



---

# Civil Justice Subcommittee

**Wednesday, December 2, 2015  
8:30 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:** Wednesday, December 02, 2015 08:30 am  
**End Date and Time:** Wednesday, December 02, 2015 11:00 am  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.50 hrs

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

HB 297 Limitations on Actions Other than for the Recovery of Real Property by Perry  
CS/HB 325 Involuntary Examinations under the Baker Act by Health Quality Subcommittee, Campbell, Plasencia  
HB 503 Judgments by Renner  
HB 549 Offenses Concerning Racketeering and Illegal Debts by Burton  
HB 573 Allocation of Court Costs by Stone

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

PCS for HB 3 -- Civil Remedies for Terrorism

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



PCB CJS 16-01 -- Marketable Record Title Act

**NOTICE FINALIZED on 11/25/2015 2:45PM by Ingram.Michele**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 3 Civil Remedies for Terrorism  
**SPONSOR(S):** Civil Justice Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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

**SUMMARY ANALYSIS**

Current law provides a civil cause of action for a person who has been injured by specified criminal activities such as extortion, battery, elderly exploitation, and certain drug offenses. A plaintiff who prevails on such a claim is entitled to treble damages, specified minimum damages, and attorney fees and court costs.

The PCS creates a separate civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism. A prevailing plaintiff is entitled to recover treble damages, minimum damages of \$1,000, and attorney fees and court costs. The cause of action is not available to a person whose injuries are the result of his or her participation in the act that caused the injury.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### *Terrorism-related Crimes in Florida*

Terrorism is defined in current law as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States, or that involves a violation of s. 815.06, F.S., related to computer crimes, and is intended to intimidate, injure, or coerce a civilian population, influence the policy of a government by intimidation or coercion, or affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.<sup>1</sup> Terrorism is not an independent crime in Florida; rather, it is a predicate act for the crime of capital murder.<sup>2</sup>

Although terrorism is not an independent crime, if a person is convicted of committing a felony or misdemeanor that *facilitated or furthered* an act of terrorism, the court must reclassify the felony or misdemeanor to the next higher degree.<sup>3</sup> Additionally, if the underlying crime that facilitated or furthered an act of terrorism is a first-degree misdemeanor or greater, the offense severity ranking is increased, thus further increasing the defendant's potential sentence.<sup>4</sup>

###### *Intentional Torts*

In Florida, "an intentional tort is one in which [a person] exhibits a deliberate intent to injure or engages in conduct which is substantially certain to result in injury or death."<sup>5</sup> A defendant will be held liable for an intentional tort if the plaintiff's injuries were the natural and probable consequence of the defendant's intended actions.<sup>6</sup> In addition to being liable for economic and non-economic damages, a defendant who commits an intentional tort may be liable for punitive damages.<sup>7</sup> Intentional torts recognized in Florida include assault,<sup>8</sup> battery,<sup>9</sup> and intentional infliction of emotional distress.<sup>10</sup>

Although there is no specific cause of action in Florida that expressly allows a victim of terrorism to recover damages caused by an individual terrorist, existing intentional torts, such as battery and intentional infliction of emotional distress, would likely apply. However, existing intentional torts may not

---

<sup>1</sup> ss. 775.30, 815.06, 782.04(5), and 775.31(3).

<sup>2</sup> s. 782.04(1)(a)r., (3)r., and (4)s., F.S.

<sup>3</sup> s. 775.31(1), F.S. For example, if a defendant is convicted of a third-degree felony, the offense is reclassified as a second-degree felony.

<sup>4</sup> s. 775.31(2), F.S.

<sup>5</sup> *Boza v. Carter*, 993 So. 2d 561, 562 (Fla. 1st DCA 2008) (quoting *D'Amario v. Ford Motor Co.*, 806 So.2d 424, 438 (Fla.2001)).

<sup>6</sup> 55 Fla. Jur 2d Torts § 6 (2015).

<sup>7</sup> s. 768.72, F.S.

<sup>8</sup> *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982) ("Assault is defined as an intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another under such circumstances as to create a fear of imminent peril, coupled with the apparent present ability to effectuate the attempt.").

<sup>9</sup> *Paul v. Holbrook*, 696 So. 2d 1311, 1312 (Fla. 5th DCA 1997) ("A battery consists of the infliction of a harmful or offensive contact upon another with the intent to cause such contact or the apprehension that such contact is imminent.").

<sup>10</sup> *Metro. Life Ins. Co. v. McCarson*, 467 So. 2d 277 (Fla. 1985); see *Johnson v. Thigpen*, 788 So. 2d 410, 412 (Fla. 1st DCA 2001) ("In order to state a cause of action for intentional infliction of emotional distress, the plaintiff must demonstrate that: 1) the defendant acted recklessly or intentionally; 2) the defendant's conduct was extreme and outrageous; 3) the defendant's conduct caused the plaintiff's emotional distress; and 4) plaintiff's emotional distress was severe.").

allow a victim of terrorism to recover damages from individuals or organizations who provided material support to the terrorist.<sup>11</sup>

### *Civil Remedies for Criminal Practices*

Chapter 772, F.S., provides a civil cause of action for persons injured by certain criminal activities. Section 772.104, F.S., provides a civil cause of action for a person who has been injured by “any person who has received proceeds derived . . . from a pattern of criminal activity.”<sup>12</sup> The “criminal activity” for which a defendant may be liable encompasses a broad range of criminal conduct including public assistance fraud, use of explosives, homicide, extortion, and computer-related crimes.<sup>13</sup> Chapter 772, F.S., also provides specific causes of action for a person injured by financial crimes such as theft, fraud, and elderly exploitation, and by certain drug crimes.<sup>14</sup>

Although punitive damages are generally not recoverable for claims raised pursuant to ch. 772, F.S., a plaintiff may recover treble damages and is entitled to minimum damages of \$200, or \$1,000 in the case of drug crimes, and attorney fees and court costs.<sup>15</sup> However, a defendant may recover attorney fees and court costs if the court finds that the plaintiff’s claim was without substantial fact or legal support.<sup>16</sup>

The civil remedies in ch. 772, F.S., do not preclude any other remedy provided by law.<sup>17</sup> In cases where the defendant has been found guilty or pled guilty or nolo contendere to the same criminal act that forms the basis of the plaintiff’s civil cause of action pursuant to ch. 772, F.S., the defendant is estopped from denying the essential elements of the criminal activity in the civil case.<sup>18</sup>

### **Effect of Proposed Changes**

The PCS creates s. 772.13, F.S., to provide a specific civil cause of action for a person injured by an act of terrorism or any crime that facilitated or furthered an act of terrorism. A prevailing plaintiff will be entitled to recover treble damages, minimum damages of \$1,000, and attorney fees and court costs. The cause of action created by the PCS is not available to a person whose injuries are the result of his or her participation in the same act that resulted in the act of terrorism or crime that facilitated or furthered the act of terrorism.

If the court finds that the plaintiff raised a claim that lacked support in fact or law, the defendant is entitled to reasonable attorney fees and court costs

In awarding attorney fees and court costs pursuant to newly created s. 772.13, F.S., the court may not consider the ability of the opposing party to pay such fees and costs. Additionally, s. 772.13, F.S., does not limit any right to recover attorney fees or costs provided under other provisions of law.<sup>19</sup>

---

<sup>11</sup> See *Boza*, 993 So. 2d at 562 (“As a general principle, a party has no legal duty to control the conduct of a third person to prevent that person from causing harm to another.”).

<sup>12</sup> ss. 772.103(1) and 772.104(1), F.S.

<sup>13</sup> s. 772.102(1), F.S. “Criminal activity” also includes an attempt to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit. *Id.* This cause of action is only available if the defendant engages in two or more similar acts of criminal activity within a five-year period. *Id.* at (4).

<sup>14</sup> ss. 772.11 and 772.12, F.S.

<sup>15</sup> ss. 772.104(1),(3), 772.11(1), and 772.12(2), F.S.

<sup>16</sup> s. 772.104(3), F.S.

<sup>17</sup> s. 772.18, F.S.

<sup>18</sup> s. 772.14, F.S.; *J.P. Transp., Inc., v. Fidelity and Cas. Co. of New York*, 750 So. 2d 752, 753 (Fla. 5th DCA 2000); *Peterson v. Therma Building, Inc.*, 958 So. 2d 977, 979 (Fla. 2d DCA 2007).

<sup>19</sup> See ch. 57, F.S.; Fla. R. Civ. P. Taxation of Costs (2015).

**B. SECTION DIRECTORY:**

Section 1 creates s. 772.13, F.S., related to civil remedy for terrorism or facilitation or furthering terrorism.

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 PCS does not appear to have any impact on state revenues.

2. Expenditures:

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

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

1. Revenues:

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

2. Expenditures:

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

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

The PCS 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 PCS 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 PCS 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

1                                   A bill to be entitled  
 2           An act relating to civil remedies for terrorism;  
 3           creating s. 772.13, F.S.; creating a cause of action  
 4           relating to terrorism; specifying a measure of  
 5           damages; prohibiting claims by specified individuals;  
 6           providing for attorney fees and costs; providing an  
 7           effective date.

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

10  
 11           Section 1. Section 772.13, Florida Statutes, is created to  
 12           read:

13                   772.13 Civil remedy for terrorism or facilitation or  
 14                   furthering terrorism.-

15                   (1) Any person who has been injured by an act of terrorism  
 16                   as defined in s. 775.30 or a violation of any law for which the  
 17                   penalty is increased pursuant to s. 775.31 for facilitating or  
 18                   furthering terrorism shall have a cause of action for threefold  
 19                   the actual damages sustained and, in any such action, is  
 20                   entitled to minimum damages in the amount of \$1,000, and  
 21                   reasonable attorney fees and court costs in the trial and  
 22                   appellate courts.

23                   (2) A person injured by reason of his or her participation  
 24                   in the same act or transaction that resulted in the act of  
 25                   terrorism or resulted in the defendant's penalty increase  
 26                   pursuant to s. 775.31 may not bring a claim under this section.



27           (3) The defendant shall be entitled to recover reasonable  
 28 attorney fees and court costs in the trial and appellate courts  
 29 upon a finding that the claimant raised a claim which was  
 30 without support in fact or law.

31           (4) In awarding attorney fees and costs under this section,  
 32 the court shall not consider the ability of the opposing party  
 33 to pay such fees and costs.

34           (5) Nothing under this section shall be interpreted as  
 35 limiting any right to recover attorney fees or costs provided  
 36 under other provisions of law.

37           Section 2. This act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 297 Limitations on Actions Other than for the Recovery of Real Property  
**SPONSOR(S):** Perry and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		King <i>AK</i>	Bond <i>YTB</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

Both a statute of limitations and a statute of repose limit the time period with which a person may file a lawsuit. A statute of limitations usually begins when the cause of action accrues and bars the lawsuit after a set period of time. A statute of repose extinguishes the right of action altogether and begins at the occurrence of a specified event.

Under current law, a cause of action founded on the design or construction of a building is subject to a four-year statute of limitations and a 10-year statute of repose. The statute of limitations and the statute of repose start at the latest date of the following: the date of actual possession; the date a certificate of occupancy is issued; the date construction, if not completed, is abandoned; or the date the contract is completed or terminated. The difference between the two is in treatment of a latent defect. The statute of limitations for a latent defect begins when the defect was or should have been discovered, but the statute of limitations may not extend beyond the statute of repose. The statute of repose thus limits the cause of action even if the injured party has no knowledge of the latent defect.

A recent court decision found that a construction contract is complete upon final payment. For the purposes of both the statute of limitations and the statute of repose, this bill provides that a construction contract is considered complete on the last day that the contractor, architect, or engineer performs services related to the contract.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. Laws creating statutes of limitation specify when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). A statute of limitations usually begins to run when a cause of action accrues (generally, when the harm occurs).

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run not from accrual of the cause of action, but from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.<sup>1</sup> Moreover, unlike a statute of limitations, a statute of repose abolishes or completely eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute of repose.<sup>2</sup> Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.<sup>3</sup>

Section 95.11(3)(c), F.S., currently provides that actions founded on the design, planning, or construction of an improvement to real property are subject to a four-year statute of limitations. The four-year time period of the statute of limitations begins to run from the latest date of the following events:

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

However, when an action involves a latent defect,<sup>4</sup> the four-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.

In addition to this four-year statute of limitations, there is a 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, regardless of the time the cause of action accrued, within 10 years after the date of the above listed events, whichever is latest. Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

---

<sup>1</sup> *Kush v. Lloyd*, 616 So. 2d 415 (Fla. 1992).

<sup>2</sup> *Beach v. Great Western Bank*, 692 So. 2d 146 (Fla. 1997)

<sup>3</sup> *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988)

<sup>4</sup> Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge. *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).

## Recent Case Law

In 2013, the Fifth District Court of Appeal was presented with the issue of what constituted "the date of 'completion . . . of the contract' "<sup>5</sup> for the purpose of determining the beginning of the statute of repose pursuant to s. 95.11(3)(c), F.S. The court held that the contract is complete for purposes of s. 95.11(3)(c), F.S., on the date final payment is made.<sup>6</sup> It reasoned that

[c]ompletion of the contract means completion of performance by both sides of the contract, not merely performance by the contractor. Had the legislature intended the statute to run from the time the contractor completed performance, it could have simply so stated. It is not our function to alter plain and unambiguous language under the guise of interpreting a statute.<sup>7</sup>

The court's definition of completion of the contract subjects the triggering of the statute of limitations period to particular actions of the injured party. This differs from the normal operation of a statute of repose which is usually based on the actions of the injuring party.

### Effect of Proposed Changes

This bill amends s. 95.11(3)(c), F.S., to define the date of the completion of the contract. It provides that the completion of the contract for purposes of the statute of repose and statute of limitations for design, planning, or construction defects is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding those furnished to correct a deficiency in previously performed work or materials supplied.

#### B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to limitations on actions other than for the recovery of real property.

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 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.

<sup>5</sup> *Cypress Fairway Condominium v. Bergeron Const. Co. Inc.*, 164 So. 3d 706, 707 (Fla. 5th DCA 2015).

<sup>6</sup> *Id.* at 708.

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This 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, not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Florida courts may interpret this law to only apply prospectively.<sup>8</sup> If applied prospectively, only a cause of action accruing after the passage of this bill will be affected.

Although the right to commence an action is a valid and protected property interest,<sup>9</sup> a plaintiff has no vested right in a statute of repose in effect when his or her cause of action accrues.<sup>10</sup> Thus, the time allowed for a suit may be either initially imposed or reduced by legislation enacted after the cause of action arose, provided the litigant still has a reasonable time left in which to enforce his or her right.<sup>11</sup> Particularly, the Florida Supreme Court in *Bauld* held that a change to a statute of repose was constitutional because it provided a one-year savings clause that allowed individuals a reasonable time to enforce his or her right after the change.<sup>12</sup> This amendment to s. 95.11(3)(c), F.S., will reduce the time allowed for a suit in every case where the final payment is made after the construction or planning is complete. Without a savings clause similar to the one in *Bauld*, a court may find that this law infringes on an individual's protected property interest.

