.*

⁴ S. 29.004(5), F.S.

⁵ American Translators Association, *What’s the Difference Between a Translator and an Interpreter?*, (Feb. 1, 2023), <https://www.atanet.org/client-assistance/whats-the-difference-between-a-translator-and-an-interpreter/> (last visited Jan. 22, 2024).

⁶ Consecutive interpreting involves listening to a speaker and repeating what has been said after the speaker stops talking. *Supra* note 11.

⁷ Simultaneous interpreting involves listening to a speaker and simultaneously repeating their speech in the target language on a slight delay. *Supra* note 11.

⁸ *Id.*

⁹ *Id.*

¹⁰ U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (last visited Jan. 22, 2024).

¹¹ *Id.*

¹² U.S. Census Bureau, *Quick Facts: Florida*, <https://www.census.gov/quickfacts/fact/table/FL/POP815221> (last visited Jan. 22, 2024).

this is often true of failing to ensure that an LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods.¹³

The Florida Evidence Code provides that, when a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, a duly-qualified interpreter must be sworn in to interpret for the witness, at no cost to the witness.¹⁴ Similarly, the Florida Rules of Judicial Administration require an interpreter's appointment free of charge to the person needing the interpreter's services:

- In any criminal or juvenile delinquency proceeding in which an LEP individual is the:
 - Accused; or
 - Victim, unless the court finds that he or she does not require an interpreter; and
- In all other proceedings in which an LEP individual is a litigant, if the court determines that:
 - The litigant's inability to comprehend English deprives him or her of an understanding of the court proceedings;
 - A fundamental interest is at stake;¹⁵ and
 - No alternative to an interpreter's appointment exists.¹⁶

The Office of the State Courts Administrator manages and administers the Court Interpreter Certification and Regulation Program and maintains a registry of certified,¹⁷ language-skilled,¹⁸ provisionally approved,¹⁹ and registered²⁰ court interpreters.²¹ Generally, the court must appoint an interpreter to provide interpretation services in the following order of preference:²²

- A certified or language-skilled interpreter.
- A provisionally-approved interpreter.
- A registered interpreter.
- An interpreter who is not certified, language-skilled, provisionally-approved, or registered, if the court finds good cause (such as preventing burdensome delay or the LEP individual's consent).

Parties to litigation may, for proceedings for which no interpreter is appointed, contract for the services of an interpreter at their own expense, but must observe the same preferences when retaining an interpreter as do the courts when appointing them.²³ However, the United States Department of Justice has noted that interpreters are not just necessary for court appearances; an interpreter may also be necessary to give an LEP individual access to points of public contact for the court system, which may include information desks and filing offices, including the offices of the clerks of the circuit court.²⁴

United States Department of Justice

¹³ U.S. Dept. of Justice, *Working with State Courts to Remove Language Barriers to Justice*, <https://www.justice.gov/archives/opa/blog/working-state-courts-remove-language-barriers-justice> (last visited Jan. 22, 2024).

¹⁴ S. 90.606, F.S.

¹⁵ A fundamental interest may include civil commitment, termination of parental rights, paternity, or dependency proceedings.

¹⁶ R. 2.560, F.R.J.A.

¹⁷ A "certified" designation is the highest-qualified state-level interpreter designation for languages for which there is a state-level certification examination. Currently, these languages are Amharic, Arabic, Bosnian/Serbian/Croatian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Spanish, Turkish, and Vietnamese. Office of the State Courts Administrator, *Find an Interpreter*, <https://www.flcourts.gov/Resources-Services/Court-Services/Court-Interpreting/Find-an-Interpreter> (last visited Jan. 22, 2024).

¹⁸ The "language-skilled" designation is the highest-qualified state-level interpreter designation for languages for which there is no state-level certification examination. *Id.*

¹⁹ The "provisionally approved" designation is the next highest qualified state-level interpreter designation below the certified and language-skilled designations. Such an interpreter may be utilized when no certified or language-skilled interpreter is available. *Id.*

²⁰ Registration is the initial step towards obtaining an official state-level designation, and "registered" refers to interpreters who have satisfied general prerequisites but who have yet to qualify for an official designation. Such an interpreter may be utilized when there is no certified, language-skilled, or provisionally approved interpreter available. *Id.*

²¹ *Id.*; Office of the State Courts Administrator, *Court Services*, <https://www.flcourts.gov/Resources-Services/Court-Services> (last visited Jan. 22, 2024).

²² R. 2.560, F.R.J.A.

²³ R. 2.565, F.R.J.A.

²⁴ Letter from the U.S. Dept. of Justice, Civil Rights Division, to Chief Justices/State Court Administrators (August 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 22, 2024).

In 2010, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, the U.S. Department of Justice (DOJ) issued a letter of guidance to state courts regarding the obligation to provide language access services to individuals with limited proficiency in the English language.²⁵ The DOJ's letter specifically emphasized the following concerns about state courts' policies and practices which:

- Limit the types of proceedings for which qualified interpreter services were being provided by the court,
- Charge interpreter costs to one or more parties;
- Restrict language services to courtrooms; and
- Fail to ensure effective communication with court-appointed or supervised personnel.²⁶

The DOJ continues to monitor state courts' efforts related to the provision of interpreting services as part of the department's responsibilities under Title VI of the Civil Rights Act of 1964.²⁷

State's Commission on Trial Court Performance and Accountability

To gain greater compliance with the DOJ's priorities, the state's Commission on Trial Court Performance and Accountability, in coordination with the Trial Court Budget Commission, has been tasked with evaluating the ability of trial courts to expand the provision of court interpreting services without cost to court participants and without regard to an individual's financial status.²⁸ The Commission recommended a phased approach to the expansion of state-funded court interpreter services.²⁹

In March 2023, the Commission submitted a revised report to the Court which recommended an initial expansion of interpreter services, without cost and regardless of indigency status to the following types of proceedings:

- Child support;
- Uniform Interstate Family Support Act;
- Simplified Dissolution of Marriage;
- Evictions; and
- Small Claims.³⁰

The Florida Supreme Court approved the Commission's revised report, including the expansion of state-funded court interpreter services for the recommended proceedings.³¹

Effect of Proposed Changes

HB 1393 amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals. Such funds may be used if they are available in the fiscal year appropriation for due process services and if such interpreting services are provided as prescribed by the Supreme Court.

Additionally, the bill amends s. 29.0195, F.S., to repeal the requirement that a trial court administrator recover funds utilized for court interpreter services from those individuals who have the present ability to pay. The bill retains in current law the requirement that a trial court administrator must attempt to recover expenditures for translation services from non-indigent individuals. Under the bill, any such provision of state-funded court interpreting services to non-indigent participants would be subject to the availability of funds.

²⁵ U.S. Dept. of Justice, *Department of Justice Guidance Letter Regarding the Obligation to Provide Language Access* (Aug. 17, 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 23, 2024).

²⁶ *Id.* at 2.

²⁷ Office of the State Courts Administrator, *2024 Judicial Impact Statement on SB 468* (Jan. 17, 2024), on file with the House Civil Justice Subcommittee.

²⁸ *Id.* at 3, *citing to* Fla. Admin. Order No. AOSC20-56 (June 24, 2020).

²⁹ *Id.*

³⁰ *Id.* at 4.

³¹ *Id.*

However, if those expenditures were for translation services, the trial court administrator is required to seek reimbursement from the non-indigent individual. Further, the bill clarifies that it does not authorize the recovery of costs for interpreter services from the state attorney, indigent defendants, or court-appointed defense counsel for indigent defendants.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 29.0185, F.S., relating to the provision of state-funded due process services to individuals.

Section 2: Amends s. 29.0195, F.S., relating to the recovery of expenditures for state-funded services.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will likely have an insignificant fiscal impact on the state judiciary revenues. The elimination of the cost-recovery provision for court interpreting services is not anticipated to result in a significant fiscal impact, as the amount currently collected from such services is minimal.³²

2. Expenditures:

The bill will likely have an indeterminate negative fiscal impact on state expenditures. Expenditures are contingent upon the expansion and provision of court interpreting services as defined by court rule and will be subject to availability of funds.³³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The potential expansion of court interpretation services to non-indigent individuals may have a positive economic impact on court participants who are not proficient in the English language.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

³² *Id.* at 5.

³³ *Id.* at 6.

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure 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 court interpreter services;
 3 amending s. 29.0185, F.S.; authorizing the state
 4 courts system to use state revenues, if available, to
 5 provide court-appointed interpreting services to
 6 nonindigent individuals; requiring such services to be
 7 provided as prescribed by the Supreme Court; amending
 8 s. 29.0195, F.S.; repealing the cost recovery
 9 requirement for court-appointed interpreting services;
 10 providing an exception; providing an effective date.

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

13
 14 Section 1. Section 29.0185, Florida Statutes, is amended
 15 to read:

16 29.0185 Provision of state-funded due process services to
 17 individuals.—

18 (1) Due process services may not be provided with state
 19 revenues to an individual unless the individual on whose behalf
 20 the due process services are being provided is eligible for
 21 court-appointed counsel under s. 27.40, based upon a
 22 determination of indigency under s. 27.52, regardless of whether
 23 such counsel is appointed or the individual on whose behalf the
 24 due process services are being provided is eligible for court-
 25 appointed counsel under s. 27.40 and has been determined

26 indigent for costs pursuant to s. 27.52.

27 (2) Notwithstanding subsection (1), state revenues may be
 28 used by the state courts system to provide court-appointed
 29 interpreting services to nonindigent individuals if funds are
 30 available in the fiscal year appropriation for due process
 31 services and if interpreting services are provided as prescribed
 32 by the Supreme Court.

