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# Judiciary Committee

**Wednesday, January 13, 2016  
3:30 p.m. – 5:30 p.m.  
Sumner Hall (404 HOB)**

**MEETING PACKET**

**Steve Crisafulli  
Speaker**

**Charles McBurney  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Wednesday, January 13, 2016 03:30 pm  
**End Date and Time:** Wednesday, January 13, 2016 05:30 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

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

CS/HB 55 Trade Secrets by Criminal Justice Subcommittee, Pilon  
CS/HB 57 Public Records and Meetings/Trade Secrets by Criminal Justice Subcommittee, Pilon  
CS/CS/HB 91 Severe Injuries Caused by Dogs by Local Government Affairs Subcommittee, Civil Justice Subcommittee, Steube  
CS/HB 101 Violation of an Injunction for Protection by Criminal Justice Subcommittee, Rodríguez, J.  
CS/CS/HB 147 Expunging and Sealing Criminal History Records of Minors by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Latvala, Sprowls  
CS/HJR 165 Selection and Duties of County Officers by Local Government Affairs Subcommittee, Artiles  
HB 4029 Nonresident Plaintiffs in Civil Actions by Sprowls

Pursuant to rule 7.12, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 12, 2016.

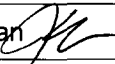

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 12, 2016.

**NOTICE FINALIZED on 01/11/2016 3:58PM by Ingram.Michele**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 55 Trade Secrets  
**SPONSOR(S):** Criminal Justice Subcommittee; Pilon  
**TIED BILLS:** CS/HB 57 **IDEN./SIM. BILLS:** CS/SB 180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Lloyd
3) Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
4) Judiciary Committee		Keegan 	Havlicak 

### SUMMARY ANALYSIS

Florida law currently imposes criminal penalties for a variety of acts relating to the theft, unauthorized copying, and misappropriation of trade secrets. For many of these statutes, the term "trade secret" is defined in accordance with s. 812.081, F.S., to include "any scientific, technical, or commercial information" that otherwise qualifies as trade secret.

The bill amends the definition of "trade secret" to mean "any scientific, technical, or commercial information, *including financial information*," that otherwise qualifies as trade secret. The bill reenacts ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes to the definition of "trade secret."

The Criminal Justice Impact Conference met on October 28, 2015, and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds). The bill also creates a new first degree misdemeanor; therefore, it may increase commitments to local jails.

This bill is effective October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Florida law currently prohibits a variety of acts relating to trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony<sup>1</sup> for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that is a trade secret which is residing or existing internal or external to a computer, computer system, computer network, or electronic device.<sup>2</sup>
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article representing a trade secret, when done with an intent to:
  - Deprive or withhold from the trade secret's owner the control of a trade secret, or
  - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it a first degree misdemeanor<sup>3</sup> for a designated employee, inspector, or collaborator of the Division of Plant Industry of the Department of Agriculture and Consumer Services or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets.<sup>4</sup> However, a small number of these statutes provide other types of protections, such as procedural safeguards and civil remedies.<sup>5</sup>

For purposes of the above-described statutes, the term "trade secret" is defined in accordance with s. 812.081(1)(c), F.S., as:

[T]he whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

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<sup>1</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>2</sup> The offense is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine, if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

<sup>3</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

<sup>4</sup> ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(8)(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

<sup>5</sup> ss. 721.071 and 812.035, F.S.

## **Effect of the Bill**

The bill amends the definition of “trade secret” in s. 812.081(1)(c), F.S., to mean “any scientific, technical, or commercial information, *including financial information*, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.” As such, the criminal offenses described above will apply to a clarified list of trade secret information.

Florida law contains a variety of provisions that cross-reference the definition of “trade secret” in s. 812.081(1)(c), F.S. The bill reenacts the following provisions to incorporate the changes made by the bill to the definition of “trade secret”:

- Section 581.199, F.S., prohibits any unauthorized representative from using trade secret information for personal gain or to reveal it to an unauthorized person.
- Section 721.071(1), F.S., provides requirements for filing trade secret information with the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.
- Section 812.035, F.S., provides civil remedies for violations of ss. 812.012-812.037, F.S., or s. 812.081, F.S.
- Section 815.04(4), F.S., prohibits a person from willfully, knowingly, and without authorization disclosing or taking specified data, programs, or supporting documentation that is trade secret or confidential.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 812.081, F.S., relating to trade secrets; theft, embezzlement; unlawful copying; definitions; penalty.

Section 2. Reenacts s. 581.199, F.S., relating to confidential business information.

Section 3. Reenacts s. 721.071(1), F.S., relating to trade secrets.

Section 4. Reenacts s. 812.035(1), (2), (5), (7), (8), (10), and (11), F.S., relating to civil remedies; limitation on civil and criminal actions.

Section 5. Reenacts s. 815.04(4), F.S., relating to offenses against intellectual property; public records exemption.

Section 6. Provides an effective date of October 1, 2016.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

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

The Criminal Justice Impact Conference met on October 28, 2015, and determined this bill will have an insignificant prison bed impact on the Department of Corrections (an increase of 10 or fewer beds).

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

#### **1. Revenues:**

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill makes it a first degree misdemeanor for certain persons to use trade secret information in specified ways; therefore, it may increase the application of this offense, and increase commitments to local jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On September 16, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added reenactments of ss. 581.199, 721.071(1), 812.035(1), (2), (5), (7), (8), (10), and (11), and 815.04(4), F.S., to incorporate the changes made by the bill to the definition of "trade secret" in s. 812.081, F.S.

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

1                                   A bill to be entitled  
 2       An act relating to trade secrets; amending s. 812.081,  
 3       F.S.; including financial information in provisions  
 4       prohibiting the theft, embezzlement, or unlawful  
 5       copying of trade secrets; providing criminal  
 6       penalties; reenacting ss. 581.199, 721.071(1),  
 7       812.035(1), (2), (5), (7), (8), (10), and (11), and  
 8       815.04(4), F.S., relating to confidential business  
 9       information, trade secret information filed with the  
 10      Division of Florida Condominiums, Timeshares, and  
 11      Mobile Homes within the Department of Business and  
 12      Professional Regulation, civil remedies, and offenses  
 13      against intellectual property, respectively, to  
 14      incorporate changes made by this act to the definition  
 15      of the term "trade secret" in s. 812.081, F.S., in  
 16      references thereto; providing an effective date.

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

19  
 20       Section 1. Section 812.081, Florida Statutes, is amended  
 21      to read:

22       812.081 Trade secrets; theft, embezzlement; unlawful  
 23      copying; definitions; penalty.-

24       (1) As used in this section, the term:

25       (a) "Article" means any object, device, machine, material,  
 26      substance, or composition of matter, or any mixture or copy



27 | thereof, whether in whole or in part, including any complete or  
 28 | partial writing, record, recording, drawing, sample, specimen,  
 29 | prototype model, photograph, microorganism, blueprint, map, or  
 30 | copy thereof.

31 | (b) "Representing" means completely or partially  
 32 | describing, depicting, embodying, containing, constituting,  
 33 | reflecting, or recording.

34 | (c) "Trade secret" means the whole or any portion or phase  
 35 | of any formula, pattern, device, combination of devices, or  
 36 | compilation of information which is for use, or is used, in the  
 37 | operation of a business and which provides the business an  
 38 | advantage, or an opportunity to obtain an advantage, over those  
 39 | who do not know or use it. The term ~~"Trade secret"~~ includes any  
 40 | scientific, technical, or commercial information, including  
 41 | financial information, and includes any design, process,  
 42 | procedure, list of suppliers, list of customers, business code,  
 43 | or improvement thereof. Irrespective of novelty, invention,  
 44 | patentability, the state of the prior art, and the level of  
 45 | skill in the business, art, or field to which the subject matter  
 46 | pertains, a trade secret is considered to be:

- 47 | 1. Secret;
- 48 | 2. Of value;
- 49 | 3. For use or in use by the business; and
- 50 | 4. Of advantage to the business, or providing an
- 51 | opportunity to obtain an advantage, over those who do not know
- 52 | or use it

53  
 54 when the owner thereof takes measures to prevent it from  
 55 becoming available to persons other than those selected by the  
 56 owner to have access thereto for limited purposes.

57 (d) "Copy" means any facsimile, replica, photograph, or  
 58 other reproduction in whole or in part of an article and any  
 59 note, drawing, or sketch made of or from an article or part or  
 60 portion thereof.

61 (2) Any person who, with intent to deprive or withhold  
 62 from the owner thereof the control of a trade secret, or with an  
 63 intent to appropriate a trade secret to his or her own use or to  
 64 the use of another, steals or embezzles an article representing  
 65 a trade secret or without authority makes or causes to be made a  
 66 copy of an article representing a trade secret commits ~~is guilty~~  
 67 ~~of~~ a felony of the third degree, punishable as provided in s.  
 68 775.082 or s. 775.083.

69 (3) In a prosecution for a violation of ~~the provisions of~~  
 70 this section, the fact it is no defense that the person so  
 71 charged returned or intended to return the article so stolen,  
 72 embezzled, or copied is not a defense.

73 Section 2. For the purpose of incorporating the amendment  
 74 made by this act to section 812.081, Florida Statutes, in a  
 75 reference thereto, section 581.199, Florida Statutes, is  
 76 reenacted to read:

77 581.199 Confidential business information.—It is unlawful  
 78 for any authorized representative who in an official capacity

79 obtains under the provisions of this chapter any information  
 80 entitled to protection as a trade secret, as defined in s.  
 81 812.081, to use that information for personal gain or to reveal  
 82 it to any unauthorized person.

83 Section 3. For the purpose of incorporating the amendment  
 84 made by this act to section 812.081, Florida Statutes, in a  
 85 reference thereto, subsection (1) of section 721.071, Florida  
 86 Statutes, is reenacted to read:

87 721.071 Trade secrets.—

88 (1) If a developer or any other person filing material  
 89 with the division pursuant to this chapter expects the division  
 90 to keep the material confidential on grounds that the material  
 91 constitutes a trade secret, as that term is defined in s.  
 92 812.081, the developer or other person shall file the material  
 93 together with an affidavit of confidentiality. "Filed material"  
 94 for purposes of this section shall mean material that is filed  
 95 with the division with the expectation that the material will be  
 96 kept confidential and that is accompanied by an affidavit of  
 97 confidentiality. Filed material that is trade secret information  
 98 includes, but is not limited to, service contracts relating to  
 99 the operation of reservation systems and those items and matters  
 100 described in s. 815.04(3).

101 Section 4. For the purpose of incorporating the amendment  
 102 made by this act to section 812.081, Florida Statutes, in  
 103 references thereto, subsections (1), (2), (5), (7), (8), (10),  
 104 and (11) of section 812.035, Florida Statutes, are reenacted to

105 read:

106       812.035 Civil remedies; limitation on civil and criminal  
107 actions.—

108       (1) Any circuit court may, after making due provisions for  
109 the rights of innocent persons, enjoin violations of the  
110 provisions of ss. 812.012-812.037 or s. 812.081 by issuing  
111 appropriate orders and judgments, including, but not limited to:

112           (a) Ordering any defendant to divest himself or herself of  
113 any interest in any enterprise, including real estate.

114           (b) Imposing reasonable restrictions upon the future  
115 activities or investments of any defendant, including, but not  
116 limited to, prohibiting any defendant from engaging in the same  
117 type of endeavor as the enterprise in which he or she was  
118 engaged in violation of the provisions of ss. 812.012-812.037 or  
119 s. 812.081.

120           (c) Ordering the dissolution or reorganization of any  
121 enterprise.

122           (d) Ordering the suspension or revocation of any license,  
123 permit, or prior approval granted to any enterprise by any  
124 department or agency of the state.

125           (e) Ordering the forfeiture of the charter of a  
126 corporation organized under the laws of the state or the  
127 revocation of a certificate authorizing a foreign corporation to  
128 conduct business within the state, upon finding that the board  
129 of directors or a managerial agent acting on behalf of the  
130 corporation, in conducting the affairs of the corporation, has

131 authorized or engaged in conduct in violation of ss. 812.012-  
 132 812.037 or s. 812.081 and that, for the prevention of future  
 133 criminal activity, the public interest requires the charter of  
 134 the corporation forfeited and the corporation dissolved or the  
 135 certificate revoked.

136 (2) All property, real or personal, including money, used  
 137 in the course of, intended for use in the course of, derived  
 138 from, or realized through conduct in violation of a provision of  
 139 ss. 812.012-812.037 or s. 812.081 is subject to civil forfeiture  
 140 to the state. The state shall dispose of all forfeited property  
 141 as soon as commercially feasible. If property is not exercisable  
 142 or transferable for value by the state, it shall expire. All  
 143 forfeitures or dispositions under this section shall be made  
 144 with due provision for the rights of innocent persons.

145 (5) The Department of Legal Affairs, any state attorney,  
 146 or any state agency having jurisdiction over conduct in  
 147 violation of a provision of ss. 812.012-812.037 or s. 812.081  
 148 may institute civil proceedings under this section. In any  
 149 action brought under this section, the circuit court shall  
 150 proceed as soon as practicable to the hearing and determination.  
 151 Pending final determination, the circuit court may at any time  
 152 enter such injunctions, prohibitions, or restraining orders, or  
 153 take such actions, including the acceptance of satisfactory  
 154 performance bonds, as the court may deem proper.

155 (7) The state, including any of its agencies,  
 156 instrumentalities, subdivisions, or municipalities, if it proves

157 | by clear and convincing evidence that it has been injured in any  
 158 | fashion by reason of any violation of the provisions of ss.  
 159 | 812.012-812.037 or s. 812.081, has a cause of action for  
 160 | threefold the actual damages sustained and, in any such action,  
 161 | is entitled to minimum damages in the amount of \$200 and shall  
 162 | also recover court costs and reasonable attorney's fees in the  
 163 | trial and appellate courts. In no event shall punitive damages  
 164 | be awarded under this section. The defendant shall be entitled  
 165 | to recover reasonable attorney's fees and court costs in the  
 166 | trial and appellate courts upon a finding that the claimant  
 167 | raised a claim which was without substantial fact or legal  
 168 | support.

169 |         (8) A final judgment or decree rendered in favor of the  
 170 | state in any criminal proceeding under ss. 812.012-812.037 or s.  
 171 | 812.081 shall estop the defendant in any subsequent civil action  
 172 | or proceeding as to all matters as to which such judgment or  
 173 | decree would be an estoppel as between the parties.

174 |         (10) Notwithstanding any other provision of law, a  
 175 | criminal or civil action or proceeding under ss. 812.012-812.037  
 176 | or s. 812.081 may be commenced at any time within 5 years after  
 177 | the cause of action accrues; however, in a criminal proceeding  
 178 | under ss. 812.012-812.037 or s. 812.081, the period of  
 179 | limitation does not run during any time when the defendant is  
 180 | continuously absent from the state or is without a reasonably  
 181 | ascertainable place of abode or work within the state, but in no  
 182 | case shall this extend the period of limitation otherwise

183 applicable by more than 1 year. If a criminal prosecution or  
 184 civil action or other proceeding is brought, or intervened in,  
 185 to punish, prevent, or restrain any violation of the provisions  
 186 of ss. 812.012-812.037 or s. 812.081, the running of the period  
 187 of limitations prescribed by this section with respect to any  
 188 cause of action arising under subsection (6) or subsection (7)  
 189 which is based in whole or in part upon any matter complained of  
 190 in any such prosecution, action, or proceeding shall be  
 191 suspended during the pendency of such prosecution, action, or  
 192 proceeding and for 2 years following its termination.

193 (11) The application of one civil remedy under any  
 194 provision of ss. 812.012-812.037 or s. 812.081 shall not  
 195 preclude the application of any other remedy, civil or criminal,  
 196 under ss. 812.012-812.037 or s. 812.081 or any other section of  
 197 the Florida Statutes.

198 Section 5. For the purpose of incorporating the amendment  
 199 made by this act to section 812.081, Florida Statutes, in a  
 200 reference thereto, subsection (4) of section 815.04, Florida  
 201 Statutes, is reenacted to read:

202 815.04 Offenses against intellectual property; public  
 203 records exemption.-

204 (4) A person who willfully, knowingly, and without  
 205 authorization discloses or takes data, programs, or supporting  
 206 documentation that is a trade secret as defined in s. 812.081 or  
 207 is confidential as provided by law residing or existing internal  
 208 or external to a computer, computer system, computer network, or

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209 | electronic device commits an offense against intellectual  
210 | property.



211 |       Section 6. This act shall take effect October 1, 2016.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 57 Public Records and Meetings/Trade Secrets  
**SPONSOR(S):** Criminal Justice Subcommittee; Pilon  
**TIED BILLS:** CS/HB 55 **IDEN./SIM. BILLS:** CS/CS/SB 182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Keegan	White
2) Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
3) Judiciary Committee		Keegan 	Havlicak 

### SUMMARY ANALYSIS

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public records. Many of these statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S.

CS/HB 55, which is tied to this bill, expands the definition of the term "trade secret" contained in s. 812.081(1)(c), F.S., to include financial information.

This bill, which is linked to the passage of CS/HB 55 or similar legislation, amends ss. 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2) and (3)(b), 403.73, 499.012(8)(g) and (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 601.10(8), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.04(6), and reenacts 815.04(3), F.S., to incorporate the changes to the definition of "trade secret" made by CS/HB 55. The sections provide public record exemptions for trade secret information. Thus, the bill amends those public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

This bill is tied to CS/HB 55, which clarifies the types of trade secret information that are exempt from public record disclosure. Together, the bills may have a positive fiscal impact on state and local government expenditures because they may require agencies to provide personnel training on the modified exemptions.

The bill will be effective on the same date CS/HB 55 or similar legislation takes effect.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands public record exemptions for trade secret information; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records**

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no more broad than necessary to accomplish its purpose.<sup>3</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:<sup>5</sup>

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

The Act also requires the automatic repeal of a public record exemption on October 2<sup>nd</sup> of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> Specified questions must be considered by the Legislature during the review process.<sup>7</sup>

##### **Trade Secrets**

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt<sup>8</sup> from public record requirements. For example:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> FLA. CONST. art. I, s. 24(c).

<sup>4</sup> s. 119.15, F.S.

<sup>5</sup> s. 119.15(6)(b), F.S.

<sup>6</sup> s. 119.15(3), F.S.

<sup>7</sup> Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>8</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation;
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt;
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board, the Technology Program within the Department of Management Services, and the Department of Revenue, confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- Section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- Section 499.051(7), F.S., makes trade secret information obtained by DBPR during an investigation of a permit holder confidential and exempt;
- Section 499.931, F.S., makes trade secret information submitted to DBPR for medical gas permitting purposes confidential and exempt;
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- Section 601.10(8), F.S., makes any information held by the Department of Citrus (DOC) that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to DOC confidential and exempt;
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to DOC confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3) and (6), F.S., makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

The above-described statutes define the term "trade secret" in accordance with s. 812.081(1)(c), F.S., which defines the term as follows:

"Trade secret" means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. "Trade secret" includes any *scientific, technical, or commercial information*, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and

4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

#### **Committee Substitute for House Bill 55**

During the 2016 Legislative Session, CS/HB 55, which is tied to this bill, amends the definition of "trade secret" contained in s. 812.081(1)(c), F.S., to include *financial information* that is contained or included in scientific, technical, or commercial information.

#### **Effect of the Bill**

The bill, which is linked to the passage of CS/HB 55 or similar legislation, amends or reenacts all of the above-described public record exemptions to incorporate the changes to the definition of "trade secret" in s. 812.081(1)(c), F.S., made by CS/HB 55. Thus, the bill amends the public record exemptions for trade secret information to include financial information.

The bill provides for repeal of the amended exemptions on October 2, 2021, unless they are reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

#### **B. SECTION DIRECTORY:**

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

Section 2. Amends s. 125.0104(9)(d), F.S., relating to tourist development tax; procedure for levying; authorized uses; referendum; enforcement.

Section 3. Amends s. 288.1226(8), F.S., relating to Florida Tourism Industry Marketing Corporation; use of property; board of directors; duties; audit.

Section 4. Amends s. 331.326, F.S., relating to information relating to trade secrets confidential.

Section 5. Amends s. 365.174, F.S., relating to proprietary confidential business information.

Section 6. Amends s. 381.83, F.S., relating to trade secrets; confidentiality.

Section 7. Amends s. 403.7046(2) and (3)(b), F.S., relating to regulation of recovered materials.

Section 8. Amends s. 403.73, F.S., relating to trade secrets; confidentiality.

Section 9. Amends s. 499.012(8)(g) and (m), F.S., relating to permit application requirements.

Section 10. Amends s. 499.0121(7), F.S., relating to storage and handling of prescription drugs; recordkeeping.

Section 11. Amends s. 499.051(7), F.S., relating to inspections and investigations.

Section 12. Amends s. 499.931, F.S., relating to trade secret information.

Section 13. Amends s. 502.222, F.S., relating to information relating to trade secrets confidential.

Section 14. Amends s. 570.48(3), F.S., relating to Division of Fruit and Vegetables; powers and duties; records.

Section 15. Amends s. 573.123(2), F.S., relating to maintenance and production of records.

Section 16. Amends s. 601.10(8), F.S., relating to powers of the Department of Citrus.

Section 17. Amends s. 601.15(7)(d), F.S., relating to advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.

Section 18. Amends s. 601.152(8)(c), F.S., relating to special marketing orders.

Section 19. Amends s. 601.76, F.S., relating to manufacturer to furnish formula and other information.

Section 20. Reenacts s. 815.04(3), and amends subsection (6), F.S., relating to offenses against intellectual property; public records exemption.

Section 21. Provides a public necessity statement.

Section 22. Provides an effective date that is the same date as CS/HB 55 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

This bill is tied to CS/HB 55, which amends an existing category of trade secret information that is exempt or confidential and exempt from public record requirements. Together, the bills may have a minimal positive impact on state government expenditures because they may require agencies to provide personnel training on the amended exemptions.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

This bill is tied to CS/HB 55, which amends an existing category of trade secret information that is exempt or confidential and exempt from public record requirements. Together, the bills may have a minimal positive impact on local government expenditures because they may require agencies to provide personnel training on the expanded exemptions.

