



Civil Justice Subcommittee

**Tuesday, November 3, 2015
9:00 a.m. – 11:00 a.m.
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Kathleen Passidomo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Tuesday, November 03, 2015 09:00 am
End Date and Time: Tuesday, November 03, 2015 11:00 am
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 203 Residential Properties by Wood
HB 225 Self-Authentication of Documents by Fitzenhagen

Consideration of the following proposed committee substitute(s):

PCS for HJR 197 -- Term Limits for Appellate Courts

NOTICE FINALIZED on 10/27/2015 4:05PM by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HJR 197 Term Limits for Appellate Courts
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SJR 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Bond <i>YWB</i>	Bond <i>YWB</i>

SUMMARY ANALYSIS

Justices of the Florida Supreme Court and judges of the Florida district courts of appeal are appointed to office by the Governor and serve six year terms. There are no limits on the number of terms a justice or judge may serve, but each justice or judge is subject to the merit retention process and a mandatory retirement age.

Merit retention is the system of retaining justices and judges established by the voters when they amended the Florida Constitution in the 1970s. Newly appointed justices or judges face their first merit retention vote in the next general election that occurs more than one year after their appointment, but before the completion of a full six-year term. If retained in office by a majority of voters, the justice or judge serves a full six-year term. Thereafter, the justice or judge is subject to a merit retention election every six years. No Florida justice or judge has ever lost a merit retention election.

This joint resolution limits future justices and judges to two full terms of office.

A joint resolution to amend the constitution must be passed by a three-fifths vote of the membership of each house of the Legislature. The proposed joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 8, 2016.

The proposed joint resolution appears to require a nonrecurring expense of approximately \$60,000 payable from the General Revenue Fund in FY 2016-17. This joint resolution does not appear to have a fiscal impact on local governments.

If adopted at the 2016 general election, the effective date of this resolution is January 3, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Appointment of Justices and Judges

Where there is a judicial vacancy in the Florida Supreme Court or a Florida district court of appeal, the Governor must appoint a replacement justice or judge from a list of nominees provided by a judicial nominating commission (JNC).¹ When a judgeship becomes vacant, candidates submit an application to the JNC for that court. The commission sends a list of three to six nominees to the Governor and the Governor fills the vacancy by selecting from that list.² At the next general election occurring at least a year after appointment, the newly appointed justice or district court judge sits for a retention election. If a majority of voters choose to retain the justice or judge, the justice or judge is retained for a six year term.³ Thereafter, the justice or judge will sit for a retention election every six years.

Retention in Office

While the state does have term limits applicable to the Governor, cabinet members, and legislators, no term limits apply to justices or judges. A justice or judge can serve an unlimited number of terms of office, limited only by a failure to be retained or a mandatory retirement age.

Mandatory Retirement Age

The Florida Constitution establishes a mandatory retirement age for justices and judges on or after their 70th birthday. The exact date of retirement depends upon when the 70th birthday occurs. If it occurs during the first half of a six-year term, then the mandatory retirement age is the same as the birthday. If the 70th birthday occurs in the second half of a six-year term, then the justice or judge can remain on the bench until the full term expires.⁴

Past Retention Election Results

Forty-two Supreme Court justices have appeared on the ballot for retention between 1980 and 2014. All 42 were retained by a majority of the voters. For the general elections from 2004 through 2014, all 125 district court of appeal judges that appeared on the ballot were retained.

Effect of the Bill

The joint resolution limits Supreme Court justices and judges of the district courts of appeal to two full terms of office. Given that terms are 6 years each, and that the time from appointment to first retention election ranges from one to three years, the effect of the bill is to create an effective term limit of between 13 and 15 years depending upon the date of appointment.

The joint resolution does not provide an effective date.⁵ Therefore, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate,⁶ which is January 3, 2017.

¹ art. V, s.11, Fla. Const.

² art. V, s. 11(a), Fla. Const.

³ art. V, s. 10, Fla. Const.

⁴ art. V, s. 8, Fla. Const.

⁵ While an amendment can specify its effective date, it is common practice in constitutional amendments to simply allow the default effective date to apply.

⁶ art. XI, s. 5, Fla. Const.

The joint resolution is prospective only. Term limits will only apply to a justice or judge appointed to office after the effective date of the amendment.

B. SECTION DIRECTORY:

n/a

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:

Article XI, s.5(d) of the state constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Department of State provided the following fiscal analysis for HB 197 as originally filed:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. The cost to advertise constitutional amendments for the 2014 general election was \$135.97 per word. Using 2014 rates, the cost to advertise this amendment for the 2016 general election could be \$58,331.13 at a minimum.⁷

The PCS has 435 words, changing the estimate to \$59,146.95. These funds must be spent regardless of whether the amendment passes, and would be payable from the General Revenue Fund in FY 2016-17.

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.

⁷ Department of State analysis dated October 26, 2015, on file with the Civil Justice Subcommittee.
STORAGE NAME: pcs0197.CJS.DOCX
DATE: 10/30/2015

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This section does not apply to proposed constitutional amendments.

2. Other:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.⁸ Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.⁹ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.¹⁰

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

n/a

⁸ art. XI, s. 1, Fla. Const.

⁹ art. XI, s. 5(a), Fla. Const.

¹⁰ art. XI, s. 5(e), Fla. Const.

House Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article V and the creation of a new section in Article XII of the State Constitution to create term limits for Supreme Court justices and judges of the district courts of appeal, limiting application to justices and judges appointed after the effective date of the amendment.

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

That the following amendment to Section 8 of Article V of the State Constitution is 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 V

JUDICIARY

SECTION 8. Eligibility.—

(a) No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served.

(b) No person is eligible for the office of justice of the

27 | supreme court or judge of a district court of appeal unless the
 28 | person is, and has been for the preceding ten years, a member of
 29 | the bar of Florida. No person is eligible for the office of
 30 | circuit judge unless the person is, and has been for the
 31 | preceding five years, a member of the bar of Florida. Unless
 32 | otherwise provided by general law, no person is eligible for the
 33 | office of county court judge unless the person is, and has been
 34 | for the preceding five years, a member of the bar of Florida.
 35 | Unless otherwise provided by general law, a person shall be
 36 | eligible for election or appointment to the office of county
 37 | court judge in a county having a population of 40,000 or less if
 38 | the person is a member in good standing of the bar of Florida.

39 | (c) No person may appear on the ballot for retention to
 40 | the office of justice of the supreme court or judge of a
 41 | district court of appeal if, by the end of the current term of
 42 | office, the person has ever served or, but for resignation,
 43 | would have served, in that office for two consecutive full
 44 | terms.