33 Section 2. Section 29.0195, Florida Statutes, is amended
 34 to read:

35 29.0195 Recovery of expenditures for state-funded
 36 services.-

37 (1) The trial court administrator of each circuit shall
 38 recover expenditures for state-funded services when those
 39 services have been furnished to a user of the state court system
 40 who possesses the present ability to pay. The rate of
 41 compensation for such services is ~~shall be~~ the actual cost of
 42 the services, including the cost of recovery. The trial court
 43 administrator shall deposit moneys recovered under this section
 44 in the Administrative Trust Fund within the state courts system.
 45 The trial court administrator shall recover the costs of court
 46 reporter services and transcription; translations ~~court~~
 47 ~~interpreter services, including translation;~~ and any other
 48 service for which state funds were used to provide a product or
 49 service within the circuit.

50 (2) This section does not authorize cost recovery for

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2024

51 | court-appointed interpreting services, except translations, or
52 | cost recovery from entities described in ss. 29.005-29.007.

53 | Section 3. This act shall take effect upon becoming a law.



Special Master's Final Report

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6003 - Representative Gottlieb
Relief/Sidney Holmes/State of Florida

SUMMARY

This is an equitable claim for \$1,722,000 to compensate Sidney Lamar Holmes for 34 years of wrongful incarceration under a 400-year prison sentence.

FINDINGS OF FACT

Crime and Initial Investigation

On June 19, 1988 (Father's Day), at around 6:30 p.m., Vincent Wright and Anissia Johnson were robbed at gunpoint while at the OneStop convenience store located at 2525 NW 6th Street, in Broward County, Florida. Ms. Johnson was pregnant with Mr. Wright's child at the time of the robbery. The two victims had stopped at the OneStop to put air into one of the tires of Mr. Wright's 1983 Mercury Cougar vehicle. Mr. Wright was putting air in the right rear passenger side tire of the vehicle while Ms. Johnson remained in the locked vehicle. Two armed men approached Mr. Wright and demanded money while each brandished a semi-automatic handgun (with a magazine, not a revolver). Mr. Wright informed the perpetrators that he did not have any money and they proceeded to forcibly remove the gold chain he was wearing around his neck.

Around that same time, a third perpetrator arrived driving a brown Oldsmobile vehicle. Mr. Wright informed police that the brown Oldsmobile had a hole in the trunk where the lock should be and looked as if someone could use a screwdriver in the hole to open the trunk. According to police reports and subsequent depositions, the driver instructed the two armed men to take Mr. Wright's vehicle since he did not have any money to steal. Mr. Wright instructed Ms. Johnson to get out of the vehicle and let the men take it. The first two perpetrators proceeded to get into Mr. Wright's vehicle and drove eastward, while the third perpetrator, driving the brown Oldsmobile, drove off toward the North. Ms. Johnson called the police while Mr. Wright left the scene with an acquaintance to attempt to follow the men and retrieve his car. No shots were fired and neither of the victims were injured. Mr. Wright's necklace, some change from his car, and his car were stolen at the scene. Mr. Wright's car was found abandoned the next morning and was subsequently returned to him with extensive damage. No fingerprints were taken from Mr.

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Wright's vehicle upon its location and return.

Following the incident, Mr. Wright told his brother, Milton Wright, about the robbery and described the three men and the brown Oldsmobile. Milton Wright told Mr. Wright that the same thing had happened to him earlier on the same day while he was stopped at a stoplight about five minutes away from the OneStop. However, Milton Wright explained that four perpetrators attempted to rob him, with three passengers getting out of a brown Oldsmobile with a "busted" lock on the trunk while the fourth man stayed in the vehicle. Milton Wright was not at the OneStop during the incident in question and did not witness the robbery of Mr. Vincent Wright and Ms. Anissia Johnson.

Under the belief that the same perpetrators who tried to rob him earlier in the day were the ones who attempted to rob his brother, Milton Wright began to drive around the area in search of the suspect vehicle, the brown Oldsmobile. After locating what he suspected to be the brown Oldsmobile in question, he informed Mr. Vincent Wright of the license plate number. Mr. Vincent Wright called the police with the information gathered by Milton Wright and was subsequently told by the police that it was not the car involved in either incident. Two weeks later, Milton Wright found himself driving behind another brown Oldsmobile Cutlass and wrote down the license plate number. The second vehicle did not have a broken lock or a hole in the trunk and Mr. Milton Wright told his brother that the vehicle's "lock was fixed." He provided that second license plate number to Mr. Vincent Wright, who reported the same to the police.

Upon a search of the license plate number, the police learned that the vehicle belonged to Mr. Sidney Lamar Holmes, Jr., a black male who had previously pled guilty to two armed robberies which occurred on August 31, 1984, four years earlier. Based solely upon Mr. Milton Wright's identification of Mr. Holmes' Oldsmobile, Mr. Holmes became the only suspect in the armed robbery incident.

Immediately following the incident, Ms. Johnson admitted that she did not get a good look at any of the three perpetrators and was unable to make an identification throughout the case. A number of photo lineups were conducted and Ms. Johnson consistently was unable to make a single identification. Mr. Wright was not present during the initial police report taken by Deputy Kenneth Smith on the date of the incident. In fact, Deputy Smith took Ms. Johnson's statement after the incident and was unable to locate Mr. Wright to take his statement. Subsequently, Deputy Smith was never contacted by Mr. Wright per the Deputy's request to speak with him about the incident.¹

Claimant's Identification and Arrest

Following the robbery, Ms. Johnson described the first two perpetrators as black men in their twenties.² Ms. Johnson stated that she saw a brown car pull up but did not see the driver.³ As Mr. Wright left the scene of the incident to pursue his stolen vehicle, Ms. Johnson was the only victim/witness at the scene to offer a statement and description of the perpetrators. Mr. Wright first spoke with police after the incident on June 28, 1988, nine days after the robbery, and did not offer a description of the driver in question. On July 25, 1988, during a recorded sworn statement, Mr. Wright only described the driver as a black man.⁴ During the July 25th statement, Mr. Wright was able to offer a description of the other two perpetrators in more detail, including the clothing they were wearing and a more specific description of their skin color.

During his first deposition on January 12, 1989, Mr. Wright described the driver of the vehicle as being short, dark-skinned, with big lips.⁵ During a second deposition on March 23, 1989, Mr. Wright described the driver as a short dark-skinned man around 5'6" and weighing around 170

¹ Deposition of Deputy Kenneth Smith, Jan. 12, 1989 at 15.

² Smith Dep. at 11.

³ Sworn Statement of Anissia Johnson, July 28, 1988.

⁴ Sworn Statement of Vincent Wright, July 25, 1988.

⁵ Wright S.S. at 2.

pounds. He further described him as being muscle-bound, having big lips, a lot haircut, muscular arms, and being a little overweight.⁶ This second deposition occurred after three photo lineups, a live lineup, and Mr. Holmes' arrest.

First Photo Lineup

Detective Robert Campbell, of the Broward County Sheriff's Office, made contact with the victim, Mr. Wright, on June 28, 1988, approximately 9 days after the date of the incident. Detective Campbell presented Mr. Wright with a photo lineup book of about 250 photographs. The photographs in the book were of people who had previously been arrested for robbery or had been contacted in connection to any possible robberies. Detective Campbell asked Mr. Wright to look through the lineup book and see if he was able to identify anyone in the book as one of the perpetrators from the June 19th robbery. Mr. Wright was unable to make an identification from the lineup book. Mr. Holmes' photograph was not included in the initial lineup book of 250 photos.⁷

Ms. Johnson was also presented with the 250-photo lineup book and was unable to make an identification.

Second Photo Lineup

After Mr. Holmes' vehicle was identified by Mr. Milton Wright and Mr. Holmes subsequently became the only suspect in the case, a second photo lineup was compiled. On July 1, 1988, Detective Campbell presented a 6-photo lineup to Mr. Vincent Wright. A photo of Mr. Holmes from his arrest in 1984 was included as one of the 6 photographs. Mr. Vincent Wright was given the opportunity to examine the photo lineup and was unable to make an identification. Ms. Johnson was provided with the 6-photo lineup and was unable to make a single identification.

Third Photo Lineup

After making contact with Mr. Holmes in regards to the robbery, Detective Campbell requested to take a new photo of him to use in the investigation. Mr. Holmes complied with the request and agreed to speak with Detective Campbell, asserting his innocence throughout the investigation. Detective Campbell used the new photo of Mr. Holmes and created a third lineup, consisting of 6 photographs. In creating the third lineup, Detective Campbell chose five other photographs of similar looking black males to include in the lineup. Mr. Holmes was the only person from the first 6-photo lineup to appear in the second 6-photo lineup.

On July 25, 1988, Detective Campbell provided the third photo lineup to Mr. Wright. Mr. Wright identified Mr. Holmes as one of the three perpetrators from the June 19th robbery. Detective Campbell presented the third lineup to Ms. Johnson and she, again, was unable to make an identification. Detective Campbell did not pursue any additional leads or suspects and proceeded to focus his attention arresting Mr. Holmes.⁸

Live Lineup

On October 6, 1988, Mr. Holmes was arrested for the robbery at the OneStop. On October 20, 1988, Mr. Wright attended a live lineup at the Broward County Jail to identify the suspect in the robbery. During a live lineup of six men, Mr. Wright positively identified Mr. Holmes as the driver and third perpetrator of the robbery. At the time of the live lineup, Mr. Wright had previously seen Mr. Holmes' photo two times in two photo lineups. No other person in the live lineup had been included in the prior photo lineups. No other arrests were made and the remaining two perpetrators were never identified.

⁶ Deposition of Vincent Wright, March 23, 1989 at 9, 19-21.

⁷ Deposition of Detective Robert Campbell, Jan. 12, 1989 at 5.

⁸⁸ Campbell Dep. at 17.

At the first day of Mr. Holmes' trial on April 24, 1989, Mr. Wright positively identified Mr. Holmes in court as the driver of the brown car.

Ms. Johnson was informed of the live lineup on October 20 but did not attend and, thus, did not make an identification. Ms. Johnson continued to be unable to make an identification throughout all three photo lineups and maintained that she was unable to make an identification throughout the remainder of the investigation and trial. At trial, Ms. Johnson, who previously stated that she did not see the driver inside of the brown car, testified that she saw a black, heavyset man in the driver seat of the car.