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

<sup>8</sup> *Foley v. Morris*, 339 So.2d 215, 217 (Fla. 1976).

<sup>9</sup> See *Polk Cty. BOCC v. Special Disability Trust Fund*, 791 So. 2d 581, 583 (Fla. 1st DCA 2001).

<sup>10</sup> *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

<sup>11</sup> *Bauld v. J.A. Jones Const. Co.*, 357 So. 2d 401, 403 (Fla. 1978), quoting *Hart v. Bostick*, 14 Fla. 162, 181 (1872); *Walter Denson & Son v. Nelson*, 88 So. 2d 120 (Fla. 1956).

<sup>12</sup> *Bauld*, 357 So. 2d at 403.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

A bill to be entitled  
An act relating to limitations on actions other than  
for the recovery of real property; amending s. 95.11,  
F.S.; specifying the date of completion for specified  
contracts; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section  
95.11, Florida Statutes, is amended to read:

95.11 Limitations other than for the recovery of real  
property.—Actions other than for recovery of real property shall  
be commenced as follows:

(3) WITHIN FOUR YEARS.—

(c) An action founded on the design, planning, or  
construction of an improvement to real property, with the time  
running from the date of actual possession by the owner, the  
date of the issuance of a certificate of occupancy, the date of  
abandonment of construction if not completed, or the date of  
completion or termination of the contract between the  
professional engineer, registered architect, or licensed  
contractor and his or her employer, whichever date is latest;  
except that, when the action involves a latent defect, the time  
runs from the time the defect is discovered or should have been  
discovered with the exercise of due diligence. In any event, the  
action must be commenced within 10 years after the date of

27 | actual possession by the owner, the date of the issuance of a  
 28 | certificate of occupancy, the date of abandonment of  
 29 | construction if not completed, or the date of completion or  
 30 | termination of the contract between the professional engineer,  
 31 | registered architect, or licensed contractor and his or her  
 32 | employer, whichever date is latest. The date of completion of  
 33 | the contract between the professional engineer, registered  
 34 | architect, or licensed contractor and his or her employer is the  
 35 | last day during which the professional engineer, registered  
 36 | architect, or licensed contractor furnishes labor, services, or  
 37 | materials, excluding labor, services, or materials relating to  
 38 | the correction of deficiencies in previously performed work or  
 39 | materials supplied.

40 | Section 2. 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 Perry offered the following:

**Amendment (with title amendment)**

5 Between lines 39 and 40, insert:

6 Section 2. The amendment made by this act to s.  
 7 95.11(3)(c), Florida Statutes, applies to any action commenced  
 8 on or after July 1, 2016, regardless of when the cause of action  
 9 accrued, except that, any action that would not have been barred  
 10 on July 1, 2017, under s. 95.11(3)(c), Florida Statutes, prior  
 11 to the amendment made by this act may be commenced before July  
 12 1, 2017, and if it is not commenced by that date and would be  
 13 barred by the amendment made by this act to s. 95.11(3)(c),  
 14 Florida Statutes, it shall be barred.

15 Section 3. For the purpose of incorporating the amendment  
 16 made by this act to section 95.11, Florida Statutes, in a



Amendment No. 1

17 reference thereto, subsection (2) of section 627.441, Florida  
18 Statutes, is reenacted to read:

19 627.441 Commercial general liability policies; coverage to  
20 contractors for completed operations.—

21 (2) A liability insurer must offer coverage at an  
22 appropriate additional premium for liability arising out of  
23 current or completed operations under an owner-controlled  
24 insurance program for any period beyond the period for which the  
25 program provides liability coverage, as specified in s.  
26 255.0517(2)(b). The period of such coverage must be sufficient  
27 to protect against liability arising out of an action brought  
28 within the time limits provided in s. 95.11(3)(c).

29  
30 -----

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

32 Remove line 5 and insert:  
33 contracts; providing for applicability; reenacting s.  
34 627.441(2), F.S., relating to commercial general liability  
35 policy coverage to contractors for completed operations, to  
36 incorporate the amendment made by the act to s. 95.11, F.S., in  
37 a reference thereto; providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 325 Involuntary Examinations under the Baker Act  
**SPONSOR(S):** Health Quality Subcommittee; Campbell; Plasencia and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N, As CS	Siples	O'Callaghan
2) Civil Justice Subcommittee		Robinson <i>RL</i>	Bond <i>NB</i>
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary examinations of individuals suspected of having a mental illness, and establishes procedures for courts, law enforcement, and certain medical professionals to initiate such examinations.

The bill adds advanced registered nurse practitioners and physician assistants to the list of medical professionals who may initiate the involuntary examination of a person under the Baker Act.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Involuntary Examination under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as “The Baker Act”), codified in part I of ch. 394, F.S., to address mental health needs in the state.<sup>1</sup> The Baker Act provides the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of such individuals for treatment.

The Department of Children and Families (DCF) administers The Baker Act through receiving facilities that provide for the examination of persons with evidence of mental illness. Receiving facilities are designated by the DCF and may be public or private facilities that provide the examination and short-term treatment of persons who meet the criteria under The Baker Act.<sup>2</sup> Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by the DCF are state hospitals (e.g. Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.<sup>3</sup>

Current law provides that an involuntary examination may be initiated if there is reason to believe a person has a mental illness and because of the illness:<sup>4</sup>

- The person has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for himself or herself that an examination is needed; and
- The person is likely to suffer from self-neglect or substantial harm to her or his well-being, or be a danger to himself or herself or others.

Courts, law enforcement officers, and certain medical professionals are authorized to initiate an involuntary examination.<sup>5</sup> A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer<sup>6</sup> may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination. Medical professionals may initiate an involuntary examination by executing the *Certificate of a Professional Initiating an Involuntary Examination*.<sup>7</sup> The medical professional must have examined the person within the preceding 48 hours and state that the person meets the criteria for involuntary examination.<sup>8</sup> The Baker Act currently authorizes the following medical professionals to initiate an involuntary examination by certificate:<sup>9</sup>

---

<sup>1</sup> Chapter 71-131, s. 1, Laws of Fla.

<sup>2</sup> Section 394.455(26), F.S.

<sup>3</sup> Section 394.455(32), F.S.

<sup>4</sup> Section 394.463(1), F.S.

<sup>5</sup> Section 394.463(2)(a)1.-3., F.S.

<sup>6</sup> “Law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. s. 943.10(1), F.S.

<sup>7</sup> The *Certificate of a Professional Initiating an Involuntary Examination* is an official form created by the Department of Children and Families which must be executed by medical professionals initiating an involuntary examination under The Baker Act. The form contains information related to the person’s diagnosis and the medical professional’s personal observations of statements and behaviors which support the involuntary examination of such person. See FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, *CF-MH 3052b*, <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf> (last visited November 23, 2015).

<sup>8</sup> Section 394.463(2)(a)3., F.S.

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

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure.
- A physician or psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

In 2014, there were 181,471 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.18 percent), followed closely by mental health professionals (47.86 percent), with the remaining initiated pursuant to *ex parte* orders by judges (1.96 percent).<sup>10</sup>

### Physician Assistants

The licensure of physician assistants (PAs) in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses PAs and the Florida Council on Physician Assistants (Council) regulates them.<sup>11</sup> PAs are also regulated by either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S. The duty of a board and its members is to make disciplinary decisions concerning whether a doctor or PA has violated the provisions of his or her practice act.<sup>12</sup> There are 7,987 PAs who hold active licenses in Florida.<sup>13</sup>

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship.<sup>14</sup> A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.<sup>15</sup> The supervising physician is responsible and liable for any and all acts of the PA and may not supervise more than four PAs at any time.<sup>16</sup>

To become licensed as a PA in Florida, an applicant must demonstrate to the Council:<sup>17</sup>

- Satisfactory passage of the National Commission on Certification of Physician Assistant exam;
- Completion of the application and remittance of the application fee;<sup>18</sup>
- Completion of an approved PA training program;

<sup>10</sup> Christy, Annette & Christina Guenther, Baker Act Reporting Center, College of Behavioral & Community Sciences, University of South Florida, *Annual Report of Baker Act Data: Summary of 2014 Data*, available at <http://bakeraact.fmhi.usf.edu/index.html> (last visited Nov. 5, 2015).

<sup>11</sup> The Council consists of three physicians who are members of the Board of Medicine; one member who is a member of the Board of Osteopathic Medicine, and a physician assistant appointed by the State Surgeon General. (Sections 458.347(9) and 459.022(8), F.S.)

<sup>12</sup> Sections 458.347(12) and 459.022(12), F.S.

<sup>13</sup> Email correspondence with the Department of Health, Medical Quality Assurance staff on November 9, 2015. The number of active licensed PAs include both in-state and out-of-state licensees, as of November 9, 2015.

<sup>14</sup> Sections 458.347(2)(f) and 459.022(2)(f), F.S., define supervision as responsible supervision and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.

<sup>15</sup> Rules 64B8-30.012 and 64B15-6.010, F.A.C.

<sup>16</sup> Sections 458.347(3) and 459.022(3), F.S.

<sup>17</sup> Sections 458.347(7) and 459.022(7), F.S.

<sup>18</sup> The application fee is \$100 and the initial license fee is \$205. See <http://flboardofmedicine.gov/licensing/physician-assistant-licensure/> (last visited Nov. 5, 2015).

- A sworn statement of any prior felony convictions;
- A sworn statement of any previous revocation or denial of licensure in any state;
- Two letters of recommendation; and
- If the applicant wishes to apply for prescribing authority, a copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy.

Licenses are renewed biennially.<sup>19</sup> At the time of renewal, a PA must demonstrate that he or she has met the continuing education requirements and must submit a sworn statement that he or she has not been convicted of any felony in the previous two years.<sup>20</sup>

In 2008, Attorney General Bill McCollum issued an opinion stating:

A physician assistant pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.<sup>21</sup>

However, PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

#### Advanced Registered Nurse Practitioners

The licensure and regulation of nurses in this state is governed by part I of ch. 464, F.S. Nurses are licensed by the DOH and are regulated by the Board of Nursing. Licensure requirements to practice nursing include completion of education requirements, demonstration of passage of an examination approved by the DOH, acceptable results of a criminal background screening, and payment of applicable fees.<sup>22</sup>

A nurse who holds a current license to practice professional nursing may apply to be certified as an Advanced Registered Nurse Practitioner (ARNP), under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

- Satisfactory completion of a formal postbasic educational program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.<sup>23</sup> All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or dentist.<sup>24</sup> ARNPs may carry out treatments as specified in statute, including:<sup>25</sup>

<sup>19</sup> For timely renewed licenses, the renewal fee is \$280 and the prescribing registration is \$150. An applicant may be charged an additional fee if the license is renewed after expiration or is more than 120 days delinquent. See <http://flboardofmedicine.gov/renewals/physician-assistants/> (last visited Nov. 5, 2015).

<sup>20</sup> Sections 458.347(7)(c)-(d) and 459.022(7)(c)-(d), F.S.

<sup>21</sup> Op. Att'y Gen. Fla. 08-31 (2008), available at <http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf> (last visited Nov. 5, 2015).

<sup>22</sup> Sections 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

<sup>23</sup> Section 464.012(2), F.S.

<sup>24</sup> Section 464.012(3), F.S.

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

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy; and
- Performing additional functions as maybe determined by rule in accordance with s. 464.003(2), F.S.<sup>26</sup>

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.<sup>27</sup> Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.<sup>28</sup>

There are 22,003 ARNPs who hold active licenses in Florida.<sup>29</sup>

### **Effect of Proposed Changes**

The bill authorizes a PA or an ARNP to execute a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination for mental illness. Under current law, only a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist or clinical social worker may execute such a certificate.

The bill defines a "physician assistant" as having the same definition as the term has in s. 458.347(2)(e), F.S., or s. 459.022(2)(2), F.S. Those provisions define "physician assistant" as a person who is a graduate of an approved program or its equivalent or meets standards approved by the Board of Medicine or Osteopathic Board and is licensed to perform medical services delegated by the supervising physician. The bill defines an "advanced registered nurse practitioner" as a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing, as defined in s. 464.003, F.S.

The bill makes necessary conforming changes due to the statutory changes made by the bill.

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

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

**Section 1:** Amends s. 394.464, F.S., relating to involuntary examination.

**Section 2:** Amends s. 394.455, F.S., relating to definitions.

**Section 3:** Amends s. 394.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.

**Section 4:** Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.

**Section 5:** Amends s. 394.496, F.S., relating to service planning.

**Section 6:** Amends s. 394.9085, F.S., relating to behavioral provider liability.

**Section 7:** Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.

**Section 8:** Amends s. 744.704, F.S., relating to powers and duties.

**Section 9:** Provides an effective date of July 1, 2016.

<sup>26</sup> Section 464.003(2), F.S., defines "advanced or specialized nursing practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.

<sup>27</sup> Section 464.012(4), F.S.

<sup>28</sup> Section 464.012(4)(c)1., F.S.

<sup>29</sup> Email correspondence with the Department of Health, Medical Quality Assurance staff on November 9, 2015. The number of active licensed ARNPs include both in-state and out-of-state licensees, as of November 9, 2015.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

No additional rule-making is necessary to implement the provisions of the bill.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2015, the Health Quality Subcommittee adopted an amendment that clarified the definition of physician assistant by incorporating, by reference, the definitions of physician in ss. 458.347(2)(e) and 459.022(2)(e), F.S.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

1                           A bill to be entitled  
2           An act relating to involuntary examinations under the  
3           Baker Act; amending s. 394.463, F.S.; authorizing  
4           physician assistants and advanced registered nurse  
5           practitioners to initiate involuntary examinations  
6           under the Baker Act of persons believed to have mental  
7           illness; amending s. 394.455, F.S.; providing  
8           definitions; amending ss. 39.407, 394.495, 394.496,  
9           394.9085, 409.972, and 744.704, F.S.; conforming  
10          cross-references; providing an effective date.

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

13  
14          Section 1. Paragraph (a) of subsection (2) of section  
15          394.463, Florida Statutes, is amended to read:

16          394.463   Involuntary examination.—

17          (2)   INVOLUNTARY EXAMINATION.—

18          (a)   An involuntary examination may be initiated by any one  
19          of the following means:

20                1. A court may enter an ex parte order stating that a  
21                person appears to meet the criteria for involuntary examination,  
22                giving the findings on which that conclusion is based. The ex  
23                parte order for involuntary examination must be based on sworn  
24                testimony, written or oral. If other less restrictive means are  
25                not available, such as voluntary appearance for outpatient  
26                evaluation, a law enforcement officer, or other designated agent

27 of the court, shall take the person into custody and deliver him  
28 or her to the nearest receiving facility for involuntary  
29 examination. The order of the court shall be made a part of the  
30 patient's clinical record. No fee shall be charged for the  
31 filing of an order under this subsection. Any receiving facility  
32 accepting the patient based on this order must send a copy of  
33 the order to the Agency for Health Care Administration on the  
34 next working day. The order shall be valid only until executed  
35 or, if not executed, for the period specified in the order  
36 itself. If no time limit is specified in the order, the order  
37 shall be valid for 7 days after the date that the order was  
38 signed.