45 | ARTICLE XII

46 | SCHEDULE

47 | Applicability of limitations on the terms of justices and
 48 | judges.—The amendment to Section 8 of Article V shall take
 49 | effect upon approval by the electors. The limitations of the
 50 | amendment on the terms of justices of the supreme court and
 51 | judges of the district courts of appeal only applies to justices

52 | and judges appointed to office after the effective date of the
53 | amendment.

54 |
55 | BE IT FURTHER RESOLVED that the following statement be
56 | placed on the ballot:

57 | CONSTITUTIONAL AMENDMENT

58 | ARTICLE V, SECTION 8

59 | ARTICLE XII

60 | TERM LIMITS FOR APPELLATE COURTS.—Proposing an amendment to
61 | the State Constitution to limit the terms of Supreme Court
62 | justices and judges of the district courts of appeal. They
63 | currently serve unlimited 6-year terms, if retained, until age
64 | 70 or beyond that age, if less than one-half of a term remains
65 | at age 70. This amendment would limit them to two full terms. A
66 | partial term would not count toward the limit. This amendment
67 | does not apply to current justices and judges.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 203 Residential Properties
SPONSOR(S): Wood
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Robinson <i>R</i>	Bond <i>NB</i>
2) Business & Professions Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

An estoppel certificate is a legal document issued by a homeowners', cooperative, or condominium association (collectively referred to herein as "association") which certifies the total debt owed to the association for unpaid financial obligations of a parcel owner or unit owner.

The bill:

- provides for the ability to request and deliver estoppel certificates through electronic means;
- reduces the period of time in which an association must respond to an estoppel certificate request;
- specifies the required content, effective periods, and approved delivery methods for estoppel certificates;
- establishes fee caps for the preparation and delivery of an estoppel certificate;
- requires that the estoppel certificate fee be paid from closing or settlement proceeds from the sale or refinance of a home under certain circumstances;
- waives the right of an association to collect moneys owed in excess of the amount stated in an estoppel certificate from any person who in good faith relies on such certificate; and
- provides that cooperative associations are subject to the same requirements regarding the issuance of estoppel certificates as homeowner and condominium associations.

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

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Condominium¹ and cooperative² associations are governed internally by an association whose members are the owners of units within the association. Many single-family residential communities are similarly governed by a homeowners' association³ made up of parcel owners. An association is in effect a partnership between unit or parcel owners who share an undivided interest in the common elements of the community.

Sections 718.111(4), 719.104(5), and 720.308, F.S., provide for the collection of periodic and special assessments to fund the association. To operate, an association must collect periodic assessments from the unit or parcel owners in order to pay for common expenses, management, maintenance, insurance, and reserves for anticipated future major expenses. Additionally, special assessments may be levied for expenditures that were not included in the association's annual budget.⁴ A unit or parcel owner is liable for all assessments that come due while he or she is the owner, and is jointly liable with past owners for previous unpaid assessments.⁵ Unpaid assessments may also become a lien on the parcel.⁶

An estoppel certificate issued by an association certifies the total debt owed to the association for unpaid financial obligations by a parcel owner or unit owner as of a specified date.⁷ The association is legally bound⁸ by the amount stated in the estoppel certificate. It may not later assert a contradictory claim of moneys due against any third party who relies on the certificate.⁹

Buyers, lenders, title insurance companies, and other entities involved in the sale or refinance of real property are examples of third-parties who rely on estoppel certificates to ascertain the value of property and ensure that title to property is transferred without any lien or encumbrance.

¹ A condominium association means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership. s. 718.103(2), F.S.

² A cooperative association means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative. s. 719.103(2), F.S.

³ A homeowners' association is a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. s. 720.301(9), F.S.

⁴ ss. 718.103(24), 719.103(23), and 720.308(1)(a), F.S.

⁵ ss. 718.116(1), 719.108(1), and 720.3085(2)(b), F.S.

⁶ ss. 718.116(5), 719.108(4), and 720.3085, F.S.

⁷ ss. 718.116(8), 719.108(6), and 720.30851, F.S.

⁸ "Estoppel" means a bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true. *Black's Law Dictionary* (10th ed. 2014), available at Westlaw BLACKS.

⁹ ss. 718.116(8)(a), 719.108(6), and 720.30851(1), F.S.

Present Situation – Form, Effective Period, and Delivery of Estoppel Certificate

An association is required to provide an estoppel certificate within 15 days after receiving a request¹⁰ from a unit or parcel owner, unit or parcel mortgagee, or the designee of the owner or mortgagee.¹¹ Current law provides few criteria for the form of the certificate. An estoppel certificate issued by a homeowners' or condominium association must only set forth all assessments and other moneys owed to the association with respect to the unit or parcel, disclose any fee charged by the association for the preparation of such certificate, and be signed by an officer or authorized agent of the association.¹² An estoppel certificate issued by a cooperative association must only set forth the amount of assessments or other moneys owed.¹³

Some associations provide the amount of assessments and other moneys owed to the association in one lump sum while others provide an itemized breakdown of assessments, late fees, interest, etc. The amount in some certificates reflect only the amount presently owed while others provide the amount owed through a given date a few weeks or months into the future which provides for a longer use of the certificate. Accordingly, the information provided in an estoppel certificate and the period of effectiveness varies among associations.

Effect of Proposed Changes – Form, Effective Period, and Delivery of Estoppel Certificate

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to provide uniform requirements for the form, effective period, and delivery of an estoppel certificate.

The bill provides that an estoppel certificate must specify all of the following information:

- The date of issuance.
- The amount of all assessments and other moneys owed to the association, limited to the amounts authorized to be recorded in the official records of the association.
- The amount of any additional assessments and other moneys that are scheduled to become due during the effective period of the estoppel certificate. If delivered on the date of issuance, the certificate has a 30 day effective period. The estoppel certificate is effective for 35 days if mailed to the requester. In calculating such amounts, the association may assume that any delinquent amounts will remain delinquent.
- The amount of the estoppel certificate fee.
- The signature of an officer or agent of the association.

Additionally, the bill reduces the period of time in which an association must issue an estoppel certificate from 15 days to 10 business days. The certificate must be delivered on the day of issuance by mail, hand, or electronic means.