Arrest

Mr. Holmes was arrested by the Broward County Sheriff's Office on October 6, 1988, at his mother's home. Pursuant to transcripts reviewed by the Special Master, Mr. Holmes fully complied with the investigation while asserting his innocence throughout. Mr. Holmes did not resist the arrest and did not have any significant sums of money or jewelry on him at the time of the arrest.⁹

Claimant's Alibi

Mr. Holmes maintained that he was not involved in the crime as he was at his parents' home the entire day on June 19, 1988. The date in question was Father's Day and Mr. Holmes spent the entire day at his family's house with neighbors, friends, and family members celebrating the holiday with a large family meal and driving a go-kart around the street. Six witnesses from the Father's Day festivities corroborated Mr. Holmes' alibi, noting that he was present at the house from the morning until late into the evening. Further, the witnesses provided that Mr. Holmes' brown Oldsmobile was parked under a tree in the yard of the house and did not move the entire day.

At the original trial and throughout the CRU and IPF's investigation, the witnesses from the Father's Day picnic at Mr. Holmes' family's house confidently asserted that he was present at the house the entire day. The consistency in the witness statements and confidence that Mr. Holmes was present for the entirety of the day strongly supports Mr. Holmes' alibi and his inability to have perpetrated the robbery.

Trial and Conviction

During the pre-sentence investigation, the prosecutor, Mr. Peter Magrino, asked the court to impose an 825-year prison sentence for Mr. Holmes. Prosecutor Magrino argued that Mr. Holmes' prior criminal conviction for armed robbery combined with his alleged actions in this matter required a sentence greater than the term of life so that "Mr. Holmes could not be released from prison while his body was still functioning."¹⁰

Prosecutor Magrino further rationalized that he had given Mr. Holmes numerous opportunities to come clean about the robbery and implicate the other two perpetrators but he "chose not to accept it" and refused to offer any helpful information.¹¹ It is the Special Master's belief that Mr. Holmes' was not simply refusing to assist the investigation but truly did not have any knowledge of the incident and was unable to offer information with respect to an incident he was not a part of.

Mr. Holmes' trial took place on April 24-26, 1989, before a jury of his peers, where he was found guilty of armed robbery. During the sentencing hearing, Judge Grossman indicated that the 825-year sentence requested by the prosecution was an overreach, stating that it was, "a little bit much," and sentenced Holmes to 400 years in prison.

⁹ Campbell Dep. at 24.

¹⁰ Transcript from the Pre-Sentence Hearing of Mr. Holmes on May 17, 1989.

¹¹ *Id.*

CRU Investigation

CRU Background

The Broward County Conviction Review Unit (CRU) is a specialized unit within the State Attorney's Office of the 17th Judicial Circuit which was created in 2019.¹² The purpose of the CRU is to identify whether innocent defendants have been wrongfully convicted.¹³ In those cases, the CRU works to promptly remedy the wrongful conviction. Mr. Holmes' case is only the second exoneration since the CRU was created in 2019. The Unit has had several inculpatations in which they found the petitioner did commit the crime. However, the vast majority of petitions submitted to the CRU end up being closed out after a preliminary review reveals that not grounds exist for further investigation.¹⁴

The CRU reviews felony convictions where there is a plausible claim of innocence and prioritizes cases where the petitioner is incarcerated and was convicted of a serious or violent felony.¹⁵ The claim must be capable of being substantiated by credible, factual information and evidence not previously considered by the original fact finder.¹⁶ The CRU utilizes the guidelines for its screening process provided by the Quattrone Center for the Fair Administration of Justice, the preeminent national research and policy organization that advises CRUs across the country on best practices.¹⁷

Once the CRU determines a petition for request to review a case meets the required conditions, the unit conducts an extensive review and reinvestigation of the evidence in the case. Additionally, the CRU impanels an Independent Review Panel comprised of legal professionals and citizens to take an unbiased look at the evidence in the case and identify their own conclusions as to the reasonable doubt and actual innocence of the specific case.

CRU and Innocence Project Investigation

Mr. Holmes contacted the CRU in November of 2020 asserting his actual innocence for the 1988 armed robbery at the OneStop in Broward County. During the screening stage, Mr. Holmes asserted his a plausible claim of innocence. Subsequently, the CRU asked the Innocence Project of Florida (IPF) to assist Mr. Holmes in his case. The CRU and the IPF then conducted an extensive collaborative, post-conviction investigation during 2021-2022.^{18 19}

The CRU and IPF conducted a thorough post-conviction investigation, reviewing all existing materials from the original case, consulting with experts in eyewitness identification, alibi composition, and re-interviewing victims, witnesses, and law enforcement who were involved in the original case. Following the review, the CRU concluded that there was reasonable doubt as to Mr. Holmes' guilt and that it was highly likely that he was factually innocent of the armed robbery. Further, based on the totality of the evidence known today, the CRU concluded that the Broward State Attorney's Office would not have charged Mr. Holmes if the case were presented today.²⁰

¹² Broward County State Attorney, *FAQs*, <https://browardsao.com/wp-content/uploads/2021/01/HP-FAQs-re-ConvictionReviewUnit.pdf> (last visited Jan. 21, 2024).

¹³ *Id.*

¹⁴ Email from Arielle DembyBerger, Assistant State Attorney, Conviction Review Unit with the Office of the State Attorney for the 17th Judicial Circuit (Jan. 22, 2024), on file with the House Civil Justice Subcommittee.

¹⁵ *Supra* note 12.

¹⁶ *Id.*

¹⁷ Arielle DembyBerger, *Conviction Review Unit Final Memorandum*, Feb. 20, 2023, on file with the House Civil Justice Subcommittee.

¹⁸ *Id.* at 2.

¹⁹ The collaboration between the CRU and IPF was in furtherance of a multi-year U.S. Department of Justice grant between the CRU and IPF to screen and investigate cases of wrongful conviction. The goal of the congressionally authorized program is to create a non-adversarial approach to identifying and remedying wrongful convictions in a more time and cost-effective manner.

²⁰ *CRU Final Memorandum* at 2.

After reaching its own conclusion from the extensive reinvestigation, the CRU convened an Independent Review Panel (IRP). The specific IRP for Mr. Holmes' case was composed of six Broward County residents. Five of the members were attorneys from the community, including a retired career prosecutor, former public defenders, defense attorneys, civil attorneys, a former president of the Florida Bar Association, a hearing officer, and a former City Commissioner and Vice Mayor.

The IRP was given all transcripts, sworn statements, case docket, post-conviction motions, evidence, memorandums, legal research, and the joint investigation by the CRU and IPF. The panel was given the opportunity to ask questions to which the CRU conducted additional legal research and investigation to provide answers to said questions. After a roundtable discussion of the evidence, the IRP unanimously determined that a complete review of the evidence demonstrated that the case against Mr. Holmes gave rise to a reasonable doubt as to his culpability. Five out of the six panel members expressed their belief that Mr. Holmes was actually innocent and should be exonerated immediately.

The IRP presented its conclusions to State Attorney, Harold F. Pryor. State Attorney Pryor agreed with the IRP that Mr. Holmes' sentence should be vacated. With the agreement of the State, Mr. Holmes' conviction and sentence was vacated on March 13, 2023; the State immediately dropped the associated charges, and Mr. Holmes was released from prison.

Expert Analysis (Witness Identification and Memory)

The IPF consulted with Dr. Lora Levett, an expert in the field of psychology and eyewitness identification, to conduct a review of the case materials and prepare a report explaining the relevant psychological research on eyewitness memory and the impact on eyewitness testimony and identifications. Upon review of Dr. Levett's credentials, it is clear to the Special Master that she is a qualified expert on the subject matter.²¹

Dr. Levett produced a thorough 22-page report in which she identified eleven significant issues with the eyewitness testimony and identification made in Mr. Holmes' case. Dr. Levett's report focused on the following issues:

- Weapon Focus Effect;
- Significant witness stress;
- Multiple perpetrators and divided attention;
- Exposure duration and time estimation;
- Post-event co-witness contamination;
- Retention interval;
- Multiple lineup procedures;
- Lineup composition;
- Biased instruction;
- Lack of investigator blindness in administering the lineup procedure; and
- Witness confidence and accuracy.

While the entirety of Dr. Levett's report was persuasive, it was the explanation and analysis of the flaws in the lineup procedure and multiple lineups presented that were the most persuasive to the Special Master. Given the report's insight into how memory functions and the importance of a sterile and properly composed lineup, the procedures used in Mr. Holmes' case are of significant concern. It is a strong possibility that the victim, Vincent Wright, was correlating his recognition of Mr. Holmes to the previous photo lineups he had been shown (in which Mr. Holmes' photo was included and Mr. Wright was unable to make an identification) rather than his actual recollection of the perpetrators from the day of the incident.

²¹ See Lora M. Levett, Ph.D., *Report on the State of Florida v. Sidney Holmes*, on file with the House Civil Justice Subcommittee.

Given the myriad of issues surrounding the identification of Mr. Holmes, the lack of any other evidence supporting the theory that Mr. Holmes was involved in the crime, and Mr. Holmes' strong alibi supported by multiple witnesses, it is highly unlikely that Mr. Holmes was involved in the robbery in question. In fact, it seems more than plausible that once Mr. Holmes' vehicle was identified as matching the perpetrator's vehicle, the investigation became the victim of tunnel vision, with a conviction of Mr. Holmes by any means necessary as the ultimate goal.

The CRU consulted with Dr. Laura J. Shambaugh, who conducted an independent review of the materials and drafted a concurring review of the report by Dr. Levett.²² Upon review of her credentials, it is evident that Dr. Shambaugh is a qualified expert in legal psychology and eyewitness memory.

In her concurring report, Dr. Shambaugh agreed with the findings stated in Dr. Levett's report, again emphasizing the significance of the lineup fairness and multiple lineups throughout the investigation. Both the report by Dr. Levett and the concurring report by Dr. Shambaugh were incredibly insightful, informative, and persuasive.