39 2. A law enforcement officer shall take a person who  
40 appears to meet the criteria for involuntary examination into  
41 custody and deliver the person or have him or her delivered to  
42 the nearest receiving facility for examination. The officer  
43 shall execute a written report detailing the circumstances under  
44 which the person was taken into custody, and the report shall be  
45 made a part of the patient's clinical record. Any receiving  
46 facility accepting the patient based on this report must send a  
47 copy of the report to the Agency for Health Care Administration  
48 on the next working day.

49 3. A physician, physician assistant, clinical  
50 psychologist, psychiatric nurse, mental health counselor,  
51 marriage and family therapist, ~~or~~ clinical social worker, or  
52 advanced registered nurse practitioner may execute a certificate

53 | stating that he or she has examined a person within the  
 54 | preceding 48 hours and finds that the person appears to meet the  
 55 | criteria for involuntary examination and stating the  
 56 | observations upon which that conclusion is based. If other less  
 57 | restrictive means are not available, such as voluntary  
 58 | appearance for outpatient evaluation, a law enforcement officer  
 59 | shall take the person named in the certificate into custody and  
 60 | deliver him or her to the nearest receiving facility for  
 61 | involuntary examination. The law enforcement officer shall  
 62 | execute a written report detailing the circumstances under which  
 63 | the person was taken into custody. The report and certificate  
 64 | shall be made a part of the patient's clinical record. Any  
 65 | receiving facility accepting the patient based on this  
 66 | certificate must send a copy of the certificate to the Agency  
 67 | for Health Care Administration on the next working day.

68 |       Section 2. Subsections (2) through (21) of section  
 69 | 394.455, Florida Statutes, are renumbered as subsections (3)  
 70 | through (22), respectively, present subsections (22) through  
 71 | (38) are renumbered as subsections (24) through (40),  
 72 | respectively, and new subsections (2) and (23) are added to that  
 73 | section, to read:

74 |       394.455 Definitions.—As used in this part, unless the  
 75 | context clearly requires otherwise, the term:

76 |       (2) "Physician assistant" has the same meaning as provided  
 77 | in s. 458.347(2)(e) or s. 459.022(2)(e).

78 |       (23) "Advanced registered nurse practitioner" means a

79 person licensed in this state to practice professional nursing  
 80 and certified in advanced or specialized nursing practice, as  
 81 defined in s. 464.003.

82 Section 3. Paragraph (a) of subsection (3) of section  
 83 39.407, Florida Statutes, is amended to read:

84 39.407 Medical, psychiatric, and psychological examination  
 85 and treatment of child; physical, mental, or substance abuse  
 86 examination of person with or requesting child custody.—

87 (3)(a)1. Except as otherwise provided in subparagraph  
 88 (b)1. or paragraph (e), before the department provides  
 89 psychotropic medications to a child in its custody, the  
 90 prescribing physician shall attempt to obtain express and  
 91 informed consent, as defined in s. 394.455(10) ~~394.455(9)~~ and as  
 92 described in s. 394.459(3)(a), from the child's parent or legal  
 93 guardian. The department must take steps necessary to facilitate  
 94 the inclusion of the parent in the child's consultation with the  
 95 physician. However, if the parental rights of the parent have  
 96 been terminated, the parent's location or identity is unknown or  
 97 cannot reasonably be ascertained, or the parent declines to give  
 98 express and informed consent, the department may, after  
 99 consultation with the prescribing physician, seek court  
 100 authorization to provide the psychotropic medications to the  
 101 child. Unless parental rights have been terminated and if it is  
 102 possible to do so, the department shall continue to involve the  
 103 parent in the decisionmaking process regarding the provision of  
 104 psychotropic medications. If, at any time, a parent whose

105 parental rights have not been terminated provides express and  
 106 informed consent to the provision of a psychotropic medication,  
 107 the requirements of this section that the department seek court  
 108 authorization do not apply to that medication until such time as  
 109 the parent no longer consents.

110 2. Any time the department seeks a medical evaluation to  
 111 determine the need to initiate or continue a psychotropic  
 112 medication for a child, the department must provide to the  
 113 evaluating physician all pertinent medical information known to  
 114 the department concerning that child.

115 Section 4. Paragraphs (a) and (c) of subsection (3) of  
 116 section 394.495, Florida Statutes, are amended to read:

117 394.495 Child and adolescent mental health system of care;  
 118 programs and services.—

119 (3) Assessments must be performed by:

120 (a) A professional as defined in s. 394.455(3), (5), (22),  
 121 (25), or (26) ~~394.455(2), (4), (21), (23), or (24);~~

122 (c) A person who is under the direct supervision of a  
 123 professional as defined in s. 394.455(3), (5), (22), (25), or  
 124 (26) ~~394.455(2), (4), (21), (23), or (24)~~ or a professional  
 125 licensed under chapter 491.

126 Section 5. Subsection (5) of section 394.496, Florida  
 127 Statutes, is amended to read:

128 394.496 Service planning.—

129 (5) A professional as defined in s. 394.455(3), (5), (22),  
 130 (25), or (26) ~~394.455(2), (4), (21), (23), or (24)~~ or a

131 professional licensed under chapter 491 must be included among  
 132 those persons developing the services plan.

133 Section 6. Subsection (6) of section 394.9085, Florida  
 134 Statutes, is amended to read:

135 394.9085 Behavioral provider liability.—

136 (6) For purposes of this section, the terms  
 137 "detoxification services," "addictions receiving facility," and  
 138 "receiving facility" have the same meanings as those provided in  
 139 ss. 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(28)  
 140 ~~394.455(26)~~, respectively.

141 Section 7. Paragraph (b) of subsection (1) of section  
 142 409.972, Florida Statutes, is amended to read:

143 409.972 Mandatory and voluntary enrollment.—

144 (1) The following Medicaid-eligible persons are exempt  
 145 from mandatory managed care enrollment required by s. 409.965,  
 146 and may voluntarily choose to participate in the managed medical  
 147 assistance program:

148 (b) Medicaid recipients residing in residential commitment  
 149 facilities operated through the Department of Juvenile Justice  
 150 or mental health treatment facilities as defined by s.  
 151 394.455(34) ~~394.455(32)~~.

152 Section 8. Subsection (7) of section 744.704, Florida  
 153 Statutes, is amended to read:

154 744.704 Powers and duties.—

155 (7) A public guardian shall not commit a ward to a mental  
 156 health treatment facility, as defined in s. 394.455(34)



CS/HB 325

2016

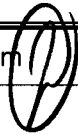

157 | ~~394.455(32)~~, without an involuntary placement proceeding as  
158 | provided by law.

159 |       Section 9. This act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 503 Judgments  
**SPONSOR(S):** Renner  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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

### SUMMARY ANALYSIS

Proceedings supplementary allow for the discovery of assets that a judgment debtor may have improperly transferred or concealed in an effort to delay or hinder a creditor attempting to satisfy a final judgment. A key part of proceedings supplementary is the ability of a judgment creditor to bring in to the proceeding a non-party who improperly received the property from the judgment debtor.

The bill makes a number of changes to current law governing proceedings supplementary:

- Revises and updates terms and creates a stand-alone "Definitions" section to provide uniform usage of terms.
- Moves the discovery provisions in current law into a single provision and provides that the discovery provisions are in addition to those provided under the rules of civil procedure.
- Provides a procedure for bringing non-parties into proceedings supplementary via service of a Notice to Appear that describes the property at issue and requires the third-party to serve an answer within a time set by the court.
- Provides that Uniform Fraudulent Transaction Act (UFTA) claims raised during proceedings supplementary must be initiated by a supplemental complaint and that such claims are governed by the provisions of the UFTA and the rules of civil procedure.
- Provides that a person who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to court-imposed penalties.

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:

##### **Final Process and Proceedings Supplementary**

Chapter 56, F.S., regulates the final process, referred to as “execution,” to enforce a final judgment of a court. Section 56.29, F.S., titled “Proceedings Supplementary,” was enacted to replace the common law requirement of a creditor’s bill in which a judgment creditor initiate a separate action to enjoin the fraudulent disposition of a judgment debtor’s property.<sup>1</sup> Proceedings supplementary allow for the discovery of assets that may have been improperly transferred, covered up, or concealed by a judgment debtor in an effort to delay or hinder creditors attempting to satisfy a final judgment.<sup>2</sup> A key part of proceedings supplementary is the ability of a judgment creditor to bring a non-party who improperly received the property into the proceeding.

First enacted in 1919, s. 56.29, F.S., has remained substantially unchanged with the exception of a minor change in 2014 that allows separate claims under the Uniform Fraudulent Transfer Act<sup>3</sup> to be filed in proceedings supplementary.<sup>4</sup> According to the Florida Bar, because of its age, s. 56.29, F.S., “contains formulaic provisions and references to archaic rules of civil procedure resulting in a lack of uniformity in the procedural application of the statute”<sup>5</sup> and raises concerns about adequate due process to non-parties brought into the proceeding.<sup>6</sup>

The bill makes the following changes to ch. 56, F.S.:

##### **Terms and Definitions**

A number of terms currently used in ch. 56, F.S., are not used uniformly, are imprecise, and lack conformity with current law and practice.<sup>7</sup> Additionally, ch. 56, F.S., does not currently provide definitions for terms used in the chapter.

The bill revises and updates terms in ch. 56, F.S., and creates s. 56.0101, F.S., a stand-alone “Definitions” section, to provide uniform definitions and usage of terms in ch. 56, F.S. Revisions and definitions made in the bill include the following:

- Where applicable, “defendant” and “defendant in execution” is changed to “judgment debtor,” which is defined as “each person who is liable on a judgment, order, or decree subject to execution under this chapter.”
- “Plaintiff,” “plaintiff in execution,” and “creditor” are changed to “judgment creditor,” which is defined as “the holder of an unsatisfied judgment, order, or decree for the payment of money, including any transferee or any surety having the right to control and collect the judgment.”
- “Corporations” is changed to “corporate judgment debtor,” which means “any judgment debtor other than an individual, an estate, or a trust that is not a business trust.” This definition conforms to corporate law,<sup>8</sup> which encompasses a variety of business entities.

---

<sup>1</sup> Benjamin H. Brodsky, *Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*, FLORIDA BAR JOURNAL, Dec. 2012, at 28, available at <https://www.floridabar.org/divcom/jn/jnjournal01.nsf/Articles/A29338FA50F7A88085257AC2007494DE>.

<sup>2</sup> See *State v. Viney*, 163 So. 57, 60 (Fla. 1935).

<sup>3</sup> ch. 726, F.S.

<sup>4</sup> s. 17, ch. 2014-182, Laws of Florida.

<sup>5</sup> Business Law Section of the Florida Bar, *Analysis of Proposed Amendments to Chapter 56*, 1 (on file with the Civil Justice Subcommittee).

<sup>6</sup> Brodsky, *supra* note 1.

<sup>7</sup> Business Law Section, *supra* note 5, at 1.

- “Levying creditor” is defined as the “levying judgment creditor.”
- Where applicable, “defendant” is changed to “claimant,” which is defined as any person other than the judgment debtor who claims any property levied on.”

### **Discovery in Proceedings Supplementary**

Currently, the discovery tools available to a judgment creditor in proceedings supplementary, such as requiring a judgment debtor to be examined before the court, are spread around in s. 56.29, F.S. It is also unclear whether these discovery tools are generally available or whether they may be used prior to initiating proceedings supplementary.<sup>9</sup>

The bill moves the discovery provisions in 56.29, F.S., to a newly-created s. 56.30, F.S., to provide clearly identifiable discovery procedures in proceedings supplementary. The provisions in 56.30, F.S., are identical to current law with the following additions:

- The discovery provisions in 56.30, F.S., are in addition to those provided under the rules of civil procedure.
- A judgment debtor may be required to appear before the court in the county of the judgment debtor’s principal place of business.
- A court’s examination of a judgment debtor may occur before issuance of a Notice to Appear to third-parties.<sup>10</sup>
- A corporate judgment debtor may send a designee with knowledge of the property subject to execution to be examined by the court.

### **Notification and Examination of Third-Parties**

As explained above, proceedings supplementary allow for the discovery of assets that may be been transferred, covered up, or concealed by a judgment debtor in an effort to hinder creditors attempting to satisfy a final judgment. Such attempts at hindering creditors generally involve people and entities that were not parties in the underlying case. However, the process for bringing these third-parties into the proceedings under s. 56.29(2), F.S., is unclear, which has caused confusion and raised due process concerns among practitioners and judges.<sup>11</sup>

The bill amends s. 56.29(2), F.S., to provide a uniform procedure for bringing non-parties into proceedings supplementary. A judgment creditor, in its motion to initiate proceedings supplementary, must describe the property of the judgment debtor that may be applied toward satisfaction of the judgment. After proceedings supplementary have been initiated, a court must issue a notice to appear to third-parties informing them that property in their possession or control may be subject to execution and applied to satisfy a judgment. Service of the notice to appear makes them parties to the proceedings supplementary. The notice to appear must be served by process server, should describe with reasonable particularity the property at issue, require the third-party to serve an answering affidavit within a time to be fixed by the court (no less than seven business days, unless shortened by the court for cause), and require the third-party to assert any defenses in the answering affidavit. The notice to appear must also inform the third-party that penalties may be imposed for failure to timely file an affidavit and that he or she has the right to a trial by jury.

### **Uniform Fraudulent Transfers Act Claims**

Section 56.29(5), F.S., currently allows judgment creditors to file claims under the Uniform Fraudulent Transfers Act<sup>12</sup> (UFTA) in proceedings supplementary. The bill moves this provision from s. 56.29(5),

<sup>8</sup> chs. 605-621, F.S.

<sup>9</sup> Business Law Section, *supra* note 5, at 7.

<sup>10</sup> See Notification and Examination of Third-Parties section below.

<sup>11</sup> See Brodsky, *supra* note 1.

<sup>12</sup> ch. 726, F.S.

F.S., to newly-created s. 56.29(9), F.S. To highlight that UFTA claims are distinct from proceedings supplementary, the bill provides that UFTA claims must be initiated by a supplemental complaint and served as provided by the rules of civil procedures, and that the UFTA claims are subject to ch. 726, F.S., and the rules of civil procedure. Additionally, the bill requires the clerk of court to provide the parties with a parallel case number that the parties will use for the UFTA action.