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

None.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

###### Vote Requirement

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

###### Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands current public record exemptions for trade secret information; therefore, it includes a public necessity statement.

###### Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill amends the definition of trade secrets that qualify for specified public record exemptions. The exemption does not appear to be in conflict with the constitutional requirement that the exemptions be no more broad than necessary to accomplish its purpose.

#### B. RULE-MAKING AUTHORITY:

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

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On September 16, 2015, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments collectively:

- Restructured the public records Sunset Review Act language in s. 365.174, F.S., to correctly apply the language to the entire section;
- Amended and reenacted a cross-reference to s. 812.081, F.S.; and
- Removed the republication of a criminal prohibition.

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





27 Consumer Services, trade secret information of a  
 28 person subject to a marketing order held by the  
 29 Department of Agriculture and Consumer Services, trade  
 30 secret information provided to the Department of  
 31 Citrus, trade secret information of noncommodity  
 32 advertising and promotional program participants held  
 33 by the Department of Citrus, trade secret information  
 34 of a person subject to a marketing order held by the  
 35 Department of Citrus, and a manufacturer's formula  
 36 filed with the Department of Agriculture and Consumer  
 37 Services, respectively, to incorporate changes made to  
 38 the definition of the term "trade secret" in s.  
 39 812.081, F.S., by CS/HB 55; expanding a public meeting  
 40 exemption for any meeting or portion of a meeting of  
 41 Space Florida's board at which trade secrets are  
 42 discussed to incorporate changes made to the  
 43 definition of the term "trade secret" in s. 812.081,  
 44 F.S., by CS/HB 55; reenacting and amending s. 815.04,  
 45 F.S., relating to specified data, programs, or  
 46 supporting documentation held by an agency, to  
 47 incorporate changes made to the definition of the term  
 48 "trade secret" in s. 812.081, F.S., by CS/HB 55;  
 49 providing for future legislative review and repeal of  
 50 the exemptions; providing a statement of public  
 51 necessity; providing a contingent effective date.  
 52

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

54

55 Section 1. Paragraph (f) of subsection (1) of section  
56 119.071, Florida Statutes, is amended to read:

57 119.071 General exemptions from inspection or copying of  
58 public records.—

59 (1) AGENCY ADMINISTRATION.—

60 (f) Data processing software obtained by an agency under a  
61 licensing agreement that prohibits its disclosure and which  
62 software is a trade secret, as defined in s. 812.081, and  
63 agency-produced data processing software that is sensitive are  
64 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
65 Constitution. The designation of agency-produced software as  
66 sensitive does ~~shall~~ not prohibit an agency head from sharing or  
67 exchanging such software with another public agency. This  
68 paragraph is subject to the Open Government Sunset Review Act in  
69 accordance with s. 119.15 and shall stand repealed on October 2,  
70 2021, unless reviewed and saved from repeal through reenactment  
71 by the Legislature.

72 Section 2. Paragraph (d) of subsection (9) of section  
73 125.0104, Florida Statutes, is amended to read:

74 125.0104 Tourist development tax; procedure for levying;  
75 authorized uses; referendum; enforcement.—

76 (9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any  
77 other powers and duties provided for agencies created for the  
78 purpose of tourism promotion by a county levying the tourist

79 development tax, such agencies are authorized and empowered to:

80 (d) Undertake marketing research and advertising research  
 81 studies and provide reservations services and convention and  
 82 meetings booking services consistent with the authorized uses of  
 83 revenue as set forth in subsection (5).

84 1. Information given to a county tourism promotion agency  
 85 which, if released, would reveal the identity of persons or  
 86 entities who provide data or other information as a response to  
 87 a sales promotion effort, an advertisement, or a research  
 88 project or whose names, addresses, meeting or convention plan  
 89 information or accommodations or other visitation needs become  
 90 booking or reservation list data, is exempt from s. 119.07(1)  
 91 and ~~from~~ s. 24(a), Art. I of the State Constitution.

92 2. The following information, when held by a county  
 93 tourism promotion agency, is exempt from s. 119.07(1) and ~~from~~  
 94 s. 24(a), Art. I of the State Constitution:

95 ~~a. A trade secret, as defined in s. 812.081.~~

96 ~~a.b.~~ a. Booking business records, as defined in s. 255.047.

97 ~~b.e.~~ b. Trade secrets and commercial or financial information  
 98 gathered from a person and privileged or confidential, as  
 99 defined and interpreted under 5 U.S.C. s. 552(b)(4), or any  
 100 amendments thereto.

101 3. A trade secret, as defined in s. 812.081, held by a  
 102 county tourism promotion agency is exempt from s. 119.07(1) and  
 103 s. 24(a), Art. I of the State Constitution. This subparagraph is  
 104 subject to the Open Government Sunset Review Act in accordance

105 with s. 119.15 and shall stand repealed on October 2, 2021,  
 106 unless reviewed and saved from repeal through reenactment by the  
 107 Legislature.

108 Section 3. Subsection (8) of section 288.1226, Florida  
 109 Statutes, is amended to read:

110 288.1226 Florida Tourism Industry Marketing Corporation;  
 111 use of property; board of directors; duties; audit.—

112 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person  
 113 who responds to a marketing project or advertising research  
 114 project conducted by the corporation in the performance of its  
 115 duties on behalf of Enterprise Florida, Inc., or trade secrets  
 116 as defined by s. 812.081 obtained pursuant to such activities,  
 117 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 118 Constitution. This subsection is subject to the Open Government  
 119 Sunset Review Act in accordance with s. 119.15 and shall stand  
 120 repealed on October 2, 2021, unless reviewed and saved from  
 121 repeal through reenactment by the Legislature.

122 Section 4. Section 331.326, Florida Statutes, is amended  
 123 to read:

124 331.326 Information relating to trade secrets  
 125 confidential.—The records of Space Florida regarding matters  
 126 encompassed by this act are public records subject to ~~the~~  
 127 ~~provisions of~~ chapter 119. Any information held by Space Florida  
 128 which is a trade secret, as defined in s. 812.081, including  
 129 trade secrets of Space Florida, any spaceport user, or the space  
 130 industry business, is confidential and exempt from ~~the~~

131 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 132 Constitution and may not be disclosed. If Space Florida  
 133 determines that any information requested by the public will  
 134 reveal a trade secret, it shall, in writing, inform the person  
 135 making the request of that determination. The determination is a  
 136 final order as defined in s. 120.52. Any meeting or portion of a  
 137 meeting of Space Florida's board is exempt from ~~the provisions~~  
 138 ~~of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution  
 139 when the board is discussing trade secrets. Any public record  
 140 generated during the closed portions of the meetings, such as  
 141 minutes, tape recordings, and notes, is confidential and exempt  
 142 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the  
 143 State Constitution. This section is subject to the Open  
 144 Government Sunset Review Act in accordance with s. 119.15 and  
 145 shall stand repealed on October 2, 2021, unless reviewed and  
 146 saved from repeal through reenactment by the Legislature.

147       Section 5. Section 365.174, Florida Statutes, is amended  
 148 to read:

149       365.174 Proprietary confidential business information.—

150       (1)(a) All proprietary confidential business information  
 151 submitted by a provider to the board or the office is  
 152 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 153 of the State Constitution.

154       (b) Statistical abstracts of information collected by the  
 155 board or the office may be released or published, but only in a  
 156 manner that does not identify or allow identification of

157 subscribers or their service numbers or of revenues attributable  
 158 to any provider.

159 (2)(a) All proprietary confidential business information  
 160 submitted by a provider to the Department of Revenue, as an  
 161 agent of the board, is confidential and exempt from s. 119.07(1)  
 162 and s. 24(a), Art. I of the State Constitution.

163 (b) The Department of Revenue may provide information  
 164 relative to s. 365.172(9) to the Secretary of Management  
 165 Services, or his or her authorized agent, or to the E911 Board  
 166 established in s. 365.172(5) for use in the conduct of the  
 167 official business of the Department of Management Services or  
 168 the E911 Board.

169 ~~(c) This subsection is subject to the Open Government~~  
 170 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
 171 ~~repealed on October 2, 2019, unless reviewed and saved from~~  
 172 ~~repeal through reenactment by the Legislature.~~

173 (3) As used in this section, the term "proprietary  
 174 confidential business information" means customer lists,  
 175 customer numbers, individual or aggregate customer data by  
 176 location, usage and capacity data, network facilities used to  
 177 serve subscribers, technology descriptions, technical  
 178 information, or trade secrets, including trade secrets as  
 179 defined in s. 812.081, and the actual or developmental costs of  
 180 E911 systems that are developed, produced, or received  
 181 internally by a provider or by a provider's employees,  
 182 directors, officers, or agents.

183           (4) This section is subject to the Open Government Sunset  
 184 Review Act in accordance with s. 119.15 and shall stand repealed  
 185 on October 2, 2021, unless reviewed and saved from repeal  
 186 through reenactment by the Legislature.

187           Section 6. Section 381.83, Florida Statutes, is amended to  
 188 read:

189           381.83 Trade secrets; confidentiality.—

190           (1) Records, reports, or information obtained from any  
 191 person under this chapter, unless otherwise provided by law,  
 192 shall be available to the public, except upon a showing  
 193 satisfactory to the department by the person from whom the  
 194 records, reports, or information is obtained that such records,  
 195 reports, or information, or a particular part thereof, contains  
 196 trade secrets as defined in s. 812.081 ~~812.081(1)(e)~~. Such trade  
 197 secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the~~  
 198 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 199 Constitution. The person submitting such trade secret  
 200 information to the department must request that it be kept  
 201 confidential and must inform the department of the basis for the  
 202 claim of trade secret. The department shall, subject to notice  
 203 and opportunity for hearing, determine whether the information,  
 204 or portions thereof, claimed to be a trade secret is or is not a  
 205 trade secret. Such trade secrets may be disclosed, however, to  
 206 authorized representatives of the department or, pursuant to  
 207 request, to other governmental entities in order for them to  
 208 properly perform their duties, or when relevant in any

209 proceeding under this chapter. Authorized representatives and  
 210 other governmental entities receiving such trade secret  
 211 information shall retain its confidentiality. Those involved in  
 212 any proceeding under this chapter, including a hearing officer  
 213 or judge or justice, shall retain the confidentiality of any  
 214 trade secret information revealed at such proceeding.

215 (2) This section is subject to the Open Government Sunset  
 216 Review Act in accordance with s. 119.15 and shall stand repealed  
 217 on October 2, 2021, unless reviewed and saved from repeal  
 218 through reenactment by the Legislature.

219 Section 7. Subsection (2) and paragraph (b) of subsection  
 220 (3) of section 403.7046, Florida Statutes, are amended to read:  
 221 403.7046 Regulation of recovered materials.—

222 (2) Information reported pursuant to ~~the requirements of~~  
 223 this section or any rule adopted pursuant to this section which,  
 224 if disclosed, would reveal a trade secret, as defined in s.  
 225 812.081 ~~812.081(1)(c)~~, is confidential and exempt from ~~the~~  
 226 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 227 Constitution. For reporting or information purposes, however,  
 228 the department may provide this information in such form that  
 229 the names of the persons reporting such information and the  
 230 specific information reported are not revealed. This subsection  
 231 is subject to the Open Government Sunset Review Act in  
 232 accordance with s. 119.15 and shall stand repealed on October 2,  
 233 2021, unless reviewed and saved from repeal through reenactment  
 234 by the Legislature.



235 (3) Except as otherwise provided in this section or  
 236 pursuant to a special act in effect on or before January 1,  
 237 1993, a local government may not require a commercial  
 238 establishment that generates source-separated recovered  
 239 materials to sell or otherwise convey its recovered materials to  
 240 the local government or to a facility designated by the local  
 241 government, nor may the local government restrict such a  
 242 generator's right to sell or otherwise convey such recovered  
 243 materials to any properly certified recovered materials dealer  
 244 who has satisfied the requirements of this section. A local  
 245 government may not enact any ordinance that prevents such a  
 246 dealer from entering into a contract with a commercial  
 247 establishment to purchase, collect, transport, process, or  
 248 receive source-separated recovered materials.

249 (b)1. Before engaging in business within the jurisdiction  
 250 of the local government, a recovered materials dealer must  
 251 provide the local government with a copy of the certification  
 252 provided for in this section. In addition, the local government  
 253 may establish a registration process whereby a recovered  
 254 materials dealer must register with the local government before  
 255 engaging in business within the jurisdiction of the local  
 256 government. Such registration process is limited to requiring  
 257 the dealer to register its name, including the owner or operator  
 258 of the dealer, and, if the dealer is a business entity, its  
 259 general or limited partners, its corporate officers and  
 260 directors, its permanent place of business, evidence of its

261 certification under this section, and a certification that the  
 262 recovered materials will be processed at a recovered materials  
 263 processing facility satisfying the requirements of this section.  
 264 The local government may not use the information provided in the  
 265 registration application to compete unfairly with the recovered  
 266 materials dealer until 90 days after receipt of the application.  
 267 All counties, and municipalities whose population exceeds 35,000  
 268 according to the population estimates determined pursuant to s.  
 269 186.901, may establish a reporting process that ~~which~~ shall be  
 270 limited to the regulations, reporting format, and reporting  
 271 frequency established by the department pursuant to this  
 272 section, which shall, at a minimum, include requiring the dealer  
 273 to identify the types and approximate amount of recovered  
 274 materials collected, recycled, or reused during the reporting  
 275 period; the approximate percentage of recovered materials  
 276 reused, stored, or delivered to a recovered materials processing  
 277 facility or disposed of in a solid waste disposal facility; and  
 278 the locations where any recovered materials were disposed of as  
 279 solid waste. ~~Information reported under this subsection which,  
 280 if disclosed, would reveal a trade secret, as defined in s.  
 281 812.081(1)(c), is confidential and exempt from the provisions of  
 282 s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The  
 283 local government may charge the dealer a registration fee  
 284 commensurate with and no greater than the cost incurred by the  
 285 local government in operating its registration program.  
 286 Registration program costs are limited to those costs associated

287 with the activities described in this subparagraph ~~paragraph~~.  
 288 Any reporting or registration process established by a local  
 289 government with regard to recovered materials shall be governed  
 290 by ~~the provisions of~~ this section and department rules adopted  
 291 pursuant thereto.

292 2. Information reported under this subsection which, if  
 293 disclosed, would reveal a trade secret, as defined in s.  
 294 812.081, is confidential and exempt from s. 119.07(1) and s.  
 295 24(a), Art. I of the State Constitution. This subparagraph is  
 296 subject to the Open Government Sunset Review Act in accordance  
 297 with s. 119.15 and shall stand repealed on October 2, 2021,  
 298 unless reviewed and saved from repeal through reenactment by the  
 299 Legislature.

300 Section 8. Section 403.73, Florida Statutes, is amended to  
 301 read:

302 403.73 Trade secrets; confidentiality.-

303 (1) Records, reports, or information obtained from any  
 304 person under this part, unless otherwise provided by law, shall  
 305 be available to the public, except upon a showing satisfactory  
 306 to the department by the person from whom the records, reports,  
 307 or information is obtained that such records, reports, or  
 308 information, or a particular part thereof, contains trade  
 309 secrets as defined in s. 812.081 ~~812.081(1)(c)~~. Such trade  
 310 secrets are ~~shall be~~ confidential and ~~are~~ exempt from ~~the~~  
 311 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 312 Constitution. The person submitting such trade secret

313 information to the department must request that it be kept  
 314 confidential and must inform the department of the basis for the  
 315 claim of trade secret. The department shall, subject to notice  
 316 and opportunity for hearing, determine whether the information,  
 317 or portions thereof, claimed to be a trade secret is or is not a  
 318 trade secret. Such trade secrets may be disclosed, however, to  
 319 authorized representatives of the department or, pursuant to  
 320 request, to other governmental entities in order for them to  
 321 properly perform their duties, or when relevant in any  
 322 proceeding under this part. Authorized representatives and other  
 323 governmental entities receiving such trade secret information  
 324 shall retain its confidentiality. Those involved in any  
 325 proceeding under this part, including an administrative law  
 326 judge, a hearing officer, or a judge or justice, shall retain  
 327 the confidentiality of any trade secret information revealed at  
 328 such proceeding.

329 (2) This section is subject to the Open Government Sunset  
 330 Review Act in accordance with s. 119.15 and shall stand repealed  
 331 on October 2, 2021, unless reviewed and saved from repeal  
 332 through reenactment by the Legislature.

333 Section 9. Paragraphs (g) and (m) of subsection (8) of  
 334 section 499.012, Florida Statutes, are amended to read:

335 499.012 Permit application requirements.—

336 (8) An application for a permit or to renew a permit for a  
 337 prescription drug wholesale distributor or an out-of-state  
 338 prescription drug wholesale distributor submitted to the

339 department must include:

340 (g)1. For an application for a new permit, the estimated  
 341 annual dollar volume of prescription drug sales of the  
 342 applicant, the estimated annual percentage of the applicant's  
 343 total company sales that are prescription drugs, the applicant's  
 344 estimated annual total dollar volume of purchases of  
 345 prescription drugs, and the applicant's estimated annual total  
 346 dollar volume of prescription drug purchases directly from  
 347 manufacturers.

348 2. For an application to renew a permit, the total dollar  
 349 volume of prescription drug sales in the previous year, the  
 350 total dollar volume of prescription drug sales made in the  
 351 previous 6 months, the percentage of total company sales that  
 352 were prescription drugs in the previous year, the total dollar  
 353 volume of purchases of prescription drugs in the previous year,  
 354 and the total dollar volume of prescription drug purchases  
 355 directly from manufacturers in the previous year.

356 3. Such portions of the information required pursuant to  
 357 this paragraph which are a trade secret, as defined in s.  
 358 812.081, shall be maintained by the department as trade secret  
 359 information is required to be maintained under s. 499.051. This  
 360 subparagraph is subject to the Open Government Sunset Review Act  
 361 in accordance with s. 119.15 and shall stand repealed on October  
 362 2, 2021, unless reviewed and saved from repeal through  
 363 reenactment by the Legislature.

364 (m) For an applicant that is a secondary wholesale

365 distributor, each of the following:

366 1. A personal background information statement containing  
 367 the background information and fingerprints required pursuant to  
 368 subsection (9) for each person named in the applicant's response  
 369 to paragraphs (k) and (l) and for each affiliated party of the  
 370 applicant.

371 2. If any of the five largest shareholders of the  
 372 corporation seeking the permit is a corporation, the name,  
 373 address, and title of each corporate officer and director of  
 374 each such corporation; the name and address of such corporation;  
 375 the name of such corporation's resident agent, such  
 376 corporation's resident agent's address, and such corporation's  
 377 state of its incorporation; and the name and address of each  
 378 shareholder of such corporation that owns 5 percent or more of  
 379 the stock of such corporation.

380 3.a. The name and address of all financial institutions in  
 381 which the applicant has an account that ~~which~~ is used to pay for  
 382 the operation of the establishment or to pay for drugs purchased  
 383 for the establishment, together with the names of all persons  
 384 who ~~that~~ are authorized signatories on such accounts.

385 b. The portions of the information required pursuant to  
 386 this subparagraph which are a trade secret, as defined in s.  
 387 812.081, shall be maintained by the department as trade secret  
 388 information is required to be maintained under s. 499.051. This  
 389 sub-subparagraph is subject to the Open Government Sunset Review  
 390 Act in accordance with s. 119.15 and shall stand repealed on

391 October 2, 2021, unless reviewed and saved from repeal through  
 392 reenactment by the Legislature.

393 4. The sources of all funds and the amounts of such funds  
 394 used to purchase or finance purchases of prescription drugs or  
 395 to finance the premises on which the establishment is to be  
 396 located.

397 5. If any of the funds identified in subparagraph 4. were  
 398 borrowed, copies of all promissory notes or loans used to obtain  
 399 such funds.

400 Section 10. Subsection (7) of section 499.0121, Florida  
 401 Statutes, is amended to read:

402 499.0121 Storage and handling of prescription drugs;  
 403 recordkeeping.—The department shall adopt rules to implement  
 404 this section as necessary to protect the public health, safety,  
 405 and welfare. Such rules shall include, but not be limited to,  
 406 requirements for the storage and handling of prescription drugs  
 407 and for the establishment and maintenance of prescription drug  
 408 distribution records.

409 (7) PRESCRIPTION DRUG PURCHASE LIST.—

410 (a) Each wholesale distributor, except for a manufacturer,  
 411 shall annually provide the department with a written list of all  
 412 wholesale distributors and manufacturers from whom the wholesale  
 413 distributor purchases prescription drugs. A wholesale  
 414 distributor, except a manufacturer, shall notify the department  
 415 not later than 10 days after any change to either list.

416 (b) Such portions of the information required pursuant to

417 this subsection which are a trade secret, as defined in s.  
 418 812.081, shall be maintained by the department as trade secret  
 419 information is required to be maintained under s. 499.051. This  
 420 paragraph is subject to the Open Government Sunset Review Act in  
 421 accordance with s. 119.15 and shall stand repealed on October 2,  
 422 2021, unless reviewed and saved from repeal through reenactment  
 423 by the Legislature.

424 Section 11. Subsection (7) of section 499.051, Florida  
 425 Statutes, is amended to read:

426 499.051 Inspections and investigations.—

427 (7)(a) The complaint and all information obtained pursuant  
 428 to the investigation by the department are confidential and  
 429 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 430 Constitution until the investigation and the enforcement action  
 431 are completed.

432 (b) Information that constitutes a ~~However,~~ trade secret,  
 433 as defined in s. 812.081, information contained in the complaint  
 434 and all information obtained by the department pursuant to the  
 435 investigation therein as defined by s. 812.081(1)(c) shall  
 436 remain confidential and exempt from ~~the provisions of~~ s.  
 437 119.07(1) and s. 24(a), Art. I of the State Constitution, as  
 438 long as the information is retained by the department. This  
 439 paragraph is subject to the Open Government Sunset Review Act in  
 440 accordance with s. 119.15 and shall stand repealed on October 2,  
 441 2021, unless reviewed and saved from repeal through reenactment  
 442 by the Legislature.