Additional Expert Statements

One additional source of information that was of note was information provided by Mr. Dave Pfaff, a historian/archivist at the R.E. Olds Transportation Museum in Lansing, Michigan. Mr. Pfaff responded to a request from the CRU for information about the Oldsmobile Cutlass vehicle. During a phone call on August 2, 2022, Mr. Pfaff told a CRU investigator that the Oldsmobile Cutlass was a "standout seller of the 1980s."²³ In 1988, Oldsmobile produced 15 different variations of the Cutlass model with 396,386 produced that year alone. Further, he told the investigator that the Oldsmobile Cutlass was the best-selling car in the United States from 1976-1983.²⁴

The information from Mr. Pfaff supports the notion that Mr. Holmes' 1979 Oldsmobile Cutlass was not a rare car. In fact, it was one of the most popular models of car in the nation at that time, making the identification of a specific car of such popularity questionable. As such, the historical popularity of the Oldsmobile Cutlass makes the misidentification of Mr. Holmes' vehicle more probable.

Claimant's Criminal History

Mr. Holmes had two prior criminal convictions before his conviction and incarceration for the OneStop robbery. Both prior convictions were for armed robbery stemming from two incidents that both occurred on August 31, 1984. In both incidents, Mr. Holmes was driving his car with Steven Glover, his co-defendant, in the passenger seat. Around 9:30 p.m., Mr. Glover exited the vehicle, approached two people, and robbed them at gunpoint. An hour later, Mr. Glover, again, exited the vehicle, approached five people gathered in a parking lot, and robbed them at gunpoint. Mr. Glover returned to Mr. Holmes' car and Mr. Holmes drove away; Mr. Holmes did not exit the vehicle for either incident and acted solely as the driver while Mr. Glover committed the robberies.

When police began to follow Mr. Holmes' car moments after the robbery, Mr. Glover fled the vehicle and Mr. Holmes stopped the vehicle and gave himself up to the police. Subsequently, Mr. Glover gave a full confession to the crimes and told police that he committed the robberies because he needed to come up with a sum of money by the following day to purchase a car. Mr. Glover provided that he did not share any of the money or items stolen with Mr. Holmes and that Mr. Holmes was only the driver and never even had a weapon. Further, Mr. Holmes fully

²² See Laura J. Shambaugh, Ph.D., *Concurring Review of the Report on State of Florida v. Sidney Holmes* by Lora M. Levett, Ph.D., on file with the House Civil Justice Subcommittee.

²³ Amy Carr, *Investigation Contact Notes: R.E. Olds Transportation Museum*, Aug. 4, 2022, on file with the House Civil Justice Subcommittee.

²⁴ *Id.*

complied with police and provided a detailed confession of his involvement (unlike the instant case in which he adamantly denied having any knowledge to offer investigators). Mr. Holmes was sentenced to 5.5 years in prison and was released on March 17, 1987.

Aside from his involvement as the driver for Mr. Glover, Mr. Holmes has no other criminal history. He has not been charged with or convicted of any other misdemeanor or felony offenses.

Claimant's Record During and After Incarceration

Despite facing a 400-year prison sentence, Mr. Holmes was determined to keep his head down and make the most out of his time in prison, all the while maintaining his innocence. During his 34 years of incarceration, Mr. Holmes only had seven minor violations, such as "being in an unauthorized area" and "telephone violations." None of the minor violations were for acts of violence. In fact, during the last 13 years of his incarceration, Mr. Holmes did not receive a single violation.

During his time in prison, Mr. Holmes has been working on self-improvement and remained a trusted and contributing member of the prison. He has served in many capacities including working in food service, as a chaplain assistant, and working in the prison store room. He was responsible for baking, cooking, and completing paperwork in his multiple roles. During his incarceration, Mr. Holmes also took numerous courses offered through the Florida University system and obtained his paralegal certification from the Blackstone Career Institute. Mr. Holmes obtained various food handling and food management certificates and continues to work in food service and nutrition now that he has been released from prison.

Mr. Holmes is currently working in food service and nutrition for Encompass Rehabilitation Hospital. In fact, Encompass has recently applied for a grant for Mr. Holmes to get certification to become a food service director/manager in a hospital setting.

Mr. Holmes' daughter was only seven months old when he was incarcerated in 1989. As such, he has spent his time since his release trying to rebuild a relationship with his daughter and build relationships with his five grandchildren. He is happy to be working in the healthcare industry, which was always a goal for him, even prior to his incarceration. It is apparent that Mr. Holmes took a difficult situation and made the most of it. While it would have been easy to give up while facing a 400-year sentence, Mr. Holmes used the opportunities he was offered to work towards creating the life he had always wanted, with the hope that he would one day be exonerated.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant's Position

The Claimant asserts that he is actually innocent of the charges and seeks monetary compensation for his time spent wrongfully incarcerated. At the hearing on his claim bill, Mr. Holmes explained to the Special Master that he harbored no ill feelings for his time being incarcerated and that he prided himself on being a good Christian man who believes in forgiveness.

Respondent's Position

The Respondent did not present a case at the final hearing. However, during her testimony as the primary witness for the Claimant, the CRU attorney, Arielle Demby-Berger, testified that the State fully supports the claim bill and confidently believes that Mr. Holmes is actually innocent and was not involved with the armed robbery at the OneStop.

Further, during the CRU's reinvestigation of the incident, both victims, Ms. Anissia Johnson and

Mr. Vincent Wright, expressed their support for Mr. Holmes' release from prison after 34 years. State Attorney Harold F. Pryor has been vocal about his office's golden rule to "do the right thing."²⁵ In his statement regarding Mr. Holmes' exoneration, he explained that the job of a prosecutor is to promote public safety and ensure justice is served. He further provided that he "commend[s] the victims, witnesses, and law enforcement officers for their candor and assistance in reinvestigating a crime that occurred more than 34 years ago."²⁶

CONCLUSIONS OF LAW

Wrongful Incarceration Relief Under Chapter 961

Chapter 961, Florida Statutes, governs the general process for compensating wrongful incarceration victims. This chapter requires a person claiming to be such a victim to prove that he or she is actually innocent of the crime for which he or she was incarcerated and meet other criteria, including that the claimant not have more than one felony conviction on his or her record that predates or occurred during the wrongful incarceration.²⁷

In the instant matter, the Claimant is ineligible for and thus has been unable to obtain relief under ch. 961 because of the two felonies for which he was convicted prior to his conviction and incarceration for the armed robbery at the OneStop. However, the Legislature is not bound by the ch. 961 process and may pass this claim bill in spite of the Claimant's criminal record.

Evidentiary Standard for Victims of Wrongful Incarceration

Generally, a claimant seeking tort damages under a claim bill must prove entitlement to relief by a preponderance of the evidence - that is, that the claimant's position is more likely to be true than untrue. However, a claimant seeking a claim bill for wrongful incarceration must demonstrate actual innocence.

Since 2012, the House Special Master has applied a "clear and convincing" standard to wrongful incarceration claim bills, which is an intermediate burden of proof requiring that the evidence be of "such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."²⁸ Multiple wrongful incarceration claim bills passed by the Legislature since that time applied the clear and convincing standard, and it is also the standard applied to claims for relief under chapter 961.²⁹

While the Legislature is not bound by a previous Legislature's actions, the Legislature's prior acceptance of the clear and convincing standard, coupled with the Legislature's selection of that standard for chapter 961 proceedings, demonstrates that the clear and convincing standard is appropriate for wrongful incarceration claim bills.³⁰ In light of the foregoing, I find that the clear and convincing standard should apply in the instant matter, in accordance with House precedent and legislative intent.

Application of Burden of Proof to Claimant's Case

²⁵ Broward County State Attorney, *Broward State Attorney Announces Conviction Review Unit's Second Exoneration*, March 13, 2023, <https://browardsao.com/conviction-review-unit-second-exoneration/> (last visited Jan. 21, 2024).

²⁶ *Id.*

²⁷ See ss. 961.03, 961.04, F.S.

²⁸ See *S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So.3d 869, 872 (Fla. 2014).

²⁹ See s. 961.03(3), F.S. (stating that a wrongful incarceration victim is entitled to relief if he or she can present "clear and convincing evidence that [he or she] committed neither the act nor the offense that served as the basis for the conviction and incarceration," and meet other requirements).

³⁰ Additionally, while not dispositive as to legislative intent, it would seem odd to require a person with "clean hands" seeking relief under chapter 961, F.S., to prove his or her innocence by a clear and convincing standard, while requiring a person ineligible for relief under chapter 961, F.S., to prove his innocence by the lesser preponderance of the evidence standard.

In determining whether the Claimant proved his actual innocence by clear and convincing evidence, I find the following to be persuasive:

- The Claimant maintained his innocence from the time of arrest through his exoneration, consistently denying any knowledge of the crime, even when offered the opportunity to “flip” on the other perpetrators to his benefit.
- There is no direct evidence, such as DNA, fingerprints, or video surveillance, linking the Claimant to the crime.
- The only thing linking the Claimant to the crime was an identification of a vehicle by a third party who was not even present at the incident, and his subsequent quasi-vigilante civilian investigation.
- The photo lineup process in which the Claimant was not identified, and then was subsequently identified after his photo was used in an additional lineup wherein he was the only person to be included in each lineup is problematic.
 - The corresponding expert reports on the issues surrounding the eyewitness identification and the problematic lineup procedures support the probability for misidentification or altered memory.
- The Claimant’s strong alibi has consistently been supported by six different witnesses.
- The popularity of the make and model of the Claimant’s vehicle, along with the lack of any hole or damage to the trunk as was described on the perpetrator’s vehicle lead to significant doubt as to the accuracy of the vehicle identification.
- The issues surrounding the victim’s recollection of the events and the troublesome delay in obtaining his statements give rise to significant concern over the accuracy of the statements and subsequent identification of Mr. Holmes as the perpetrator.
- The overzealous 400-year sentence for an armed robbery in which the Claimant was alleged to be the driver and not one of the main perpetrators and in which none of the victims was physically harmed shows a disregard for consistent sentencing in crimes of a similar nature and demonstrate a plausible bias against Mr. Holmes .