### **Defenses or Claims Raised Solely for Delay**

Sections 56.16 and 56.18, F.S., currently provide that a person (referred to as a “claimant”), other than the judgment debtor, who claims any property levied on by the judgment creditor, may file an affidavit stating the claim. If the court determines that the claimant’s asserted claim on the property was brought for the purpose of delay, the judgment creditor may be awarded damages up to 20 percent of the value of the property claimed. The bill amends ss. 56.16, 56.18, and 56.29, F.S., to provide that “a person to whom a Notice to Appear has been issued” in proceedings supplementary and who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to the penalties provided in ss. 56.16 and 56.18, F.S.

### **Other Effects of the Bill**

The bill amends s. 56.021, F.S., to provide that an execution may be issued upon an “order,” in addition to a judgment or decree. This is a codification of existing case law<sup>13</sup> and practice.

The bill amends s. 56.29(6), F.S., to provide that the provisions and remedies available in ss. 56.16-56.20, F.S., related to third-party claims and executions against third-parties, apply to orders, judgments, and writs issued pursuant to the proceedings supplementary process.

The bill provides cross-references and makes technical and conforming corrections.

## **B. SECTION DIRECTORY:**

Section 1 creates s. 56.0101, F.S., related to definitions.

Section 2 amends s. 56.011, F.S., related to executions and *capias ad satisfaciendum* abolished.

Section 3 amends s. 56.021, F.S., related to executions, issuance and return, alias, etc.

Section 4 amends s. 56.041, F.S., related to executions, collection and return.

Section 5 amends s. 56.071, F.S., related to executions on equities of redemption and discovery of value.

Section 6 amends s. 56.09, F.S., related to executions against corporations; generally.

Section 7 amends s. 56.10, F.S., related to executions against corporations; receivership.

Section 8 amends s. 56.12, F.S., related to executions; levy and forthcoming bond.

Section 9 amends s. 56.15, F.S., related to executions; stay of illegal writs.

Section 10 amends s. 56.16, F.S., related to executions; claims of third parties to property levied on.

Section 11 amends s. 56.18, F.S., related to executions; trial of claims of third persons.

Section 12 amends s. 56.19, F.S., related to judgments upon claims of third persons.

---

<sup>13</sup> See *Davidson v. Seegar*, 15 Fla. 671 (Fla. 1876).

Section 13 amends s. 56.20, F.S., related to executions on judgments against third person claimants.

Section 14 amends s. 56.22, F.S., related to execution sales; time, date, and place of sale.

Section 15 amends s. 56.26, F.S., related to executions; mandamus to force levy and sale.

Section 16 amends s. 56.27, F.S., related to executions; payment of money collected.

Section 17 amends s. 56.28, F.S., related to executions; failure of officer to pay over moneys collected.

Section 18 amends s. 56.29, F.S., related to proceedings supplementary.

Section 19 creates s. 56.30, F.S., related to discovery in proceedings supplementary.

Section 20 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:

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

### D. FISCAL COMMENTS:

The State Courts System commented on the bill, saying:

Language clarifying process and otherwise providing more explicit direction regarding requirements preliminary to proceedings supplementary will likely assist the courts handling these matters and may contribute to a reduction in the related expenditure of judicial time . . . [however, the] fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial time and workload resulting from language clarifying ch. 56, F.S., relating to final process in execution of judgments.<sup>14</sup>

<sup>14</sup> Office of the State Courts Administrator, 2016 Judicial Impact Statement for HB 503, dated November 25, 2015 (on file with the Civil Justice Subcommittee).

### 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 may require amendment of Florida Rules of Civil Procedure 1.550 (executions and final process) and 1.560 (discovery in aid of execution).<sup>15</sup> The Supreme Court has sufficient rulemaking authority in current law to make these changes.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

---

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



1 A bill to be entitled  
2 An act relating to judgments; creating s. 56.0101,  
3 F.S.; providing definitions for purposes of chapter  
4 56, F.S.; amending s. 56.011, F.S.; revising  
5 terminology; amending s. 56.021, F.S.; providing that  
6 an execution is valid and effective during the life of  
7 the order on which it is issued; amending ss. 56.041,  
8 56.071, 56.09, 56.10, 56.12, and 56.15, F.S.; revising  
9 terminology; amending s. 56.16, F.S.; specifying that  
10 persons to whom a Notice to Appear has been issued may  
11 obtain possession of property levied on by complying  
12 with certain procedures; revising terminology;  
13 amending s. 56.18, F.S.; specifying that a jury, if  
14 not waived, should be empaneled as soon as possible  
15 after service of a Notice to Appear; revising  
16 terminology; amending ss. 56.19, 56.20, 56.22, 56.26,  
17 56.27, and 56.28, F.S.; revising terminology; amending  
18 s. 56.29, F.S.; revising terminology; providing for  
19 the issuance of a Notice to Appear; providing  
20 requirements for such a notice; providing for service;  
21 providing for requirements for a responding affidavit;  
22 deleting provisions relating to examinations  
23 concerning property; providing for fraudulent transfer  
24 claims; creating s. 56.30, F.S.; providing for  
25 discovery in proceedings supplementary; providing an  
26 effective date.

27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52

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

Section 1. Section 56.0101, Florida Statutes, is created to read:

56.0101 Definitions.—As used in this chapter, the term:

(1) "Claimant" means any person other than the judgment debtor who claims any property levied on.

(2) "Corporate judgment debtor" means any judgment debtor other than an individual, an estate, or a trust that is not a business trust.

(3) "Judgment creditor" means the holder of an unsatisfied judgment, order, or decree for the payment of money, including any transferee or any surety having the right to control and collect the judgment under s. 55.13.

(4) "Judgment debtor" means each person who is liable on a judgment, order, or decree subject to execution under this chapter.

(5) "Levying creditor" means the levying judgment creditor.

(6) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(7) "Relative" means an individual related by consanguinity within the third degree as determined by the

53 common law, a spouse, or an individual related to a spouse  
 54 within the third degree as determined by the common law, and  
 55 includes an individual in an adoptive relationship within the  
 56 third degree.

57 Section 2. Section 56.011, Florida Statutes, is amended to  
 58 read:

59 56.011 Executions; capias ad satisfaciendum abolished.—~~In~~  
 60 ~~no case shall~~ A capias ad satisfaciendum may not be issued upon  
 61 a judgment, nor may ~~shall~~ the body of any person ~~defendant~~ be  
 62 subject to arrest or confinement for the payment of money,  
 63 except ~~it be~~ for fines imposed by lawful authority.

64 Section 3. Section 56.021, Florida Statutes, is amended to  
 65 read:

66 56.021 Executions; issuance and return, alias, etc.—When  
 67 issued, an execution is valid and effective during the life of  
 68 the judgment, order, or decree on which it is issued. When fully  
 69 paid, the officer executing it shall make his or her return and  
 70 file it in the court which issued the execution. If the  
 71 execution is lost or destroyed, the party entitled thereto may  
 72 have an alias, pluries or other copies on making proof of such  
 73 loss or destruction by affidavit and filing it in the court  
 74 issuing the execution.

75 Section 4. Subsection (1) of section 56.041, Florida  
 76 Statutes, is amended to read:

77 56.041 Executions; collection and return.—

78 (1) All executions shall be returnable when satisfied, and

HB 503

2016

79 the officers to whom they are delivered shall collect the  
 80 amounts thereof as soon as possible and shall furnish the  
 81 judgment debtor ~~defendant~~ with a satisfaction of judgment. All  
 82 receipts shall be endorsed on the execution.

83 Section 5. Section 56.071, Florida Statutes, is amended to  
 84 read:

85 56.071 Executions on equities of redemption; discovery of  
 86 value.—On motion made by the person party causing a levy to be  
 87 made on an equity of redemption, the court from which the  
 88 execution issued shall order the mortgagor, mortgagee, and all  
 89 other persons interested in the mortgaged property levied on to  
 90 appear and be examined about the amount remaining due on the  
 91 mortgage, the amount that has been paid, the person party to  
 92 whom that amount has been paid, and the date when that amount  
 93 was paid so that the value of the equity of redemption may be  
 94 ascertained before the property is sold. The court may appoint a  
 95 general or special magistrate to conduct the examination. This  
 96 section shall also apply to the interest of and personal  
 97 property in possession of a vendee under a retained title  
 98 contract or conditional sales contract.

99 Section 6. Section 56.09, Florida Statutes, is amended to  
 100 read:

101 56.09 Executions against corporate judgment debtors  
 102 ~~corporations~~; generally.—On any judgment against a corporate  
 103 judgment debtor, the judgment creditor ~~corporation~~ plaintiff may  
 104 have an execution levied on the current money as well as on the

105 goods and chattels, lands and tenements of the corporate  
 106 judgment debtor ~~said corporation~~.

107 Section 7. Section 56.10, Florida Statutes, is amended to  
 108 read:

109 56.10 Executions against corporate judgment debtors  
 110 ~~corporations~~; receivership.—If an execution cannot be satisfied  
 111 in whole or in part for lack of property of the corporate  
 112 judgment debtor ~~defendant corporation~~ subject to levy and sale,  
 113 on motion of the judgment creditor the circuit court in chancery  
 114 within whose circuit such corporate judgment debtor ~~corporation~~  
 115 is or has been doing business, or in which any of its effects  
 116 are found, may sequester the property, things in action, goods  
 117 and chattels of the corporate judgment debtor ~~corporation~~ for  
 118 the purpose of enforcing the judgment, and may appoint a  
 119 receiver for the corporate judgment debtor ~~corporation~~. A  
 120 receiver so appointed is subject to the rules prescribed by law  
 121 for receivers of the property of other judgment debtors. His or  
 122 her power shall extend throughout the state.

123 Section 8. Section 56.12, Florida Statutes, is amended to  
 124 read:

125 56.12 Executions; levy, forthcoming bond.—If a judgment  
 126 debtor ~~defendant~~ in execution wants to retake possession of any  
 127 property levied on, the judgment debtor ~~he or she~~ may do so by  
 128 executing a bond with surety to be approved by the officer in  
 129 favor of the judgment creditor ~~plaintiff~~ in a sum double the  
 130 value of the property retaken as fixed by the officer holding

131 the execution and conditioned that the property will be  
 132 forthcoming on the day of sale stated in the bond.

133 Section 9. Section 56.15, Florida Statutes, is amended to  
 134 read:

135 56.15 Executions; stay of illegal writs.—If any execution  
 136 issues illegally, the judgment debtor ~~defendant~~ in execution may  
 137 obtain a stay by making and delivering an affidavit to the  
 138 officer having the execution, stating the illegality and whether  
 139 any part of the execution is due, with a bond with surety  
 140 payable to the judgment creditor ~~plaintiff~~ in double the amount  
 141 of the execution or the part of which a stay is sought  
 142 conditioned to pay the execution or part claimed to be illegal  
 143 and any damages for delay if the affidavit is not well founded.  
 144 On receipt of such affidavit and bond the officer shall stay  
 145 proceedings on the execution and return the bond and affidavit  
 146 to the court from which the execution issued. The court shall  
 147 pass on the question of illegality as soon as possible. If the  
 148 execution is adjudged illegal in any part, the court shall stay  
 149 it as to the part but if it is adjudged legal in whole or in  
 150 part, the court shall enter judgment against the principal and  
 151 surety on such bond for the amount of so much of the execution  
 152 as is adjudged to be legal and execution shall issue thereon.

153 Section 10. Section 56.16, Florida Statutes, is amended to  
 154 read:

155 56.16 Executions; claims of third parties to property  
 156 levied on.—If any person, including a person to whom a Notice to

157 Appear has been issued, other than the judgment debtor ~~defendant~~  
 158 ~~in execution~~ claims any property levied on, he or she may obtain  
 159 possession of the property by filing with the officer having the  
 160 execution an affidavit by the claimant, or the claimant's  
 161 ~~himself or herself, his or her~~ agent or attorney, that the  
 162 property claimed belongs to the claimant ~~him or her~~ and by  
 163 furnishing the officer a bond with surety to be approved by the  
 164 officer in favor of the judgment creditor ~~plaintiff~~ in double  
 165 the value of the goods claimed as the value is fixed by the  
 166 officer and conditioned to deliver said property on demand of  
 167 said officer if it is adjudged to be the property of the  
 168 judgment debtor ~~defendant in execution~~ and to pay the judgment  
 169 creditor ~~plaintiff~~ all damages found against the claimant ~~him or~~  
 170 ~~her~~ if it appears that the claim was interposed for the purpose  
 171 of delay.

172 Section 11. Section 56.18, Florida Statutes, is amended to  
 173 read:

174 56.18 Executions; trial of claims of third persons.—As  
 175 soon as possible after the return, or after service of a Notice  
 176 to Appear, a jury, if not waived, shall be impaneled to try the  
 177 right of property. If the verdict is in favor of the judgment  
 178 creditor ~~plaintiff~~ and it appears that the claim brought  
 179 pursuant to s. 56.16 was interposed for delay, the judgment  
 180 creditor ~~plaintiff~~ may be awarded reasonable damages, not  
 181 exceeding 20 percent of the value of the property claimed. If  
 182 the claimant denies in writing under oath filed at least 3 days

183 before the trial, the correctness of the appraisalment of the  
 184 value of the property by the officer levying the execution, and  
 185 the verdict is in favor of the judgment creditor ~~plaintiff~~, the  
 186 jury if not waived, shall fix the value of each item thereof, or  
 187 of the items covered by such denial.

188 Section 12. Section 56.19, Florida Statutes, is amended to  
 189 read:

190 56.19 Judgments upon claims of third persons.—Upon the  
 191 verdict of the jury, the court shall enter judgment deciding the  
 192 right of property, and if the verdict is for the judgment  
 193 creditor ~~plaintiff~~, awarding a recovery by the judgment creditor  
 194 ~~plaintiff~~ from the claimant ~~defendant~~ and the claimant's ~~his or~~  
 195 ~~her~~ sureties, of the value (as fixed by the officer, or as fixed  
 196 by the jury if fixed by it) of such parts of the property as the  
 197 jury may have found subject to execution that were delivered to  
 198 the claimant, and awarding separately such damages as ~~the jury~~  
 199 may be ~~have~~ awarded under s. 56.18, and of all costs attending  
 200 the presentation and trial of the claim.

201 Section 13. Section 56.20, Florida Statutes, is amended to  
 202 read:

203 56.20 Executions on judgments against third person  
 204 claimants.—If the execution issued on the judgment is not paid,  
 205 it shall be satisfied in the usual manner unless on demand of  
 206 the officer holding it, the principal and surety in the claim  
 207 bond deliver the property released under the claim bond to the  
 208 officer and pay him or her the damages and costs awarded to the



209 judgment creditor ~~plaintiff~~. If the property is returned to the  
 210 officer but damages and costs are not paid, execution shall be  
 211 enforced for the damages and costs. If part of the property is  
 212 returned to the officer, the execution shall be enforced for the  
 213 value, fixed as aforesaid, of that not returned. All property  
 214 returned shall be sold under the original execution against the  
 215 judgment debtor ~~original defendant~~.