443           (c) This subsection does not prohibit the department from  
 444 using such information for regulatory or enforcement proceedings  
 445 under this chapter or from providing such information to any law  
 446 enforcement agency or any other regulatory agency. However, the  
 447 receiving agency shall keep such records confidential and exempt  
 448 as provided in this subsection. In addition, this subsection is  
 449 not intended to prevent compliance with ~~the provisions of s.~~  
 450 499.01212, and the pedigree papers required in that section are  
 451 ~~shall~~ not be deemed a trade secret.

452           Section 12. Section 499.931, Florida Statutes, is amended  
 453 to read:

454           499.931 Trade secret information.—Information required to  
 455 be submitted under this part which is a trade secret as defined  
 456 in s. 812.081 ~~812.081(1)(e)~~ and designated as a trade secret by  
 457 an applicant or permitholder must be maintained as required  
 458 under s. 499.051. This section is subject to the Open Government  
 459 Sunset Review Act in accordance with s. 119.15 and shall stand  
 460 repealed on October 2, 2021, unless reviewed and saved from  
 461 repeal through reenactment by the Legislature.

462           Section 13. Section 502.222, Florida Statutes, is amended  
 463 to read:

464           502.222 Information relating to trade secrets  
 465 confidential.—The records of the department regarding matters  
 466 encompassed by this chapter are public records, subject to ~~the~~  
 467 ~~provisions of~~ chapter 119, except that any information that  
 468 ~~which~~ would reveal a trade secret, as defined in s. 812.081, of

469 a dairy industry business is confidential and exempt from ~~the~~  
 470 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 471 Constitution. If the department determines that any information  
 472 requested by the public will reveal a trade secret, it shall, in  
 473 writing, inform the person making the request of that  
 474 determination. The determination is a final order as defined in  
 475 s. 120.52. This section is subject to the Open Government Sunset  
 476 Review Act in accordance with s. 119.15 and shall stand repealed  
 477 on October 2, 2021, unless reviewed and saved from repeal  
 478 through reenactment by the Legislature.

479 Section 14. Subsection (3) of section 570.48, Florida  
 480 Statutes, is amended to read:

481 570.48 Division of Fruit and Vegetables; powers and  
 482 duties; records.—The duties of the Division of Fruit and  
 483 Vegetables include, but are not limited to:

484 (3) Maintaining the records of the division. The records  
 485 of the division are public records; however, trade secrets as  
 486 defined in s. 812.081 are confidential and exempt from ~~the~~  
 487 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 488 Constitution. This subsection is subject to the Open Government  
 489 Sunset Review Act in accordance with s. 119.15 and shall stand  
 490 repealed on October 2, 2021, unless reviewed and saved from  
 491 repeal through reenactment by the Legislature. This section may  
 492 ~~shall~~ not be construed to prohibit:

- 493 (a) A disclosure necessary to enforcement procedures.
- 494 (b) The department from releasing information to other

495 governmental agencies. Other governmental agencies that receive  
 496 confidential information from the department under this  
 497 subsection shall maintain the confidentiality of that  
 498 information.

499 (c) The department or other agencies from compiling and  
 500 publishing appropriate data regarding procedures, yield,  
 501 recovery, quality, and related matters, provided such released  
 502 data do not reveal by whom the activity to which the data relate  
 503 was conducted.

504 Section 15. Subsection (2) of section 573.123, Florida  
 505 Statutes, is amended to read:

506 573.123 Maintenance and production of records.—

507 (2) Information that, if disclosed, would reveal a trade  
 508 secret, as defined in s. 812.081, of any person subject to a  
 509 marketing order is confidential and exempt from ~~the provisions~~  
 510 ~~of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 511 and may shall not be disclosed except to an attorney who  
 512 provides legal advice to the division about enforcing a  
 513 marketing market order or by court order. A person who receives  
 514 confidential information under this subsection shall maintain  
 515 the confidentiality of that information. This subsection is  
 516 subject to the Open Government Sunset Review Act in accordance  
 517 with s. 119.15 and shall stand repealed on October 2, 2021,  
 518 unless reviewed and saved from repeal through reenactment by the  
 519 Legislature.

520 Section 16. Subsection (8) of section 601.10, Florida

521 Statutes, is amended to read:

522       601.10 Powers of the Department of Citrus.—The department  
523 shall have and shall exercise such general and specific powers  
524 as are delegated to it by this chapter and other statutes of the  
525 state, which powers shall include, but are not limited to, the  
526 following:

527       (8) (a) To prepare and disseminate information of  
528 importance to citrus growers, handlers, shippers, processors,  
529 and industry-related and interested persons and organizations  
530 relating to department activities and the production, handling,  
531 shipping, processing, and marketing of citrus fruit and  
532 processed citrus products. ~~Any information that constitutes a~~  
533 ~~trade secret as defined in s. 812.081(1)(c) is confidential and~~  
534 ~~exempt from s. 119.07(1) and shall not be disclosed.~~ For  
535 referendum and other notice and informational purposes, the  
536 department may prepare and maintain, from the best available  
537 sources, a citrus grower mailing list. Such list shall be a  
538 public record available as other public records, but is it shall  
539 not ~~be~~ subject to the purging provisions of s. 283.55.

540       (b) Any information provided to the department which  
541 constitutes a trade secret as defined in s. 812.081 is  
542 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
543 of the State Constitution. This paragraph is subject to the Open  
544 Government Sunset Review Act in accordance with s. 119.15 and  
545 shall stand repealed on October 2, 2021, unless reviewed and  
546 saved from repeal through reenactment by the Legislature.

547        (c)~~(b)~~ Any nonpublished reports or data related to studies  
 548 or research conducted, caused to be conducted, or funded by the  
 549 department under s. 601.13 is confidential and exempt from s.  
 550 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
 551 paragraph is subject to the Open Government Sunset Review Act in  
 552 accordance with s. 119.15 and shall stand repealed on October 2,  
 553 2017, unless reviewed and saved from repeal through reenactment  
 554 by the Legislature.

555        Section 17. Paragraph (d) of subsection (7) of section  
 556 601.15, Florida Statutes, is amended to read:

557        601.15 Advertising campaign; methods of conducting;  
 558 assessments; emergency reserve fund; citrus research.—

559        (7) All assessments levied and collected under this  
 560 chapter shall be paid into the State Treasury on or before the  
 561 15th day of each month. Such moneys shall be accounted for in a  
 562 special fund to be designated as the Florida Citrus Advertising  
 563 Trust Fund, and all moneys in such fund are appropriated to the  
 564 department for the following purposes:

565        (d)1. The pro rata portion of moneys allocated to each  
 566 type of citrus product in noncommodity programs shall be used by  
 567 the department to encourage substantial increases in the  
 568 effectiveness, frequency, and volume of noncommodity  
 569 advertising, merchandising, publicity, and sales promotion of  
 570 such citrus products through rebates and incentive payments to  
 571 handlers and trade customers for these activities. The  
 572 department shall adopt rules providing for the use of such

573 moneys. The rules shall establish alternate incentive programs,  
 574 including at least one incentive program for product sold under  
 575 advertised brands, one incentive program for product sold under  
 576 private label brands, and one incentive program for product sold  
 577 in bulk. For each incentive program, the rules shall establish  
 578 eligibility and performance requirements and shall provide  
 579 appropriate limitations on amounts payable to a handler or trade  
 580 customer for a particular season. Such limitations may relate to  
 581 the amount of citrus assessments levied and collected on the  
 582 citrus product handled by such handler or trade customer during  
 583 a 12-month representative period.

584 2. The department may require from participants in  
 585 noncommodity advertising and promotional programs commercial  
 586 information necessary to determine eligibility for and  
 587 performance in such programs. Any information ~~so~~ required which  
 588 ~~that~~ constitutes a "trade secret" as defined in s. 812.081 is  
 589 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 590 of the State Constitution. This subparagraph is subject to the  
 591 Open Government Sunset Review Act in accordance with s. 119.15  
 592 and shall stand repealed on October 2, 2021, unless reviewed and  
 593 saved from repeal through reenactment by the Legislature.

594 Section 18. Paragraph (c) of subsection (8) of section  
 595 601.152, Florida Statutes, is amended to read:

596 601.152 Special marketing orders.—

597 (8)

598 (c)1. Every handler shall, at such times as the department

599 may require, file with the department a return, not under oath,  
 600 on forms to be prescribed and furnished by the department,  
 601 certified as true and correct, stating the quantity of the type,  
 602 variety, and form of citrus fruit or citrus product specified in  
 603 the marketing order first handled in the primary channels of  
 604 trade in the state by such handler during the period of time  
 605 specified in the marketing order. Such returns shall contain any  
 606 further information deemed by the department to be reasonably  
 607 necessary to properly administer or enforce this section or any  
 608 marketing order implemented under this section.

609 2. Information that, if disclosed, would reveal a trade  
 610 secret, as defined in s. 812.081, of any person subject to a  
 611 marketing order is confidential and exempt from s. 119.07(1) and  
 612 s. 24(a), Art. I of the State Constitution. This subparagraph is  
 613 subject to the Open Government Sunset Review Act in accordance  
 614 with s. 119.15 and shall stand repealed on October 2, 2021,  
 615 unless reviewed and saved from repeal through reenactment by the  
 616 Legislature.

617 Section 19. Section 601.76, Florida Statutes, is amended  
 618 to read:

619 601.76 Manufacturer to furnish formula and other  
 620 information.—Any formula required to be filed with the  
 621 Department of Agriculture shall be deemed a trade secret as  
 622 defined in s. 812.081, is confidential and exempt from s.  
 623 119.07(1) and s. 24(a), Art. I of the State Constitution, and  
 624 shall only be divulged to the Department of Agriculture or to

625 its duly authorized representatives or upon court order ~~orders~~  
 626 ~~of a court of competent jurisdiction~~ when necessary in the  
 627 enforcement of this law. A person who receives such a formula  
 628 from the Department of Agriculture under this section shall  
 629 maintain the confidentiality of the formula. This section is  
 630 subject to the Open Government Sunset Review Act in accordance  
 631 with s. 119.15 and shall stand repealed on October 2, 2021,  
 632 unless reviewed and saved from repeal through reenactment by the  
 633 Legislature.

634 Section 20. For the purpose of incorporating the amendment  
 635 made by CS/HB 55 to section 812.081, Florida Statutes, in a  
 636 reference thereto, subsection (3) of section 815.04, Florida  
 637 Statutes, is reenacted, and subsection (6) of that section is  
 638 amended, to read:

639 815.04 Offenses against intellectual property; public  
 640 records exemption.—

641 (3) Data, programs, or supporting documentation that is a  
 642 trade secret as defined in s. 812.081, that is held by an agency  
 643 as defined in chapter 119, and that resides or exists internal  
 644 or external to a computer, computer system, computer network, or  
 645 electronic device is confidential and exempt from the provisions  
 646 of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

647 (6) Subsection ~~Subsections~~ (3) is ~~and (4) are~~ subject to  
 648 the Open Government Sunset Review Act in accordance with s.  
 649 119.15~~7~~ and shall stand repealed on October 2, 2021 ~~2019~~, unless  
 650 reviewed and saved from repeal through reenactment by the



651 Legislature.

652       Section 21. The Legislature finds that it is a public  
 653 necessity that financial information comprising a trade secret  
 654 as defined in s. 812.081, Florida Statutes, be made exempt or  
 655 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 656 s. 24(a), Article I of the State Constitution. The Legislature  
 657 also finds that it is a public necessity that any portion of a  
 658 meeting in which a trade secret as defined in s. 812.081,  
 659 Florida Statutes, is discussed be made exempt from s. 286.011,  
 660 Florida Statutes, and s. 24(b), Article I of the State  
 661 Constitution. The Legislature recognizes that in many instances,  
 662 businesses are required to provide financial information for  
 663 regulatory or other purposes to public entities and that  
 664 disclosure of such information to competitors of those  
 665 businesses would be detrimental to the businesses. The  
 666 Legislature's intent is to protect trade secret information of a  
 667 confidential nature that includes, but is not limited to, a  
 668 formula, a pattern, a device, a combination of devices, or a  
 669 compilation of information used to protect or further a business  
 670 advantage over those who do not know or use the information, the  
 671 disclosure of which would injure the affected business in the  
 672 marketplace. Therefore, the Legislature finds that the need to  
 673 protect trade secret financial information is sufficiently  
 674 compelling to override this state's public policy of open  
 675 government and that the protection of such information cannot be  
 676 accomplished without these exemptions.

677 Section 22. This act shall take effect on the same date  
678 that CS/HB 55 or similar legislation relating to trade secrets  
679 takes effect, if such legislation is adopted in the same  
680 legislative session or an extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 91 Severe Injuries Caused by Dogs

**SPONSOR(S):** Local Government Affairs Subcommittee; Civil Justice Subcommittee; Steube and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 334

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Robinson	Bond
2) Local Government Affairs Subcommittee	11 Y, 0 N, As CS	Darden	Miller
3) Judiciary Committee		Robinson <i>RC</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

State laws governing the classification, control, and destruction of "dangerous dogs" are enforced by local animal control authorities. The overall purpose of such laws is to protect public safety by classifying certain dogs as "dangerous" and requiring their owners to follow specific safety restrictions.

Under current law, dogs which cause severe injury to human beings may either be classified as a dangerous dog subject to safety restrictions or immediately confiscated and destroyed. If an animal control authority proceeds under the classification provisions, the owner of the dog may raise certain affirmative defenses for the dog's bad acts. Affirmative defenses may not be raised in a destruction proceeding. This inconsistency has led three different Florida courts to declare the current law unconstitutional.

The bill requires that all cases involving the severe injury to a human being by an unclassified dog be resolved pursuant to a dangerous dog classification proceeding where affirmative defenses may be raised rather than a destruction proceeding. If classified as a dangerous dog, the dog may be destroyed or returned to its owner subject to the safety restrictions for dangerous dogs. The bill also expressly exempts law enforcement dogs from all provisions governing dangerous dogs.

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

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### **Dangerous Dogs**

Chapter 767, F.S., governs the classification, control, and disposition of “dangerous dogs.” A “dangerous dog”<sup>1</sup> is a dog that, according to the records of the appropriate authority, has:

- Aggressively bitten, attacked, or endangered or has inflicted severe injury<sup>2</sup> on a human being on public or private property.
- More than once severely injured or killed a domestic animal while off the owner’s property.
- Has, when unprovoked, chased or approached a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

##### Investigation and Classification of Dangerous Dogs

Section 767.12, F.S., requires that animal control authorities<sup>3</sup> investigate reported incidents involving any dog that may be a dangerous dog. While under investigation, the dog must be impounded with the authorities or securely confined by the owner pending the outcome.<sup>4</sup>

In determining whether a dog is a “dangerous dog”, an animal control authority must consider certain defenses for the dog’s bad acts. If the threat, injury, or damage that is the subject of the reported incident was sustained by a person who was unlawfully on the property where the attack occurred, by a person who was tormenting, abusing, or assaulting the dog, its owner, or a family member, the dog may not be classified as dangerous.<sup>5</sup> A dog may not be classified as dangerous if the dog was protecting a human being from an unjustified attack or assault.<sup>6</sup> Law enforcement dogs are also exempt from classification as a dangerous dog.<sup>7</sup>

In all other cases, if the animal control authority finds sufficient evidence that the dog meets the statutory criteria, it may make an initial determination that the dog should be classified as dangerous.<sup>8</sup> The owner may request a hearing within 7 days of receiving notice of the initial determination. The hearing must be held no earlier than 5 days, but no later than 21 days, after receipt of the owner’s request.<sup>9</sup>

Thereafter, the animal control authority issues a written final determination of the dog’s status as a dangerous dog. The owner may appeal the dangerous dog classification to the county court within 10 days after receipt of the final determination.<sup>10</sup>

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<sup>1</sup> s. 767.11(1), F.S.

<sup>2</sup> “Severe injury” means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. s. 767.11(3), F.S.

<sup>3</sup> “Animal control authority” means an entity acting alone or in concert with other local governmental units and authorized by them to enforce the animal control laws of the city, county, or state. In those areas not served by an animal control authority, the sheriff carries out such duties. s. 767.11(5), F.S.

<sup>4</sup> s. 767.12(1)(a), F.S.

<sup>5</sup> s. 767.12(1)(b), F.S.

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

<sup>7</sup> s. 767.12(6), F.S.

<sup>8</sup> s. 767.12(1)(c), F.S.

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

<sup>10</sup> s. 767.12(1)(d), F.S.

Local governments may adopt ordinances placing restrictions and additional requirements on the owners of dangerous dogs, provided that those regulations do not target a specific breed.<sup>11</sup>

### Dangerous Dog Restrictions

The owner<sup>12</sup> of a dog that has been classified as a dangerous dog must comply with the following requirements and restrictions:

- Within 14 days of the final determination, or the completion of any appeal, the owner must obtain, and annually renew, a certificate of registration which requires proof of current rabies vaccination.<sup>13</sup>
- The dog must be marked with a form of permanent identification, such as a tattoo or electronic implant.<sup>14</sup>
- The owner must provide a proper enclosure<sup>15</sup> to confine the dog and post the premises with warning signs at each entry point.<sup>16</sup>
- The dog must be muzzled and restrained when outside a proper enclosure or when being transported within a vehicle.<sup>17</sup>
- The owner must notify animal control if the dog is moved to another address, and, if such address is in a different jurisdiction, inform the authorities of that jurisdiction of the presence of the dog.<sup>18</sup>
- The owner must notify animal control when the dog is loose or has attacked a human being or animal.<sup>19</sup>
- The owner must notify animal control prior to the dog being sold or given away and provide the contact information of the new owner.<sup>20</sup>
- The dog may not be used for hunting purposes.<sup>21</sup>

The owner of a dangerous dog is subject to civil penalties for violating any of the specified restrictions<sup>22</sup> and may be criminally charged if the dog subsequently attacks or bites a human being or domestic animal.<sup>23</sup>

### **Destruction of Dogs**

In addition to classifying dogs as “dangerous”, ch. 767, F.S. also requires animal control authorities to destroy dogs which display dangerous behaviors. The circumstances under which a dog must be destroyed depend upon whether the dog has been classified as a dangerous dog.

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<sup>11</sup> s. 767.14, F.S.

<sup>12</sup> Subsequent owners of a dog that has been declared dangerous must also comply with all the dangerous dog requirements and the implementing local ordinances, even if the dog is moved from one local jurisdiction to another within the state. s. 767.12(3), F.S.

<sup>13</sup> s. 767.12(2), F.S.

<sup>14</sup> s. 767.12(2)(c), F.S.

<sup>15</sup> “Proper enclosure of a dangerous dog” means, while on the owner’s property, a dangerous dog is securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from escaping. Such pen or structure must have secure sides and a secure top to prevent the dog from escaping over, under, or through the structure and must also provide protection from the elements.

s. 767.11(4), F.S.

<sup>16</sup> s. 767.12(2)(b), F.S.

<sup>17</sup> s. 767.12(4), F.S.

<sup>18</sup> s. 767.12(3), F.S.

<sup>19</sup> s. 767.12(3)(a)-(b), F.S.

<sup>20</sup> s. 767.12(3)(c), F.S.

<sup>21</sup> s. 767.12(5), F.S.

<sup>22</sup> s. 767.12(7), F.S.

<sup>23</sup> s. 767.13, F.S.

### Dangerous Dogs

A dog that has previously been classified as a dangerous dog must be destroyed if the dog subsequently:

- Attacks or bites a human being or domestic animal without provocation.<sup>24</sup>
- Attacks and causes severe injury to a human being.<sup>25</sup>
- Attacks and causes the death of a human being.<sup>26</sup>

Upon the occurrence of any such event, the dog is immediately confiscated by the animal control authority and placed in quarantine, if necessary, or impounded. The dog is held for 10 business days from the notification of its owner, and then destroyed. During the 10 day time period, the owner may request a hearing before the animal control authority. If an appeal of the destruction order is filed to the county court, the dog may not be destroyed pending the appeal, although the owner will be liable for boarding costs and fees arising from holding the dog.<sup>27</sup>

### Unclassified Dogs

Previously unclassified dogs must be destroyed under a narrower set of circumstances. Section 767.13(2), F.S., provides in pertinent part:

If a dog that has not been declared dangerous attacks and causes severe injury to or death of any human, the dog shall be immediately confiscated by an animal control authority, placed in quarantine, if necessary, for the proper length of time or held for 10 business days after the owner is given written notification under s. 767.12, and thereafter destroyed in an expeditious and humane manner.

The owner of a previously unclassified dog that causes severe injury or death to a human being possesses the same rights to a hearing and appeal as the owner of a dangerous dog.<sup>28</sup>

Difficulty has arisen in the resolution of destruction cases involving previously unclassified dogs that cause severe injuries. Rather than destruction, the classification scheme under s. 767.12, F.S. provides that a dog which causes severe injuries to a human being may be classified as “dangerous” and returned to its owner subject to compliance with certain safety restrictions.

Accordingly, under current law, the investigating animal control authority may treat such a previously unclassified dog as either a dangerous dog subject to restriction under s. 767.12, F.S., or as a candidate for destruction under s. 767.13(2), F.S. This dichotomy essentially gives animal control authorities unfettered discretion to determine whether a previously unclassified dog shall be confiscated and destroyed or returned to its owner. One county court<sup>29</sup> has found that “such discretion in the hands of the enforcement authority runs afoul of the constitutional doctrine of nondelegation.”<sup>30</sup> The court

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<sup>24</sup> s. 767.13(1), F.S.

<sup>25</sup> s. 767.13(3), F.S.

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

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

<sup>28</sup> s. 767.13(2), F.S.

<sup>29</sup> Order on Petitioner’s Motion for Rehearing at 4, *In Re: Petition of Gilbert Otero Regarding the Dog “Zeus,”* No. 2007-CC-2863-SC (Sarasota Cty. Ct. Jul. 27, 2007).