Furthermore, I give great weight to the fact that the Claimant’s innocence came to light through the State’s own investigation by the Broward County CRU. Additionally, at the conclusion of the investigation, the State, convinced of the Claimant’s innocence, recommended and ultimately obtained the vacatur of the Claimant’s judgment and sentence and entered a nolle prosequi. The testimony from Assistant State Attorney Arielle Demby Berger was as persuasive as it was moving. It was obvious that her office takes its responsibilities to heart and wholeheartedly seeks to “do the right thing” while protecting its citizens.

In light of the foregoing, I find that the Claimant has successfully demonstrated, by clear and convincing evidence, that he is actually innocent of the crime for which he was convicted – that is, Armed Robbery with a Firearm.

AMOUNT OF CLAIM BILL

Section 961.06(1)(a), Florida Statutes, provides that “monetary compensation [shall] be calculated at a rate of \$50,000 for each year of wrongful incarceration.” The Claimant seeks a total monetary award of \$1,722,000, which is \$50,000 for each of the 34 years that he was wrongfully incarcerated.

EXHAUSTION OF REMEDIES

House Rule 5.6(c) requires a claim bill to be held in abeyance until a claimant has exhausted “all available administrative and judicial remedies. . . .”³¹ In the instant matter, the Claimant is ineligible for chapter 961 relief due to his criminal record.

ATTORNEY AND LOBBYING FEES

³¹ Senate Rule 4.81(6), while including a similar exhaustion of remedies requirement, states that such requirement “does not apply to a bill which relates to a claim of wrongful incarceration.”

The Claimant's attorneys and lobbyists represent him on a pro bono basis. Thus, there are no attorney fees, lobbying fees, or costs associated with this claim bill.

RECOMMENDATION

Because I find that the Claimant has demonstrated by clear and convincing evidence that he is actually innocent of the crime for which he was convicted – that is, Armed Robbery – I recommend that House Bill 6003 be reported FAVORABLY.

Respectfully submitted,



SARAH R. MATHEWS

House Special Master

Cc: Representative Gottlieb, House Sponsor
Senator Jones, Senate Sponsor
Lucas Parsons, Senate Special Master

HB 6003

2024

1 A bill to be entitled

2 An act for the relief of Sidney Holmes; providing an
3 appropriation to compensate Mr. Holmes for being
4 wrongfully incarcerated for 34 years; directing the
5 Chief Financial Officer to draw a warrant payable
6 directly to Mr. Holmes; requiring the Chief Financial
7 Officer to pay the directed funds without requiring
8 Mr. Holmes to sign a liability release; providing for
9 the waiver of certain tuition and fees for Mr. Holmes;
10 declaring that the Legislature does not waive certain
11 defenses or increase the state's limits of liability
12 with respect to the act; prohibiting funds awarded
13 under the act to Mr. Holmes from being used or paid
14 for attorney or lobbying fees; prohibiting Mr. Holmes
15 from submitting a compensation application under
16 certain provisions upon his receipt of payment under
17 the act; requiring Mr. Holmes to reimburse the state
18 under certain circumstances; requiring Mr. Holmes to
19 notify the Department of Legal Affairs upon filing
20 certain civil actions; requiring the department to
21 file a specified notice under certain circumstances;
22 providing that certain benefits are void upon
23 specified findings; providing an effective date.

24
25 WHEREAS, Sidney Holmes was arrested on October 6, 1988, for

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2024

26 | a June 19, 1988, robbery outside of a convenience store in Fort
27 | Lauderdale and was convicted on April 26, 1989, of armed robbery
28 | with a firearm, and

29 | WHEREAS, since the time of his arrest, Mr. Holmes has been
30 | unwavering in maintaining his innocence in connection with the
31 | crime, and

32 | WHEREAS, Mr. Holmes, who had previous felony convictions,
33 | was sentenced to 400 years in prison and served 34 years of that
34 | sentence, and

35 | WHEREAS, on February 23, 2023, the Conviction Review Unit
36 | for the State Attorney's Office for the 17th Judicial Circuit
37 | issued a 25-page "Conviction Review Unit Final Memorandum,"
38 | reaching the conclusion that Mr. Holmes' judgment and sentence
39 | should be vacated and that the State Attorney's Office should
40 | enter a nolle prosequi, and

41 | WHEREAS, the final memorandum was issued based on the
42 | findings of the Independent Review Panel that the case against
43 | Mr. Holmes gave rise to reasonable doubt as to his culpability
44 | and noted that it was highly likely that Mr. Holmes is factually
45 | innocent of the armed robbery and the Broward County State
46 | Attorney's Office would not charge Mr. Holmes if the case were
47 | presented today, and

48 | WHEREAS, on March 13, 2023, the Circuit Court for the 17th
49 | Judicial Circuit issued, with the concurrence of the state, an
50 | Agreed Order Vacating Judgment and Sentence on the basis that

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51 | there is reasonable doubt as to Mr. Holmes' guilt in the case
 52 | and that it is highly likely that he was misidentified and is
 53 | factually innocent of the armed robbery, and

54 | WHEREAS, that same day, the state filed a Notice of Nolle
 55 | Prosequi, and Mr. Holmes was exonerated, and

56 | WHEREAS, the Legislature acknowledges that the state's
 57 | system of justice yielded an imperfect result that had tragic
 58 | consequences in this case, and

59 | WHEREAS, the Legislature acknowledges that as a result of
 60 | his physical confinement Mr. Holmes suffered significant damages
 61 | that are unique to him, and that the damages are due to the fact
 62 | that he was physically restrained and prevented from exercising
 63 | the freedom to which all innocent citizens are entitled, and

64 | WHEREAS, before his conviction for the aforementioned
 65 | crimes, Mr. Holmes had prior convictions for unrelated felonies,
 66 | and

67 | WHEREAS, because of his prior felony convictions, Mr.
 68 | Holmes is ineligible for compensation under chapter 961, Florida
 69 | Statutes, and

70 | WHEREAS, the Legislature apologizes to Mr. Holmes on behalf
 71 | of the state, NOW, THEREFORE,

72 |

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

74 |

75 | Section 1. The facts stated in the preamble to this act

76 are found and declared to be true.

77 Section 2. The sum of \$1.722 million is appropriated from
 78 the General Revenue Fund to the Department of Financial Services
 79 for the relief of Sidney Holmes for his wrongful incarceration.
 80 The Chief Financial Officer is directed to draw a warrant in
 81 favor of Mr. Holmes in the sum of \$1.722 million, payable
 82 directly to Sidney Holmes.

83 Section 3. The Chief Financial Officer shall pay the funds
 84 directed by this act without requiring that Mr. Holmes sign a
 85 liability release.

86 Section 4. Tuition and fees for Mr. Holmes shall be waived
 87 for up to a total of 120 hours of instruction at any career
 88 center established under s. 1001.44, Florida Statutes, any
 89 Florida College System institution established under part III of
 90 chapter 1004, Florida Statutes, or any state university. For any
 91 educational benefit made, Mr. Holmes must meet and maintain the
 92 regular admission and registration requirements of such career
 93 center, institution, or state university and make satisfactory
 94 academic progress as defined by the educational institution in
 95 which he is enrolled.

96 Section 5. With respect to the relief for Mr. Holmes as
 97 described in this act, the Legislature does not waive any
 98 defense of sovereign immunity or increase the limits of
 99 liability on behalf of the state or any person or entity that is
 100 subject to s. 768.28, Florida Statutes, or any other law. Funds

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101 awarded under this act to Mr. Holmes may not be used or be paid
102 for attorney fees or lobbying fees related to this claim.

103 Section 6. Upon his receipt of payment under this act, Mr.
104 Holmes may not submit an application for compensation under
105 chapter 961, Florida Statutes.

106 Section 7. If, after monetary compensation is paid under
107 this act, a court enters a monetary judgment in favor of Mr.
108 Holmes in a civil action related to his wrongful incarceration,
109 or Mr. Holmes enters into a settlement agreement with the state
110 or any political subdivision thereof related to his wrongful
111 incarceration, Mr. Holmes must reimburse the state for the
112 monetary compensation awarded under this act. Such reimbursement
113 may not exceed the amount of monetary award Mr. Holmes receives
114 for damages in such civil action or settlement agreement, less
115 any sums paid for attorney fees or costs incurred in litigating
116 the civil action or obtaining the settlement agreement. The
117 court must include in the order of judgment an award to the
118 state of any amount required to be deducted pursuant to this
119 act. Claimant Sidney Holmes shall notify the Department of Legal
120 Affairs immediately upon filing any such civil action, after
121 receipt of which the Department of Legal Affairs shall file a
122 notice of payment of monetary compensation in the civil action.
123 Such notice constitutes a lien upon any judgment or settlement
124 recovered under the civil action in an amount equal to the sum
125 of monetary compensation paid to the claimant under this act,

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126 | less the specified attorney fees and costs.

127 | Section 8. If any future judicial determination concludes
128 | that Mr. Holmes, by DNA evidence or otherwise, participated in
129 | any manner in the armed robbery for which he was incarcerated,
130 | the unused benefits to which he is entitled under this act are
131 | void.

132 | Section 9. This act shall take effect upon becoming a law.



Special Master's Final Report

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6007 - Representative Yarkosky
Relief/Julia Perez/St. Johns County Sheriff's Office

SUMMARY

This is a settled claim for \$6,300,000¹ by Julia Perez ("Perez") against the St. Johns County Sheriff's Office ("SJSO") for injuries and damages she suffered when an SJSO deputy drove his patrol vehicle directly into the path of a motorcycle operated by Perez on April 7, 2019, causing Perez's motorcycle to collide with his vehicle.