Present Situation - Fees for Preparation of Estoppel Certificate

A homeowners' or condominium association may charge a fee for the preparation of an estoppel certificate as long as the fee is established by a written resolution adopted by the board, or provided by a written management, bookkeeping, or maintenance contract.¹⁴ A cooperative association may also charge a fee to prepare an estoppel certificate.¹⁵

¹⁰ A request to a condominium association must be in writing. Section 718.116(8), F.S.

¹¹ Sections 718.116(8), 719.108(6), and 720.30851, F.S. The cooperative act does not currently require that a cooperative association provide an estoppel certificate to the designee of the owner or mortgagee.

¹² *Id.*

¹³ s. 719.108(6), F.S.

¹⁴ ss. 718.116(8)(d) and 720.30851(3), F.S.

¹⁵ s. 719.108(6), F.S.

Current law provides only that such preparation fee be "reasonable."¹⁶ Neither the Legislature nor the courts have provided guidance on what constitutes a reasonable fee for an estoppel certificate. This has caused variations in the amount of the fee charged by associations for the preparation of an estoppel certificate.

After a series of public meetings in 2014, the Community Association Living Study Council,¹⁷ by unanimous vote, recommended to the Legislature that a reasonable cap be established for estoppel certificate fees and that such fees be tiered.¹⁸ The Council proposed several additional factors that should be considered when determining the amount of the fee including whether or not the owner is current in fees, delinquent in fees, or if the estoppel certificate was requested in conjunction with a bulk purchase.¹⁹

Effect of Proposed Changes - Fees for Preparation of Estoppel Certificate

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to establish the maximum fees that may be charged by an association for the preparation and delivery of an estoppel certificate as illustrated by **Figure 1**. The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees not authorized by the bill. If the association issues the estoppel certificate more than 10 business days after receipt of the request, the association may not collect any fee.

Figure 1: Maximum Allowable Estoppel Certificate Fees

Authorized Fees	Cap*
Base Fee	
Preparation of Estoppel Certificate:	
- Non-Delinquent Account	\$200
- Delinquent Account	Reasonable Cost To Prepare + Reasonable Cost To Deliver
Delivery of Estoppel Certificate:	
Additional Fee (as applicable)	+
Expedited Delivery within 3 days	\$100
Delinquent Account	\$200
TOTAL	Base Fees + Additional Fees (if applicable)

*Fee caps will be adjusted for inflation every three years based on the change in the Consumer Price Index for All Urban Consumers, U.S. City Average, all items.²⁰ The first adjustment should take effect July 1, 2019.

¹⁶ ss. 718.116(8)(c) and 719.108(6), F.S. There is no corresponding requirement in ch. 720, F.S., that the fee charged by a homeowners' association be reasonable.

¹⁷ The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of seven members appointed by the President of the Senate, the Speaker of the House Representatives, and the Governor. An ex officio nonvoting member was appointed by the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Council was abolished by the Legislature in 2014. See s. 718.50151, F.S. (2013); Ch. 2014-133, L.O.F.

¹⁸ Community Association Living Study Council, *Final Report*, March 31, 2014, available at <http://www.myfloridalicense.com/Dbpr/lsc/documents/2014CALSCReport.pdf> (last visited Oct. 27, 2015).

¹⁹ *Id.*

²⁰ A measure produced by the Bureau of Labor Statistics in the United States Department of Labor of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services.

Present Situation – Payment and Allocation of Estoppel Certificate Fee

Any fee charged by a homeowners' or condominium association for an estoppel certificate is payable upon preparation of the certificate.²¹ If the certificate was requested in conjunction with the sale or mortgage of a unit or parcel but the sale does not occur, a homeowners' or condominium association must refund the fee, but only to a non-owner payor.²² The refund becomes the obligation of the unit or parcel owner and the homeowners' or condominium association may collect it from the owner in the same manner as an assessment.²³

As estoppel certificates are generally required to close the sale or refinancing of a home and must be requested earlier than the time of closing, the fee is typically paid by one party to the transaction, usually the seller, rather than from the closing or settlement proceeds. Accordingly, the estoppel certificate fee, which is similar to other fees paid from closing or settlement proceeds, is most often imposed solely on owners due to the early payment requirement or the obligation to refund the fee if a sale does not occur.

Effect of Proposed Changes – Payment and Allocation of Estoppel Certificate Fee

The bill repeals the requirement that the fee for an estoppel certificate be paid upon preparation. If the estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the fee and any supplemental fees must be paid from the closing or settlement proceeds. If the closing does not occur, the fee is the obligation of the unit or parcel owner and may be collected by an association in the same manner as an assessment which is the procedure under current law.

Provisions of current law authorizing a refund of fees by a homeowners' or condominium association to a non-owner payor are rendered obsolete by revising the time for payment of the fee and are therefore repealed by the bill.

Other Changes

- The bill amends current law to estop an association from collecting any moneys owed in excess of the amount stated in the certificate from any person, which would include owners, who in good faith relied upon the certificate as well as such person's successors and assigns. Current law provides that an association is only estopped from asserting a contradictory claim for amounts due against third parties who rely on an estoppel certificate, and expressly excludes owners from such protection.²⁴
- The bill amends ch. 719, F.S. governing cooperative associations, to provide that a cooperative association issue estoppel certificates consistent with standards, procedures and requirements governing condominium and homeowners' associations. This includes establishing the authority to charge estoppel fees by resolution or contract and authorizing a cooperative unit owner to bring an action against the association pursuant to the summary procedure under s. 51.011, F.S. to compel compliance with the estoppel certificate requirements.²⁵

²¹ ss. 718.116(8)(d) and 720.30851(3), F.S.; The time for payment of the fee to a cooperative association is not provided under current law.

²² *Id.*

²³ *Id.*

²⁴ ss. 718.116(8)(a), 719.108(6), and 720.30851(1), F.S.

²⁵ ss. 718.116(8)(b) and 720.30851(2), F.S.; s. 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted,

- The bill implements an additional recommendation by the Community Association Living Study Council to authorize the use of digital communications by associations.²⁶ Specifically, the bill provides for the electronic delivery of estoppel certificates and authorizes the electronic submission of estoppel certificate requests.

B. SECTION DIRECTORY:

Section 1 amends s. 718.116, F.S., relating to assessments; liability; lien and priority; interest; collection.

Section 2 amends s. 719.108, F.S., relating to rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.

Section 3 amends s. 720.30851, F.S., relating to estoppel certificates.

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 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:

To the extent that an association currently imposes a greater fee for an estoppel certificate than the fees authorized by the bill, the bill may have a positive economic impact on unit and parcel owners of such association by reducing the fee required to obtain an estoppel certificate. In such instance there would be a corresponding negative reduction in the fee collected by the association.