216 Section 14. Section 56.22, Florida Statutes, is amended to  
 217 read:

218 56.22 Execution sales; ~~time, date, and place of sale.~~-

219 (1) All sales of property under legal process shall take  
 220 place at the time, date, and place advertised in the notice of  
 221 the sheriff's sale on any day of the week except Saturday and  
 222 Sunday and shall continue from day to day until such property is  
 223 disposed of.

224 (2) Property not effectively disposed of at the initial  
 225 sheriff's sale may be readvertised, as provided in s. 56.21,  
 226 upon receipt of an additional deposit to cover costs incurred in  
 227 connection with the maintenance of the property under legal  
 228 process. ~~If In the event~~ no additional deposit is received by  
 229 the sheriff, the property may be returned to the judgment debtor  
 230 ~~defendant~~; if the judgment debtor ~~defendant~~ refuses to accept  
 231 such property, the property may be returned to a third party,  
 232 such as a lienholder, upon presentation of a proper court order  
 233 directing such return. If the property cannot be returned as  
 234 described in this subsection ~~none of the above can be~~

235 ~~accomplished~~, such property shall be disposed of as unclaimed or  
 236 abandoned.

237 Section 15. Section 56.26, Florida Statutes, is amended to  
 238 read:

239 56.26 Executions; mandamus to force levy and sale.—When an  
 240 officer holds an unsatisfied execution and refuses to levy on  
 241 property liable thereunder and on which it is his or her duty to  
 242 levy or having levied, refuses to advertise and sell the  
 243 property levied on, the judgment creditor ~~plaintiff in execution~~  
 244 is entitled to an alternative writ of mandamus requiring the  
 245 officer to levy such execution or advertise and sell the  
 246 property levied on, or both, as the case may be.

247 Section 16. Subsection (1) and paragraph (a) of subsection  
 248 (4) of section 56.27, Florida Statutes, are amended to read:

249 56.27 Executions; payment of money collected.—

250 (1) All money received under executions shall be paid, in  
 251 the order prescribed, to the following: the sheriff, for costs;  
 252 the levying creditor in the amount of \$500 as liquidated  
 253 expenses; and the priority lienholder under s. 55.10(1) and (2),  
 254 s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an  
 255 affidavit required by subsection (4), or the levying creditor's  
 256 ~~his or her~~ attorney, in satisfaction of the judgment lien, if  
 257 the judgment lien has not lapsed at the time of the levy. The  
 258 receipt of the attorney shall be a release of the officer paying  
 259 the money to him or her. If the name of more than one attorney  
 260 appears in the court file, the money shall be paid to the

261 attorney who originally commenced the action or who made the  
 262 original defense unless the file shows that another attorney has  
 263 been substituted.

264 (4) Before the date of the first publication or posting of  
 265 the notice of sale provided for under s. 56.21, at the time of  
 266 the levy request to the sheriff, the levying creditor shall  
 267 deliver to the sheriff an affidavit setting forth all of the  
 268 following as to the judgment debtor:

269 (a) For a personal property levy, an attestation by the  
 270 levying creditor or the levying creditor's attorney of record  
 271 that he or she has reviewed the database or judgment lien  
 272 records established in accordance with ss. 55.201-55.209 and  
 273 that the information contained in the affidavit based on that  
 274 review is true and correct. For a real property levy in  
 275 accordance with s. 55.10(1) and (2), an attestation by the  
 276 levying creditor or the levying creditor's ~~his or her~~ attorney  
 277 of record that he or she has reviewed the records of the clerk  
 278 of the court of the county where the property is situated, or  
 279 that he or she has performed or reviewed a title search, and  
 280 that the information contained in the affidavit, including a  
 281 disclosure of all judgment liens, mortgages, financing  
 282 statements, tax warrants, and other liens against the real  
 283 property, based on that review or title search is true and  
 284 correct.

285 Section 17. Section 56.28, Florida Statutes, is amended to  
 286 read:

287           56.28 Executions; failure of officer to pay over moneys  
 288 collected.—If any officer collecting money under execution fails  
 289 or refuses to pay it over within 30 days after it has been  
 290 received by him or her, or within 10 days after demand by the  
 291 levying creditor or the levying creditor's ~~plaintiff or his or~~  
 292 ~~her~~ attorney of record made in writing and delivered during  
 293 regular business hours to the civil process bureau, the officer  
 294 is liable to pay the same and 20 percent damages, to be  
 295 recovered by motion in court.

296           Section 18. Section 56.29, Florida Statutes, is amended to  
 297 read:

298           56.29 Proceedings supplementary.—

299           (1) When any judgment creditor ~~person or entity~~ holds an  
 300 unsatisfied judgment or judgment lien obtained under chapter 55,  
 301 the judgment creditor ~~holder or judgment lienholder~~ may file a  
 302 motion and an affidavit so stating, identifying, if applicable,  
 303 the issuing court, the case number, and the unsatisfied amount  
 304 of the judgment or judgment lien, including accrued costs and  
 305 interest, and stating that the execution is valid and  
 306 outstanding, and thereupon the judgment creditor ~~holder or~~  
 307 ~~judgment lienholder~~ is entitled to these proceedings  
 308 supplementary to execution.

309           (2) The judgment creditor shall, in the motion described  
 310 in subsection (1) or in a supplemental affidavit, describe any  
 311 property of the judgment debtor not exempt from execution in the  
 312 hands of any person or any property, debt, or other obligation

313 due to the judgment debtor that may be applied toward the  
 314 satisfaction of the judgment. Upon filing of the motion and  
 315 affidavits that property of the judgment debtor, or any debt, or  
 316 other obligation due to the judgment debtor in the custody or  
 317 control of any other person may be applied to satisfy the  
 318 judgment, then the court shall issue a Notice to Appear. The  
 319 Notice to Appear shall direct such person to file an affidavit,  
 320 as provided in s. 56.16, with the court by a date certain, which  
 321 date shall not be less than 7 business days from the date of  
 322 service of the Notice to Appear, stating why the property, debt,  
 323 or other obligation should not be applied to satisfy the  
 324 judgment. For good cause shown, the court may shorten the time  
 325 for serving an affidavit. The Notice to Appear shall describe  
 326 with reasonable particularity the property, debt, or other  
 327 obligation that may be available to satisfy the judgment, shall  
 328 provide such person with the opportunity to present defenses,  
 329 and shall indicate that discovery as provided under the rules of  
 330 civil procedure is available and that there is a right to a jury  
 331 trial as provided in s. 56.18. The Notice to Appear shall be  
 332 served as provided for in chapter 48. A responding affidavit  
 333 shall raise any fact or defense opposing application of the  
 334 property described in the Notice to Appear to satisfy the  
 335 judgment, including legal defenses, such as lack of personal  
 336 jurisdiction. Legal defenses need not be filed under oath but  
 337 must be served contemporaneously with the affidavit ~~On such~~  
 338 ~~plaintiff's motion the court shall require the defendant in~~

339 ~~execution to appear before it or a general or special magistrate~~  
 340 ~~at a time and place specified by the order in the county of the~~  
 341 ~~defendant's residence to be examined concerning his or her~~  
 342 ~~property.~~

343 ~~(3) The order shall be served in a reasonable time before~~  
 344 ~~the date of the examination in the manner provided for service~~  
 345 ~~of summons or may be served on such defendant or his or her~~  
 346 ~~attorney as provided for service of papers in the rules of civil~~  
 347 ~~procedure.~~

348 ~~(4) Testimony shall be under oath, shall be comprehensive~~  
 349 ~~and cover all matters and things pertaining to the business and~~  
 350 ~~financial interests of defendant which may tend to show what~~  
 351 ~~property he or she has and its location. Any testimony tending~~  
 352 ~~directly or indirectly to aid in satisfying the execution is~~  
 353 ~~admissible. A corporation must attend and answer by an officer~~  
 354 ~~who may be specified in the order. Examination of witnesses~~  
 355 ~~shall be as at trial and any party may call other witnesses.~~

356 ~~(5) The court may order any property of the judgment~~  
 357 ~~debtor, not exempt from execution, in the hands of any person,~~  
 358 ~~or any property, debt, or other obligation due to the judgment~~  
 359 ~~debtor, to be applied toward the satisfaction of the judgment~~  
 360 ~~debt. The court may entertain claims concerning the judgment~~  
 361 ~~debtor's assets brought under chapter 726 and enter any order or~~  
 362 ~~judgment, including a money judgment against any initial or~~  
 363 ~~subsequent transferee, in connection therewith, irrespective of~~  
 364 ~~whether the transferee has retained the property. Claims under~~

365 ~~chapter 726 are subject to the provisions of chapter 726 and~~  
 366 ~~applicable rules of civil procedure.~~

367 (3)(6)(a) When, within 1 year before the service of  
 368 process on the judgment debtor in the original proceeding or  
 369 action ~~him or her~~, the judgment debtor ~~defendant~~ has had title  
 370 to, or paid the purchase price of, any personal property to  
 371 which the judgment debtor's ~~defendant's~~ spouse, any relative, or  
 372 any person on confidential terms with the judgment debtor  
 373 ~~defendant~~ claims title and right of possession ~~at the time of~~  
 374 ~~examination~~, the judgment debtor ~~defendant~~ has the burden of  
 375 proof to establish that such transfer or gift ~~from him or her~~  
 376 was not made to delay, hinder, or defraud creditors.

377 (b) When any gift, transfer, assignment or other  
 378 conveyance of personal property has been made or contrived by  
 379 the judgment debtor to delay, hinder, or defraud creditors, the  
 380 court shall order the gift, transfer, assignment or other  
 381 conveyance to be void and direct the sheriff to take the  
 382 property to satisfy the execution. This does not authorize  
 383 seizure of property exempted from levy and sale under execution  
 384 or property which has passed to a bona fide purchaser for value  
 385 and without notice. Any person aggrieved by the levy or Notice  
 386 to Appear may proceed under ss. 56.16-56.20.

387 (4)(7) At any time the court may refer the proceeding to a  
 388 general or special magistrate who may be directed to report  
 389 findings of law or fact, or both. The general or special  
 390 magistrate has all the powers thereof, including the power to

391 issue subpoena, and shall be paid the fees provided by the court  
 392 ~~law~~.

393 ~~(5)(8)~~ A party or a witness examined under these  
 394 provisions is not excused from answering a question on the  
 395 ground that the answer will tend to show him or her guilty of  
 396 the commission of a fraud, or prove that he or she has been a  
 397 party or privy to, or knowing of a conveyance, assignment,  
 398 transfer, or other disposition of property for any purpose, or  
 399 that the party or witness or another person claims to have title  
 400 as against the judgment debtor ~~defendant~~ or to hold property  
 401 derived from or through the judgment debtor ~~defendant~~, or to be  
 402 discharged from the payment of a debt which was due to the  
 403 judgment debtor ~~defendant~~ or to a person on ~~in his or her~~ behalf  
 404 of the judgment debtor. An answer cannot be used as evidence  
 405 against the person so answering in any criminal proceeding.

406 ~~(6)(9)~~ The court may order any property of the judgment  
 407 debtor, not exempt from execution, or any property, debt, or  
 408 other obligation due to the judgment debtor, in the hands of or  
 409 under the control of any person subject to the Notice to Appear,  
 410 to be levied upon and applied toward the satisfaction of the  
 411 judgment debt. The court may enter any orders, judgments, or  
 412 writs required to carry out the purpose of this section,  
 413 including those orders necessary or proper to subject property  
 414 or property rights of any judgment debtor to execution, and  
 415 including entry of money judgments as provided in ss. 56.16-  
 416 56.19 against any person to whom a Notice to Appear has been



417 directed and over whom the court obtained personal jurisdiction  
 418 ~~impleaded defendant~~ irrespective of whether such person  
 419 ~~defendant~~ has retained the property, subject to ~~ss. 56.18 and~~  
 420 ~~56.19 and~~ applicable principles of equity, and in accordance  
 421 with chapters 76 and 77 and all applicable rules of civil  
 422 procedure. Sections 56.16-56.20 apply to any order issued under  
 423 this subsection.

424 (7)(10) Any person failing to obey any order issued under  
 425 this section by a judge or general or special magistrate or  
 426 failing to attend in response to a subpoena served on him or her  
 427 may be held in contempt.

428 (8)(11) Costs for proceedings supplementary shall be taxed  
 429 against the judgment debtor ~~defendant~~ as well as all other  
 430 incidental costs determined to be reasonable and just by the  
 431 court including, but not limited to, docketing the execution,  
 432 sheriff's service fees, and court reporter's fees. Reasonable  
 433 attorney ~~attorney's~~ fees may be taxed against the judgment  
 434 debtor ~~defendant~~.

435 (9) The court may entertain claims concerning the judgment  
 436 debtor's assets brought under chapter 726 and enter any order or  
 437 judgment, including a money judgment against any initial or  
 438 subsequent transferee, in connection therewith, irrespective of  
 439 whether the transferee has retained the property. Claims under  
 440 chapter 726 brought under this section shall be initiated by a  
 441 supplemental complaint and served as provided by the rules of  
 442 civil procedure, and the claims under the supplemental complaint

443 are subject to chapter 726 and the rules of civil procedure. The  
 444 clerk of the court shall docket a supplemental proceeding under  
 445 both the same case number assigned to the original complaint  
 446 filed by the judgment creditor or the case number assigned to a  
 447 judgment domesticated per s. 55.01, a separate supplemental  
 448 proceeding number, and shall assign such supplemental proceeding  
 449 to the same division and judge assigned to the main case or  
 450 domesticated judgment.

451 Section 19. Section 56.30, Florida Statutes, is created to  
 452 read:

453 56.30 Discovery in proceedings supplementary.-

454 (1) In addition to any other discovery permitted under the  
 455 rules of civil procedure, on the judgment creditor's motion the  
 456 court shall require the judgment debtor to appear before it or a  
 457 general or special magistrate at a time and place specified by  
 458 the order in the county of the judgment debtor's residence or  
 459 principal place of business to be examined concerning property  
 460 subject to execution. This examination may occur before issuance  
 461 of a Notice to Appear.

462 (2) The order shall be served in a reasonable time before  
 463 the date of the examination in the manner provided for service  
 464 of summons or may be served on the judgment debtor or the  
 465 judgment debtor's attorney of record as provided for service of  
 466 papers in the rules of civil procedure.

467 (3) Testimony shall be under oath, shall be comprehensive,  
 468 and cover all matters and things pertaining to the business and

469 financial interests of the judgment debtor which may tend to  
 470 show what property the judgment debtor has and its location. Any  
 471 testimony tending directly or indirectly to aid in satisfying  
 472 the execution is admissible. A corporate judgment debtor must  
 473 attend and answer by a designee with knowledge or an identified  
 474 officer or manager who may be specified in the order.  
 475 Examination of witnesses shall be as at trial and any party may  
 476 call other witnesses to be examined concerning property that may  
 477 be subject to execution.