<sup>30</sup> The doctrine of nondelegation describes the principle that one branch of government may not authorize another entity to exercise the power or function which it is constitutionally authorized to exercise itself. The nondelegation doctrine is explicitly stated in Article II, Section 3 of the Florida Constitution, “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” *See also Dickinson v. State*, 227 So. 2d 36, 37 (Fla. 1969) (the legislative exercise of the police power should be so clearly defined, so limited in scope, that nothing is left to the unbridled discretion or whim of the administrative agency charged with responsibility of enforcing the act).

overtaken an order mandating destruction of a dog that, alternately, could have been classified and restricted as a dangerous dog under s. 767.12, F.S.

Further, in classification proceedings, the dog owner may raise a number of affirmative defenses, such as provocation or abuse of the dog, to prevent the classification of his or her dog as dangerous. However, if the animal control authority pursues destruction under s. 767.13(2), F.S., the owner may raise no defense for the dog's bad acts. Section 767.13(2), F.S. is a strict liability statute and the fate of the dog is determined with finality the moment that the dog inflicts a severe injury or death, regardless of the reason or circumstances. The inability to raise affirmative defenses to the destruction of the dog led the county court in *In Re: "Cody"* to declare s. 767.13(2), F.S. unconstitutional as a violation of the owner's right to substantive due process.<sup>31</sup>

It truly does defy logic that the owner of a dog facing potential classification as "dangerous" may defend his or her pet by establishing that the dog had been provoked, or that the victim was unlawfully on the property, or that the dog was defending a family member, but no similar defense, no matter how valid or compelling, may be raised by a person trying to prevent *execution* of his or her pet. To compel execution of all dogs confiscated under Section 767.13(2) is arbitrary and unduly oppressive. The legislature has given animal control authorities unfettered authority to order the killing of any dog, who has not previously been declared dangerous and who causes "severe injury," regardless of the circumstances. Section 767.13(2), as it is currently written, does not further the government's interest of protecting society from "dangerous dogs."<sup>32</sup>

On December 14, 2015, in a case of first impression before the circuit courts,<sup>33</sup> the Twelfth Judicial Circuit Court in and for Manatee County also declared s. 767.13(2), F.S. unconstitutional.<sup>34</sup> The court similarly cited violations of the nondelegation doctrine and substantive due process as grounds for its decision.<sup>35</sup>

### **Effect of Proposed Changes**

The bill amends ss. 767.12 and 767.13, F.S. to require that all cases involving severe injury to a human being by an unclassified dog be resolved pursuant to a dangerous dog classification proceeding where affirmative defenses may be raised rather than a destruction proceeding. In such cases an animal authority may, but is not required to, quarantine and confiscate the dog pending the outcome of the dangerous dog investigation. If not confiscated, the dog is subject to home confinement under s. 767.12(1)(a), F.S. until the completion of the investigation.

---

<sup>31</sup> The Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the State Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. Dogs and other domestic animals, commonly referred to as pets, are subjects of property or ownership. *Levine v. Knowles*, 197 So. 2d 329, 330 (Fla. 3d DCA 1967). The owner of such animals may not be deprived of their use, except in accord with all of the elements of due process. *County of Pasco v. Riehl*, 620 So. 2d 229, 231 (Fla. 2d DCA 1993). Due process protects not only basic procedural rights, but also basic substantive rights. In considering whether a statute violates substantive due process, the basic test is whether the state can justify the infringement of its legislative activity upon personal rights and liberties. The statute must bear a reasonable relationship to the legislative objective and not be arbitrary, discriminatory, or oppressive. See *Young v. Broward County*, 570 So. 2d 309, 310 (Fla. 4th DCA 1990); *Joseph v. Henderson*, 834 So. 2d 373, 374 (Fla. 2d DCA 2003).

<sup>32</sup> Opinion of the Court at 5, *In Re: "Cody", an adult male, black and tan German Shepard dog, owned by Charles Henshall*, No. 1999-33984-COCI (Volusia Cty. Ct. May 6, 2003).

<sup>33</sup> Dale White, *Attorney cites 'Stand your ground' in Padi case*, Sarasota Herald-Tribune, September 29, 2015, <http://www.heraldtribune.com/article/20150929/ARTICLE/150929611/2416/NEWS?Title=Attorney-cites-Stand-your-ground-in-Padi-case&tc=ar>.

<sup>34</sup> Final Order Granting Motions for Summary Judgment, Deeming §767.13(2), Florida Statutes, Unconstitutional, and Granting Declaratory and Supplemental Relief at 9-10, *Manatee County v. Paul Gartenberg*, No. 2015-CA-003844 (Fla. 12th Cir. Dec. 14, 2015).

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



If the dog is classified as a dangerous dog as a result of the investigation, the animal control authority may impose one of the following penalties after considering the nature of the injury and the future likelihood of harm:

- Compliance with the dangerous dog safety restrictions; or
- Destruction of the dog in an expeditious and humane manner.

The animal control authority must notify the owner of the penalty imposed within the notice of sufficient cause. If the owner requests a hearing, the hearing officer may review and change the penalty.

The bill authorizes local governments to adopt ordinances placing further restrictions or requirements concerning dogs that have bitten or attacked persons or domestic animals, but have not been declared dangerous. The bill does not change current law prohibiting such ordinances from targeting specific breeds.

The bill also expressly exempts law enforcement dogs from all provisions of the dangerous dog law and makes conforming changes to ch. 767, F.S.

The bill does not revise provisions governing unclassified dogs that cause the death of a human.

#### B. SECTION DIRECTORY:

Section 1 provides a directive to the Division of Law Revision and Information.

Section 2 amends s. 767.12, F.S., regarding the classification of dangerous dogs.

Section 3 transfers, renumbers, and amends s. 767.13(2), F.S., regarding the confiscation and destruction of dogs.

Section 4 creates s. 767.136, F.S., regarding criminal penalties for attack or bite by an unclassified dog.

Section 5 amends s. 767.14, F.S., regarding additional local restrictions on dogs that have bitten or attacked persons or domestic animals.

Section 6 amends s. 767.16, F.S., regarding exemptions for police or service dogs.

Section 7 provides that the bill is effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill does not appear to have any impact on state revenues.

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

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

##### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 7, 2015, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. That strike-all amendment:

- Required that cases involving the severe injury of a human being by an unclassified dog be resolved pursuant to a classification proceeding rather than a destruction proceeding.
- Provided that confiscation and impoundment of a dog which has caused severe injuries to a human is discretionary.
- Established penalties for dangerous dogs that cause severe injuries to humans.
- Exempted law enforcement dogs from all provisions of the dangerous dog law.
- Made conforming and technical changes to ch. 767, F.S.

On November 4, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment authorizes local governments to adopt additional restrictions concerning dogs that have attacked a person or a domestic animal.

This analysis is drawn to the committee substitute reported favorably by the Local Government Affairs Subcommittee.

1 A bill to be entitled

2 An act relating to severe injuries caused by dogs;  
 3 providing a directive to the Division of Law Revision  
 4 and Information; amending s. 767.12, F.S.; providing  
 5 for discretionary, rather than mandatory, impoundment  
 6 of dogs that cause severe injuries to humans;  
 7 specifying circumstances under which a dangerous dog  
 8 that has caused severe injuries to a human may be  
 9 euthanized or returned to its owner; transferring,  
 10 renumbering, and amending a provision of s. 767.13,  
 11 F.S.; repealing a requirement for automatic euthanasia  
 12 for unclassified dogs that cause severe injuries to  
 13 humans; deleting a criminal penalty related to severe  
 14 injuries or death caused by a dog; creating s.  
 15 767.136, F.S.; re-creating an existing criminal  
 16 penalty related to severe injuries or death caused by  
 17 a dog in a new statutory section; amending s. 767.14,  
 18 F.S.; authorizing local governments to adopt certain  
 19 ordinances pertaining to dogs that have bitten or  
 20 attacked persons or domestic animals; amending s.  
 21 767.16, F.S.; exempting law enforcement dogs from  
 22 dangerous dog law; providing an effective date.

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

25  
 26 Section 1. The Division of Law Revision and Information is

27 directed to designate ss. 767.01-767.07, Florida Statutes, as  
 28 part I of chapter 767, Florida Statutes, entitled "Damage By  
 29 Dogs," and ss. 767.10-767.16, Florida Statutes, as part II of  
 30 that chapter, entitled "Dangerous Dogs."

31 Section 2. Section 767.12, Florida Statutes, is amended to  
 32 read:

33 767.12 Classification of dogs as dangerous; certification  
 34 of registration; notice and hearing requirements; confinement of  
 35 animal; exemption; appeals; unlawful acts.-

36 (1)~~(a)~~ An animal control authority shall investigate  
 37 reported incidents involving any dog that may be dangerous and  
 38 shall, if possible, interview the owner and require a sworn  
 39 affidavit from any person, including any animal control officer  
 40 or enforcement officer, desiring to have a dog classified as  
 41 dangerous.

42 (a) An animal that is the subject of a dangerous dog  
 43 investigation because of severe injury to a human being may be  
 44 immediately confiscated by an animal control authority, placed  
 45 in quarantine, if necessary, for the proper length of time, or  
 46 impounded and held pending the outcome of the investigation and  
 47 any hearings related to the determination of a dangerous dog  
 48 classification. In the event that the dog is to be destroyed,  
 49 the dog may not be destroyed while an appeal is pending.  
 50 However, the owner is responsible for payment of all boarding  
 51 costs and other fees as may be required to humanely and safely  
 52 keep the animal during any appeal procedure.

53           (b) Any animal that is the subject of a dangerous dog  
 54 investigation, that is not impounded with the animal control  
 55 authority, shall be humanely and safely confined by the owner in  
 56 a securely fenced or enclosed area pending the outcome of the  
 57 investigation and resolution of any hearings related to the  
 58 dangerous dog classification. The address of where the animal  
 59 resides shall be provided to the animal control authority. No  
 60 dog that is the subject of a dangerous dog investigation may be  
 61 relocated or ownership transferred pending the outcome of an  
 62 investigation or any hearings related to the determination of a  
 63 dangerous dog classification. In the event that a dog is to be  
 64 destroyed, the dog shall not be relocated or ownership  
 65 transferred.

66           (2)(b) A dog shall not be declared dangerous if:

67           (a) The threat, injury, or damage was sustained by a  
 68 person who, at the time, was unlawfully on the property or,  
 69 while lawfully on the property, was tormenting, abusing, or  
 70 assaulting the dog or its owner or a family member.

71           (b) ~~No dog may be declared dangerous if~~ The dog was  
 72 protecting or defending a human being within the immediate  
 73 vicinity of the dog from an unjustified attack or assault.

74           (3)(e) After the investigation, the animal control  
 75 authority shall make an initial determination as to whether  
 76 there is sufficient cause to classify the dog as dangerous and  
 77 shall afford the owner an opportunity for a hearing prior to  
 78 making a final determination. The animal control authority shall

79 provide written notification of the sufficient cause finding, to  
 80 the owner, by registered mail, certified hand delivery, or  
 81 service in conformance with the provisions of chapter 48  
 82 relating to service of process. The owner may file a written  
 83 request for a hearing within 7 calendar days from the date of  
 84 receipt of the notification of the sufficient cause finding and,  
 85 if requested, the hearing shall be held as soon as possible, but  
 86 not more than 21 calendar days and no sooner than 5 days after  
 87 receipt of the request from the owner. Each applicable local  
 88 governing authority shall establish hearing procedures that  
 89 conform to this subsection ~~paragraph~~.

90 (4) ~~(d)~~ Once a dog is classified as a dangerous dog, the  
 91 animal control authority shall provide written notification to  
 92 the owner by registered mail, certified hand delivery or  
 93 service, and the owner may file a written request for a hearing  
 94 in the county court to appeal the classification within 10  
 95 business days after receipt of a written determination of  
 96 dangerous dog classification and must confine the dog in a  
 97 securely fenced or enclosed area pending a resolution of the  
 98 appeal. Each applicable local governing authority must establish  
 99 appeal procedures that conform to this subsection ~~paragraph~~.

100 (5) Except as otherwise provided in subsection (6), the  
 101 owner of a dog classified as a dangerous dog shall comply with  
 102 this subsection:

103 (a) ~~(2)~~ Within 14 days after a dog has been classified as  
 104 dangerous by the animal control authority or a dangerous dog

105 classification is upheld by the county court on appeal, the  
 106 owner of the dog must obtain a certificate of registration for  
 107 the dog from the animal control authority serving the area in  
 108 which he or she resides, and the certificate shall be renewed  
 109 annually. Animal control authorities are authorized to issue  
 110 such certificates of registration, and renewals thereof, only to  
 111 persons who are at least 18 years of age and who present to the  
 112 animal control authority sufficient evidence of:

113 1.~~(a)~~ A current certificate of rabies vaccination for the  
 114 dog.

115 2.~~(b)~~ A proper enclosure to confine a dangerous dog and  
 116 the posting of the premises with a clearly visible warning sign  
 117 at all entry points that informs both children and adults of the  
 118 presence of a dangerous dog on the property.

119 3.~~(c)~~ Permanent identification of the dog, such as a  
 120 tattoo on the inside thigh or electronic implantation.

121  
 122 The appropriate governmental unit may impose an annual fee for  
 123 the issuance of certificates of registration required by this  
 124 section.

125 (b)~~(3)~~ The owner shall immediately notify the appropriate  
 126 animal control authority when a dog that has been classified as  
 127 dangerous:

128 1.~~(a)~~ Is loose or unconfined.

129 2.~~(b)~~ Has bitten a human being or attacked another animal.

130 3.~~(c)~~ Is sold, given away, or dies.

131            4.~~(d)~~ Is moved to another address.

132

133            Prior to a dangerous dog being sold or given away, the owner  
 134 shall provide the name, address, and telephone number of the new  
 135 owner to the animal control authority. The new owner must comply  
 136 with all of the requirements of this section ~~act~~ and  
 137 implementing local ordinances, even if the animal is moved from  
 138 one local jurisdiction to another within the state. The animal  
 139 control officer must be notified by the owner of a dog  
 140 classified as dangerous that the dog is in his or her  
 141 jurisdiction.

142            (c)~~(4)~~ It is unlawful for the owner of a dangerous dog to  
 143 permit the dog to be outside a proper enclosure unless the dog  
 144 is muzzled and restrained by a substantial chain or leash and  
 145 under control of a competent person. The muzzle must be made in  
 146 a manner that will not cause injury to the dog or interfere with  
 147 its vision or respiration but will prevent it from biting any  
 148 person or animal. The owner may exercise the dog in a securely  
 149 fenced or enclosed area that does not have a top, without a  
 150 muzzle or leash, if the dog remains within his or her sight and  
 151 only members of the immediate household or persons 18 years of  
 152 age or older are allowed in the enclosure when the dog is  
 153 present. When being transported, such dogs must be safely and  
 154 securely restrained within a vehicle.

155            (6) If a dog is classified as a dangerous dog as the  
 156 result of an incident that causes severe injury to a human



157 being, based upon the nature and circumstances of the injury and  
 158 the likelihood of a future threat to the public safety, health,  
 159 and welfare, the dog may be destroyed in an expeditious and  
 160 humane manner, or, alternatively, the owner shall be required to  
 161 comply with subsection (5). The animal control authority shall  
 162 inform the owner of the penalty imposed within the notice of  
 163 sufficient cause. If the owner requests a hearing under  
 164 subsection (3), the hearing officer may review the penalty  
 165 imposed by the animal control authority and rule upon the proper  
 166 penalty under this subsection.

167 (7)(5) Hunting dogs are exempt from ~~the provisions of this~~  
 168 ~~section~~ and when engaged in any legal hunt or training  
 169 procedure. Dogs engaged in training or exhibiting in legal  
 170 sports such as obedience trials, conformation shows, field  
 171 trials, hunting/retrieving trials, and herding trials are exempt  
 172 from the provisions of this ~~section~~ and when engaged in any  
 173 legal procedures. However, such dogs at all other times in all  
 174 other respects shall be subject to this and local laws. Dogs  
 175 that have been classified as dangerous shall not be used for  
 176 hunting purposes.

177 ~~(6) This section does not apply to dogs used by law~~  
 178 ~~enforcement officials for law enforcement work.~~

179 (8)(7) Any person who violates any provision of this  
 180 section commits ~~is guilty of~~ a noncriminal infraction,  
 181 punishable by a fine not exceeding \$500.

182 Section 3. Subsection (2) of section 767.13, Florida

183 Statutes, is transferred, renumbered as section 767.135, Florida  
 184 Statutes, and amended, to read:

185 767.135 ~~767.13~~ Attack or bite by ~~dangerous~~ dog that has  
 186 not been declared dangerous; penalties; confiscation;  
 187 destruction.-

188 ~~(2)~~ If a dog that has not been declared dangerous attacks  
 189 and causes the ~~severe injury to or~~ death of any human, the dog  
 190 shall be immediately confiscated by an animal control authority,  
 191 placed in quarantine, if necessary, for the proper length of  
 192 time or held for 10 business days after the owner is given  
 193 written notification under s. 767.12, and thereafter destroyed  
 194 in an expeditious and humane manner. This 10-day time period  
 195 shall allow the owner to request a hearing under s. 767.12. If  
 196 the owner files a written appeal under s. 767.12 or this  
 197 section, the dog must be held and may not be destroyed while the  
 198 appeal is pending. The owner shall be responsible for payment of  
 199 all boarding costs and other fees as may be required to humanely  
 200 and safely keep the animal during any appeal procedure. ~~In~~  
 201 ~~addition, if the owner of the dog had prior knowledge of the~~  
 202 ~~dog's dangerous propensities, yet demonstrated a reckless~~  
 203 ~~disregard for such propensities under the circumstances, the~~  
 204 ~~owner of the dog is guilty of a misdemeanor of the second~~  
 205 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

206 Section 4. Section 767.136, Florida Statutes, is created  
 207 to read:

208 767.136 Attack or bite by unclassified dog that causes

209 severe injury or death; penalties.-

210 (1) If the owner of a dog that has not been declared  
 211 dangerous, but which attacks and causes severe injury to, or the  
 212 death of, a human, had knowledge of the dog's dangerous  
 213 propensities, yet demonstrated a reckless disregard for such  
 214 propensities under the circumstances, the owner of the dog  
 215 commits a misdemeanor of the second degree, punishable as  
 216 provided in s. 775.082 or s. 775.083.

217 (2) If the dog attacks or bites a person who is engaged in  
 218 or attempting to engage in a criminal activity at the time of  
 219 the attack, the owner is not guilty of any crime under this  
 220 section.

221 Section 5. Section 767.14, Florida Statutes, is amended to  
 222 read:

223 767.14 Additional local restrictions authorized.—Nothing  
 224 in this act shall limit any local government from adopting an  
 225 ordinance to address the safety and welfare concerns caused by  
 226 attacks on persons or domestic animals, placing further  
 227 restrictions or additional requirements on owners of ~~dangerous~~  
 228 dogs that have bitten or attacked persons or domestic animals,  
 229 or developing procedures and criteria for the implementation of  
 230 this act, provided that no such regulation is specific to breed  
 231 and that the provisions of this act are not lessened by such  
 232 additional regulations or requirements. This section shall not  
 233 apply to any local ordinance adopted prior to October 1, 1990.

234 Section 6. Section 767.16, Florida Statutes, is amended to

235 read:

236 767.16 ~~Bite by a~~ Police or service dog; exemption ~~from~~  
 237 ~~quarantine.~~-

238 (1) Any dog that is owned, or the service of which is  
 239 employed, by a law enforcement agency, is exempt from this part.

240 (2) ~~or~~ Any dog that is used as a service dog for blind,  
 241 hearing impaired, or disabled persons, and that bites another  
 242 animal or human is exempt from any quarantine requirement  
 243 following such bite if the dog has a current rabies vaccination  
 244 that was administered by a licensed veterinarian.

245 Section 7. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

3  
 4  
 5  
 6 Section 1. The Division of Law Revision and Information is  
 7 directed to designate ss. 767.01-767.07, Florida Statutes, as  
 8 part I of chapter 767, Florida Statutes, entitled "Damage by  
 9 Dogs," and ss. 767.10-767.16, Florida Statutes, as part II of  
 10 that chapter, entitled "Dangerous Dogs."

11 Section 2. Section 767.12, Florida Statutes, is amended to  
 12 read:

13 767.12 Classification of dogs as dangerous; certification  
 14 of registration; notice and hearing requirements; confinement of  
 15 animal; exemption; appeals; unlawful acts.—

16 (1)(a) An animal control authority shall investigate  
 17 reported incidents involving any dog that may be dangerous and



Amendment No. 1

18 ~~shall~~, if possible, shall interview the owner and require a  
19 sworn affidavit from any person, including any animal control  
20 officer or enforcement officer, desiring to have a dog  
21 classified as dangerous.

22 (a) An animal that is the subject of a dangerous dog  
23 investigation because of severe injury to a human being may be  
24 immediately confiscated by an animal control authority, placed  
25 in quarantine, if necessary, for the proper length of time, or  
26 impounded and held. The animal may be held pending the outcome  
27 of the investigation and any hearings or appeals related to the  
28 dangerous dog classification or any penalty imposed under this  
29 section. If the dog is to be destroyed, the dog may not be  
30 destroyed while an appeal is pending. The owner is responsible  
31 for payment of all boarding costs and other fees as may be  
32 required to humanely and safely keep the animal pending any  
33 hearing or appeal.

34 (b) An ~~any~~ animal that is the subject of a dangerous dog  
35 investigation ~~which, that~~ is not impounded with the animal  
36 control authority ~~must, shall~~ be humanely and safely confined by  
37 the owner in a securely fenced or enclosed area. The animal  
38 shall be confined in such manner pending the outcome of the  
39 investigation and ~~the~~ resolution of any hearings ~~or~~ appeals  
40 related to the dangerous dog classification ~~or any penalty~~  
41 imposed under this section. The address ~~at which~~ ~~of where~~ the  
42 animal resides shall be provided to the animal control  
43 authority. ~~A~~ ~~no~~ dog that is the subject of a dangerous dog

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Amendment No. 1

44 investigation may not be relocated or its ownership transferred  
45 pending the outcome of the an investigation and or any hearings  
46 or appeals related to the ~~determination of a dangerous dog~~  
47 classification or any penalty imposed under this section. If In  
48 ~~the event that~~ a dog is to be destroyed, the dog may shall not  
49 be relocated or its ownership transferred.