D. FISCAL COMMENTS:

None.

and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

²⁶ *Supra* at note 17.

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:

Estoppel certificates are often prepared on behalf of an association by association counsel or community association management companies pursuant to a contract for services. The fee caps established by the bill may be greater or less than the current rates negotiated between the association and such contractors for the preparation of estoppel certificates.

Article I, s. 10 of the United States Constitution, and art. I, s. 10 of the state constitution prohibit the legislature from enacting any law impairing the obligation of contracts. Although written in terms of an absolute prohibition, courts have long interpreted the provisions to only prohibit enactment of any law that is an *unreasonable* impairment of existing contractual rights.

In *Allied Structural Steel Co. v. Spannaus*,²⁷ the United States Supreme Court set forth the following principles in examining a law under an impairment analysis, ruling:

[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

Referring to the *Allied* opinion, the Florida Supreme Court in *Pomponio v. Claridge of Pompano Condominium, Inc.*²⁸ stated that courts must consider:

- (a) Was the law enacted to deal with a broad, generalized economic or social problem?
- (b) Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- (c) Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?

B. RULE-MAKING AUTHORITY:

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

²⁷ *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978).

²⁸ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774, 779 (Fla. 1979).

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear whether the bill authorizes an association to provide information regarding multiple units or parcels within a single estoppel certificate. If information regarding multiple units or parcels may be provided within a single estoppel certificate, language regarding the computation of fees may require clarification.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to residential properties; amending
 3 ss. 718.116, 719.108, and 720.30851, F.S.; revising
 4 requirements relating to the issuance of an estoppel
 5 certificate to specified persons; requiring that an
 6 estoppel certificate contain certain information;
 7 providing an effective period for a certificate based
 8 upon the date of issuance and form of delivery;
 9 providing that the association waives a specified
 10 claim against a person or such person's successors or
 11 assigns who rely on the certificate in good faith;
 12 authorizing a summary proceeding to be brought to
 13 compel an association to prepare or deliver an
 14 estoppel certificate; specifying the maximum amounts
 15 an association may charge for an estoppel certificate;
 16 providing that the authority to charge a fee for the
 17 estoppel certificate must be established by a
 18 specified written resolution or provided by a written
 19 management, bookkeeping, or maintenance contract;
 20 deleting obsolete provisions; conforming provisions to
 21 changes made by the act; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:
 24

25 Section 1. Subsection (8) of section 718.116, Florida
 26 Statutes, is amended to read:

27 718.116 Assessments; liability; lien and priority;
 28 interest; collection.-

29 (8) An association shall issue an estoppel certificate to
 30 a unit owner or the unit owner's designee or a unit mortgagee or
 31 the unit mortgagee's designee within 10 business ~~15~~ days after
 32 receiving a written or electronic request for the certificate.
 33 The estoppel certificate must be delivered by mail, by hand
 34 delivery, or by electronic means to the requester on the date of
 35 issuance.

36 (a) The estoppel certificate must contain all of the
 37 following:

38 1. The date of issuance.

39 2. The amount of all assessments and other moneys owed to
 40 the association by the unit owner for a specific unit on the
 41 date of issuance. This amount is limited to amounts authorized
 42 by statute to be recorded in the official records of the
 43 association under s. 718.111(12).

44 3. The amount of any additional assessments and other
 45 moneys that are scheduled to become due for each day after the
 46 date of issuance for the 30-day or 35-day effective period of
 47 the estoppel certificate. This amount is limited to amounts
 48 authorized by statute to be recorded in the official records of
 49 the association under s. 718.111(12). In calculating the amounts
 50 that are scheduled to become due, the association may assume
 51 that any delinquent amounts will remain delinquent during the
 52 effective period of the estoppel certificate.

53 4. The amount of any fee charged by the association for
 54 preparing and delivering the estoppel certificate. This fee is
 55 in addition to any other amounts on the estoppel certificate.

56 5. The signature of an officer or agent of the
 57 association.

58 (b) An estoppel certificate that is delivered on the date
 59 of issuance has a 30-day effective period. An estoppel
 60 certificate that is mailed to the requester has a 35-day
 61 effective period.

62 (c) An association waives the right to collect any moneys
 63 owed in excess of the amounts specified in the estoppel
 64 certificate from any person who in good faith relies upon the
 65 estoppel certificate and from the person's successors and
 66 assigns. ~~therefor from a unit owner or his or her designee, or a~~
 67 ~~unit mortgagee or his or her designee, the association shall~~
 68 ~~provide a certificate signed by an officer or agent of the~~
 69 ~~association stating all assessments and other moneys owed to the~~
 70 ~~association by the unit owner with respect to the condominium~~
 71 ~~parcel.~~

72 ~~(a) Any person other than the owner who relies upon such~~
 73 ~~certificate shall be protected thereby.~~

74 (d) ~~(b)~~ A summary proceeding pursuant to s. 51.011 may be
 75 brought to compel compliance with this subsection, and in any
 76 such action the prevailing party is entitled to recover
 77 reasonable attorney ~~attorney's~~ fees.

78 (e) ~~(c)~~ Notwithstanding any limitation on transfer fees

79 contained in s. 718.112(2)(i), an ~~the~~ association or its
 80 ~~authorized~~ agent may charge a reasonable fee, which may not
 81 exceed its reasonable costs to prepare and deliver for the
 82 ~~preparation of the~~ estoppel certificate. However, the fee for
 83 the estoppel certificate may not exceed \$200 if on the date the
 84 certificate is issued, no delinquent amounts are owed to the
 85 association for the applicable unit. If an estoppel certificate
 86 is requested on an expedited basis and delivered within 3
 87 business days after the request, the association may charge an
 88 additional fee of \$100. If delinquent amounts are owed to the
 89 association for the applicable unit, an additional fee for the
 90 estoppel certificate may not exceed \$200. The association may
 91 not charge a fee for an estoppel certificate that is issued more
 92 than 10 business days after it receives the request for the
 93 certificate. The maximum allowable fees charged in accordance
 94 with this section shall be adjusted every 3 years in an amount
 95 equal to the annual increases for that 3-year period in the
 96 Consumer Price Index for All Urban Consumers, U.S. City Average,
 97 all items ~~The amount of the fee must be included on the~~
 98 ~~certificate.~~

99 2. If the estoppel certificate is requested in conjunction
 100 with the sale or refinancing of a unit, the fee for the
 101 certificate shall be paid to the association from the closing or
 102 settlement proceeds. If the closing does not occur, the fee for
 103 the certificate is the obligation of the unit owner, and the
 104 association may collect the fee in the same manner as an

105 assessment against the unit. An association may not require the
 106 payment of any other fees as a condition for the preparation or
 107 delivery of an estoppel certificate.