478           Section 20. 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 Renner offered the following:

**Amendment**

5 Remove lines 126-176 and insert:

6 debtor ~~defendant in execution~~ wants to retake possession of any  
 7 property levied on, the judgment debtor ~~he or she~~ may do so by  
 8 executing a bond with surety to be approved by the officer in  
 9 favor of the judgment creditor ~~plaintiff~~ in a sum double the  
 10 value of the property retaken as fixed by the officer holding  
 11 the execution and conditioned that the property will be  
 12 forthcoming on the day of sale stated in the bond.

13 Section 9. Section 56.15, Florida Statutes, is amended to  
 14 read:

15 56.15 Executions; stay of illegal writs.—If any execution  
 16 issues illegally, the judgment debtor ~~defendant in execution~~ may  
 17 obtain a stay by making and delivering an affidavit to the



Amendment No. 1

18 officer having the execution, stating the illegality and whether  
19 any part of the execution is due, with a bond with surety  
20 payable to the judgment creditor ~~plaintiff~~ in double the amount  
21 of the execution or the part of which a stay is sought  
22 conditioned to pay the execution or part claimed to be illegal  
23 and any damages for delay if the affidavit is not well founded.  
24 On receipt of such affidavit and bond the officer shall stay  
25 proceedings on the execution and return the bond and affidavit  
26 to the court from which the execution issued. The court shall  
27 pass on the question of illegality as soon as possible. If the  
28 execution is adjudged illegal in any part, the court shall stay  
29 it as to the part but if it is adjudged legal in whole or in  
30 part, the court shall enter judgment against the principal and  
31 surety on such bond for the amount of so much of the execution  
32 as is adjudged to be legal and execution shall issue thereon.

33 Section 10. Section 56.16, Florida Statutes, is amended to  
34 read:

35 56.16 Executions; claims of third parties to property  
36 levied on.—If any person, including a person to whom a Notice to  
37 Appear has been issued pursuant to s. 56.29(2), other than the  
38 judgment debtor ~~defendant in execution~~ claims any property  
39 levied on, he or she may obtain possession of the property by  
40 filing with the officer having the execution an affidavit by the  
41 claimant, or the claimant's ~~himself or herself, his or her~~ agent  
42 or attorney, that the property claimed belongs to the claimant  
43 ~~him or her~~ and by furnishing the officer a bond with surety to



Amendment No. 1

44 be approved by the officer in favor of the judgment creditor  
45 ~~plaintiff~~ in double the value of the goods claimed as the value  
46 is fixed by the officer and conditioned to deliver said property  
47 on demand of said officer if it is adjudged to be the property  
48 of the judgment debtor ~~defendant in execution~~ and to pay the  
49 judgment creditor ~~plaintiff~~ all damages found against the  
50 claimant ~~him or her~~ if it appears that the claim was interposed  
51 for the purpose of delay.

52 Section 11. Section 56.18, Florida Statutes, is amended to  
53 read:

54 56.18 Executions; trial of claims of third persons.—As  
55 soon as possible after the return, or after service of a Notice  
56 to Appear pursuant to s. 56.29(2), a jury, if not waived, shall  
57 be impaneled to try the  
58



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: Civil Justice Subcommittee  
 2 Representative Renner offered the following:

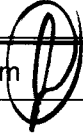

3  
 4 **Amendment**  
 5 Remove line 447 and insert:  
 6 judgment domesticated pursuant to s. 55.01, shall assign a  
 7 separate supplemental





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 549 Offenses Concerning Racketeering and Illegal Debts  
**SPONSOR(S):** Burton  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 850

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

### SUMMARY ANALYSIS

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act imposes criminal and civil liability on any person who engages in racketeering or the collection of unlawful debt to acquire real property or establish or operate any enterprise or be associated with such an enterprise. Any property that is used in the course of or derived from the illegal conduct is subject to forfeiture to the state. The bill makes a number of changes to the civil enforcement provisions of the RICO Act:

- If property subject to forfeiture is diminished in value, an investigative agency may pursue an action in circuit court to recover fair market value of the property.
- Investigative agencies may recover fair market value of any property that is diminished in value or made unavailable for forfeiture regardless of when the property is diminished in value or rendered unavailable for forfeiture.
- A court may order the forfeiture of any other property of the defendant up to the value of any property that is unavailable or is diminished in value.
- Civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person may be imposed for violations of the RICO Act.
- All investigatory subpoenas issued pursuant to the RICO Act are confidential for 120 days after the date of its issuance.
- Any party to a RICO Act civil action may petition the court for entry of a consent decree or for approval of a settlement agreement.
- The court is required to order distribution of forfeiture proceeds to the victims of the racketeering activity.

The bill appears to have an indeterminate positive fiscal impact on state revenues. The bill does not appear to have a fiscal impact on local government.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida RICO Act**

The Florida RICO (Racketeer Influenced and Corrupt Organization) Act<sup>1</sup> makes it a first-degree felony for any person to engage in, or conspire to engage in, racketeering activity or the collection of unlawful debt to establish or operate an enterprise or to be associated with such an enterprise.<sup>2</sup> The term "racketeering activity" encompasses a broad range of state and federal criminal offenses identified in current law.<sup>3</sup>

In addition to criminal penalties, the RICO Act imposes civil liability for violations of the Act, including forfeiture to the state of all property, including money, "used in the course of, intended for use in the course of, derived from, or realized through conduct" in violation of the Act.<sup>4</sup>

The bill makes a number of changes to the RICO Act:

##### **Property Rendered Unavailable for Forfeiture**

Current law, s. 895.05(2), F.S., provides that if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a RICO lien notice<sup>5</sup> or after the filing of a civil or criminal proceeding pursuant to the Act, the investigative agency<sup>6</sup> may institute an action to recover an amount equal to the fair market value of the property along with investigative costs and attorney's fees incurred by the investigative agency.

The bill amends s. 895.05(2), F.S., to include property subject to forfeiture that is diminished in value among the conditions sufficient for an investigative agency to pursue an action in circuit court to recover fair market value of the property. The bill also repeals that portion of s. 895.05(2), F.S., which provided investigative agencies the authority to pursue an action to recover fair market value of the unavailable property only if the property became unavailable "after the filing of a RICO lien notice or after the filing of a civil proceeding or criminal proceeding." Consequently, the bill gives investigative agencies the authority to pursue an action to recover fair market value of the unavailable property regardless of when the property is conveyed, alienated, disposed of, diminished in value, or rendered unavailable for forfeiture.

In addition to recovering the fair market value of the property of the unavailable or diminished property, the bill allows a court to order the forfeiture of any other property of the defendant up to the value of the unavailable property.

##### **Civil Proceedings by Investigative Agencies and the Department of Legal Affairs**

The bill restates and reorganizes current law provisions in s. 895.05, F.S., that provide for the filing of RICO Act civil proceedings by an investigative agency and the Department of Legal Affairs.

---

<sup>1</sup> ch. 895, F.S.

<sup>2</sup> ss. 895.03 and 895.04, F.S.

<sup>3</sup> s. 895.02(1)(a), F.S.

<sup>4</sup> s. 895.05(2)(a), F.S.

<sup>5</sup> An investigative agency may file a RICO lien notice in the county records when it initiates a civil proceeding. The RICO lien notice creates a lien in favor of the state on the real property or beneficial interest situated in the county where the lien is filed. s. 895.07, F.S.

<sup>6</sup> "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney." s. 895.02(7), F.S.

An investigative agency may institute a civil proceeding for forfeiture in the judicial circuit in which the defendant's real or personal tangible property is located and may institute a civil proceeding for forfeiture in any circuit court in the state regarding the defendant's intangible property.

The Department of Legal Affairs may bring an action to obtain injunctive relief, attorney fees, and costs incurred in the investigation and prosecution under the RICO Act. Money recovered by the Department of Legal Affairs for attorney fees and costs must be deposited in the Legal Affairs Revolving Trust Fund.

The Department of Legal Affairs may also bring an action for newly created civil penalties. Any natural person who violates the RICO Act is subject to a civil penalty of up to \$100,000, any other person is subject to a civil penalty of up to \$1 million. Money recovered for civil penalties must be deposited into the General Revenue Fund.

### **Court Approval of Consent Decrees and Settlement Agreements**

Current law does not address consent decrees or settlement agreements in civil actions for RICO Act violations brought by the Department of Legal Affairs. The bill provides that any party to such a civil action may petition the court for entry of a consent decree or for approval of a settlement agreement. The proposed decree or settlement must specify the alleged violations, the future obligations of the parties, the agreed upon relief, and the reasons for entering into the decree or settlement.

### **Confidentiality of Subpoenas**

During the course of a civil enforcement investigation, an investigating agency may subpoena witnesses or material.<sup>7</sup> Generally, investigatory subpoenas are used to obtain information from third-parties through the production of documents, files, and records or through testimony. Section 895.06, F.S., authorizes investigative agencies to apply ex parte to a circuit court for an order directing a person or entity who has been subpoenaed not disclose the existence of the subpoena to anyone except the subpoenaed person's attorney for a period of 90 days. The court may only grant an order for nondisclosure if the agency shows:

- sufficient factual grounds to reasonably indicate a violation of the RICO Act;
- that the documents or testimony sought appear reasonably calculated to lead to the discovery of admissible evidence; and
- facts which reasonably indicate that disclosure of the subpoena would hamper or impede the investigation or would result in a flight from prosecution.<sup>8</sup>

The 90-day non-disclosure time limit may be extended by the court for good cause shown by the investigative agency.

The bill amends s. 895.06, F.S., to remove the requirement that an investigative agency seek court authorization for non-disclosable subpoenas and provides that all subpoenas issued pursuant to the RICO Act automatically confidential for 120 days. The subpoenaed person or entity may only disclose the existence of the subpoena to his or her attorney during the 120-day period. The subpoena must include a reference to the confidentiality of the subpoena and a notice to the recipient that disclosure of the existence of the subpoena to anyone except the subpoenaed person's or entity's attorney is prohibited. The investigative agency may apply for an extension of the confidentiality period for good cause.

---

<sup>7</sup> s. 895.06(2), F.S.

<sup>8</sup> s. 895.06(3), F.S.

The bill also provides that an investigative agency may stipulate to protective orders with respect to documents and information submitted in response to a subpoena.

### **Restitution for Victims of RICO Act Violations**

Current law requires a court to direct the distribution of the proceeds from a forfeiture in the following priority: the clerk of the court to cover statutory fees; claims by people whose interests in the property are preserved (known as "innocent persons"); and claims by the Board of Trustees of the Internal Improvement Trust Fund.<sup>9</sup> Remaining funds are split between four government funds. However, current law does not authorize restitution to the victims of RICO Act violations.

The bill amends s. 895.09(1), F.S., to require a court to direct the distribution of the proceeds from a forfeiture to claims for restitution for victims of the racketeering activity after the proceeds have been distributed to the clerk, innocent persons, and claims of the Board of Trustees. If the forfeiture action was brought by the Department of Legal Affairs, the restitution must be distributed through the Legal Affairs Revolving Trust Fund; otherwise, the restitution will be distributed by the clerk of the court.

### **Other Effects of the Bill**

The bill deletes duplicative definitions, updates cross-references, and makes conforming changes.

The bill reenacts trust funds in current law for the purpose of incorporating changes made to s. 895.05, F.S.

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

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

Section 1 amends s. 895.02, F.S., related to definitions.

Section 2 amends s. 895.05, F.S., related to civil remedies.

Section 3 amends s. 895.06, F.S., related to civil investigative subpoenas.

Section 4 amends s. 895.09, F.S., related to the disposition of funds obtained through forfeiture.

Section 5 amends s. 16.56, F.S., related to the Office of Statewide Prosecution.

Section 6 amends s. 905.34, F.S., related to the powers and duties of a statewide grand jury; law applicable.

Section 7 reenacts s. 16.53, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S. Section 7 also corrects a cross-reference.

Section 8 reenacts s. 27.345, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S.

Section 9 reenacts s. 92.142, F.S., for the purpose of incorporating the amendment by the bill to s. 895.05, F.S.

Section 10 provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The civil penalties of up to \$100,000 for a natural person and up to \$1 million for any other person for RICO Act violations created by the bill may have an indeterminate positive revenue impact on the General Revenue Fund.

#### 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

n/a

1 A bill to be entitled  
2 An act relating to offenses concerning racketeering  
3 and illegal debts; reordering and amending s. 895.02,  
4 F.S.; specifying the earliest date that incidents  
5 constituting a pattern of racketeering activity may  
6 have occurred; conforming a cross-reference; amending  
7 s. 895.05, F.S.; authorizing an investigative agency  
8 to institute a civil proceeding for forfeiture in a  
9 circuit court in certain circumstances; adding  
10 diminution in value as a ground for an action under  
11 certain circumstances; removing certain grounds for an  
12 action; authorizing a court to order the forfeiture of  
13 other property of the defendant up to the value of  
14 unavailable property in certain circumstances;  
15 authorizing the Department of Legal Affairs to bring  
16 an action for certain violations to obtain specified  
17 relief, fees, and costs for certain purposes;  
18 providing for civil penalties for natural persons and  
19 other persons who commit certain violations; providing  
20 for deposit of moneys received for certain violations;  
21 authorizing a party to a specific civil action to  
22 petition the court for entry of a consent decree or  
23 for approval of a settlement agreement; providing  
24 requirements for such decrees or agreements; amending  
25 s. 895.06, F.S.; deleting the definition of  
26 "investigative agency" for purposes of provisions

27 relating to civil investigative subpoenas; providing  
 28 that a subpoena must be confidential for a specified  
 29 time; restricting to whom the subpoenaed person or  
 30 entity may disclose the existence of the subpoena;  
 31 requiring certain information be included in the  
 32 subpoena; authorizing the investigative agency to  
 33 apply for an order extending the amount of time the  
 34 subpoena remains confidential rather than having it  
 35 extended by the court for a specified period;  
 36 providing that the investigative agency has the  
 37 authority to stipulate to protective orders with  
 38 respect to documents and information submitted in  
 39 response to a subpoena; amending s. 895.09, F.S.;  
 40 conforming a cross-reference; providing for  
 41 distribution of forfeiture proceeds to victims;  
 42 amending ss. 16.56 and 905.34, F.S.; conforming cross-  
 43 references; reenacting and amending s. 16.53, F.S.,  
 44 relating to the Department of Legal Affairs Trust  
 45 Fund, to incorporate the amendment made by the act to  
 46 s. 895.05, F.S., in references thereto; conforming a  
 47 cross-reference; reenacting ss. 27.345(1) and  
 48 92.142(3), F.S., relating to the State Attorney RICO  
 49 Trust Fund and witness pay, respectively, to  
 50 incorporate the amendment made by the act to s.  
 51 895.05, F.S., in references thereto; providing an  
 52 effective date.

53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78

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

Section 1. Section 895.02, Florida Statutes, is reordered and amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1)~~(8)~~ "Beneficial interest" means any of the following:

(a) The interest of a person as a beneficiary under a trust established pursuant to s. 689.07 or s. 689.071 in which the trustee for the trust holds legal or record title to real property;

(b) The interest of a person as a beneficiary under any other trust arrangement pursuant to which a trustee holds legal or record title to real property for the benefit of such person; or

(c) The interest of a person under any other form of express fiduciary arrangement pursuant to which any other person holds legal or record title to real property for the benefit of such person.