50 ~~(2)(b)~~ A dog may shall not be declared dangerous if:

51 (a) The threat, injury, or damage was sustained by a  
52 person who, at the time, was unlawfully on the property or, who,  
53 while lawfully on the property, was tormenting, abusing, or  
54 assaulting the dog or its owner or a family member.

55 (b) ~~No dog may be declared dangerous if~~ The dog was  
56 protecting or defending a human being within the immediate  
57 vicinity of the dog from an unjustified attack or assault.

58 (3)(e) After the investigation, the animal control  
59 authority shall make an initial determination as to whether  
60 there is sufficient cause to classify the dog as dangerous and,  
61 if sufficient cause is found, as to the appropriate penalty  
62 under subsection (5). The animal control authority shall afford  
63 the owner an opportunity for a hearing prior to making a final  
64 determination regarding the classification or penalty. The  
65 animal control authority shall provide written notification of  
66 the sufficient cause finding and proposed penalty, to the owner,  
67 by registered mail, certified hand delivery, or service in  
68 conformance with the provisions of chapter 48 relating to  
69 service of process. The owner may file a written request for a

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Amendment No. 1

70 hearing regarding the dangerous dog classification, penalty, or  
71 both, within 7 calendar days after from the date of receipt of  
72 the notification of the sufficient cause finding and proposed  
73 penalty. ~~If the owner requests a hearing requested,~~ the hearing  
74 shall be held as soon as possible, but not later more than 21  
75 calendar days and not no sooner than 5 days after receipt of the  
76 request from the owner. If a hearing is not timely requested  
77 regarding the dangerous dog classification or proposed penalty,  
78 the determination of the animal control authority as to such  
79 matter shall become final. Each applicable local governing  
80 authority shall establish hearing procedures that conform to  
81 this subsection paragraph.

82 (4)(d) Upon a dangerous dog classification and penalty  
83 becoming final after a hearing or by operation of law pursuant  
84 to subsection (3)Once a dog is classified as a dangerous dog,  
85 the animal control authority shall provide a written final order  
86 notification to the owner by registered mail, certified hand  
87 delivery or service. ~~and The owner may file a written request~~  
88 ~~for a hearing in the county court to appeal the classification,~~  
89 penalty, or both, to the circuit court in accordance with the  
90 Florida Rules of Appellate Procedure within 10 business days  
91 after receipt of the final order. If the dog is not held by the  
92 animal control authority, the owner a written determination of  
93 dangerous dog classification and must confine the dog in a  
94 securely fenced or enclosed area pending a resolution of the  
95 appeal. Each applicable local governing authority must establish

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Amendment No. 1

96 appeal procedures that conform to this subsection ~~paragraph~~.

97 (5) (a) Except as otherwise provided in paragraph (b), the  
98 owner of a dog classified as a dangerous dog shall:

99 1.(2) Within 14 days after the issuance of the final order  
100 classifying the dog as dangerous or the conclusion of any appeal  
101 that affirms such final order ~~a dog has been classified as~~  
102 ~~dangerous by the animal control authority or a dangerous dog~~  
103 ~~classification is upheld by the county court on appeal, the~~  
104 ~~owner of the dog must~~ obtain a certificate of registration for  
105 the dog from the animal control authority serving the area in  
106 which he or she resides, and renew the certificate ~~shall be~~  
107 ~~renewed~~ annually. Animal control authorities are authorized to  
108 issue such certificates of registration, and renewals thereof,  
109 only to persons who are at least 18 years of age and who present  
110 to the animal control authority sufficient evidence of:

111 a.(a) A current certificate of rabies vaccination for the  
112 dog.

113 b.(b) A proper enclosure to confine a dangerous dog and  
114 the posting of the premises with a clearly visible warning sign  
115 at all entry points which ~~that~~ informs both children and adults  
116 of the presence of a dangerous dog on the property.

117 c.(c) Permanent identification of the dog, such as a  
118 tattoo on the inside thigh or electronic implantation.

119

120 The appropriate governmental unit may impose an annual fee for  
121 the issuance of certificates of registration required by this



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122 section.

123 2.~~(3)~~ ~~The owner shall~~ Immediately notify the appropriate  
124 animal control authority when the a dog ~~that has been classified~~  
125 ~~as dangerous~~:

126 a.~~(a)~~ Is loose or unconfined.

127 b.~~(b)~~ Has bitten a human being or attacked another animal.

128 c.~~(c)~~ Is sold, given away, or dies.

129 d.~~(d)~~ Is moved to another address.

130

131 Prior to a dangerous dog being sold or given away, the owner  
132 shall provide the name, address, and telephone number of the new  
133 owner to the animal control authority. The new owner must comply  
134 with all of the requirements of this section ~~act~~ and  
135 implementing local ordinances, even if the animal is moved from  
136 one local jurisdiction to another within the state. The animal  
137 control officer must be notified by the owner of a dog  
138 classified as dangerous that the dog is in his or her  
139 jurisdiction.

140 3.~~(4)~~ Not ~~It is unlawful for the owner of a dangerous dog~~  
141 ~~to~~ permit the dog to be outside a proper enclosure unless the  
142 dog is muzzled and restrained by a substantial chain or leash  
143 and under control of a competent person. The muzzle must be made  
144 in a manner that will not cause injury to the dog or interfere  
145 with its vision or respiration but will prevent it from biting a  
146 ~~any~~ person or animal. The owner may exercise the dog in a  
147 securely fenced or enclosed area that does not have a top,

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148 without a muzzle or leash, if the dog remains within his or her  
149 sight and only members of the immediate household or persons 18  
150 years of age or older are allowed in the enclosure when the dog  
151 is present. When being transported, such dogs must be safely and  
152 securely restrained within a vehicle.

153 (b) If a dog is classified as a dangerous dog due to an  
154 incident that causes severe injury to a human being, based upon  
155 the nature and circumstances of the injury and the likelihood of  
156 a future threat to the public safety, health, and welfare, the  
157 dog may be destroyed in an expeditious and humane manner.

158 (6)(5) Hunting dogs are exempt from ~~the provisions of this~~  
159 section ~~act~~ when engaged in any legal hunt or training  
160 procedure. Dogs engaged in training or exhibiting in legal  
161 sports such as obedience trials, conformation shows, field  
162 trials, hunting/retrieving trials, and herding trials are exempt  
163 from ~~the provisions of this~~ section ~~act~~ when engaged in any  
164 legal procedures. However, such dogs at all other times in all  
165 other respects are ~~shall be~~ subject to this and local laws. Dogs  
166 that have been classified as dangerous may ~~shall~~ not be used for  
167 hunting purposes.

168 ~~(6) This section does not apply to dogs used by law~~  
169 ~~enforcement officials for law enforcement work.~~

170 (7) A ~~Any~~ person who violates any provision of this  
171 section commits ~~is guilty of~~ a noncriminal infraction,  
172 punishable by a fine not to exceed ~~exceeding~~ \$500.

173 Section 3. Subsection (2) of section 767.13, Florida



Amendment No. 1

174 Statutes, is transferred, renumbered as section 767.135, Florida  
175 Statutes, and amended, to read:

176 767.135 ~~767.13~~ Attack or bite by unclassified ~~dangerous~~  
177 dog that causes death; penalties; ~~confiscation; destruction.-~~

178 ~~(2)~~ If a dog that has not been declared dangerous attacks  
179 and causes the ~~severe injury to or~~ death of a ~~any~~ human, the dog  
180 shall be immediately confiscated by an animal control authority,  
181 placed in quarantine, if necessary, for the proper length of  
182 time or held for 10 business days after the owner is given  
183 written notification under s. 767.12, and thereafter destroyed  
184 in an expeditious and humane manner. This 10-day time period  
185 shall allow the owner to request a hearing under s. 767.12. If  
186 the owner files a written appeal under s. 767.12 or this  
187 section, the dog must be held and may not be destroyed while the  
188 appeal is pending. The owner is ~~shall be~~ responsible for payment  
189 of all boarding costs and other fees as may be required to  
190 humanely and safely keep the animal during any appeal procedure.  
191 ~~In addition, if the owner of the dog had prior knowledge of the~~  
192 ~~dog's dangerous propensities, yet demonstrated a reckless~~  
193 ~~disregard for such propensities under the circumstances, the~~  
194 ~~owner of the dog is guilty of a misdemeanor of the second~~  
195 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

196 Section 4. Section 767.136, Florida Statutes, is created  
197 to read:

198 767.136 Attack or bite by unclassified dog that causes  
199 severe injury or death; penalties.-



## Amendment No. 1

200       (1) If a dog that has not been declared dangerous attacks  
201 and causes severe injury to, or the death of, a human, and the  
202 owner of the dog had knowledge of the dog's dangerous  
203 propensities, yet demonstrated a reckless disregard for such  
204 propensities under the circumstances, the owner of the dog  
205 commits a misdemeanor of the second degree, punishable as  
206 provided in s. 775.082 or s. 775.083.

207       (2) If the dog attacks or bites a person who is engaged in  
208 or attempting to engage in a criminal activity at the time of  
209 the attack, the owner of the dog is not guilty of any crime  
210 under this section.

211       Section 5. Section 767.14, Florida Statutes, is amended to  
212 read:

213       767.14 Additional local restrictions authorized. ~~Nothing~~  
214 ~~in~~ This act does not shall limit any local government from  
215 adopting an ordinance to address the safety and welfare concerns  
216 caused by attacks on persons or domestic animals, placing  
217 further restrictions or additional requirements on owners of  
218 dangerous dogs that have bitten or attacked persons or domestic  
219 animals, or developing procedures and criteria for the  
220 implementation of this act, provided that no such regulation is  
221 specific to breed and that the provisions of this act are not  
222 lessened by such additional regulations or requirements. This  
223 section does shall not apply to any local ordinance adopted  
224 prior to October 1, 1990.

225       Section 6. Section 767.16, Florida Statutes, is amended to



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226 read:

227 767.16 ~~Bite by a~~ Police or service dog; exemption ~~from~~  
228 quarantine.-

229 (1) Any dog that is owned, or the service of which is  
230 employed, by a law enforcement agency, is exempt from this part.

231 (2) ~~or~~ Any dog ~~that is~~ used as a service dog for blind,  
232 hearing impaired, or disabled persons, ~~and~~ that bites another  
233 animal or a human is exempt from any quarantine requirement  
234 following such bite if the dog has a current rabies vaccination  
235 that was administered by a licensed veterinarian.

236 Section 7. This act shall take effect upon becoming a law.

237

238 -----

239

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

240

Remove everything before the enacting clause and insert:

241

An act relating to severe injuries caused by dogs; providing a  
242 directive to the Division of Law Revision and Information;

243

amending s. 767.12, F.S.; providing for discretionary, rather  
244 than mandatory, quarantine or impoundment of dogs that cause

245

severe injuries to humans; revising the hearing and final order  
246 procedures, and related confinement requirements, for dangerous

247

dog actions; specifying circumstances under which a dog that has  
248 caused severe injury to a human may be euthanized; transferring,

249

renumbering, and amending s. 767.13(2), F.S.; repealing

250

automatic euthanasia requirement for dogs that cause severe

251

injury to humans; deleting a criminal penalty related to severe



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252 injury or death caused by a dog; creating s. 767.136, F.S.; re-  
253 creating an existing criminal penalty related to severe injury  
254 or death caused by a dog in a new statutory section; amending s.  
255 767.14, F.S.; authorizing local governments to adopt certain  
256 ordinances pertaining to dogs that have bitten or attacked  
257 persons or domestic animals; amending s. 767.16, F.S.; exempting  
258 law enforcement dogs from regulation under Part II of ch. 767,  
259 F.S.; providing an effective date.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 101 Violation of an Injunction for Protection  
**SPONSOR(S):** Criminal Justice Subcommittee; Rodríguez, J. and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee	12 Y, 0 N	McAuliffe	Lloyd
3) Judiciary Committee		Cox <i>JAC</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Victims of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking may obtain an injunction for protection if certain requirements are met. An injunction is either temporary, lasting a maximum of 15 days, or final, lasting until dissolved by the court. A respondent violates the terms of an injunction for protection if the respondent willfully commits specified prohibited acts against the petitioner. The court can enforce a violation of an injunction through a civil or criminal contempt proceeding, or the state attorney may prosecute it as a first degree misdemeanor.

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., increasing the penalty for third or subsequent violations of an injunction for protection to a third degree felony.

While repeat offenders for the offenses of this bill can be determined, the number of third or subsequent offenses cannot. The Criminal Justice Impact Conference met on October 28, 2015, and determined that the impact of this bill on Department of Correction's prison beds is indeterminate, but will likely increase prison beds. Additionally, because the bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, the bill may reduce the need for jail beds. (See Fiscal Impact Statement)

The bill is effective on October 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Injunctions for Protection against Specified Acts of Violence**

###### *Domestic Violence*

Any person who is the victim of domestic violence<sup>1</sup> or who reasonably believes that he or she is in imminent danger of becoming the victim of domestic violence may file a petition for an injunction for protection against domestic violence.<sup>2</sup> The sworn petition must allege the existence of domestic violence and include specific facts and circumstances upon which relief is sought.<sup>3</sup> A hearing must be set at the earliest possible time after a petition is filed and the respondent must be personally served with a copy of the petition.<sup>4</sup> At the hearing, specified injunctive relief may be granted if the court finds that the petitioner is:

- The victim of domestic violence; or
- Has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence.<sup>5</sup>

If it appears to the court that an immediate and present danger of domestic violence exists when the petition is filed, the court may grant a temporary injunction *ex parte*.<sup>6,7</sup> Temporary injunctions are only effective for a fixed period that cannot exceed 15 days.<sup>8</sup> The hearing on the petition must be set for a date on or before the date when the temporary injunction expires.<sup>9</sup>

###### *Repeat, Dating, and Sexual Violence*

Section 784.046, F.S., governs the issuance of injunctions against repeat violence,<sup>10</sup> dating violence,<sup>11</sup> and sexual violence.<sup>12</sup> This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

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<sup>1</sup> Section 741.28, F.S., defines “domestic violence” as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

<sup>2</sup> s. 741.30(1), F.S.

<sup>3</sup> s. 741.30(3), F.S.

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

<sup>5</sup> s. 741.30(6), F.S. Either party may move the court to modify or dissolve an injunction at any time. s. 741.30(6)(c) and (10), F.S.

<sup>6</sup> The court may grant such relief as it deems proper, including an injunction restraining the respondent from committing any acts of domestic violence, awarding to the petitioner the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner, and providing the petitioner a temporary parenting plan. s. 741.30(5), F.S.

<sup>7</sup> The only evidence admissible in the *ex parte* hearing is verified pleadings or affidavits, unless the respondent appears at the hearing or has received reasonable notice of the hearing. s. 741.30(5)(b), F.S.

<sup>8</sup> s. 741.30(5)(c), F.S.

<sup>9</sup> The court may grant a continuance of the hearing for good cause, which may include obtaining service of process. A temporary injunction must be extended, if necessary, during any period of continuance. s. 741.30(5)(c), F.S.

<sup>10</sup> Section 784.046(1)(b), F.S., defines “repeat violence” to mean 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 against the petitioner or the petitioner’s immediate family member. Section 784.046(1)(a), F.S., defines “violence” to mean any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person.

<sup>11</sup> Section 784.046(1)(d), F.S., defines “dating violence” to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. Dating violence does not include violence in a casual acquaintanceship or between individuals who have only engaged in ordinary fraternization. The existence of such a relationship is determined by considering the following factors:

- A dating relationship must have existed within the past six months;
- The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and

### *Stalking and Cyberstalking*

Section 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This statute largely parallels the provisions discussed above regarding domestic violence injunctions.

#### **Violation of an Injunction against Specified Acts of Violence**

A respondent violates the terms of an injunction against domestic, repeat, dating, or sexual violence, or stalking or cyberstalking<sup>13</sup> if the respondent willfully:

- Refuses to vacate the dwelling that the parties share;<sup>14</sup>
- Goes to, or is within 500 feet of, the petitioner's residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- Commits an act of domestic, repeat, dating, or sexual violence, or stalking or cyberstalking against the petitioner;
- Commits any other violation of the injunction through an intentional unlawful threat, word, or act to do violence to the petitioner;
- Telephones, contacts, or otherwise communicates with the petitioner directly or indirectly, unless the injunction specifically allows indirect contact through a third party;
- Knowingly and intentionally comes within 100 feet of the petitioner's motor vehicle, whether or not that vehicle is occupied;
- Defaces or destroys the petitioner's personal property, including the petitioner's car; or
- Refuses to surrender firearms or ammunition if ordered to do so by the court.<sup>15</sup>

A court can enforce a violation of an injunction for protection through civil or criminal contempt proceedings, or the state attorney may prosecute the violation as a first degree misdemeanor.<sup>16,17</sup>

Currently, violating an injunction for protection is a first degree misdemeanor, regardless of how many times a person is convicted of this offense.

#### Effect of the Bill

The bill amends ss. 741.31(4), 784.047, and 784.0487(4), F.S., making the penalty for an offense of violating an injunction for protection a third degree felony if a person has two or more prior convictions for the same offense.

The bill defines "conviction" to mean a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 741.31, F.S., relating to violation of an injunction for protection against domestic violence.

Section 2. Amends s. 784.047, F.S., relating to penalties for violating protective injunction against violators.

- 
- The persons involved in the relationship must have been involved over time and on a continuous basis during the course of the relationship.

<sup>12</sup> Section 784.046(1)(c), F.S., defines "sexual violence" to mean any one incident of: sexual battery; a lewd or lascivious act committed upon or in the presence of a person younger than 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. For purposes of this definition, it does not matter whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

<sup>13</sup> Sections 741.31(4)(a), 784.047, and 784.0487(4), F.S., provide that this includes foreign protection orders that are accorded full and faith credit pursuant to s. 741.315, F.S.

<sup>14</sup> This provision does not apply to injunctions for protection against stalking or cyberstalking. s. 784.0487, F.S.

<sup>15</sup> ss. 741.31(4)(a), 784.047, and 784.0487, F.S.

<sup>16</sup> 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.

<sup>17</sup> ss. 741.30(9), 784.046(9), and 784.0485(9), F.S.

Section 3. Amends s. 784.0487, F.S., relating to violation of an injunction for protection against stalking or cyberstalking.

Section 4. Reenacts 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 5. Reenacts s. 741.315, F.S., relating to recognition of foreign protection orders.

Section 6. Reenacts 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 7. Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 8. Provides an effective date of October 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The Criminal Justice Impact Conference met on October 28, 2015, and determined that the impact of this bill on Department of Correction's prison beds is indeterminate but will likely increase prison beds.

This bill increases penalties from a misdemeanor to a third degree felony for third or subsequent offenses. While repeat offenders for the offenses of this bill can be determined, the number of third or subsequent offenses cannot. In Fiscal Year 2014-2015, there were 190 persons convicted and 6 adjudication withheld counts for repeat offenders violating s. 741.31, F.S. There were 12 persons convicted and one adjudication withheld for repeat offenders violating s. 784.047, F.S. There was one guilty/convicted count and 0 adjudication withheld counts for repeat offenders violating s. 784.0487, F.S. It is unknown what number of these repeat offenses were third or subsequent violations.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill reduces the number of persons subject to misdemeanor penalties for third or subsequent violations of such injunctions for protection, therefore the bill may reduce the need for jail beds.

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

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 4, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment reenacts necessary cross-referenced provisions of statute that are impacted by changes made in the act.

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

1                   A bill to be entitled  
 2           An act relating to violation of an injunction for  
 3           protection; amending ss. 741.31, 784.047, and  
 4           784.0487, F.S.; providing enhanced criminal penalties  
 5           for a third or subsequent violation of an injunction  
 6           for protection against specified acts of violence or a  
 7           foreign protection order issued under specified  
 8           provisions; reenacting s. 741.30(9), F.S., relating to  
 9           injunctions for protection against domestic violence,  
 10          to incorporate the amendment made by the act to s.  
 11          741.31, F.S., in references thereto; reenacting s.  
 12          741.315(2), F.S., relating to recognition of foreign  
 13          protection orders, to incorporate the amendment made  
 14          by the act to ss. 741.31, 784.047, and 784.0487, F.S.,  
 15          in references thereto; reenacting s. 784.0485(9),  
 16          F.S., relating to injunctions for protection against  
 17          stalking, to incorporate the amendment made by the act  
 18          to s. 784.0487, F.S., in references thereto;  
 19          reenacting s. 901.15(6) and (7), F.S., relating to  
 20          when an arrest by an officer without warrant is  
 21          lawful, to incorporate the amendment made by the act  
 22          to ss. 741.31 and 784.047, F.S., in references  
 23          thereto; providing an effective date.

24  
 25   Be It Enacted by the Legislature of the State of Florida:  
 26

27 Section 1. Subsection (4) of section 741.31, Florida  
 28 Statutes, is amended to read:

29 741.31 Violation of an injunction for protection against  
 30 domestic violence.—

31 (4)(a) A person who willfully violates an injunction for  
 32 protection against domestic violence issued pursuant to s.  
 33 741.30, or a foreign protection order accorded full faith and  
 34 credit pursuant to s. 741.315, by:

35 1. Refusing to vacate the dwelling that the parties share;

36 2. Going to, or being within 500 feet of, the petitioner's  
 37 residence, school, place of employment, or a specified place  
 38 frequented regularly by the petitioner and any named family or  
 39 household member;

40 3. Committing an act of domestic violence against the  
 41 petitioner;

42 4. Committing any other violation of the injunction  
 43 through an intentional unlawful threat, word, or act to do  
 44 violence to the petitioner;

45 5. Telephoning, contacting, or otherwise communicating  
 46 with the petitioner directly or indirectly, unless the  
 47 injunction specifically allows indirect contact through a third  
 48 party;

49 6. Knowingly and intentionally coming within 100 feet of  
 50 the petitioner's motor vehicle, whether or not that vehicle is  
 51 occupied;

52 7. Defacing or destroying the petitioner's personal

53 property, including the petitioner's motor vehicle; or  
 54 8. Refusing to surrender firearms or ammunition if ordered  
 55 to do so by the court

56  
 57 commits a misdemeanor of the first degree, punishable as  
 58 provided in s. 775.082 or s. 775.083, except as provided in  
 59 paragraph (c).