108 ~~(f)(d)~~ The authority to charge a fee for the estoppel
 109 certificate must ~~shall~~ be established by a written resolution
 110 adopted by the board or provided by a written management,
 111 bookkeeping, or maintenance contract ~~and is payable upon the~~
 112 ~~preparation of the certificate. If the certificate is requested~~
 113 ~~in conjunction with the sale or mortgage of a unit but the~~
 114 ~~closing does not occur and no later than 30 days after the~~
 115 ~~closing date for which the certificate was sought the preparer~~
 116 ~~receives a written request, accompanied by reasonable~~
 117 ~~documentation, that the sale did not occur from a payor that is~~
 118 ~~not the unit owner, the fee shall be refunded to that payor~~
 119 ~~within 30 days after receipt of the request. The refund is the~~
 120 ~~obligation of the unit owner, and the association may collect it~~
 121 ~~from that owner in the same manner as an assessment as provided~~
 122 ~~in this section.~~

123 Section 2. Subsection (6) of section 719.108, Florida
 124 Statutes, is amended to read:

125 719.108 Rents and assessments; liability; lien and
 126 priority; interest; collection; cooperative ownership.—

127 (6) An association shall issue an estoppel certificate to
 128 a unit owner or the unit owner's designee or a unit mortgagee or
 129 the unit mortgagee's designee within 10 business 15 days after
 130 receiving a written or electronic request for the certificate.

131 The estoppel certificate must be delivered by mail, by hand
 132 delivery, or by electronic means to the requester on the date of
 133 issuance.

134 (a) The estoppel certificate must contain all of the
 135 following:

136 1. The date of issuance.

137 2. The amount of all assessments and other moneys owed to
 138 the association by the unit owner for a specific unit on the
 139 date of issuance. This amount is limited to the amounts
 140 authorized to be recorded in the official records of the
 141 association under s. 719.104(2).

142 3. The amount of any additional assessments and other
 143 moneys that are scheduled to become due for each day after the
 144 date of issuance for the 30-day or 35-day effective period of
 145 the estoppel certificate. This amount is limited to the amounts
 146 authorized to be recorded in the official records of the
 147 association under s. 719.104(2). In calculating the amounts that
 148 are scheduled to become due, the association may assume that any
 149 delinquent amounts will remain delinquent during the effective
 150 period of the estoppel certificate.

151 4. The amount of any fee charged by the association for
 152 preparing and delivering the estoppel certificate. This fee is
 153 in addition to any other amounts on the estoppel certificate.

154 5. The signature of an officer or agent of the
 155 association.

156 (b) An estoppel certificate that is delivered on the date

157 of issuance has a 30-day effective period. An estoppel
 158 certificate that is mailed to the requester has a 35-day
 159 effective period.

160 (c) An association waives the right to collect any moneys
 161 owed in excess of the amounts specified in the estoppel
 162 certificate from any person who in good faith relies upon the
 163 estoppel certificate and from that person's successors and
 164 assigns.

165 (d) A summary proceeding pursuant to s. 51.011 may be
 166 brought to compel compliance with this subsection, and in any
 167 such action the prevailing party is entitled to recover
 168 reasonable attorney fees. ~~by a unit owner or mortgagee, the~~
 169 ~~association shall provide a certificate stating all assessments~~
 170 ~~and other moneys owed to the association by the unit owner with~~
 171 ~~respect to the cooperative parcel. Any person other than the~~
 172 ~~unit owner who relies upon such certificate shall be protected~~
 173 ~~thereby.~~

174 (e)1. Notwithstanding any limitation on transfer fees
 175 contained in s. 719.106(1)(i), an the association or its
 176 authorized agent may charge a reasonable fee, which may not
 177 exceed its reasonable costs to prepare and deliver for the
 178 preparation of the estoppel certificate. However, the fee for
 179 the estoppel certificate may not exceed \$200 if on the date the
 180 certificate is issued, no delinquent amounts are owed to the
 181 association for the applicable unit. If an estoppel certificate
 182 is requested on an expedited basis and delivered within 3

183 business days after the request, the association may charge an
 184 additional fee of \$100. If delinquent amounts are owed to the
 185 association for the applicable unit, an additional fee for the
 186 estoppel certificate may not exceed \$200. The association may
 187 not charge a fee for an estoppel certificate that is issued more
 188 than 10 business days after it receives a request for the
 189 certificate. The maximum allowable fees charged in accordance
 190 with this section shall be adjusted every 3 years in an amount
 191 equal to the annual increases for that 3-year period in the
 192 Consumer Price Index for All Urban Consumers, U.S. City Average,
 193 all items.

194 2. If the estoppel certificate is requested in conjunction
 195 with the sale or refinancing of a unit, the fee for the
 196 certificate shall be paid to the association from the closing or
 197 settlement proceeds. If the closing does not occur, the fee for
 198 the certificate is the obligation of the unit owner, and the
 199 association may collect the fee in the same manner as an
 200 assessment against the unit. An association may not require the
 201 payment of any other fees as a condition for the preparation or
 202 delivery of an estoppel certificate.

203 (f) The authority to charge a fee for the estoppel
 204 certificate must be established by a written resolution adopted
 205 by the board or provided by a written management, bookkeeping,
 206 or maintenance contract.

207 Section 3. Section 720.30851, Florida Statutes, is amended
 208 to read:

209 720.30851 Estoppel certificates.—An association shall
 210 issue an estoppel certificate to a parcel owner or the parcel
 211 owner's designee or a mortgagee or the mortgagee's designee
 212 within 10 business ~~15~~ days after receiving a written or
 213 electronic request for the certificate. The estoppel certificate
 214 must be delivered by mail, by hand delivery, or by electronic
 215 means to the requester on the date of issuance.

216 (1) The estoppel certificate must contain all of the
 217 following:

218 (a) The date of issuance.

219 (b) The amount of all assessments and other moneys owed to
 220 the association by the parcel owner for a specific parcel as
 221 recorded on the date of issuance. This amount is limited to
 222 amounts authorized by statute to be recorded in the official
 223 records of the association under s. 720.303(4).