FINDINGS OF FACT

Accident

Shortly after 5:00 p.m. on April 7, 2019, then-51-year-old mother of two Julia Perez ("Perez") was operating a motorcycle, traveling eastbound on State Road 16 in unincorporated St. Johns County, Florida.² Perez wore a motorcycle helmet and was, according to witnesses, operating her motorcycle within the posted speed limits.

At the same time, on-duty St. Johns County Sheriff's Office ("SJSO") Deputy Brandon Hetzler ("Hetzler") was operating a marked SJSO patrol vehicle, traveling westbound on State Road 16.³ In response to a call for service, Hetzler proceeded into the left turn lane at the intersection of State Road 16 and Harvest Lane; however, Hetzler failed to activate his vehicle's emergency lights or sirens in response to this call, and he later testified in a deposition that the sun was shining in his eyes so he could not see oncoming traffic, including Perez, who had a continuous green signal giving her the right-of-way. In spite of this, Hetzler proceeded to enter the intersection to attempt to make a left turn, driving his patrol vehicle directly into the path of Perez's oncoming motorcycle.

The front of Perez's motorcycle collided with the front right side of Hetzler's patrol vehicle, and

¹ The Claim Bill, as currently filed, requests \$15,000,000. The parties have since settled the matter for \$6,500,000, \$200,000 of which has been paid. This leaves an excess settlement amount of \$6,300,000.

² Perez traveled with her partner, Tom Eiland, who operated his own motorcycle. Eiland was injured in the same accident at issue in this Claim Bill but his injuries and damages are not the subject of this Claim Bill. Thus, they are not discussed herein.

³ At all times relevant to this Claim Bill, Hetzler, employed by the SJSO as a deputy sheriff, was acting within the course and scope of his employment.

the force of the crash ejected Perez from her motorcycle. Perez then impacted the hood of Hetzler's patrol vehicle, and the force of the impact propelled her over the vehicle's roof, causing her to impact the vehicle's trunk before she finally came to rest on the pavement of State Road 16. Several witnesses to the accident called 911, and an off-duty SJSO deputy who happened to be among the witnesses attended to Perez before emergency responders arrived. In the course of rendering emergency aid, the off-duty deputy had to revive Perez with a defibrillator he happened to have been carrying in his personal vehicle.

Once at the scene, emergency responders found Perez unconscious and hemorrhaging, with a Glasgow Coma Score of 3, indicating a severe, traumatic brain injury. Indeed, her injuries were so severe that she was not expected to survive; consequently, traffic homicide investigators with the Florida Highway Patrol ("FHP investigators") responded to the scene.⁴ At the conclusion of their investigation, the FHP investigators found Hetzler solely at fault for the accident and issued him a traffic citation, citing him with failure to yield to oncoming traffic when making a left turn under s. 316.122, F.S.⁵ Hetzler went on to plead no contest to the citation and the court withheld adjudication, ultimately fining Hetzler. An investigation conducted by the SJSO's Traffic Crash Review Board also found Hetzler solely at fault for the accident, and the Crash Review Board ultimately suspended his driving privileges for three months and ordered him to complete a remedial driving course.

Injuries and Treatment

Emergency responders transported Perez by ambulance to the emergency department of Memorial Hospital Jacksonville; while in the ambulance, Perez was intubated, placed on mechanical ventilation, and sedated. Upon arrival to Memorial Hospital Jacksonville, Perez was unresponsive with a blood pressure reading of 59/31 and in hemorrhagic shock, which required "aggressive resuscitation with massive transfusion protocol" and "emergent exploration" to determine the extent of her "devastating" injuries. Treating physicians ultimately found that, due to the April 7, 2019, accident, Perez had:

- A severe traumatic brain injury.
- Kidney tubular necrosis, which led to kidney failure.
- Multiple displaced pelvic fractures.
- A right distal humerus fracture.
- Right tibia and fibula fractures.
- Multiple right femur fractures.
- A left distal radius fracture.
- Left-side rib fractures.
- A right medial malleolar fracture.
- Fractures to the sternum and manubrium.
- Cervical spine fractures.
- A pneumothorax.
- A right-sided labia majora laceration.
- Liver lacerations.
- A hiatal hernia in the abdomen.
- A large right-sided pelvic sidewall hematoma.
- A bladder hematoma.

All told, Perez spent approximately eight months receiving in-patient medical care, first at Memorial Hospital Jacksonville, then at a rehabilitation facility, and ultimately at a nursing home before she was able to return home for ongoing out-patient care. During this time, she suffered numerous complications, including bed sores, a pulmonary embolism, and infections for which she had to take numerous antibiotics.

⁴ See THI Case No. FHP 119-20-001.

⁵ S. 316.122, F.S., is a noncriminal traffic infraction, a violation of which is punishable, without aggravating factors, by a civil penalty of up to \$500 and/or a requirement to attend a driver improvement school.

Due to her injuries, Perez also spent three months on a ventilator and feeding tube and underwent multiple surgeries, including: several orthopedic surgeries for the placement of a temporary external fixation device and later the placement of permanent rods and screws to stabilize her various fractures; and a gynecological surgery to repair the laceration to her labia majora. She also began kidney dialysis for treatment of her kidney failure and was, for a significant time period, a candidate for a kidney transplant.⁶

Civil Action

On March 14, 2020, Perez filed a Complaint in the Circuit Court of the Seventh Judicial Circuit in and for St. Johns County, Florida.⁷ Therein, Perez alleged that the SJSO was negligent through the actions of Hetzler and requested damages for her injuries, including: catastrophic bodily injury and resulting pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; expenses of hospitalization, medical and nursing care, and treatment; medical liens; debts for gratuitous services and attendant care; loss of earnings; loss of ability to earn money; and aggravation of a previously existing condition.

On April 29, 2020, the SJSO filed an Answer, wherein it raised several affirmative defenses, including sovereign immunity, a Fabre defense,⁸ collateral source payments, contributory negligence, and failure to mitigate. However, Perez and the SJSO ultimately agreed to settle the matter for \$6,500,000, and on November 27, 2023, Perez filed a Notice of Settlement wherein she asked that the matter be removed from the trial docket pending final disposition; the parties executed the Settlement Agreement on November 30, 2023, and the court dismissed the matter on January 15, 2024. The SJSO has since paid the \$200,000 authorized by Florida's sovereign immunity limits, leaving an excess settlement amount of \$6,300,000.

Economic Damages

Perez incurred over \$4,000,000 in medical bills for her initial medical care, the majority of which were paid by her health insurance provider at a negotiated rate; however, the health insurance provider has since imposed a lien in the amount of \$1,500,000 against any damages Perez may recover for the April 7, 2019, accident. Medicaid also covered a portion of Perez's medical bills, as she lost her health insurance coverage while still receiving accident-related medical care. According to the record, Medicaid intends to impose a lien against any damages Perez may recover for the April 7, 2019, accident, but has not yet provided the exact lien amount. Perez also owes approximately \$50,000 to several medical providers and facilities, and approximately \$71,962 to a litigation financier. Thus, she faces at least \$1,600,000 in liens for past medical care and related expenses, but this amount will likely increase when Medicaid provides its final lien amount.

In addition to her past medical expenses, Perez is expected to incur significant costs for future accident-related medical care. According to her Life Care Plan, such future costs will likely range from \$2,962,051.27 to \$3,575,770.73; however, should Perez's kidney function deteriorate, requiring her to resume dialysis or undergo a kidney transplant in the future, such costs will likely increase by approximately \$200,000, or more.⁹ Perez is also unable to maintain employment due to her injuries, and thus has suffered lost past and future wages of an estimated \$282,110 based on a minimum-wage earning capacity.¹⁰

⁶ As of the date of the Special Master Hearing held in this matter on January 12, 2024, Perez's kidney function had improved enough that she was not presently on dialysis or in immediate danger of needing a kidney transplant. According to the record, it is possible she may have to resume dialysis or undergo a kidney transplant at some future point, but no physician could say what her prognosis is with any degree of medical certainty.

⁷ See Case No. 2020-CA-387.

⁸ A Fabre defense allows a defendant in a civil lawsuit to reduce its liability by the degree of negligence attributed to a non-party to the lawsuit. *Fabre v. Martin*, 623 So. 2d 1182 (Fla. 1993).

⁹ Perez's Life Care Plan was prepared by rehabilitation counselor and life care planner Gil Spruance, MS, CRC, CVE, CCM, CLP, MSCC.

¹⁰ On April 7, 2019, Perez was working part-time as an Uber driver, making approximately \$1,200 per week. She previously held positions including a school bus driver, a patient transporter for a hospital, and the secretary and treasurer for several churches, for which she also volunteered.

Personal Impact

Before her accident, Perez was, according to her children, a vibrant, adventurous, fearless, and joyful woman. Perez's children described their mother as having once been full of life, committed to maintaining her health and to living in accordance with the tenets of her deep faith. Now, however, Perez's children testified that she is a completely different person, unable to live the full life she once had; although she is, according to her children, still a deeply faithful person and "the best mom ever." Perez, in turn, described her children as her "treasure," and the two halves of her heart.

Dr. Emily Keener, Perez's treating orthopedic trauma surgeon, testified that, in her opinion, it is likely that Perez's overall health and active lifestyle before her accident saved her life, as a person with comorbidities likely would not have survived such traumatic injuries, which Dr. Keener described as among the worst injuries she has seen in her career. Perez herself testified that she was an "adventure person" who once enjoyed many activities, including golfing, motorcycle riding, fitness classes, taking cruises, and camping, and that she looked forward to saving money to enjoy an active retirement, during which she hoped to ski and skydive. However, Perez testified that because she now lives with chronic pain and significant mobility limitations, her once-active lifestyle is now lost to her. Indeed, Perez testified that seemingly-simple activities, such as rising from a chair unassisted, are now impossible for her, and she requires the assistance of her mother, with whom she resides, for the completion of certain physical tasks she cannot herself perform.