60 (b)1. It is a violation of s. 790.233, and a misdemeanor  
 61 of the first degree, punishable as provided in s. 775.082 or s.  
 62 775.083, for a person to violate a final injunction for  
 63 protection against domestic violence by having in his or her  
 64 care, custody, possession, or control any firearm or ammunition.

65 2. It is the intent of the Legislature that the  
 66 disabilities regarding possession of firearms and ammunition are  
 67 consistent with federal law. Accordingly, this paragraph shall  
 68 not apply to a state or local officer as defined in s.  
 69 943.10(14), holding an active certification, who receives or  
 70 possesses a firearm or ammunition for use in performing official  
 71 duties on behalf of the officer's employing agency, unless  
 72 otherwise prohibited by the employing agency.

73 (c) A person who has two or more prior convictions for  
 74 violation of an injunction and who commits any third or  
 75 subsequent violation commits a felony of the third degree,  
 76 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 77 For purposes of this paragraph, the term "conviction" means a  
 78 determination of guilt that is the result of a plea or a trial,



79 regardless of whether adjudication is withheld or a plea of nolo  
 80 contendere is entered.

81 Section 2. Section 784.047, Florida Statutes, is amended  
 82 to read:

83 784.047 Penalties for violating protective injunction  
 84 against violators.—

85 (1) A person who willfully violates an injunction for  
 86 protection against repeat violence, sexual violence, or dating  
 87 violence, issued pursuant to s. 784.046, or a foreign protection  
 88 order accorded full faith and credit pursuant to s. 741.315 by:

89 (a)~~(1)~~ Refusing to vacate the dwelling that the parties  
 90 share;

91 (b)~~(2)~~ Going to, or being within 500 feet of, the  
 92 petitioner's residence, school, place of employment, or a  
 93 specified place frequented regularly by the petitioner and any  
 94 named family or household member;

95 (c)~~(3)~~ Committing an act of repeat violence, sexual  
 96 violence, or dating violence against the petitioner;

97 (d)~~(4)~~ Committing any other violation of the injunction  
 98 through an intentional unlawful threat, word, or act to do  
 99 violence to the petitioner;

100 (e)~~(5)~~ Telephoning, contacting, or otherwise communicating  
 101 with the petitioner directly or indirectly, unless the  
 102 injunction specifically allows indirect contact through a third  
 103 party;

104 (f)~~(6)~~ Knowingly and intentionally coming within 100 feet

105 of the petitioner's motor vehicle, whether or not that vehicle  
 106 is occupied;

107 ~~(g)(7)~~ Defacing or destroying the petitioner's personal  
 108 property, including the petitioner's motor vehicle; or

109 ~~(h)(8)~~ Refusing to surrender firearms or ammunition if  
 110 ordered to do so by the court,

111

112 commits a misdemeanor of the first degree, punishable as  
 113 provided in s. 775.082 or s. 775.083, except as provided in  
 114 subsection (2).

115 (2) A person who has two or more prior convictions for  
 116 violation of an injunction and who commits any third or  
 117 subsequent violation commits a felony of the third degree,  
 118 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 119 For purposes of this subsection, the term "conviction" means a  
 120 determination of guilt that is the result of a plea or a trial,  
 121 regardless of whether adjudication is withheld or a plea of nolo  
 122 contendere is entered.

123 Section 3. Subsection (4) of section 784.0487, Florida  
 124 Statutes, is amended to read:

125 784.0487 Violation of an injunction for protection against  
 126 stalking or cyberstalking.—

127 (4) (a) A person who willfully violates an injunction for  
 128 protection against stalking or cyberstalking issued pursuant to  
 129 s. 784.0485, or a foreign protection order accorded full faith  
 130 and credit pursuant to s. 741.315, by:

131           ~~1.(a)~~ Going to, or being within 500 feet of, the  
 132 petitioner's residence, school, place of employment, or a  
 133 specified place frequented regularly by the petitioner and any  
 134 named family members or individuals closely associated with the  
 135 petitioner;

136           ~~2.(b)~~ Committing an act of stalking against the  
 137 petitioner;

138           ~~3.(c)~~ Committing any other violation of the injunction  
 139 through an intentional unlawful threat, word, or act to do  
 140 violence to the petitioner;

141           ~~4.(d)~~ Telephoning, contacting, or otherwise communicating  
 142 with the petitioner, directly or indirectly, unless the  
 143 injunction specifically allows indirect contact through a third  
 144 party;

145           ~~5.(e)~~ Knowingly and intentionally coming within 100 feet  
 146 of the petitioner's motor vehicle, whether or not that vehicle  
 147 is occupied;

148           ~~6.(f)~~ Defacing or destroying the petitioner's personal  
 149 property, including the petitioner's motor vehicle; or

150           ~~7.(g)~~ Refusing to surrender firearms or ammunition if  
 151 ordered to do so by the court,

152  
 153 commits a misdemeanor of the first degree, punishable as  
 154 provided in s. 775.082 or s. 775.083, except as provided in  
 155 paragraph (b).

156           (b) A person who has two or more prior convictions for

157 violation of an injunction and who commits any third or  
 158 subsequent violation commits a felony of the third degree,  
 159 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 160 For purposes of this paragraph, the term "conviction" means a  
 161 determination of guilt that is the result of a plea or a trial,  
 162 regardless of whether adjudication is withheld or a plea of nolo  
 163 contendere is entered.

164 Section 4. For the purpose of incorporating the amendment  
 165 made by this act to section 741.31, Florida Statutes, in  
 166 references thereto, subsection (9) of section 741.30, Florida  
 167 Statutes, is reenacted to read:

168 741.30 Domestic violence; injunction; powers and duties of  
 169 court and clerk; petition; notice and hearing; temporary  
 170 injunction; issuance of injunction; statewide verification  
 171 system; enforcement; public records exemption.—

172 (9) (a) The court may enforce a violation of an injunction  
 173 for protection against domestic violence through a civil or  
 174 criminal contempt proceeding, or the state attorney may  
 175 prosecute it as a criminal violation under s. 741.31. The court  
 176 may enforce the respondent's compliance with the injunction  
 177 through any appropriate civil and criminal remedies, including,  
 178 but not limited to, a monetary assessment or a fine. The clerk  
 179 of the court shall collect and receive such assessments or  
 180 fines. On a monthly basis, the clerk shall transfer the moneys  
 181 collected pursuant to this paragraph to the State Treasury for  
 182 deposit in the Domestic Violence Trust Fund established in s.

183 741.01.

184 (b) If the respondent is arrested by a law enforcement  
 185 officer under s. 901.15(6) or for a violation of s. 741.31, the  
 186 respondent shall be held in custody until brought before the  
 187 court as expeditiously as possible for the purpose of enforcing  
 188 the injunction and for admittance to bail in accordance with  
 189 chapter 903 and the applicable rules of criminal procedure,  
 190 pending a hearing.

191 Section 5. For the purpose of incorporating the amendment  
 192 made by this act to sections 741.31, 784.047, and 784.0487,  
 193 Florida Statutes, in references thereto, subsection (2) of  
 194 section 741.315, Florida Statutes, is reenacted to read:

195 741.315 Recognition of foreign protection orders.—

196 (2) Pursuant to 18 U.S.C. s. 2265, an injunction for  
 197 protection against domestic violence issued by a court of a  
 198 foreign state must be accorded full faith and credit by the  
 199 courts of this state and enforced by a law enforcement agency as  
 200 if it were the order of a Florida court issued under s. 741.30,  
 201 s. 741.31, s. 784.046, s. 784.047, s. 784.0485, or s. 784.0487,  
 202 and provided that the court had jurisdiction over the parties  
 203 and the matter and that reasonable notice and opportunity to be  
 204 heard was given to the person against whom the order is sought  
 205 sufficient to protect that person's right to due process. Ex  
 206 parte foreign injunctions for protection are not eligible for  
 207 enforcement under this section unless notice and opportunity to  
 208 be heard have been provided within the time required by the

209 foreign state or tribal law, and in any event within a  
 210 reasonable time after the order is issued, sufficient to protect  
 211 the respondent's due process rights.

212 Section 6. For the purpose of incorporating the amendment  
 213 made by this act to section 784.0487, Florida Statutes, in  
 214 references thereto, subsection (9) of section 784.0485, Florida  
 215 Statutes, is reenacted to read:

216 784.0485 Stalking; injunction; powers and duties of court  
 217 and clerk; petition; notice and hearing; temporary injunction;  
 218 issuance of injunction; statewide verification system;  
 219 enforcement.—

220 (9)(a) The court may enforce a violation of an injunction  
 221 for protection against stalking through a civil or criminal  
 222 contempt proceeding, or the state attorney may prosecute it as a  
 223 criminal violation under s. 784.0487. Any assessments or fines  
 224 ordered by the court enforcing such an injunction shall be  
 225 collected by the clerk of the court and transferred on a monthly  
 226 basis to the State Treasury for deposit into the Domestic  
 227 Violence Trust Fund.

228 (b) If the respondent is arrested by a law enforcement  
 229 officer under s. 901.15(6) or for a violation of s. 784.0487,  
 230 the respondent shall be held in custody until brought before the  
 231 court as expeditiously as possible for the purpose of enforcing  
 232 the injunction and for admittance to bail in accordance with  
 233 chapter 903 and the applicable rules of criminal procedure,  
 234 pending a hearing.

235 Section 7. For the purpose of incorporating the amendment  
 236 made by this act to sections 741.31 and 784.047, Florida  
 237 Statutes, in a references thereto, subsections (6) and (7) of  
 238 section 901.15, Florida Statutes, are reenacted to read:

239 901.15 When arrest by officer without warrant is lawful.—A  
 240 law enforcement officer may arrest a person without a warrant  
 241 when:

242 (6) There is probable cause to believe that the person has  
 243 committed a criminal act according to s. 790.233 or according to  
 244 s. 741.31 or s. 784.047 which violates an injunction for  
 245 protection entered pursuant to s. 741.30 or s. 784.046, or a  
 246 foreign protection order accorded full faith and credit pursuant  
 247 to s. 741.315, over the objection of the petitioner, if  
 248 necessary.

249 (7) There is probable cause to believe that the person has  
 250 committed an act of domestic violence, as defined in s. 741.28,  
 251 or dating violence, as provided in s. 784.046. The decision to  
 252 arrest shall not require consent of the victim or consideration  
 253 of the relationship of the parties. It is the public policy of  
 254 this state to strongly discourage arrest and charges of both  
 255 parties for domestic violence or dating violence on each other  
 256 and to encourage training of law enforcement and prosecutors in  
 257 these areas. A law enforcement officer who acts in good faith  
 258 and exercises due care in making an arrest under this  
 259 subsection, under s. 741.31(4) or s. 784.047, or pursuant to a  
 260 foreign order of protection accorded full faith and credit

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261 | pursuant to s. 741.315, is immune from civil liability that  
262 | otherwise might result by reason of his or her action.

263 |       Section 8. This act shall take effect October 1, 2016.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 147 Expunging and Sealing Criminal History Records of Minors  
**SPONSOR(S):** Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Latvala; Sprowls and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	White
2) Justice Appropriations Subcommittee	13 Y, 0 N, As CS	Smith	Lloyd
3) Judiciary Committee		Cox <i>lee</i>	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Chapter 943, F.S., in part, sets forth procedures for expunging criminal history records.

Section 943.0515, F.S., requires the automatic expunction of the criminal history records of specified juveniles at age 26 or 24. For a juvenile who is classified as a serious or habitual juvenile offender, or who has been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP) must retain his or her criminal history record until the age of 26, at which time it is automatically expunged unless other specified circumstances apply. For other juveniles, CJIP must retain their records until the age of 24, at which time the records are automatically expunged unless other specified circumstances apply.

The bill requires all records related to minors who are not classified as serious or habitual juvenile offenders (non-serious juvenile offenders) to be automatically expunged when the minor reaches the age of 21, provided the specified exceptions do not apply. The bill also permits non-serious juvenile offenders to apply to the Florida Department of Law Enforcement (FDLE) to have their record expunged earlier than age 21. FDLE must expunge the juvenile criminal history record earlier than age 21 if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the 5-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.

The bill makes conforming changes to s. 790.23, F.S., which regulates the possession of weapons by felons and delinquents, to provide that the section does not apply to a non-serious juvenile offender whose criminal history record has been expunged under s. 943.0515, F.S.

Juvenile prearrest and postarrest diversion programs (diversion programs) are nonjudicial alternatives used to keep less serious juvenile offenders from being processed through the traditional juvenile justice system. A diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the diversion program. To obtain such an expunction, a juvenile who has completed a diversion program must provide specified documentation to FDLE within a 12-month time frame in accordance with s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to eliminate the requirement that an application for diversion program expunction must be submitted within a 12-month time frame.

The bill will likely have both a positive and a negative fiscal impact on FDLE. See "Fiscal Impact on State Government," *infra*.

The bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Automatic Expunction of Criminal History Records of Minors**

Section 943.0515, F.S., requires the automatic expunction of the records of specified juveniles at age 24 or 26. For a juvenile who is classified as a serious or habitual juvenile offender, or who has been committed to a juvenile correctional facility or juvenile prison, the Criminal Justice Information Program (CJIP)<sup>1</sup> must retain his or her record until the age of 26, at which time the record is automatically expunged.<sup>2</sup> For all other juveniles, CJIP must retain the record until the juvenile reaches the age of 24, at which time the record is automatically expunged.<sup>3</sup>

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.<sup>4,5</sup>

In these three instances, the person's record as a minor must be merged with and retained as part of his or her adult record.<sup>6</sup>

##### Effect of the Bill

The bill requires all records related to minors who are not classified as serious or habitual juvenile offenders (non-serious juvenile offenders) to be automatically expunged when the minor reaches the age of 21, so long as one of the three above-mentioned exceptions does not apply. The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders remains at age 26.

The bill also permits non-serious juvenile offenders to apply to the Florida Department of Law Enforcement (FDLE) to have their record expunged before the minor reaches 21 years of age. FDLE must expunge the juvenile criminal history record earlier than age 21 if:

- The minor has reached 18 years of age and has not been charged with or found to have committed a criminal offense in the 5-year period before the application; and
- The State Attorney for each circuit in which an offense specified in the criminal history record occurred has given approval.

A juvenile seeking to have his or her criminal history record expunged before age 21 must submit a:

- \$75 application fee;
- Full set of fingerprints taken by a law enforcement agency for identification purposes; and
- Sworn, written statement that he or she is no longer under court supervision and that he or she has not been charged with or found to have committed a criminal offense, in any jurisdiction of the state or within the United States, within the 5-year period before the application date.

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<sup>1</sup> Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information repository, including the maintenance of a statewide automated biometric identification system. Identifying information of persons arrested and prosecuted in this state is sent to FDLE for inclusion in CJIP, which can then transmit this information between criminal justice agencies.

<sup>2</sup> s. 943.0515(1)(a), F.S.

<sup>3</sup> s. 943.0515(1)(b), F.S.

<sup>4</sup> s. 943.0515(2) and (3), F.S.

<sup>5</sup> Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

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

The bill provides that a person who knowingly provides false information on the above-referenced sworn statement commits a third degree felony.<sup>7</sup>

A person who is denied early expungement is still eligible to have their record expunged at age 21 if they meet the eligibility requirements.

The bill also makes conforming changes to s. 790.23, F.S., which regulates the possession of weapons by felons and delinquents, to provide that the section does not apply to a non-serious juvenile offender whose criminal history record has been expunged under s. 943.0515, F.S.

### **Juvenile Prearrest and Postarrest Diversion Program Expunction**

#### *Juvenile Prearrest and Postarrest Diversion Program*

Juvenile prearrest and postarrest diversion programs (diversion programs) are nonjudicial alternatives used to keep less serious juvenile offenders from being processed through the traditional juvenile justice system.<sup>8</sup> These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.<sup>9</sup>

Section 985.125, F.S., authorizes a law enforcement agency or school district, in collaboration with the state attorney, to establish a diversion program for juveniles charged with criminal offenses. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver license, or refrain from applying for a driver license, for up to 90 days.<sup>10</sup>

A diversion program is authorized to provide for the expunction of a juvenile's arrest record upon successful completion of the program.<sup>11</sup> Each diversion program must have an agreement among the establishing agencies to provide for such expunction.<sup>12</sup> Expunction of a criminal history record resulting from a diversion program is obtained in accordance with s. 943.0582, F.S.

#### *Juvenile Diversion Program Expunction*

Chapter 943, F.S., in part, sets forth procedures for expunging<sup>13</sup> and sealing criminal history records.<sup>14</sup> FDLE is required to expunge the nonjudicial arrest record of a juvenile who has successfully completed a diversion program if that juvenile:

- Submits a signed copy of FDLE's application for diversion program expunction;<sup>15</sup>

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<sup>7</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

<sup>8</sup> "Probation and Community Intervention," DJJ 2011 Comprehensive Accountability Report, <http://www.djj.state.fl.us/research/reports/car> (last visited on October 1, 2015).

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

<sup>10</sup> s. 985.125(2), F.S. Additionally, if the juvenile fails to comply with the requirements of the program, the state attorney may notify Department of Highway Safety and Motor Vehicles in writing to suspend their driver license for up to 90 days.

<sup>11</sup> s. 985.125(3), F.S.

<sup>12</sup> *Id.* Juveniles who successfully complete diversion programs that do not expressly authorize expunction pursuant to s. 943.0582, F.S., are not eligible for expunction under this section.

<sup>13</sup> Section 943.045(16), F.S., defines "expunction of a criminal history record" to mean the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order, except that criminal history records in the custody of the department must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record if an order to expunge is vacated by a court of competent jurisdiction. The definitions provided for in s. 943.045, F.S., apply to ss. 943.045 through 943.08, F.S.

<sup>14</sup> Section 943.045(6), F.S., defines "criminal history record" to mean any nonjudicial record maintained by a criminal justice agency containing criminal history information. Section 943.045(5), F.S., defines "criminal history information" to mean information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. Criminal history information does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

- Submits the application no later than 12 months after completion of diversion program;
- Submits an official written statement from the state attorney for the county in which the charges originated certifying that:
  - He or she has successfully completed that county's diversion program;
  - Participation in the program is based on an arrest for a nonviolent misdemeanor;<sup>16</sup> and
  - He or she has not otherwise been charged by the state attorney with or found to have committed any criminal offense or comparable ordinance violation;
- Participated in a diversion program that expressly authorizes or permits such expunction;
- Participated in a diversion program based on an arrest for a nonviolent misdemeanor that is not considered an act of domestic violence as that term is defined in s. 741.28, F.S.;<sup>17</sup> and
- Has never, prior to filing the application for expunction, been charged by the state attorney with or been found to have committed any criminal offense or comparable ordinance violation.<sup>18</sup>

Section 943.0582(2)(a), F.S., defines "expunction" to have the same meaning and effect as in s. 943.0585, F.S.,<sup>19</sup> except in two circumstances:

- FDLE may only make available an expunged juvenile diversion criminal record to:
  - Criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs;
  - When the record is sought as part of a criminal investigation; or
  - When the subject of the record is a candidate for employment with a criminal justice agency; and
- The records that are maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction must be sealed<sup>20</sup> instead of destroyed.

#### Effect of the Bill

The bill amends s. 943.0582(3)(b), F.S., to eliminate the requirement that an application for expunction relating to a juvenile's completion of a diversion program must be submitted within a 12-month time frame.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 943.0515, F.S., relating to retention of criminal history records of minors.

Section 2. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

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<sup>15</sup> The application is required to be on the prescribed FDLE form and "signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying." s. 943.0582(3)(a), F.S.

<sup>16</sup> Section 943.0582(2), F.S., defines "nonviolent misdemeanor" as including simple assault or battery when diversion expunction is approved in writing by the state attorney in the county in which arrest occurred. Under current law, a juvenile who enters and successfully completes a diversion program for any felony offense or a violent misdemeanor is not eligible for expunction.

<sup>17</sup> An act of "domestic violence" is defined as any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. s. 741.28, F.S.

<sup>18</sup> s. 943.0582, F.S. It should be noted that a juvenile who obtains an expunction under this section is not prevented from petitioning for expunction or sealing of a later criminal history record under s. 943.0585, F.S. and 943.059, F.S., provided he or she is otherwise eligible.

<sup>19</sup> Section 943.0585(4), F.S., provides that when a criminal history record is expunged, criminal justice agencies other than the Florida Department of Law Enforcement (FDLE) must physically destroy the record. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE is required to retain expunged records. Records that have been expunged are confidential and exempt from the public records law and it is a first degree misdemeanor to divulge their existence. Persons who have had their criminal history records expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution. 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.

<sup>20</sup> As the term is used in s. 943.059, F.S.

Section 3. Amends s. 790.23, F.S., relating to felons and delinquents; possession of firearms, ammunition, or electric weapons or devices unlawful.

Section 4. Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill removes the requirement that an application for diversion program expunction be submitted within 12 months of the date of program completion. If this results in more people submitting the \$75 fee to FDLE to obtain a diversion program expunction of their juvenile arrest record, the bill would result in a positive indeterminate fiscal impact on FDLE.

#### 2. Expenditures:

Implementation of the bill would reduce the period for automatic juvenile criminal record expungement from 24 years of age to 21 years of age. According to the FDLE, existing staff resources will be utilized to implement the required changes.<sup>21</sup> The estimated time to develop and implement these changes is 1.5 months at an approximate cost of \$20,000, according to FDLE.<sup>22</sup> The cost of implementation is insignificant and can be absorbed within existing resources.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### 2. Other:

None.