224 (c) The amount of any additional assessments and other
 225 moneys that are scheduled to become due for each day after the
 226 date of issuance for the 30-day or 35-day effective period of
 227 the estoppel certificate. This amount is limited to amounts
 228 authorized by statute to be recorded in the official records of
 229 the association under s. 720.303(4). In calculating the amounts
 230 that are scheduled to become due, the association may assume
 231 that any delinquent amounts will remain delinquent during the
 232 effective period of the estoppel certificate.

233 (d) The amount of any fee charged by the association for
 234 preparing and delivering the estoppel certificate. This fee is

235 in addition to any other amounts on the certificate.

236 (e) The signature of an officer or agent of the
 237 association.

238 (2) An estoppel certificate that is delivered on the date
 239 of issuance has a 30-day effective period. An estoppel
 240 certificate that is mailed to the requester has a 35-day
 241 effective period.

242 (3) An association waives the right to collect any moneys
 243 owed in excess of the amounts specified in the estoppel
 244 certificate from any person who in good faith relies upon the
 245 estoppel certificate and from that person's successors and
 246 assigns. the date on which a request for an estoppel certificate
 247 is received from a parcel owner or mortgagee, or his or her
 248 designee, the association shall provide a certificate signed by
 249 an officer or authorized agent of the association stating all
 250 assessments and other moneys owed to the association by the
 251 parcel owner or mortgagee with respect to the parcel. An
 252 association may charge a fee for the preparation of such
 253 certificate, and the amount of such fee must be stated on the
 254 certificate.

255 ~~(1) Any person other than a parcel owner who relies upon a~~
 256 ~~certificate receives the benefits and protection thereof.~~

257 (4)(2) A summary proceeding pursuant to s. 51.011 may be
 258 brought to compel compliance with this section, and the
 259 prevailing party is entitled to recover reasonable attorney
 260 attorney's fees.

261 (5) (a) An association or its agent may charge a fee, which
 262 may not exceed its reasonable costs to prepare and deliver the
 263 estoppel certificate. However, the fee for the estoppel
 264 certificate may not exceed \$200 if on the date the certificate
 265 is issued, no delinquent amounts are owed to the association for
 266 the applicable parcel. If an estoppel certificate is requested
 267 on an expedited basis and delivered within 3 business days after
 268 the request, the association may charge an additional fee of
 269 \$100. If delinquent amounts are owed to the association for the
 270 applicable parcel, an additional fee for the certificate may not
 271 exceed \$200. The association may not charge a fee for an
 272 estoppel certificate that is issued more than 10 business days
 273 after it receives the request for the certificate. The maximum
 274 allowable fees charged in accordance with this section shall be
 275 adjusted every 3 years in an amount equal to the annual
 276 increases for that 3-year period in the Consumer Price Index for
 277 All Urban Consumers, U.S. City Average, all items.

278 (b) If the estoppel certificate is requested in
 279 conjunction with the sale or refinancing of a parcel, the fee
 280 for the certificate shall be paid to the association from the
 281 closing or settlement proceeds. If the closing does not occur,
 282 the fee for the certificate is the obligation of the parcel
 283 owner, and the association may collect the fee in the same
 284 manner as an assessment against the parcel. An association may
 285 not require the payment of any other fees as a condition for the
 286 preparation or delivery of an estoppel certificate.

287 (6)~~(3)~~ The authority to charge a fee for the estoppel
 288 certificate must ~~shall~~ be established by a written resolution
 289 adopted by the board or provided by a written management,
 290 bookkeeping, or maintenance contract ~~and is payable upon the~~
 291 ~~preparation of the certificate. If the certificate is requested~~
 292 ~~in conjunction with the sale or mortgage of a parcel but the~~
 293 ~~closing does not occur and no later than 30 days after the~~
 294 ~~closing date for which the certificate was sought the preparer~~
 295 ~~receives a written request, accompanied by reasonable~~
 296 ~~documentation, that the sale did not occur from a payor that is~~
 297 ~~not the parcel owner, the fee shall be refunded to that payor~~
 298 ~~within 30 days after receipt of the request. The refund is the~~
 299 ~~obligation of the parcel owner, and the association may collect~~
 300 ~~it from that owner in the same manner as an assessment as~~
 301 ~~provided in this section.~~

302 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: Civil Justice Subcommittee
 2 Representative Wood offered the following:

Amendment (with title amendment)

Remove line 97 and insert:

6 all items. The Department of Business and Professional
 7 Regulation shall periodically calculate the maximum allowable
 8 fees under this section, rounded to the nearest dollar, and
 9 publish the amounts, as adjusted, on its website ~~The amount of~~
 10 ~~the fee must be included on the~~

Remove line 193 and insert:

12 all items. The Department of Business and Professional
 13 Regulation shall periodically calculate the maximum allowable
 14 fees under this section, rounded to the nearest dollar, and
 15 publish the amounts, as adjusted, on its website.

Remove line 277 and insert:



Amendment No. 1

17 | All Urban Consumers, U.S. City Average, all items. The
18 | Department of Business and Professional Regulation shall
19 | periodically calculate the maximum allowable fees under this
20 | section, rounded to the nearest dollar, and publish the amounts,
21 | as adjusted, on its website.

22 |
23 | -----
24 | **T I T L E A M E N D M E N T**

25 | Between lines 15 and 16, insert:

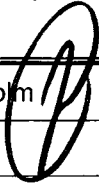
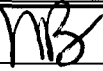
26 | providing for an adjustment of the maximum amounts every three
27 | years; requiring the Department of Business and Professional
28 | Regulation to calculate and publish the adjusted maximum
29 | amounts;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 Self-Authentication of Documents

SPONSOR(S): Fitzenhagen

TIED BILLS: None **IDEN./SIM. BILLS:** SB 352

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

SUMMARY ANALYSIS

Evidence, such as a document, must be authenticated before it can be admitted in the course of litigation. Florida law currently considers a number of documents, such as a certified copy of an official public record, to be self-authenticating and thus admissible without further proof of authenticity.

The bill provides that a copy of a pleading, order, or other filing in any court in the United States is self-authenticating. The bill also provides a process for the self-authentication of government records available on the internet. The party seeking to authenticate a government record available on the internet must provide notice to other parties who may object to the authenticity of the document. The process for self-authenticating online government records does not prohibit a party from authenticating a document under current law.

The bill also provides that a certified copy of a self-authenticating, official public record may be filed electronically.