In addition to her physical limitations, Perez testified that she suffers cognitive impairments from her traumatic brain injury, including memory loss, struggling to remember things like whether she has finished washing while in the shower or whether she has recently used the restroom. Dr. Syed Asad, Perez's treating neurologist, testified that, though Perez's motorcycle helmet likely contributed to saving her life, her cognitive impairment is, at this point, considered "chronic"; in other words, it is unlikely to improve to any significant degree, and will likely worsen due to the natural mental decline that often comes with aging.

CONCLUSIONS OF LAW

In the instant matter, Perez raises a negligence claim, the elements of which are duty, breach, causation, and damages. The SJSO has, as part of the Settlement Agreement in the underlying civil action, admitted liability for the April 7, 2019, accident through the actions of Hetzler. However, pursuant to House Rule 5.6(b), stipulations entered into by the parties to a claim bill are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard *de novo*, and the Special Master must make findings of fact and conclusions of law which support the claim.

Duty

Section 316.122, F.S., requires a motor vehicle driver intending to turn left within an intersection to yield the right-of-way to any vehicle approaching from the oncoming direction which is within the intersection or so close thereto as to constitute an immediate hazard. Because a motor vehicle driver has a duty to take reasonable care and to follow all applicable laws to prevent harm to those within the vehicle's path, Hetzler owed a duty to Perez to abide by s. 316.122, F.S.

Breach

The evidence presented demonstrates that Hetzler breached the duty of care described above when he improperly entered the intersection at State Road 16 and Harvest Lane while attempting to make a left turn and, in doing so, failed to yield the right-of-way to Perez as she approached the intersection from the oncoming direction.

Causation

The April 7, 2019, accident and Perez's consequential injuries were the direct and proximate result of Hetzler's breach of the duty described above. But for Hetzler's failure to yield the right-of-way to Perez as he attempted to make a left turn, the April 7, 2019, accident would not have occurred.

Damages

The SJSO settled the instant matter with Perez for \$6,500,000, \$200,000 of which has already been paid; thus, this claim bill is for \$6,300,000 to compensate Perez for her physical injuries caused by the April 7, 2019, accident and the economic and noneconomic damages she suffered due to said injuries.

Respondeat Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the scope of his or her employment; and
- Employee's activities were of a benefit to the employer.¹¹

For conduct to be considered within the course and scope of the employee's employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.¹²

Because Hetzler was at all times relevant to the instant matter employed by the SJSO as a deputy sheriff and was acting within the scope of his employment at the time the April 7, 2019, accident occurred, which employment benefitted the SJSO, the SJSO is liable for Hetzler's negligence under the common law *respondeat superior* doctrine.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant's Position:

Perez asserts that she is entitled to the remaining \$6,300,000 authorized by the settlement agreement she entered into with the SJSO in her underlying civil action, which money will compensate her for the injuries and damages she suffered due to the SJSO's negligence through the actions of Hetzler.

¹¹ *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

¹² *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

Respondent's Position:

The SJSO has admitted liability in the underlying civil action and supports the passage of the Claim Bill. The SJSO indicated, through counsel, that, should this Claim Bill pass, the St. Johns County Board of Commissioners has agreed that it will appropriate county funds to pay the amount awarded to Perez and, thus, passage of the Claim Bill will not impact the SJSO's operations.

LEGISLATIVE HISTORY

This Claim Bill is presented to the Legislature for the second time. It was first filed during the 2023 Legislative Session; however, the Claimant had not yet exhausted her remedies as the matter had not yet been settled and, thus, no Special Master Hearing occurred that Session.

ATTORNEY AND LOBBYING FEES

Under the terms of the settlement agreement, attorney fees may not exceed 25 percent of the total award, while lobbying fees may not exceed 7 percent of the total award. Thus, attorney fees may not exceed \$1,575,000, while lobbying fees may not exceed \$441,000.

SUGGESTED AMENDMENT

This Claim Bill, as currently filed, requests \$15,000,000. However, subsequent to the filing of the Claim Bill, the parties settled the matter for \$6,500,000. \$200,000 of this amount has already been paid, leaving an excess settlement amount of \$6,300,000. Based on the foregoing, I recommend that HB 6007 be amended to reduce the requested amount from \$15,000,000 to \$6,300,000.

RECOMMENDATION

Based on the foregoing, I recommend that HB 6007 be amended as described above and reported FAVORABLY as amended.

Respectfully submitted,



CAITLIN R. MAWN,
House Special Master

1 A bill to be entitled
2 An act for the relief of Julia Perez by the St. Johns
3 County Sheriff's Office; providing for an
4 appropriation to compensate Julia Perez for personal
5 injuries and damages sustained as a result of the
6 negligence of an employee of the St. Johns County
7 Sheriff's Office; providing legislative intent for the
8 waiver of certain lien interests; providing a
9 limitation on compensation and the payment of attorney
10 fees; providing an effective date.

11
12 WHEREAS, at 5:09 p.m. on April 7, 2019, Julia Perez, then
13 51 years of age, and her companion, Tom Eiland, then 59 years of
14 age, were both wearing helmets and lawfully operating separate
15 motorcycles within the posted speed limit, traveling east on
16 State Road 16 in the correct travel lane in unincorporated St.
17 Johns County, and

18 WHEREAS, at the same time, Deputy Brandon Hetzler, then 28
19 years of age, a newly sworn employee of the St. Johns County
20 Sheriff's Office (SJSO), acting in the course and scope of his
21 employment, was operating a marked SJSO patrol vehicle and
22 traveling west on State Road 16 in the left turn lane at the
23 intersection of State Road 16 and Harvest Lane, and

24 WHEREAS, the afternoon sky was clear, the road was dry, and
25 there were no obstructions when Deputy Hetzler suddenly entered

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26 | the intersection of State Road 16 and Harvest Lane and attempted
27 | a left turn directly in front of both motorcycles operated by
28 | Ms. Perez and Mr. Eiland, and

29 | WHEREAS, the front right side of Deputy Hetzler's vehicle
30 | collided with the front of Ms. Perez's motorcycle, ejecting Ms.
31 | Perez from her motorcycle, with her making contact with the hood
32 | of the patrol car and being propelled over the roof, striking
33 | the trunk before she landed on the pavement of State Road 16,
34 | and

35 | WHEREAS, the front right side of Deputy Hetzler's vehicle
36 | collided with the left side of Mr. Eiland's motorcycle, ejecting
37 | Mr. Eiland from his motorcycle and onto the pavement, and

38 | WHEREAS, the Florida Highway Patrol's traffic crash
39 | investigators conducted an extensive investigation of the
40 | accident, which included preparation for a traffic homicide
41 | reconstruction due to Ms. Perez's grave condition, and

42 | WHEREAS, witnesses on the scene told investigators that at
43 | the time of the crash, the eastbound traffic had a steady green
44 | signal and that Ms. Perez and Mr. Eiland had the right of way,
45 | and

46 | WHEREAS, the investigation revealed that Deputy Hetzler had
47 | overheard a service call and was responding to it, but he did
48 | not activate his siren or emergency lights, and

49 | WHEREAS, the investigation determined that the actions of
50 | Ms. Perez and Mr. Eiland were reasonable and did not contribute

51 | to or cause the collisions, and

52 | WHEREAS, the Florida Highway Patrol investigation found
53 | Deputy Hetzler to be solely at fault in the accident and issued
54 | him a traffic citation for failure to yield to oncoming traffic
55 | in violation of s. 316.122, Florida Statutes, and

56 | WHEREAS, SJSO policy 61.16 states, "It shall be the
57 | responsibility of each employee to operate agency vehicles
58 | efficiently, maintain the vehicle, and drive the vehicle in
59 | observance of all rules of the road in order to reduce the
60 | likelihood of traffic crashes or injury," and

61 | WHEREAS, SJSO policy 61.16 also states, "All crashes and
62 | incidents involving agency vehicle damage shall be reviewed by
63 | the Traffic Crash Review Board within thirty days of the crash,"
64 | and

65 | WHEREAS, the SJSO Traffic Crash Review Board found Deputy
66 | Hetzler to be at fault for causing the crash and injuries, and

67 | WHEREAS, Deputy Hetzler's negligence was the sole cause of
68 | the collisions, and

69 | WHEREAS, the St. Johns County Sheriff's Office admitted
70 | negligence for causing the collision and liability for Ms.
71 | Perez's injuries, and

72 | WHEREAS, Ms. Perez suffered multiple open and comminuted
73 | fractures of the pelvis, arms, and legs, as well as organ
74 | lacerations and punctures, including a punctured left lung,
75 | resulting in cardiopulmonary arrest due to blood loss, and

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76 WHEREAS, Ms. Perez was found unresponsive at the scene of
77 the accident and had to be resuscitated on the street by first
78 responders before St. Johns County Fire Rescue arrived to assume
79 rescue efforts, and

80 WHEREAS, Ms. Perez was intubated in the field and rushed to
81 the Trauma Center at Memorial Hospital Jacksonville, arriving
82 comatose and undergoing a series of blood transfusions, and

83 WHEREAS, Ms. Perez spent 3 months on a ventilator and
84 feeding tube; battled a pulmonary embolism, a deep vein
85 thrombosis, and episodes of pneumonia; suffered at least one
86 myocardial infarction; and endured multiple systemic infections,
87 and

88 WHEREAS, Ms. Perez was unconscious for 3 months and
89 bedridden for 7 months, resulting in two painful pressure sores,
90 and

91 WHEREAS, in July 2019, a nurse reinjured Ms. Perez's
92 fractured arm while turning her to prevent pressure sores, and

93 WHEREAS, in August 2019, Ms. Perez's bladder was
94 inadvertently nicked during a surgery to insert a plate into her
95 pelvis, causing internal bleeding and necessitating a repair
96 surgery, and

97 WHEREAS, Ms. Perez remained hospitalized and was in a
98 nursing home for almost 8 months following the crash, and

99 WHEREAS, being bedridden and immobile have caused Ms. Perez
100 to suffer bowel obstructions, leading to multiple emergency care

101 visits, and

102 WHEREAS, because of blood loss and infection, Ms. Perez has
103 suffered renal tubular necrosis and permanent kidney injury, and