The term "beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in either a general partnership or a limited partnership. A beneficial interest shall be deemed to be located where the real property owned by the trustee is located.



79            (2)~~(12)~~ "Civil proceeding" means any civil proceeding  
 80 commenced by an investigative agency under s. 895.05 or any  
 81 other provision of the Florida RICO Act.

82            (3)~~(11)~~ "Criminal proceeding" means any criminal  
 83 proceeding commenced by an investigative agency under s. 895.03  
 84 or any other provision of the Florida RICO Act.

85            (4)~~(5)~~ "Documentary material" means any book, paper,  
 86 document, writing, drawing, graph, chart, photograph,  
 87 phonorecord, magnetic tape, computer printout, other data  
 88 compilation from which information can be obtained or from which  
 89 information can be translated into usable form, or other  
 90 tangible item.

91            (5)~~(3)~~ "Enterprise" means any individual, sole  
 92 proprietorship, partnership, corporation, business trust, union  
 93 chartered under the laws of this state, or other legal entity,  
 94 or any unchartered union, association, or group of individuals  
 95 associated in fact although not a legal entity; and it includes  
 96 illicit as well as licit enterprises and governmental, as well  
 97 as other, entities. A criminal gang, as defined in s. 874.03,  
 98 constitutes an enterprise.

99            (6)~~(7)~~ "Investigative agency" means the Department of  
 100 Legal Affairs, the Office of Statewide Prosecution, or the  
 101 office of a state attorney.

102            (7)~~(4)~~ "Pattern of racketeering activity" means engaging  
 103 in at least two incidents of racketeering conduct that have the  
 104 same or similar intents, results, accomplices, victims, or

105 methods of commission or that otherwise are interrelated by  
 106 distinguishing characteristics and are not isolated incidents,  
 107 provided at least one of such incidents occurred after October  
 108 1, 1977, ~~the effective date of this act~~ and that the last of  
 109 such incidents occurred within 5 years after a prior incident of  
 110 racketeering conduct.

111 (8)~~(1)~~ "Racketeering activity" means to commit, to attempt  
 112 to commit, to conspire to commit, or to solicit, coerce, or  
 113 intimidate another person to commit:

114 (a) Any crime that is chargeable by petition, indictment,  
 115 or information under the following provisions of the Florida  
 116 Statutes:

117 1. Section 210.18, relating to evasion of payment of  
 118 cigarette taxes.

119 2. Section 316.1935, relating to fleeing or attempting to  
 120 elude a law enforcement officer and aggravated fleeing or  
 121 eluding.

122 3. Section 403.727(3)(b), relating to environmental  
 123 control.

124 4. Section 409.920 or s. 409.9201, relating to Medicaid  
 125 fraud.

126 5. Section 414.39, relating to public assistance fraud.

127 6. Section 440.105 or s. 440.106, relating to workers'  
 128 compensation.

129 7. Section 443.071(4), relating to creation of a  
 130 fictitious employer scheme to commit reemployment assistance

- 131 fraud.
- 132       8. Section 465.0161, relating to distribution of medicinal
- 133 drugs without a permit as an Internet pharmacy.
- 134       9. Section 499.0051, relating to crimes involving
- 135 contraband and adulterated drugs.
- 136       10. Part IV of chapter 501, relating to telemarketing.
- 137       11. Chapter 517, relating to sale of securities and
- 138 investor protection.
- 139       12. Section 550.235 or s. 550.3551, relating to dogracing
- 140 and horseracing.
- 141       13. Chapter 550, relating to jai alai frontons.
- 142       14. Section 551.109, relating to slot machine gaming.
- 143       15. Chapter 552, relating to the manufacture,
- 144 distribution, and use of explosives.
- 145       16. Chapter 560, relating to money transmitters, if the
- 146 violation is punishable as a felony.
- 147       17. Chapter 562, relating to beverage law enforcement.
- 148       18. Section 624.401, relating to transacting insurance
- 149 without a certificate of authority, s. 624.437(4)(c)1., relating
- 150 to operating an unauthorized multiple-employer welfare
- 151 arrangement, or s. 626.902(1)(b), relating to representing or
- 152 aiding an unauthorized insurer.
- 153       19. Section 655.50, relating to reports of currency
- 154 transactions, when such violation is punishable as a felony.
- 155       20. Chapter 687, relating to interest and usurious
- 156 practices.

157 21. Section 721.08, s. 721.09, or s. 721.13, relating to  
 158 real estate timeshare plans.

159 22. Section 775.13(5)(b), relating to registration of  
 160 persons found to have committed any offense for the purpose of  
 161 benefiting, promoting, or furthering the interests of a criminal  
 162 gang.

163 23. Section 777.03, relating to commission of crimes by  
 164 accessories after the fact.

165 24. Chapter 782, relating to homicide.

166 25. Chapter 784, relating to assault and battery.

167 26. Chapter 787, relating to kidnapping or human  
 168 trafficking.

169 27. Chapter 790, relating to weapons and firearms.

170 28. Chapter 794, relating to sexual battery, but only if  
 171 such crime was committed with the intent to benefit, promote, or  
 172 further the interests of a criminal gang, or for the purpose of  
 173 increasing a criminal gang member's own standing or position  
 174 within a criminal gang.

175 29. Former s. 796.03, former s. 796.035, s. 796.04, s.  
 176 796.05, or s. 796.07, relating to prostitution.

177 30. Chapter 806, relating to arson and criminal mischief.

178 31. Chapter 810, relating to burglary and trespass.

179 32. Chapter 812, relating to theft, robbery, and related  
 180 crimes.

181 33. Chapter 815, relating to computer-related crimes.

182 34. Chapter 817, relating to fraudulent practices, false

183 | pretenses, fraud generally, and credit card crimes.  
 184 |       35. Chapter 825, relating to abuse, neglect, or  
 185 | exploitation of an elderly person or disabled adult.  
 186 |       36. Section 827.071, relating to commercial sexual  
 187 | exploitation of children.  
 188 |       37. Section 828.122, relating to fighting or baiting  
 189 | animals.  
 190 |       38. Chapter 831, relating to forgery and counterfeiting.  
 191 |       39. Chapter 832, relating to issuance of worthless checks  
 192 | and drafts.  
 193 |       40. Section 836.05, relating to extortion.  
 194 |       41. Chapter 837, relating to perjury.  
 195 |       42. Chapter 838, relating to bribery and misuse of public  
 196 | office.  
 197 |       43. Chapter 843, relating to obstruction of justice.  
 198 |       44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or  
 199 | s. 847.07, relating to obscene literature and profanity.  
 200 |       45. Chapter 849, relating to gambling, lottery, gambling  
 201 | or gaming devices, slot machines, or any of the provisions  
 202 | within that chapter.  
 203 |       46. Chapter 874, relating to criminal gangs.  
 204 |       47. Chapter 893, relating to drug abuse prevention and  
 205 | control.  
 206 |       48. Chapter 896, relating to offenses related to financial  
 207 | transactions.  
 208 |       49. Sections 914.22 and 914.23, relating to tampering with

209 or harassing a witness, victim, or informant, and retaliation  
 210 against a witness, victim, or informant.

211 50. Sections 918.12 and 918.13, relating to tampering with  
 212 jurors and evidence.

213 (b) Any conduct defined as "racketeering activity" under  
 214 18 U.S.C. s. 1961(1).

215 (9) "Real property" means any real property or any  
 216 interest in such real property, including, but not limited to,  
 217 any lease of or mortgage upon such real property.

218 (10)~~(6)~~ "RICO lien notice" means the notice described in  
 219 s. 895.05(13) ~~895.05(12)~~ or in s. 895.07.

220 (11)~~(10)~~ "Trustee" means any of the following:

221 (a) Any person acting as trustee pursuant to a trust  
 222 established under s. 689.07 or s. 689.071 in which the trustee  
 223 holds legal or record title to real property.

224 (b) Any person who holds legal or record title to real  
 225 property in which any other person has a beneficial interest.

226 (c) Any successor trustee or trustees to any or all of the  
 227 foregoing persons.

228

229 However, the term "trustee" does not include any person  
 230 appointed or acting as a personal representative as defined in  
 231 s. 731.201 or appointed or acting as a trustee of any  
 232 testamentary trust or as a trustee of any indenture of trust  
 233 under which any bonds have been or are to be issued.

234 (12)~~(2)~~ "Unlawful debt" means any money or other thing of

235 value constituting principal or interest of a debt that is  
 236 legally unenforceable in this state in whole or in part because  
 237 the debt was incurred or contracted:

238 (a) In violation of any one of the following provisions of  
 239 law:

240 1. Section 550.235 or s. 550.3551, relating to dogracing  
 241 and horseracing.

242 2. Chapter 550, relating to jai alai frontons.

243 3. Section 551.109, relating to slot machine gaming.

244 4. Chapter 687, relating to interest and usury.

245 5. Section 849.09, s. 849.14, s. 849.15, s. 849.23, or s.  
 246 849.25, relating to gambling.

247 (b) In gambling activity in violation of federal law or in  
 248 the business of lending money at a rate usurious under state or  
 249 federal law.

250 Section 2. Subsections (9) through (12) of section 895.05,  
 251 Florida Statutes, are renumbered as subsections (10) through  
 252 (13), respectively, subsection (2) and present subsections (9)  
 253 through (12) are amended, and a new subsection (9) is added to  
 254 that section, to read:

255 895.05 Civil remedies.—

256 (2)(a) All property, real or personal, including money,  
 257 used in the course of, intended for use in the course of,  
 258 derived from, or realized through conduct in violation of ~~a~~  
 259 ~~provision of~~ ss. 895.01-895.05 is subject to civil forfeiture to  
 260 the state.

261           (b) An investigative agency may, on behalf of the state,  
 262 institute a civil proceeding for forfeiture in the circuit court  
 263 for the judicial circuit in which real or personal tangible  
 264 property, as described in paragraph (a) is located. An  
 265 investigative agency may, on behalf of the state, institute a  
 266 civil proceeding for forfeiture in a circuit court in the state  
 267 regarding intangible property as described in paragraph (a).

268           (c) Upon the entry of a final judgment of forfeiture in  
 269 favor of the state, the title of the state to the forfeited  
 270 property shall relate back:

271           1. In the case of real property or a beneficial interest,  
 272 to the date of filing of the RICO lien notice in the official  
 273 records of the county where the real property or beneficial  
 274 trust is located; if no RICO lien notice is filed, then to the  
 275 date of the filing of any notice of lis pendens under s.  
 276 895.07(5)(a) in the official records of the county where the  
 277 real property or beneficial interest is located; and if no RICO  
 278 lien notice or notice of lis pendens is filed, then to the date  
 279 of recording of the final judgment of forfeiture in the official  
 280 records of the county where the real property or beneficial  
 281 interest is located.

282           2. In the case of personal property, to the date the  
 283 personal property was seized by the investigating agency.

284           (d) If property subject to forfeiture is conveyed,  
 285 alienated, disposed of, diminished in value, or otherwise  
 286 rendered unavailable for forfeiture ~~after the filing of a RICO~~



287 ~~lien notice or after the filing of a civil proceeding or~~  
 288 ~~criminal proceeding, whichever is earlier,~~ the investigative  
 289 agency may, on behalf of the state, institute an action in any  
 290 circuit court against the person named in the RICO lien notice  
 291 or the defendant in the civil proceeding or criminal proceeding,  
 292 and the court shall enter final judgment against the person  
 293 named in the RICO lien notice or the defendant in the civil  
 294 proceeding or criminal proceeding in an amount equal to the fair  
 295 market value of the property, together with investigative costs  
 296 and attorney ~~attorney's~~ fees incurred by the investigative  
 297 agency in the action. In the alternative, the court may order  
 298 the forfeiture of any other property of the defendant up to the  
 299 value of the property subject to forfeiture. If a civil  
 300 proceeding is pending, such action shall be filed only in the  
 301 court where the civil proceeding is pending.

302 ~~(e)~~ (e) The state shall dispose of all forfeited property  
 303 as soon as commercially feasible. If property is not exercisable  
 304 or transferable for value by the state, it shall expire. All  
 305 forfeitures or dispositions under this section shall be made  
 306 with due provision for the rights of innocent persons. The  
 307 proceeds realized from such forfeiture and disposition shall be  
 308 promptly distributed in accordance with the provisions of s.  
 309 895.09.

310 (9) The Department of Legal Affairs may bring an action  
 311 for a violation of s. 895.03 to obtain injunctive relief, civil  
 312 penalties as provided in this subsection, attorney fees, and

313 costs incurred in the investigation and prosecution of any  
 314 action under this chapter.

315 (a) A natural person who violates s. 895.03 is subject to  
 316 a civil penalty of up to \$100,000. Any other person who violates  
 317 s. 895.03 is subject to a civil penalty of up to \$1 million.  
 318 Moneys recovered for civil penalties under this paragraph shall  
 319 be deposited into the General Revenue Fund.

320 (b) Moneys recovered by the Department of Legal Affairs  
 321 for attorney fees and costs under this subsection shall be  
 322 deposited into the Legal Affairs Revolving Trust Fund, which may  
 323 be used to investigate and enforce this chapter.

324 (c) In a civil action brought under this subsection by the  
 325 Department of Legal Affairs, any party to such action may  
 326 petition the court for entry of a consent decree or for approval  
 327 of a settlement agreement. The proposed decree or settlement  
 328 shall specify the alleged violations, the future obligations of  
 329 the parties, the relief agreed upon, and the reasons for  
 330 entering into the consent decree or settlement agreement.

331 (10)(9) The Department of Legal Affairs may, upon timely  
 332 application, intervene in any civil action or proceeding brought  
 333 under subsection (6) or subsection (7) if it certifies that, in  
 334 its opinion, the action or proceeding is of general public  
 335 importance. In such action or proceeding, the state shall be  
 336 entitled to the same relief as if the Department of Legal  
 337 Affairs had instituted the action or proceeding.

338 (11)(10) Notwithstanding any other provision of law, a

339 criminal or civil action or proceeding under this chapter ~~act~~  
 340 may be commenced at any time within 5 years after the conduct in  
 341 violation of a ~~provision of~~ this chapter ~~act~~ terminates or the  
 342 cause of action accrues. If a criminal prosecution or civil  
 343 action or other proceeding is brought, or intervened in, to  
 344 punish, prevent, or restrain any violation of ~~the provisions of~~  
 345 this chapter ~~act~~, the running of the period of limitations  
 346 prescribed by this section with respect to any cause of action  
 347 arising under subsection (6), ~~or~~ subsection (7), or subsection  
 348 (9) which is based in whole or in part upon any matter  
 349 complained of in any such prosecution, action, or proceeding  
 350 shall be suspended during the pendency of such prosecution,  
 351 action, or proceeding and for 2 years following its termination.