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

The bill provides that it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Authentication of Documents

Section 90.901, F.S., requires that potential evidence, including documents, be authenticated before it may be admitted into evidence in a court proceeding. To authenticate a document, the proponent must provide prima facie evidence showing that the proffered document is what the proponent claims.¹ A trial court's determination of authenticity does not mean that the court has ruled that the proffered evidence is genuine; the opposing party may challenge its genuineness, and the jury will ultimately determine as a matter of fact whether the document is genuine.² An authenticated document remains subject to inadmissibility under any exclusionary rule, such as the hearsay rule.³

Authentication of Electronic Records and Websites

Like other evidence, electronic records and website contents must be authenticated with extrinsic evidence of authenticity before being admitted into evidence.⁴ Generally, an electronic record may be authenticated by the testimony of a person who created the record, another person who witnessed the record being composed and transmitted, or circumstantial evidence, such as appearance, contents, and distinctive characteristics of the evidence.⁵ To authenticate a printout of a website, it is not enough to prove that the printout of the website is accurate; rather, there must be prima facie evidence that the contents of the site are authentic and that the purported contents of the website as indicated on the printout were what appeared on the website on the relevant date.⁶ To authenticate printouts from a website, "the party proffering the evidence must produce 'some statement or affidavit from someone with knowledge of the website, for example a web master or someone else with personal knowledge would be sufficient.'"⁷

Self-Authenticating Documents

Section 90.902, F.S., sets forth a list of documents that are considered self-authenticating; that is, the document has sufficient guarantees of genuineness and is admissible into evidence without proof of extrinsic evidence of authenticity.⁸ Documents considered to be self-authenticating under s. 90.902, F.S., include documents bearing official seals of governments, copies of official public records, documents issued by governmental authorities, newspapers, and commercial papers as provided in the Uniform Commercial Code.

Effect of Proposed Changes

The bill amends s. 90.902, F.S., to provide a process for the self-authentication of certain government records available on the internet. Specifically, the bill provides that a party may file a copy⁹ of any

¹ Charles W. Ehrhardt, FLORIDA EVIDENCE, § 901.1 (2015 ed.).

² *Pace v. State*, 854 So. 2d 167, 182 (Fla. 2003) (quoting Ehrhardt at § 901.1).

³ Ehrhardt at § 901.1 (citing *Acre v. Wackenhut Corp.*, 40 So. 3d 813, 816 (Fla. 3d DCA 2010); *Dollar v. State*, 685 So. 2d 901, 903 (Fla. 5th DCA 1996)).

⁴ *Id.* at § 901.1a.

⁵ *Id.*

⁶ *Id.*

⁷ *St. Luke's Cataract & Laser Inst., P.A. v. Sanderson*, 2006 WL 1320242, 70 Fed. R. Evid. Serv. 174 (M.D. Fla. 2006).

⁸ Ehrhardt, at § 902.1. The provisions of s. 90.902, F.S., regarding self-authentication are available as an alternative to introducing evidence to meet the authenticity requirements of s. 90.901, F.S. Therefore, if a document fails to meet the requirements of one of the requirements of s. 90.902, F.S., and cannot be self-authenticated, then it may be authenticated under other procedures for authentication. *Id.*

⁹ Because of the e-filing requirements in s. 28.22205, F.S., these documents will likely be e-filed.

document or record filed with or retained by a local, state, territorial, or federal governmental agency that is available to the public from a website authorized or run by a governmental agency. The party seeking to authenticate the record must file a Notice of Reliance on Electronic Records (Notice) that includes a copy of the document to be authenticated, discloses the website and web address where the document can be located, and serve the Notice not less than 20 days before a hearing at which the authenticity of the document or its acceptance by a court as authentic is at issue. The court may waive or shorten the time period for filing the Notice.

A party may object to the authenticity of the document by filing and serving on every party an affidavit challenging the authenticity of the document by attaching a copy of what the challenging party asserts is the authentic document, and detailing in writing the portion of the challenged document which is not authentic; or by asserting that the document does not exist on the website as indicated in the Notice of Reliance on Electronic Records.

After the court reviews the document, the court must deem the document authentic unless:

- the Notice does not satisfy the statutory requirements;
- an objection is filed and the court sustains the objection or otherwise determines the document is not authentic; or
- the document does not have the same content or text, in all material respects, as the document that appears on the website identified in the Notice.

The process established by the bill for authenticating online government records does not prohibit a party from authenticating a document under s. 90.901, F.S., or as otherwise provided in s. 90.902(4), F.S., which are current methods of authentication.

Electronic Filing of Court Documents

Section 28.22205, F.S., requires each clerk of court to implement an electronic filing process (known as e-filing). According to the Florida Bar, all clerks of court in Florida now require all court documents to be filed electronically.¹⁰ Because of this e-filing requirement, some clerks will not accept a physical certified copy of a document into the court file as contemplated by s. 90.902, F.S., thus hindering a party's ability to file self-authenticating public records with the court.¹¹

The bill amends s. 90.902(4), F.S., to provide that a certified copy of a self-authenticating, official public record may be filed electronically, and it adds copies of any pleading, order, or other filing in any court in the United States or United States territory to the list of self-authenticating documents.¹²

The bill also updates cross-references and provides that it is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 90.902, F.S., related to self-authentication.

Section 2 amends s. 90.803, F.S., related to hearsay exceptions; availability of declarant is immaterial.

Section 3 provides that the bill is effective upon becoming law.

¹⁰ Real Property, Probate, and Trust law Section of the Florida Bar, *White Paper, Proposed changes to Fla. Stat. 90.902, concerning authentication of electronic records*, 1 (on file with the Civil Justice Subcommittee).

¹¹ *Id.*

¹² See Drafting Issues or Other Comments section below.

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:

There is a balance between the powers of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S. (the Evidence Code), and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.¹³

B. RULE-MAKING AUTHORITY:

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

¹³ See, e.g., *In re Florida Evidence Code*, 782 So.2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court); compare *In re Florida Evidence Code*, 372 So.2d 1369 (Fla. 1979) (Florida Supreme Court adopting Florida Evidence Code to the extent it is procedural), clarified, *In re Florida Evidence Code*, 376 So.2d 1161 (Fla. 1979).