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<sup>21</sup> Florida Department of Law Enforcement, *HB0147 Bill Analysis* (2016), (On file with the House Justice Appropriations Subcommittee)

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

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 18, 2015, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies that the \$75 application fee for expungement also applies to early expungement;
- Requires an early expungement applicant to have a full set of fingerprints taken by a law enforcement agency for identification purposes;
- Requires the early expungement applicant to submit a sworn, written statement that he or she is no longer under court supervision and that he or she has not been charged with or found to have committed a criminal offense, in any jurisdiction of the state or within the United States, within the 5-year period before the application date;
- Provides that a person who knowingly provides false information on the above-referenced sworn statement commits a third degree felony; and
- Clarifies that a person who is denied early expungement is still eligible to have their record expunged at age 21 if he or she meets the eligibility requirements.

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





27 | habitual juvenile offender or committed to a juvenile  
 28 | correctional facility or juvenile prison under chapter 985, the  
 29 | program shall retain the minor's criminal history record for 2 5  
 30 | years after the date the minor reaches 19 years of age, at which  
 31 | time the record shall be expunged unless it meets the criteria  
 32 | of paragraph (2)(a) or paragraph (2)(b).

33 | 2. A minor described in subparagraph 1. may apply to the  
 34 | department to have his or her criminal history record expunged  
 35 | before the minor reaches 21 years of age. To be eligible for  
 36 | expunction under this subparagraph, the minor must be 18 years  
 37 | of age or older but less than 21 years of age and have not been  
 38 | charged by the state attorney with or found to have committed a  
 39 | criminal offense within the 5-year period before the application  
 40 | date. The only offenses eligible for expunction under this  
 41 | subparagraph are those that the minor committed before reaching  
 42 | 18 years of age. Expunction of a criminal history record under  
 43 | this subparagraph requires the approval of the state attorney  
 44 | for each circuit in which an offense specified in the criminal  
 45 | history record occurred. A minor seeking to expunge a criminal  
 46 | history record under this subparagraph must apply to the  
 47 | department for expunction in the manner prescribed by rule. An  
 48 | application for expunction under this subparagraph must include:

49 | a. A processing fee of \$75 to the department for deposit  
 50 | into the Department of Law Enforcement Operating Trust Fund,  
 51 | unless such fee is waived by the executive director.

52 b. A full set of the applicant's fingerprints taken by a  
 53 law enforcement agency for purposes of identity verification.

54 c. A sworn, written statement from the minor seeking  
 55 relief that he or she is no longer under court supervision  
 56 applicable to the disposition of the arrest or alleged criminal  
 57 activity to which the application to expunge pertains and that  
 58 he or she has not been charged with or found to have committed a  
 59 criminal offense, in any jurisdiction of the state or within the  
 60 United States, within the 5-year period before the application  
 61 date.

62  
 63 A person who knowingly provides false information on the sworn  
 64 statement required by this sub-subparagraph commits a felony of  
 65 the third degree, punishable as provided in s. 775.082, s.  
 66 775.083, or s. 775.084.

67 3. A minor who applies, but who is not approved for early  
 68 expunction in accordance with subparagraph 2., shall have his or  
 69 her criminal history record expunged at age 21 if eligible under  
 70 subparagraph 1.

71 Section 2. Subsections (3) and (4) of section 943.0582,  
 72 Florida Statutes, are amended to read:

73 943.0582 Prearrest, postarrest, or teen court diversion  
 74 program expunction.—

75 (3) The department shall expunge the nonjudicial arrest  
 76 record of a minor who has successfully completed a prearrest or  
 77 postarrest diversion program if that minor:

78 (a) Submits an application for prearrest or postarrest  
 79 diversion expunction, on a form prescribed by the department,  
 80 signed by the minor's parent or legal guardian, or by the minor  
 81 if he or she has reached the age of majority at the time of  
 82 applying.

83 ~~(b) Submits the application for prearrest or postarrest~~  
 84 ~~diversion expunction no later than 12 months after completion of~~  
 85 ~~the diversion program.~~

86 (b)(e) Submits to the department, with the application, an  
 87 official written statement from the state attorney for the  
 88 county in which the arrest occurred certifying that he or she  
 89 has successfully completed that county's prearrest or postarrest  
 90 diversion program, that his or her participation in the program  
 91 was based on an arrest for a nonviolent misdemeanor, and that he  
 92 or she has not otherwise been charged by the state attorney with  
 93 or found to have committed any criminal offense or comparable  
 94 ordinance violation.

95 (c)(d) Participated in a prearrest or postarrest diversion  
 96 program that expressly authorizes or permits such expunction to  
 97 occur.

98 (d)(e) Participated in a prearrest or postarrest diversion  
 99 program based on an arrest for a nonviolent misdemeanor that  
 100 would not qualify as an act of domestic violence as that term is  
 101 defined in s. 741.28.

102 (e)(f) Has never, prior to filing the application for  
 103 expunction, been charged by the state attorney with or been

104 found to have committed any criminal offense or comparable  
 105 ordinance violation.

106 (4) The department may ~~is authorized to~~ charge a \$75  
 107 processing fee for each request received for prearrest or  
 108 postarrest diversion program expunction, for placement in the  
 109 Department of Law Enforcement Operating Trust Fund, unless such  
 110 fee is waived by the executive director.

111 Section 3. Subsection (2) of section 790.23, Florida  
 112 Statutes, is amended to read:

113 790.23 Felons and delinquents; possession of firearms,  
 114 ammunition, or electric weapons or devices unlawful.—

115 (2) This section does ~~shall~~ not apply to a person:

116 (a) Convicted of a felony whose civil rights and firearm  
 117 authority have been restored.

118 (b) Whose criminal history record has been expunged  
 119 pursuant to s. 943.0515(1)(b).

120 Section 4. This act shall take effect July 1, 2016.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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

3

4 **Amendment**

5 Remove lines 64-66 and insert:

6 statement required by this sub-subparagraph commits a  
7 misdemeanor of the first degree, punishable as provided in s.  
8 775.082 or s. 775.083.



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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

**Amendment (with title amendment)**

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

Remove line 2 and insert:

An act relating to expunging criminal



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HJR 165 Selection and Duties of County Officers  
**SPONSOR(S):** Local Government Affairs Subcommittee; Artiles and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SJR 648

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N, As CS	Walker	Miller
2) Judiciary Committee		Aziz PA	Havlicak RN
3) Local & Federal Affairs Committee			

**SUMMARY ANALYSIS**

CS/HJR 165 proposes to amend the State Constitution by removing the authority to alter the manner of selecting certain county officers and limiting the ability to abolish a county office and transfer all duties prescribed by general law to another office, either by charter counties or by special law approved by the county electors. As a result, the offices of sheriff, property appraiser, supervisor of elections, tax collector, and clerk of the circuit court would be filled only by vote of the county electors and for terms of four years. One or more of these county offices could be abolished and its duties transferred to another office only by special law approved by the county voters. As proposed in the joint resolution, the clerk of the circuit court would be the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds unless otherwise provided by special law approved by the county voters.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. CS/HJR 165 provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

CS/HJR 165 impacts state funds to the extent that the cost of placing the constitutional amendment on the ballot must be administered by the Department of State. The department has estimated the printing and publication costs for advertising the joint resolution and other necessary materials could be \$96,130.79 to \$100,735.77, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language. This estimate is based on the cost to advertise constitutional amendments for the 2014 general election which was \$135.97 per word.

**A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.**

**The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Article VIII of the State Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties<sup>1</sup> and has the authority to choose to create municipalities.<sup>2</sup>

Pursuant either to general<sup>3</sup> or special law, a county government may be adopted by charter approved by the county voters. A county without a charter has such powers of self-government as provided by general<sup>4</sup> or special law.<sup>5</sup> A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters.<sup>6</sup> Article VIII, s. 6(e), of the Florida Constitution incorporates by reference sections of the 1885 Constitution, providing unique authorization<sup>7</sup> for specific home rule charters including those of Duval<sup>8</sup> and Miami-Dade Counties.<sup>9</sup> Currently, twenty Florida counties have adopted charters.<sup>10</sup>

The Constitution creates five specific county officers: sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court (collectively, the Five Constitutional Offices/Officers).<sup>11</sup> The clerk of the circuit court also serves as the ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of county funds. Each officer is elected separately by the voters of the county for terms of four years. These officers have duties prescribed in general law.<sup>12</sup>

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<sup>1</sup> Art. VIII, s. 1(a), Fla. Const.

<sup>2</sup> Art. VIII, s. 2(a), Fla. Const.

<sup>3</sup> Section 125.60, F.S.

<sup>4</sup> Ch. 125, Part I, F.S.

<sup>5</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>6</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>7</sup> Article VIII, s. 6(e), Fla. Const., states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties “shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article.”

<sup>8</sup> The consolidated government of the City of Jacksonville was created by ch. 67-1320, Laws of Florida, adopted pursuant to Art. VIII, s. 9, Fla. Const. (1885).

<sup>9</sup> In 1956, an amendment to the 1885 Florida Constitution provided Dade County with the authority to adopt, revise, and amend from time to time a home rule charter government for the county. The voters of Dade County approved that charter on May 21, 1957. Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, s. 11(5) of the 1885 State Constitution, now incorporated by reference in art. VIII, s. 6(e), Fla. Const. (1968), further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).

<sup>10</sup> Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. The Local Government Formation Manual 2015-2016, Appendix B, at 101-07.

<sup>11</sup> Art. VIII, s. 1(d), Fla. Const. In a separate subsection, the Constitution requires counties to be governed by a board of county commissioners unless otherwise provided in their respective charters, if any. Art. VIII, s. 1(e), Fla. Const., which is not affected by the joint resolution.

<sup>12</sup> See ch. 30, F.S. (stating certain duties of the sheriff as a Constitutional officer); ch. 197, F.S. (stating certain duties of the tax collector as a Constitutional officer); ch. 193, Part I, F.S. (stating certain duties of the property appraiser as a Constitutional officer); ch. 102, F.S. (stating certain duties of the supervisor of elections as a Constitutional officer); and ch. 28, F.S. (stating certain duties of the clerk of the circuit court as a Constitutional officer).

The Five Constitutional Offices can only be altered through charter provision or by special act approved by the voters of the county.<sup>13</sup> All non-charter counties have the Five Constitutional Officers with statutorily prescribed duties. Eight charter counties have changed the manner of selection of at least one of the Five Constitutional Officers or restructured or abolished at least one of the Five Constitutional Offices and transferred the powers to another county office.<sup>14</sup>

### Brevard County

Brevard County “expressly preserved” the offices of the sheriff, tax collector, property appraiser, supervisor of elections, and clerk of the circuit court as departments of county government, rather than constitutional offices.<sup>15</sup> The county reiterated the ability to transfer or add to the powers of each of the county officers.<sup>16</sup> The county has transferred the powers of the clerk of circuit court as auditor, and custodian of county funds to the county manager.<sup>17</sup> Each of the officers remains elected for four year terms.<sup>18</sup>

### Broward County

Broward County has not altered the constitutionally elected offices and duties of the sheriff, property appraiser, and supervisor of elections.<sup>19</sup> However, the office of the tax collector was abolished and the duties were transferred to the Department of Finance and Administrative Services, headed by the Finance and Administrative Services Director appointed by the county administrator.<sup>20</sup> Though the clerk of the circuit court also retains the status of constitutional officer, the clerk’s constitutional duties as clerk of the county commission were transferred to the county administrator.<sup>21</sup>

### Clay County

Clay County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.<sup>22</sup> Although the clerk of the circuit court also retains the status of constitutional officer, the clerk’s constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county administrator.<sup>23</sup>

### Duval County

Duval County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.<sup>24</sup> The clerk of the circuit court retains the status of

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<sup>13</sup> Art. VIII, s. 1(d), Fla. Const.

<sup>14</sup> Brevard, Broward, Clay, Duval, Miami-Dade, Orange, Osceola, and Volusia Counties.

<sup>15</sup> Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1, *available at* [https://www.municode.com/library/fl/brevard\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances) (accessed 12/15/2015).

<sup>16</sup> Brevard County Florida, Code of Ordinances, Charter, Art. 4, ss. 4.2.1, 4.2.2, 4.2.3, 4.2.4 & 4.2.5, *available at* [https://www.municode.com/library/fl/brevard\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances) (accessed 12/15/2015).

<sup>17</sup> Brevard County Florida, Code of Ordinances, Charter, Art. 2, s. 2.9.4, and Art. 4, s. 4.2.1, and Code of Ordinances, ch. 2, ss. 2-68 & 2-73, *available at* [https://www.municode.com/library/fl/brevard\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances) (accessed 12/15/2015).

<sup>18</sup> Brevard County Florida, Code of Ordinances, Charter, Art. 4, s. 4.1.1, *available at* [https://www.municode.com/library/fl/brevard\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/brevard_county/codes/code_of_ordinances) (accessed 12/15/2015).

<sup>19</sup> BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, “Definitions”, Oct. 21, 2015 *available at* [https://www.municode.com/library/fl/broward\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances).

<sup>20</sup> BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 2.12 & 3.06, Oct. 21, 2015 *available at*, [https://www.municode.com/library/fl/broward\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances).

<sup>21</sup> BROWARD COUNTY FLORIDA, Code of Ordinances, Part I Charter, “Definitions” & s. 3.03G., Oct. 21, 2015 *available at* [https://www.municode.com/library/fl/broward\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/broward_county/codes/code_of_ordinances).

<sup>22</sup> CLAY COUNTY FLORIDA, Home Rule Charter, Article III s. 3.1, 2014 Edition, *available at*, <http://www.claycountygov.com/about-us>.

<sup>23</sup> CLAY COUNTY FLORIDA, Home Rule Charter, Article III ss. 3.1 & 2.3, 2014 Edition, *available at* <http://www.claycountygov.com/about-us>.

<sup>24</sup> Duval County currently lacks the authority to alter the methods by which the clerk of the circuit court or the sheriff are elected, nor can the County abolish the offices. *See* JACKSONVILLE COUNTY FLORIDA, Charter and Related Laws, Part A. ss. 8.01, 9.01,

constitutional officer but the clerk's duties as clerk of the county commission were transferred to the Council Secretary and the constitutional duties as auditor were transferred to the Council Auditor.<sup>25</sup>

### Miami-Dade County

Miami-Dade County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections,<sup>26</sup> and property appraiser,<sup>27</sup> and transferred these powers to the mayor, and granted the mayor the discretion to sub-delegate the powers.<sup>28</sup> The duties of the sheriff were transferred to the Police Department, the director of which is appointed by the mayor.<sup>29</sup> The duties of the tax collector were transferred to the Department of Finance,<sup>30</sup> the director of which is jointly appointed by the mayor and the clerk of court.<sup>31</sup> The county property appraiser, although not retained as a constitutional office, remains an elected position.<sup>32</sup> The duties of the supervisor of elections were transferred to the Elections Department, the director of which is appointed by the mayor.<sup>33</sup> The clerk of the circuit court remains a constitutional, elected officer with some changes in duties.<sup>34</sup> Although the clerk is still the clerk of the County Commission, the clerk's financial recorder and custodian duties were transferred to the Department of Financial Services and the clerk's auditing duties were transferred to the Commission Auditor.<sup>35</sup>

### Orange County

Orange County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser,<sup>36</sup> and supervisor of elections.<sup>37</sup> Although the clerk of the circuit court also retains the

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10.01 & 11.01, available at [https://www.municode.com/library/fl/jacksonville/codes/code\\_of\\_ordinances?nodeId=CHRELA](https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA); Art. VIII, s. 6(e), Fla. Const. (1968), incorporating by reference Art. VIII, s. 9, Fla. Const. (1885, as amended in 1934).

<sup>25</sup> JACKSONVILLE COUNTY FLORIDA, Charter and Related Laws, Part A. s. 12.06, available at, [https://www.municode.com/library/fl/jacksonville/codes/code\\_of\\_ordinances?nodeId=CHRELA](https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA); JACKSONVILLE COUNTY FLORIDA, Code of Ordinances, Title II ss. 11.103 & 13.103, available at, [https://www.municode.com/library/fl/jacksonville/codes/code\\_of\\_ordinances?nodeId=CHRELA](https://www.municode.com/library/fl/jacksonville/codes/code_of_ordinances?nodeId=CHRELA).

<sup>26</sup> Referred to in the Miami-Dade Charter as the "supervisor of registration." See MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, Nov. 4, 2014, available at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>27</sup> Referred to in the Miami-Dade Charter as the "county surveyor." See MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, Nov. 4, 2014, available at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>28</sup> MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.01, Nov. 4, 2014, available at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>29</sup> Historically, the Miami-Dade Police Director was appointed by the county manager. This appointment power was subsequently reallocated to the mayor when the office of county manager was abolished. See Miami-Dade County Florida, Code of Ordinances, ss. 2-91, 2-92 & 1-4.4 available at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTIICOOR\\_CH2AD\\_ARTXIIMIDEPODE](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH2AD_ARTXIIMIDEPODE).

<sup>30</sup> MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 5.03, Nov. 4, 2014, available at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH). See also MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (accessed 10/27/2015).

<sup>31</sup> MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 5.03, Nov. 4, 2014, available at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>32</sup> MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (accessed 10/27/2015).

<sup>33</sup> Though the Miami-Dade charter and ordinances do not expressly so state, the supervisor of elections is an appointed official. See MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (accessed 10/27/2015).

<sup>34</sup> MIAMIDADE.GOV, County Departments, <http://miamidade.gov/wps/portal/Main/departments> (accessed 10/27/2015).

<sup>35</sup> MIAMIDADE.GOV, Miami-Dade County Finance Department, <http://www.miamidade.gov/finance/> (accessed 10/27/2015); MIAMI-DADE COUNTY FLORIDA, *Constitutional Amendment and Charter*, Part I s. 9.10, Nov. 4, 2014, available at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH).

<sup>36</sup> At one point the county abolished the constitutional offices of sheriff, tax collector, and property appraiser but ultimately reconstituted the constitutional offices. ORANGE COUNTY FLORIDA, Charter, s. 703, Sept. 28, 2015 available at [https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances).

<sup>37</sup> ORANGE COUNTY FLORIDA SUPERVISOR OF ELECTIONS, *About the Supervisor*, <http://www.ocfelections.com/aboutbillcowles.aspx> (accessed 10/28/2015).

status of constitutional officer,<sup>38</sup> the clerk's constitutional duties as clerk of the county commission, auditor, and custodian of county funds were transferred to the county comptroller.<sup>39</sup>

### Osceola County

Osceola County has not altered the constitutionally elected offices and duties of the sheriff, tax collector, property appraiser, and supervisor of elections.<sup>40</sup> The clerk of the circuit court retains the status of constitutional officer but the clerk's duties as clerk of the county commission, auditor, and custodian of funds were transferred to the county manager.

### Volusia County

Volusia County abolished the constitutional offices of the sheriff, tax collector, supervisor of elections, and property appraiser. The county transferred these officers' powers to new charter offices. The duties of the sheriff were transferred to and divided between the Departments of Public Safety and of Corrections.<sup>41</sup> The duties of the tax collector were transferred to the Department of Finance.<sup>42</sup> The duties of the property appraiser were transferred to Department of Property Appraisal.<sup>43</sup> The duties of the supervisor of elections were transferred to the Department of Elections.<sup>44</sup> The sheriff, property appraiser, and supervisor of elections are elected directors of their respective offices.<sup>45</sup> The tax collector is appointed by the county manager and confirmed by the county council.<sup>46</sup> The clerk of the circuit court remains a constitutionally elected officer except that the clerk's constitutional duties as clerk of the county commission were transferred to and divided between the Department of Central Services and the Department of Finance.<sup>47</sup>

### Selection & Removal Procedures

In addition to whether the Five Constitutional Officers are elected or appointed, some counties provide in their charters for term limits, recall procedures, or the non-partisan election of these officers. While not expressly identified in art. VIII, s. 1(d), of the Constitution, these additional "selection and removal procedures" could be interpreted as affecting the selection of the Five Constitutional Officers.

There is no constitutional or statutory prohibition limiting the ability of charter counties to impose additional selection and removal procedures on the Five Constitutional Officers. The broad home rule power of counties allows them to act so long as the action taken is not "inconsistent with general law, or . . . special

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<sup>38</sup> ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-66, Sept. 28, 2015, *available at* [https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances).

<sup>39</sup> ORANGE COUNTY FLORIDA, Code of Ordinances, Part I s. 2-67, Sept. 28, 2015, *available at* [https://www.municode.com/library/fl/orange\\_county/codes/code\\_of\\_ordinances](https://www.municode.com/library/fl/orange_county/codes/code_of_ordinances).

<sup>40</sup> OSCEOLA COUNTY FLORIDA, Home Rule Charter, Article III s. 3.01, Aug. 11, 2015, *available at* [https://www.municode.com/library/fl/osceola\\_county/codes/code\\_of\\_ordinances?nodeId=11534](https://www.municode.com/library/fl/osceola_county/codes/code_of_ordinances?nodeId=11534).

<sup>41</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(2), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>42</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(1), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>43</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(3), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>44</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1(4), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>45</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter ss. 401 & 601.1(1)(b), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

<sup>46</sup> VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 2-111(a), [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO); VOLUSIA.ORG, Revenue Division-Tax Collection, <http://www.volusia.org/services/financial-and-administrative-services/revenue-services/> (accessed 10/28/2015).