104 WHEREAS, Mr. Eiland has transported Ms. Perez to
105 Jacksonville three times per week for kidney dialysis because
106 she is in chronic, end-stage kidney failure, meaning she will
107 likely either be placed on a kidney donor list as a transplant
108 candidate or be on dialysis for the rest of her life, and

109 WHEREAS, Ms. Perez suffers from incontinence and, due to
110 her dialysis catheter, is unable to shower or bathe, and instead
111 relies on a process of cleaning herself with wet towelettes,
112 which typically takes an hour or longer to complete, and

113 WHEREAS, Ms. Perez suffers from substantial pain when
114 trying to accomplish simple tasks of daily living and
115 experiences interrupted sleep on a nightly basis, and

116 WHEREAS, Ms. Perez suffers from chronic migraine headaches
117 and severely elevated blood pressure, which has resulted in
118 multiple emergency care visits, and

119 WHEREAS, Ms. Perez has suffered a traumatic brain injury as
120 a result of the crash, causing memory loss, confusion,
121 communication difficulties, fatigue, frustration, and
122 depression, and she is under the treatment of a neurologist, and

123 WHEREAS, Ms. Perez has undergone dozens of surgeries and is
124 faced with many more, and past medical bills and liens amount to
125 more than \$3,863,108.09 for her care and treatment, all due to

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126 | injuries resulting from the crash, and

127 | WHEREAS, the costs of future medical care, treatment, and
 128 | equipment is estimated to be between \$3,318,811.56 and
 129 | \$4,077,923.57 over the course of her 30-year life expectancy,
 130 | and

131 | WHEREAS, Ms. Perez is totally disabled, and her loss of
 132 | earning capacity is conservatively estimated to be \$282,110,
 133 | based on her full Social Security retirement age of 67 and a
 134 | minimum-wage earning capacity, and

135 | WHEREAS, Ms. Perez seeks the total sum of \$15 million in
 136 | equitable relief from the Legislature for satisfaction of her
 137 | injuries and damages, NOW, THEREFORE,

138 |
 139 | Be It Enacted by the Legislature of the State of Florida:

140 |
 141 | Section 1. The facts stated in the preamble to this act
 142 | are found and declared to be true.

143 | Section 2. The St. Johns County Sheriff's Office is
 144 | authorized and directed to appropriate from funds of the county
 145 | not otherwise encumbered and to pay Julia Perez \$15 million, or
 146 | an alternative amount not to exceed \$15 million in the event the
 147 | parties reach an agreement, to compensate her for the injuries
 148 | and damages she sustained due to the negligence of an employee
 149 | of the St. Johns County Sheriff's Office.

150 | Section 3. It is the intent of the Legislature that all

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151 lien interests held by the state, if any, resulting from the
152 treatment and care of Julia Perez for the occurrences described
153 in this act are waived.

154 Section 4. The amount awarded under this act is intended
155 to provide the sole compensation for all present and future
156 claims arising out of the factual situation described in this
157 act which resulted in injuries and damages to Julia Perez. The
158 total amount paid for attorney fees relating to this claim may
159 not exceed 25 percent of the total amount awarded under this
160 act.

161 Section 5. 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>	

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

6 WHEREAS, at 5:09 p.m. on April 7, 2019, Julia Perez was
 7 wearing a helmet and lawfully operating a motorcycle within the
 8 posted speed limit, traveling east on State Road 16 in the
 9 correct travel lane in unincorporated St. Johns County, and

10 WHEREAS, at the same time, an employee of the St. Johns
 11 County Sheriff's Office (SJSO), acting in the course and scope
 12 of his employment, was operating a marked SJSO patrol vehicle,
 13 and traveling west on State Road 16, and

14 WHEREAS, the SJSO employee negligently entered the
 15 intersection of State Road 16 and Harvest Lane and attempted a

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16 left turn directly in front of the motorcycle operated by Ms.
17 Perez, and

18 WHEREAS, Ms. Perez's motorcycle struck the right side of
19 the SJSO vehicle, causing her to eject from her motorcycle and
20 impact the hood of the patrol car before she came to rest on the
21 pavement of State Road 16, and

22 WHEREAS, the Florida Highway Patrol's traffic crash
23 investigators conducted an extensive crash investigation of the
24 accident, including preparation for a traffic homicide
25 reconstruction due to Ms. Perez's grave condition, and

26 WHEREAS, witnesses on the scene told investigators that, at
27 the time of the crash, eastbound traffic had a steady green
28 signal, giving Ms. Perez the right of way, and

29 WHEREAS, the investigation determined that the actions of
30 Ms. Perez were reasonable and did not contribute to or cause the
31 collision, and

32 WHEREAS, the Florida Highway Patrol investigation found the
33 SJSO employee to be solely at fault for causing the accident and
34 issued him a traffic citation for failure to yield to oncoming
35 traffic in violation of s. 316.122, Florida Statutes, to which
36 he pled no contest, and

37 WHEREAS, the St. Johns County Sheriff's Office has admitted
38 its employee was negligent in causing the collision and liable
39 for Ms. Perez's injuries, and

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40 WHEREAS, Ms. Perez suffered catastrophic injuries, was
41 intubated and resuscitated at the crash site by local emergency
42 medical services, and was rushed to the Trauma Center at
43 Memorial Hospital Jacksonville, where she arrived comatose and
44 had to undergo a series of blood transfusions, and

45 WHEREAS, Ms. Perez suffered multiple open and comminuted
46 fractures of the pelvis, arms, and legs, as well as organ
47 lacerations and punctures, including a punctured left lung,
48 resulting in cardiopulmonary arrest due to blood loss, and
49 numerous complications including a pulmonary embolism, deep vein
50 thrombosis, and episodes of pneumonia; suffered at least one
51 myocardial infarction; endured multiple systemic infections,
52 bowel obstructions, a fractured arm, and a nicked artery, and

53 WHEREAS, Ms. Perez remained hospitalized and was in a
54 nursing home for almost eight months following the crash, and

55 WHEREAS, because of blood loss and infection, Ms. Perez
56 suffered renal tubular necrosis and a kidney injury, which
57 necessitated her to receive kidney dialysis for many months and
58 made it possible that she will need further kidney treatment in
59 the future, and

60 WHEREAS, Ms. Perez suffers from substantial pain when
61 trying to accomplish simple tasks of daily living and
62 experiences interrupted sleep on a nightly basis, chronic
63 migraine headaches, and severe elevated blood pressure, and

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64 WHEREAS, Ms. Perez has suffered from memory loss,
65 confusion, communication difficulties, fatigue, frustration, and
66 depression, and she is under the treatment of a neurologist, and

67 WHEREAS, Ms. Perez has undergone dozens of surgeries and
68 faces many more, and

69 WHEREAS, Ms. Perez's past medical bills attributable to the
70 Crash and related liens amount to more than \$3,863,108.09, and

71 WHEREAS, the costs of Ms. Perez's future medical care and
72 related expenses is estimated to be as much as \$4,077,923.57
73 over the course of Ms. Perez's life, and

74 WHEREAS, Ms. Perez has been declared to be totally and
75 permanently disabled by her physicians, and her loss of earning
76 capacity is estimated to be \$282,110, based on her full Social
77 Security retirement age of 67 and a minimum-wage earning
78 capacity, and

79 WHEREAS, a lawsuit was filed on behalf of Ms. Perez and was
80 set for trial in the Circuit Court of the Seventh Judicial
81 Circuit, in and for St. Johns County, Florida, styled *Julia*
82 *Perez vs. Robert A. Hardwick, in his capacity as Sheriff of St.*
83 *Johns County*, Case No.: 2020-CA-387; however, the parties agreed
84 to a settlement amount of \$6.5 million before trial, and

85 WHEREAS, Ms. Perez has been paid the statutory limit of
86 \$200,000 by the St. Johns County Sheriff's Office's self-
87 insuring risk pool, leaving a balance of \$6.3 million which the
88 St. Johns County Sheriff's Office is willing to pay upon being

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89 authorized to do so by the enactment of a claim bill pursuant to
90 s. 768.28, Florida Statutes, and

91 WHEREAS, the parties agree to support a claim bill that
92 authorizes and directs the St. Johns County Sheriff's Office to
93 appropriate from funds of the county and pay Julia Perez \$6.3
94 million, and

95 WHEREAS, Ms. Perez seeks the total sum of \$6.3 million in
96 relief from the Legislature for satisfaction of her injuries and
97 damages, NOW, THEREFORE,

98

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

100

101 Section 1. The facts stated in the preamble to this act are
102 found and declared to be true.

103 Section 2. The St. Johns County Sheriff's Office is
104 authorized and directed to appropriate from funds of the county
105 not otherwise encumbered and pay Julia Perez \$6.3 million, to
106 compensate her for the injuries and damages she sustained due to
107 the negligence of an employee of the St. Johns County Sheriff's
108 Office.

109 Section 3. It is the intent of the Legislature that all
110 lien interests held by the state, if any, resulting from the
111 treatment and care of Julia Perez for the occurrences described
112 in this act are waived. It is the intent of the Legislature that
113 all Medicaid liens arising from the treatment and care of the

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114 injuries and damages to Julia Perez described in this act shall
115 be waived.

116 Section 4. The amount awarded under this act is intended to
117 provide the sole compensation for all present and future claims
118 arising out of the factual situation described in this act which
119 resulted in injuries and damages to Julia Perez. The total
120 amount paid for attorney fees relating to this claim may not
121 exceed 25 percent of the total amount awarded under this act.

122 Section 5. This act shall take effect upon becoming a law.

123

124

125

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

126

Remove everything before the enacting clause and insert:

127

An act for the relief of Julia Perez by the St. Johns County

128

Sheriff's Office; providing for an appropriation to compensate

129

Julia Perez for personal injuries and damages sustained as a

130

result of the negligence of an employee of the St. Johns County

131

Sheriff's Office; providing legislative intent for the waiver of

132

certain lien interests; providing a limitation on compensation

133

and the payment of attorney fees; providing an effective date.