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to contain an inconsistency in which a copy of a court document would be automatically self-authenticating without having to be a certified copy or without going through the process created in the bill for other government records available on the internet.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

HB 225

2016

1 A bill to be entitled

2 An act relating to self-authentication of documents;
3 amending s. 90.902, F.S.; allowing certified copies of
4 official public documents to be filed electronically;
5 providing a method for authenticating public documents
6 other than by certified copies; amending s. 90.803,
7 F.S.; conforming a cross-reference; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (4) of section 90.902, Florida
13 Statutes, is amended, subsections (5) through (11) are
14 renumbered as subsections (6) through (12), respectively, and a
15 new subsection (5) is added to that section, to read:

16 90.902 Self-authentication.—Extrinsic evidence of
17 authenticity as a condition precedent to admissibility is not
18 required for:

19 (4) A copy of an official public record, report, or entry,
20 or of a document authorized by law to be recorded or filed and
21 actually recorded or filed in a public office, including data
22 compilations in any form, certified as correct by the custodian
23 or other person authorized to make the certification by
24 certificate complying with subsection (1), subsection (2), or
25 subsection (3) or complying with any act of the Legislature or
26 rule adopted by the Supreme Court, which certified copy may be

27 filed electronically pursuant to s. 28.22205. An electronically
28 filed certified copy is admissible to the same extent as the
29 original would be if it complies with this subsection.

30 (5) A copy of:

31 (a) Any pleading, order, or other filing in any court
32 sitting in the United States or a United States territory; or

33 (b) Any document or record entry filed with or retained by
34 the United States or any state, municipality, district,
35 commonwealth, territory, or governmental department or agency of
36 such an entity which is available to the public from an Internet
37 website operated by a governmental agency or authorized by a
38 governmental agency if the party seeking authentication of the
39 document files a Notice of Reliance on Electronic Records which:

40 1. Attaches a copy of the document to be admitted.

41 2. Discloses the website and web address on the Internet
42 where said document can be located.

43 3. Serves written notice not less than 20 days before a
44 hearing at which the authenticity of the document or its
45 acceptance by a court as an authentic document is at issue. The
46 court may waive or shorten the time period for filing the notice
47 set forth in this subparagraph.

48 a. If a party desires to object to the authenticity of a
49 document which is the subject of a Notice of Reliance on
50 Electronic Records, such party shall file and serve on every
51 other party an affidavit within 5 days before a hearing, which
52 time period may be waived or shortened by the court, challenging

53 either the authenticity of said document by attaching a copy of
54 what the challenging party asserts is the true, correct, and
55 authentic document, and detailing in writing the portion of said
56 document which is not authentic; or that said document does not
57 exist on the website or web address as specified in the notice.

58 b. After review and consideration by the court, the court
59 shall deem authentic the document that is the subject of the
60 Notice of Reliance on Electronic Records unless:

61 (I) The document does not satisfy the requirements of this
62 paragraph;

63 (II) An objection is filed pursuant to sub-subparagraph a.
64 and the court sustains the objection or otherwise determines the
65 document to not be authentic; or

66 (III) The document does not have the same content or text,
67 in all material respects, as the document that appears on the
68 website identified in the Notice of Reliance on Electronic
69 Records.

70
71 This subsection does not prohibit a party from authenticating a
72 document under s. 90.901 or as otherwise provided in subsection
73 (4) or this subsection, all of which are alternative methods of
74 authentication.

75 Section 2. Paragraph (a) of subsection (6) of section
76 90.803, Florida Statutes, is amended to read:

77 90.803 Hearsay exceptions; availability of declarant
78 immaterial.—The provision of s. 90.802 to the contrary

79 notwithstanding, the following are not inadmissible as evidence,
80 even though the declarant is available as a witness:

81 (6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY.—

82 (a) A memorandum, report, record, or data compilation, in
83 any form, of acts, events, conditions, opinion, or diagnosis,
84 made at or near the time by, or from information transmitted by,
85 a person with knowledge, if kept in the course of a regularly
86 conducted business activity and if it was the regular practice
87 of that business activity to make such memorandum, report,
88 record, or data compilation, all as shown by the testimony of
89 the custodian or other qualified witness, or as shown by a
90 certification or declaration that complies with paragraph (c)
91 and s. 90.902(12) ~~90.902(11)~~, unless the sources of information
92 or other circumstances show lack of trustworthiness. The term
93 "business" as used in this paragraph includes a business,
94 institution, association, profession, occupation, and calling of
95 every kind, whether or not conducted for profit.

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



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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: Civil Justice Subcommittee
 2 Representative Fitzenhagen offered the following:

Amendment

5 Remove lines 30-73 and insert:

6 (5) A copy of any pleading, order, or other filing in any
 7 court sitting in the United States or a United States territory,
 8 or any document or record entry filed with or retained by the
 9 United States or any state, municipality, district,
 10 commonwealth, territory, or governmental department or agency of
 11 such an entity which is available to the public from an Internet
 12 website operated by a governmental agency or authorized by a
 13 governmental agency.

14 (a) The party seeking authentication of a document pursuant
 15 to this subsection shall:

16 1. File a Notice of Reliance on Electronic Records which
 17 attaches a copy of the document to be authenticated and



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18 discloses the website and web address where the document can be
19 located.

20 2. Serve the written Notice of Reliance on Electronic
21 Records no less than 20 days before a hearing at which the
22 authenticity of the document or its acceptance by a court as an
23 authentic document is at issue. The court may waive or shorten
24 the time period for filing the notice set forth in this
25 subparagraph.

26 (b) A party may object to the authenticity of a document
27 which is the subject of a Notice of Reliance on Electronic
28 Records by filing and serving on every other party an affidavit
29 no less than 5 days before a hearing, unless such time period is
30 waived or shortened by the court. The affidavit must challenge
31 either the authenticity of the document by attaching a copy of
32 what the challenging party asserts is the true, correct, and
33 authentic document, and detailing in writing the portion of the
34 document which is not authentic; or assert that the document
35 does not exist on the website or web address as specified in the
36 Notice of Reliance on Electronic Records.

37 (c) After review and consideration by the court, the court
38 shall deem authentic the document that is the subject of the
39 Notice of Reliance on Electronic Records unless:

40 1. The party seeking authentication of the document does
41 not satisfy the requirements of paragraph (a);



Amendment No. 1

42 2. An affidavit objecting to the authenticity of the
43 document is filed pursuant to paragraph (b) and the court
44 sustains the objection;

45 3. The document does not have the same content or text, in
46 all material respects, as the document that appears on the
47 website identified in the Notice of Reliance on Electronic
48 Records; or

49 4. The court otherwise determines the document is not
50 authentic.

51
52 This subsection does not prohibit a party from authenticating a
53 document under s. 90.901 or as otherwise provided in subsection
54 (4), all of which are alternative methods of