<sup>47</sup> CLERK OF THE CIRCUIT COURT, VOLUSIA COUNTY FLORIDA, Overview, <https://www.clerk.org/html/about.aspx#Overview> (last visited Oct. 28, 2015); VOLUSIA COUNTY FLORIDA, Code of Ordinances, Part I Charter s. 601.1 (1)(b) & (5) [https://www.municode.com/library/fl/volusia\\_county/codes/code\\_of\\_ordinances?nodeId=PTICH\\_ARTVIADDEGO](https://www.municode.com/library/fl/volusia_county/codes/code_of_ordinances?nodeId=PTICH_ARTVIADDEGO).

law.”<sup>48</sup> This suggests that counties can currently modify their selection or removal procedures within the existing art. VIII, s. 1(d) framework through charter amendment or special law.<sup>49</sup>

### Term Limits

Three charter counties have imposed term limits on one or more of the Five Constitutional Officers.<sup>50</sup> Although the imposition of term limits on the Five Constitutional Officers is neither constitutionally or statutorily prohibited nor expressly endorsed, the imposition of term limits currently is interpreted to be within the broad home rule power of charter counties.<sup>51</sup>

### Recall

Five counties have charters expressly providing for the recall of one or more of the Five Constitutional Officers.<sup>52</sup> Regardless of whether a county charter includes a recall provision, counties have independent statutory authority to conduct a recall of any of the Five Constitutional Officers.<sup>53</sup>

### Non-partisan Elections

Seven counties require non-partisan elections for some or all elections of the Five Constitutional Officers.<sup>54</sup> Non-partisan election of the Five Constitutional Officers is neither constitutionally nor statutorily prohibited and is therefore within the broad home rule power of charter counties.<sup>55</sup>

### 1885 Constitutional Provisions Incorporated by Reference

The Florida Constitution of 1968 expressly incorporated from the 1885 Constitution four sections providing for consolidated or home rule government in four counties:<sup>56</sup> Duval,<sup>57</sup> Monroe,<sup>58</sup> Dade (later renamed Miami-Dade),<sup>59</sup> and Hillsborough.<sup>60</sup> These incorporated provisions were to “remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article.”<sup>61</sup> Whether amending art. VIII, s. 1(d) alone would be

<sup>48</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>49</sup> Current statute and case law supports this principle. *See* s. 100.361, F.S. (providing that whether or not a charter county adopts a recall provision, the county may exercise recall authority); *Telli v. Broward County*, 94 So. 3d 504, 512-13 (Fla. 2012) (allowing charter counties to adopt term limits on county commissioners and explicitly overruling a prior case which barred this in the case of the Five Constitutional Officers).

<sup>50</sup> Duval, Orange, and Sarasota Counties.

<sup>51</sup> *Telli v. Broward County*, *supra* at n. 49.

<sup>52</sup> Brevard, Clay, Duval, Miami-Dade, and Sarasota Counties.

<sup>53</sup> Section 100.361, F.S.

<sup>54</sup> Lee, Leon, Miami-Dade, Orange, Palm Beach, Polk, and Volusia Counties.

<sup>55</sup> *See* Art. III s. 11(a)(1), Fla. Const. (prohibiting the Legislature from enacting special laws which alter local election procedure but excepting charter counties); Ch. 105, F.S. (providing for non-partisan elections and procedure).

<sup>56</sup> Art. VIII, s. 6(e), Fla. Const.

<sup>57</sup> Art. VIII, s. 9, Fla. Const. (1885).

<sup>58</sup> Art. VIII, s. 10, Fla. Const. (1885).

<sup>59</sup> Art. VIII, s. 11, Fla. Const. (1885). Included within the home rule powers authorized by the amendment to the 1885 Constitution was the authority to change the County’s name. Art. VIII, s. 11(1)(h), Fla. Const. (1885). In 1997, the County adopted ordinance 97-212, amending the charter and changing the official name to Miami-Dade County. Art. 10, s. 10.01, Miami-Dade County Home Rule Charter, at [https://www.municode.com/library/fl/miami\\_dade\\_county/codes/code\\_of\\_ordinances?nodeId=PTICOAMCH\\_ART10NACO](https://www.municode.com/library/fl/miami_dade_county/codes/code_of_ordinances?nodeId=PTICOAMCH_ART10NACO) (accessed 11/4/2015).

<sup>60</sup> Art VIII, s. 24, Fla. Const. (1885). In 1983, Hillsborough County enacted a new charter pursuant to art. VIII, s. 1, Fla. Const. (1968), rather than art. VIII, s. 24 (1885 Constitution), incorporated by reference through art. VIII s. 6(e), Fla. Const. *See* Hillsborough County Florida, Charter, art. 1, s. 1.01, November 2012, *available at* <http://www.hillsboroughcounty.org/>.

<sup>61</sup> There is a strong presumption that where constitutional language is readopted, the legislature is aware of existing judicial interpretations and accordingly readopts the prior judicial construction unless the constitutional language is changed to abrogate it. *Fla. House of Representatives v. League of Women Voters of Fla.*, 118 So. 3d 198, 205 (Fla. 2013); *Fla. Dep’t of Revenue v. City of Gainesville*, 918 So. 2d 250, 264 (Fla. 2005); *Advisory Opinion to Governor*, 96 So. 2d 541, 546 (Fla. 1957); *State ex rel. West v. Butler*, 69 So. 771, 780-82 (Fla. 1915).

sufficient to make its provisions applicable to these four counties is unclear. Accordingly, the joint resolution specifies that notwithstanding art. VIII, s. 6(e), of the present Constitution, the manner of selection, length of terms, or abolition of office and transfer of powers of all Five Constitutional Officers for all counties shall be controlled exclusively by art. VIII, s. 1.

### **Effect of the Joint Resolution**

If the joint resolution is adopted and the proposed amendment is approved by the voters, the resulting limitation on revising the status of certain county officers will have no impact on non-charter counties<sup>62</sup> or those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority.<sup>63</sup> Those charter counties which changed the selection or authority of any of the Five Constitutional Officers<sup>64</sup> will be required to revise their charters and ordinances to conform to the current constitution provision or to seek to abolish the constitutional office and transfer its powers through a special act adopted by referendum.

Each house of the Legislature must pass a joint resolution by a three-fifths vote in order for the proposal to be placed on the ballot. The joint resolution provides for the proposed constitutional amendment to be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose.

The joint resolution also creates a new section in art. XII of the Constitution, providing the amendment would become effective beginning January 8<sup>th</sup>, 2019. This delay would allow the affected counties time either to change their charters to comply with the new constitutional scheme and elect the Five Constitutional Officers in the 2018 general election or, alternatively, to seek a special act for approval by referendum of the county voters.

#### **B. SECTION DIRECTORY:**

As this legislation is a joint resolution proposing a constitutional amendment, it does not contain bill sections. The joint resolution proposes to amend art. VIII, s. 1(d) of the State Constitution, to limit the authority for counties to alter the manner of selecting certain county officers or to abolish a county office and transfer all duties prescribed by general law to another office. To allow sufficient time for compliance by those counties needing to conform their charters and ordinances to the amendment if adopted, the joint resolution creates a new section in art. XII of the Constitution to provide for the amendment to take effect on January 8, 2019.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The joint resolution does not have a fiscal impact on state revenues.

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

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately before the week the election is held. The Department of State, Division of

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<sup>62</sup> Baker, Bay, Bradford, Calhoun, Citrus, Collier, DeSoto, Dixie, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Pasco, Putnam, Santa Rosa, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union, Walton, and Washington Counties.

<sup>63</sup> Alachua, Charlotte, Columbia, Hillsborough, Lee, Leon, Palm Beach, Pinellas, Polk, Sarasota, Seminole, and Wakulla Counties.

<sup>64</sup> See supra at n. 14.

Elections estimated the average cost per word to advertise an amendment to the State Constitution is \$135.97 for this fiscal year. The department has estimated the publication costs for advertising the joint resolution will be at least \$96,130.79 to \$100,735.77, possibly greater, depending on the final wording of the joint resolution and the resulting ballot language.<sup>65</sup>

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

The joint resolution does not appear to have a fiscal impact on local revenues.

### 2. Expenditures:

The joint resolution will have no impact on non-charter counties, those charter counties that retained the Five Constitutional Officers without any changes to their selection or authority, or those counties that only revised the manner of selecting the tax collector. Those charter counties which changed the selection or authority of any of the remaining Five Constitutional Officers will incur an indeterminate negative fiscal impact to the extent of having to revise their charters and ordinances to conform to the revised constitutional requirement.

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

## D. FISCAL COMMENTS:

See, Fiscal Impact on State Government and Local Governments, above.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The joint resolution will not create a general law requiring a county or municipality to spend funds or take an action requiring expenditures, reducing the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate, or reducing the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

#### 2. Other:

##### Adoption of Proposed Amendment

Article XI, s. 1 of the State Constitution, provides for proposed changes to the Constitution by the Legislature:

**SECTION 1: Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

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<sup>65</sup> 2016 Agency Legislative Bill Analysis, Department of State, HJR 165 (10/27/2015), available to Legislators and staff at <http://abar.laspbs.state.fl.us/ABAR/Document.aspx?id=5939&yr=2016> (accessed 10/29/2015), and a copy of which is maintained on file by the Local Government Affairs Subcommittee.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision.<sup>66</sup> The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.<sup>67</sup>

Sixty percent voter approval is required for a proposed constitutional amendment to pass. A proposed amendment or revision approved by the requisite vote of the electors is effective as an amendment to or revision of the state constitution on the first Tuesday after the first Monday in January following the election.<sup>68</sup> This joint resolution proposes a new section to art. XII, the schedule to the state constitution, providing the amendment will not go into effect until January 8, 2019.

### Term Limits on Constitutional Officers

Imposing term limits on some or all of the Five Constitutional Officers could be seen as impacting the manner in which these officers are selected, an authority that will be removed if the amendment proposed in the joint resolution is approved by the voters. The current interpretation of art. VIII, s. 1(d) by the Florida Supreme Court is that charter counties have the ability to impose term limits on elected county officers.<sup>69</sup> However, while this interpretation references the present authority of charter counties to revise the manner of selecting the Five Constitutional Officers, the Court clearly based its decision on the "broad home rule authority granted charter counties under the Florida Constitution"<sup>70</sup> and the fact that the Constitution does not expressly prohibit the imposition of term limits by charter counties on the Five Constitutional Officers.<sup>71</sup> Therefore, removing the authority of a charter county to change the manner of election or to abolish and reconstitute the powers of the Five Constitutional Officers under county offices will not impact the ability of charter counties to impose term limits on elected county officers.

### Non-Partisan Elections of Constitutional Officers

Amending art. VIII, s. 1(d) to restrict the ability of counties in their charters to choose the Five Constitutional Officers "in another manner therein specified" could be interpreted to limit the ability of charter counties to require that the Constitutional Officers be selected in non-partisan elections. However, because the Constitution prohibits neither the Legislature, through general law, nor charter counties from requiring non-partisan elections for county officers,<sup>72</sup> imposing non-partisan election requirements may well be interpreted as outside of the scope of art. VIII, s. 1(d), just as term limits were so found by the Florida Supreme Court of Florida.<sup>73</sup>

### Recall of Constitutional Officers

Recall of county officers by charter counties is statutorily authorized.<sup>74</sup> The amendment proposed by this joint resolution would have no impact on the ability of charter counties to recall the Five Constitutional Officers.

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<sup>66</sup> Art. XI, s. 5(a), Fla. Const.

<sup>67</sup> Art. XI, s. 5(d), Fla. Const.

<sup>68</sup> Art. XI, s. 5(e), Fla. Const.

<sup>69</sup> *Telli v. Broward County*, supra at n. 49, adopting with approval the rationale of the dissent in *Cook v. City of Jacksonville*, 823 So. 2d 86, 95-96 (2002) (Anstead, J., dissenting).

<sup>70</sup> *Telli v. Broward County*, supra at n. 49, 512.

<sup>71</sup> *Id.* See also *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42-43 (Fla. 1974).

<sup>72</sup> See n. 55, supra.

<sup>73</sup> See *Telli v. Broward County*, supra at n. 49.

<sup>74</sup> Section 100.361, F.S.



**B. RULE-MAKING AUTHORITY:**

The resolution does not provide authority or require implementation by administrative agency rulemaking.

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

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 4, 2015, the Local Government Affairs Subcommittee adopted one amended strike all to the joint resolution. This amendment makes tax collectors subject to the same provisions of the joint resolution as the other four constitutional officers. The amendment also provides that any of the Five Constitutional Offices may be abolished and its duties transferred to other officers through special act subject to approval of the county's electors through referendum. The amendment clarifies that the proposed constitutional amendment is applicable to all counties irrespective of the provisions in art. VIII, s. 6(e) of the Constitution. Finally, the amendment creates art. XII, s. 34 of the Constitution which delays the implementation of the constitutional amendment until January 8, 2019, in order to provide affected charter counties time to amend their charters and hold elections.

This analysis is drawn to the joint resolution as amended.

House Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII and the creation of a new section in Article XII of the State Constitution, applicable to all counties, to remove a county's authority to choose certain county officers in a manner other than election, permit the abolition of any county office if its duties are transferred to another office by special law approved by county voters, remove authority for a county charter to transfer certain duties of the clerk of the circuit court to another officer, and provide an effective date.

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

That the following amendment to Section 1 of Article VIII and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be

27 created, abolished or changed by law, with provision for payment  
 28 or apportionment of the public debt.

29 (b) COUNTY FUNDS. The care, custody and method of  
 30 disbursing county funds shall be provided by general law.

31 (c) GOVERNMENT. Pursuant to general or special law, a  
 32 county government may be established by charter which shall be  
 33 adopted, amended or repealed only upon vote of the electors of  
 34 the county in a special election called for that purpose.

35 (d) COUNTY OFFICERS. There shall be elected by the  
 36 electors of each county, for terms of four years, a sheriff, a  
 37 tax collector, a property appraiser, a supervisor of elections,  
 38 and a clerk of the circuit court. ~~;~~ ~~except, when provided by~~  
 39 ~~county charter or special law approved by vote of the electors~~  
 40 ~~of the county, any county officer may be chosen in another~~  
 41 ~~manner therein specified, or~~ Any county office may be abolished  
 42 when all the duties of the office prescribed by general law are  
 43 transferred to another office as provided by special law  
 44 approved by vote of the electors of the county. When not  
 45 otherwise provided by ~~county charter or~~ special law approved by  
 46 vote of the electors, the clerk of the circuit court shall be ex  
 47 officio clerk of the board of county commissioners, auditor,  
 48 recorder, and custodian of all county funds. Notwithstanding  
 49 section 6(e) of this article, this subsection provides the  
 50 exclusive manner for the selection, length of terms, abolition  
 51 of office, and transfer of duties of the sheriff, tax collector,  
 52 property appraiser, supervisor of elections, and clerk of the

53 circuit court in each county.

54 (e) COMMISSIONERS. Except when otherwise provided by  
 55 county charter, the governing body of each county shall be a  
 56 board of county commissioners composed of five or seven members  
 57 serving staggered terms of four years. After each decennial  
 58 census the board of county commissioners shall divide the county  
 59 into districts of contiguous territory as nearly equal in  
 60 population as practicable. One commissioner residing in each  
 61 district shall be elected as provided by law.

62 (f) NON-CHARTER GOVERNMENT. Counties not operating under  
 63 county charters shall have such power of self-government as is  
 64 provided by general or special law. The board of county  
 65 commissioners of a county not operating under a charter may  
 66 enact, in a manner prescribed by general law, county ordinances  
 67 not inconsistent with general or special law, but an ordinance  
 68 in conflict with a municipal ordinance shall not be effective  
 69 within the municipality to the extent of such conflict.

70 (g) CHARTER GOVERNMENT. Counties operating under county  
 71 charters shall have all powers of local self-government not  
 72 inconsistent with general law, or with special law approved by  
 73 vote of the electors. The governing body of a county operating  
 74 under a charter may enact county ordinances not inconsistent  
 75 with general law. The charter shall provide which shall prevail  
 76 in the event of conflict between county and municipal  
 77 ordinances.

78 (h) TAXES; LIMITATION. Property situate within

79 municipalities shall not be subject to taxation for services  
 80 rendered by the county exclusively for the benefit of the  
 81 property or residents in unincorporated areas.

82 (i) COUNTY ORDINANCES. Each county ordinance shall be  
 83 filed with the custodian of state records and shall become  
 84 effective at such time thereafter as is provided by general law.

85 (j) VIOLATION OF ORDINANCES. Persons violating county  
 86 ordinances shall be prosecuted and punished as provided by law.

87 (k) COUNTY SEAT. In every county there shall be a county  
 88 seat at which shall be located the principal offices and  
 89 permanent records of all county officers. The county seat may  
 90 not be moved except as provided by general law. Branch offices  
 91 for the conduct of county business may be established elsewhere  
 92 in the county by resolution of the governing body of the county  
 93 in the manner prescribed by law. No instrument shall be deemed  
 94 recorded until filed at the county seat, or a branch office  
 95 designated by the governing body of the county for the recording  
 96 of instruments, according to law.

97 ARTICLE XII

98 SCHEDULE

99 Selection and duties of county officers.—The amendment to  
 100 Section 1 of Article VIII, which removes the authority for a  
 101 county charter or special law to provide for choosing certain  
 102 county officers in a manner other than election, permits the  
 103 abolition of any county office if its duties are transferred to  
 104 another office by special law approved by county voters, and

105 removes authority for a county charter to transfer certain ex  
 106 officio duties of the clerk of the circuit court to another  
 107 officer, takes effect January 8, 2019.

108 BE IT FURTHER RESOLVED that the following statement be  
 109 placed on the ballot:

110 CONSTITUTIONAL AMENDMENT

111 ARTICLE VIII, SECTION 1

112 ARTICLE XII

113 SELECTION AND DUTIES OF COUNTY OFFICERS.—Proposing an  
 114 amendment to the State Constitution, applicable to all counties,  
 115 removing the authority for a county charter or special law to  
 116 require choosing certain county officers other than by election;  
 117 permitting the abolition of any county office and transferring  
 118 its duties only by approval of county voters; removing authority  
 119 for a county charter to transfer certain duties of the clerk of  
 120 the circuit court. The amendment takes effect January 8, 2019,  
 121 if adopted.

122 BE IT FURTHER RESOLVED that the following statement be  
 123 placed on the ballot if a court declares the preceding statement  
 124 defective and the decision of the court is not reversed:

125 CONSTITUTIONAL AMENDMENT

126 ARTICLE VIII, SECTION 1

127 ARTICLE XII

128 SELECTION AND DUTIES OF COUNTY OFFICERS.—Proposing an  
 129 amendment to the State Constitution, applicable to all counties,  
 130 to remove a county's authority, by county charter or special law

131 approved by the county's voters, to choose its sheriff, property  
 132 appraiser, supervisor of elections, and clerk of the circuit  
 133 court in a manner other than election. The amendment would  
 134 permit the abolition of any county office if its duties are  
 135 transferred to another office by special law approved by county  
 136 voters. The amendment also removes authority for a county  
 137 charter to transfer to another officer the duties of the clerk  
 138 of the circuit court to serve as ex officio clerk of the board  
 139 of county commissioners, auditor, recorder, and custodian of all  
 140 county funds. The amendment takes effect January 8, 2019, if  
 141 adopted.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4029 Nonresident Plaintiffs in Civil Actions

**SPONSOR(S):** Sprowls

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 396

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Malcolm	Bond
2) Justice Appropriations Subcommittee	8 Y, 1 N	Smith	Lloyd
3) Judiciary Committee		Malcolm	Havlicak RN

### SUMMARY ANALYSIS

Current law requires a nonresident plaintiff, or a plaintiff who leaves the state after filing a lawsuit, to file a surety bond of \$100 conditioned to pay all costs for which the plaintiff may be liable. The bill repeals this requirement.

This bill is expected to have an insignificant fiscal impact to the State.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Security by Nonresident Plaintiffs**

Enacted in 1828 and 1829 by the Legislative Council of the Territory of Florida,<sup>1</sup> s. 57.011, F.S., requires a nonresident plaintiff, or a plaintiff who leaves the state after beginning an action, to file a surety bond of \$100 within 30 days after the commencement of the action or leaving the state. The bond must be conditioned to pay all costs for which the plaintiff may be liable in the action. A defendant may, after providing 20 days' notice to the plaintiff, move to dismiss the action or hold the plaintiff's attorney liable for any costs for which the plaintiff may be liable in the action up to the amount of the bond.

Costs for which a plaintiff may be liable in a lawsuit (which a cost bond in 57.011, F.S. would at least partially pay) may include court reporting costs, costs related to depositions, costs related to witnesses and testifying expert witnesses, electronic discovery expenses, and mediation fees and expenses.<sup>2</sup> Generally, these costs are only taxed against a plaintiff when the defendant prevails in the action unless a contract or statute provides otherwise.

More than 40 states have statutes similar to s. 57.011, F.S.<sup>3</sup>

##### **Effect of Proposed Changes**

The bill repeals the nonresident plaintiffs' bond requirement in s. 57.011, F.S.

#### B. SECTION DIRECTORY:

Section 1 repeals s. 57.011, F.S., related to costs and security by nonresidents.

Section 2 provides an effective date of July 1, 2016.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Florida Association of Court Clerks and Comptrollers indicates that they expect an insignificant fiscal impact from this bill.<sup>4</sup>

##### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

<sup>1</sup> s. 8, Nov. 23, 1828; s. 4 Nov. 21, 1829.

<sup>2</sup> See ss. 57.041, 57.071; Fla. R. Civ. P. Taxation of Costs (2013).

<sup>3</sup> See *Gerace v. Bentley*, 62 V.I. 254 (V.I. Super. 2015) (analyzing nonresident cost bond statutes in all federal jurisdictions and states). Section 57.011, F.S., has one notable distinction from similar statutes in other states: "in the event the plaintiff fails to post the statutory cost bond, plaintiffs [sic] counsel must stand in the absent surety's shoes-so that plaintiff's counsel is personally liable for the costs adjudged in the cause against the plaintiff . . . ." *Id.*

<sup>4</sup> Email from Fred Baggett, General Counsel of the Florida Association of Court Clerks & Comptrollers (Nov. 19, 2015) (on file with the House Justice Appropriations Subcommittee).

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

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

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

The minimum premium charged by a leading surety for a cost bond like the one required in s. 57.011, F.S., is \$100.<sup>5</sup>

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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<sup>5</sup> Jurisco, Inc., *Cost Bond*, <http://jurisco.com/bonds/plaintiffs-bonds/cost-bond/> (last visited Nov. 12, 2015).

HB 4029

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A bill to be entitled  
An act relating to nonresident plaintiffs in civil  
actions; repealing s. 57.011, F.S., requiring a  
nonresident plaintiff in a civil action to post  
security for costs; providing an effective date.

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

Section 1. Section 57.011, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2016.