352 (12)~~(11)~~ The application of one civil remedy under any  
 353 provision of this chapter ~~act~~ does not preclude the application  
 354 of any other remedy, civil or criminal, under this chapter ~~act~~  
 355 or any other provision of law. Civil remedies under this chapter  
 356 ~~act~~ are supplemental, and not mutually exclusive.

357 (13)~~(12)~~(a) In addition to the authority to file a RICO  
 358 lien notice set forth in s. 895.07(1), the Department of Legal  
 359 Affairs, the Office of Statewide Prosecution, or the office of a  
 360 state attorney may apply ex parte to a criminal division of a  
 361 circuit court and, upon petition supported by sworn affidavit,  
 362 obtain an order authorizing the filing of a RICO lien notice  
 363 against real property upon a showing of probable cause to  
 364 believe that the property was used in the course of, intended

365 for use in the course of, derived from, or realized through  
 366 conduct in violation of ~~a provision of~~ ss. 895.01-895.05. If the  
 367 lien notice authorization is granted, the department shall,  
 368 after filing the lien notice, forthwith provide notice to the  
 369 owner of the property by one of the following methods:

370 1. By serving the notice in the manner provided by law for  
 371 the service of process.

372 2. By mailing the notice, postage prepaid, by ~~registered~~  
 373 ~~or~~ certified mail to the person to be served at his or her last  
 374 known address and evidence of the delivery.

375 3. If neither of the foregoing can be accomplished, by  
 376 posting the notice on the premises.

377 (b) The owner of the property may move the court to  
 378 discharge the lien, and such motion shall be set for hearing at  
 379 the earliest possible time.

380 (c) The court shall discharge the lien if it finds that  
 381 there is no probable cause to believe that the property was used  
 382 in the course of, intended for use in the course of, derived  
 383 from, or realized through conduct in violation of ~~a provision of~~  
 384 ss. 895.01-895.05 or if it finds that the owner of the property  
 385 neither knew nor reasonably should have known that the property  
 386 was used in the course of, intended for use in the course of,  
 387 derived from, or realized through conduct in violation of a  
 388 ~~provision of~~ ss. 895.01-895.05.

389 (d) No testimony presented by the owner of the property at  
 390 the hearing is admissible against him or her in any criminal

391 proceeding except in a criminal prosecution for perjury or false  
 392 statement, nor shall such testimony constitute a waiver of the  
 393 owner's constitutional right against self-incrimination.

394 (e) A lien notice secured under ~~the provisions of~~ this  
 395 subsection is valid for a period of 90 days from the date the  
 396 court granted authorization, which period may be extended for an  
 397 additional 90 days by the court for good cause shown, unless a  
 398 civil proceeding is instituted under this section and a lien  
 399 notice is filed under s. 895.07, in which event the term of the  
 400 lien notice is governed by s. 895.08.

401 (f) The filing of a lien notice, whether or not  
 402 subsequently discharged or otherwise lifted, shall constitute  
 403 notice to the owner and knowledge by the owner that the property  
 404 was used in the course of, intended for use in the course of,  
 405 derived from, or realized through conduct in violation of a  
 406 ~~provision of~~ ss. 895.01-895.05, such that lack of such notice  
 407 and knowledge shall not be a defense in any subsequent civil or  
 408 criminal proceeding under this chapter.

409 Section 3. Section 895.06, Florida Statutes, is amended to  
 410 read:

411 895.06 Civil investigative subpoenas; public records  
 412 exemption.-

413 ~~(1) As used in this section, the term "investigative~~  
 414 ~~agency" means the Department of Legal Affairs, the Office of~~  
 415 ~~Statewide Prosecution, or the office of a state attorney.~~

416 (1)(2) If, pursuant to the civil enforcement provisions of

417 s. 895.05, an investigative agency has reason to believe that a  
 418 person or other enterprise has engaged in, or is engaging in,  
 419 activity in violation of this chapter ~~act~~, the investigative  
 420 agency may administer oaths or affirmations, subpoena witnesses  
 421 or material, and collect evidence.

422 (2)(3) A subpoena issued pursuant to this chapter is  
 423 confidential for 120 days after the date of its issuance. The  
 424 subpoenaed person or entity may not disclose the existence of  
 425 the subpoena to any person or entity other than his or her  
 426 attorney during the 120-day period. The subpoena must include a  
 427 reference to the confidentiality of the subpoena and a notice to  
 428 the recipient of the subpoena that disclosure of the existence  
 429 of the subpoena to any other person or entity except the  
 430 subpoenaed person's or entity's attorney is prohibited. The  
 431 investigative agency may apply ex parte to the circuit court for  
 432 the circuit in which a subpoenaed person or entity resides, is  
 433 found, or transacts business for an order directing that the  
 434 subpoenaed person or entity not disclose the existence of the  
 435 subpoena to any other person or entity except the subpoenaed  
 436 person's attorney for an additional a period of time ~~90 days,~~  
 437 ~~which time may be extended by the court~~ for good cause shown by  
 438 the investigative agency. The order shall be served on the  
 439 subpoenaed person or entity with the subpoena, and the subpoena  
 440 must ~~shall~~ include a reference to the order and a notice to the  
 441 recipient of the subpoena that disclosure of the existence of  
 442 the subpoena to any other person or entity in violation of the

443 order may subject the subpoenaed person or entity to punishment  
 444 for contempt of court. Such an order may be granted by the court  
 445 only upon a showing:

446 (a) Of sufficient factual grounds to reasonably indicate a  
 447 violation of ss. 895.01-895.06;

448 (b) That the documents or testimony sought appear  
 449 reasonably calculated to lead to the discovery of admissible  
 450 evidence; and

451 (c) Of facts that ~~which~~ reasonably indicate that  
 452 disclosure of the subpoena would hamper or impede the  
 453 investigation or would result in a flight from prosecution.

454 (3)~~(4)~~ If matter that the investigative agency seeks to  
 455 obtain by the subpoena is located outside the state, the person  
 456 or enterprise subpoenaed may make such matter available to the  
 457 investigative agency or its representative for examination at  
 458 the place where such matter is located. The investigative agency  
 459 may designate representatives, including officials of the  
 460 jurisdiction in which the matter is located, to inspect the  
 461 matter on its behalf and may respond to similar requests from  
 462 officials of other jurisdictions.

463 (4)~~(5)~~ Upon failure of a person or enterprise, without  
 464 lawful excuse, to obey a subpoena issued under this section or a  
 465 subpoena issued in the course of a civil proceeding instituted  
 466 pursuant to s. 895.05, and after reasonable notice to such  
 467 person or enterprise, the investigative agency may apply to the  
 468 circuit court in which such civil proceeding is pending or, if

469 no civil proceeding is pending, to the circuit court for the  
 470 judicial circuit in which such person or enterprise resides, is  
 471 found, or transacts business for an order compelling compliance.  
 472 Except in a prosecution for perjury, an individual who complies  
 473 with a court order to provide testimony or material after  
 474 asserting a privilege against self-incrimination to which the  
 475 individual is entitled by law shall not have the testimony or  
 476 material so provided, or evidence derived therefrom, received  
 477 against him or her in any criminal investigation or proceeding.

478 ~~(5)+(6)~~ A person who fails to obey a court order entered  
 479 pursuant to this section may be punished for contempt of court.

480 (6) The investigative agency may stipulate to protective  
 481 orders with respect to documents and information submitted in  
 482 response to a subpoena issued under this section.

483 (7)(a) Information held by an investigative agency  
 484 pursuant to an investigation of a violation of s. 895.03 is  
 485 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 486 of the State Constitution.

487 (b) Information made confidential and exempt under  
 488 paragraph (a) may be disclosed by the investigative agency to:

489 1. A government entity in the performance of its official  
 490 duties.

491 2. A court or tribunal.

492 (c) Information made confidential and exempt under  
 493 paragraph (a) is no longer confidential and exempt once all  
 494 investigations to which the information pertains are completed,



495 unless the information is otherwise protected by law.

496 (d) For purposes of this subsection, an investigation is  
 497 considered complete once the investigative agency either files  
 498 an action or closes its investigation without filing an action.

499 (e) This subsection is subject to the Open Government  
 500 Sunset Review Act in accordance with s. 119.15 and shall stand  
 501 repealed on October 2, 2020, unless reviewed and saved from  
 502 repeal through reenactment by the Legislature.

503 Section 4. Paragraph (b) of subsection (1) of section  
 504 895.09, Florida Statutes, is amended, and paragraph (d) is added  
 505 to that subsection, to read:

506 895.09 Disposition of funds obtained through forfeiture  
 507 proceedings.—

508 (1) A court entering a judgment of forfeiture in a  
 509 proceeding brought pursuant to s. 895.05 shall retain  
 510 jurisdiction to direct the distribution of any cash or of any  
 511 cash proceeds realized from the forfeiture and disposition of  
 512 the property. The court shall direct the distribution of the  
 513 funds in the following order of priority:

514 (b) Any claims against the property by persons who have  
 515 previously been judicially determined to be innocent persons,  
 516 pursuant to s. 895.05(2)(e) ~~the provisions of s. 895.05(2)(e)~~,  
 517 and whose interests are preserved from forfeiture by the court  
 518 and not otherwise satisfied. Such claims may include any claim  
 519 by a person appointed by the court as receiver pending  
 520 litigation.

521 (d) Any claims for restitution by victims of the  
 522 racketeering activity. Where the forfeiture action was brought  
 523 by the Department of Legal Affairs, the restitution shall be  
 524 distributed through the Legal Affairs Revolving Trust Fund;  
 525 otherwise, the restitution shall be distributed by the clerk of  
 526 the court.

527 Section 5. Paragraph (a) of subsection (1) of section  
 528 16.56, Florida Statutes, is amended to read:

529 16.56 Office of Statewide Prosecution.—

530 (1) There is created in the Department of Legal Affairs an  
 531 Office of Statewide Prosecution. The office shall be a separate  
 532 "budget entity" as that term is defined in chapter 216. The  
 533 office may:

534 (a) Investigate and prosecute the offenses of:

535 1. Bribery, burglary, criminal usury, extortion, gambling,  
 536 kidnapping, larceny, murder, prostitution, perjury, robbery,  
 537 carjacking, and home-invasion robbery;

538 2. Any crime involving narcotic or other dangerous drugs;

539 3. Any violation of the Florida RICO (Racketeer Influenced  
 540 and Corrupt Organization) Act, including any offense listed in  
 541 the definition of racketeering activity in s. 895.02(8)(a)  
 542 ~~895.02(1)(a)~~, providing such listed offense is investigated in  
 543 connection with a violation of s. 895.03 and is charged in a  
 544 separate count of an information or indictment containing a  
 545 count charging a violation of s. 895.03, the prosecution of  
 546 which listed offense may continue independently if the

547 prosecution of the violation of s. 895.03 is terminated for any  
 548 reason;

549 4. Any violation of the Florida Anti-Fencing Act;

550 5. Any violation of the Florida Antitrust Act of 1980, as  
 551 amended;

552 6. Any crime involving, or resulting in, fraud or deceit  
 553 upon any person;

554 7. Any violation of s. 847.0135, relating to computer  
 555 pornography and child exploitation prevention, or any offense  
 556 related to a violation of s. 847.0135 or any violation of  
 557 chapter 827 where the crime is facilitated by or connected to  
 558 the use of the Internet or any device capable of electronic data  
 559 storage or transmission;

560 8. Any violation of chapter 815;

561 9. Any criminal violation of part I of chapter 499;

562 10. Any violation of the Florida Motor Fuel Tax Relief Act  
 563 of 2004;

564 11. Any criminal violation of s. 409.920 or s. 409.9201;

565 12. Any crime involving voter registration, voting, or  
 566 candidate or issue petition activities;

567 13. Any criminal violation of the Florida Money Laundering  
 568 Act;

569 14. Any criminal violation of the Florida Securities and  
 570 Investor Protection Act; or

571 15. Any violation of chapter 787, as well as any and all  
 572 offenses related to a violation of chapter 787;

573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598

or any attempt, solicitation, or conspiracy to commit any of the crimes specifically enumerated above. The office shall have such power only when any such offense is occurring, or has occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

Section 6. Subsection (3) of section 905.34, Florida Statutes, is amended to read:

905.34 Powers and duties; law applicable.—The jurisdiction of a statewide grand jury impaneled under this chapter shall extend throughout the state. The subject matter jurisdiction of the statewide grand jury shall be limited to the offenses of:

(3) Any violation of the provisions of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act, including any offense listed in the definition of racketeering activity in s. 895.02(8)(a) ~~895.02(1)(a)~~, providing such listed offense is investigated in connection with a violation of s. 895.03 and is charged in a separate count of an information or indictment containing a count charging a violation of s. 895.03, the

599 prosecution of which listed offense may continue independently  
 600 if the prosecution of the violation of s. 895.03 is terminated  
 601 for any reason;

602  
 603 or any attempt, solicitation, or conspiracy to commit any  
 604 violation of the crimes specifically enumerated above, when any  
 605 such offense is occurring, or has occurred, in two or more  
 606 judicial circuits as part of a related transaction or when any  
 607 such offense is connected with an organized criminal conspiracy  
 608 affecting two or more judicial circuits. The statewide grand  
 609 jury may return indictments and presentments irrespective of the  
 610 county or judicial circuit where the offense is committed or  
 611 triable. If an indictment is returned, it shall be certified and  
 612 transferred for trial to the county where the offense was  
 613 committed. The powers and duties of, and law applicable to,  
 614 county grand juries shall apply to a statewide grand jury except  
 615 when such powers, duties, and law are inconsistent with the  
 616 provisions of ss. 905.31-905.40.

617 Section 7. For the purpose of incorporating the amendment  
 618 made by this act to section 895.05, Florida Statutes, in a  
 619 reference thereto, subsection (4) and paragraph (a) of  
 620 subsection (5) of section 16.53, Florida Statutes, are  
 621 reenacted, and subsection (6) of that section is amended, to  
 622 read:

623 16.53 Legal Affairs Revolving Trust Fund.—  
 624 (4) Subject to the provisions of s. 895.09, when the

625 Attorney General files an action pursuant to s. 895.05, funds  
 626 provided to the Department of Legal Affairs pursuant to s.  
 627 895.09(2)(a) or, alternatively, attorneys' fees and costs,  
 628 whichever is greater, shall be deposited in the fund.

629 (5)(a) In the case of a forfeiture action pursuant to s.  
 630 895.05, the remainder of the moneys recovered shall be  
 631 distributed as set forth in s. 895.09.

632 (6) "Moneys recovered" means damages or penalties or any  
 633 other monetary payment, including monetary proceeds from  
 634 property forfeited to the state pursuant to s. 895.05 remaining  
 635 after satisfaction of any valid claims made pursuant to s.  
 636 895.09(1)(a)-(d) ~~895.09(1)(a)-(e)~~, which damages, penalties, or  
 637 other monetary payment is made by any defendant by reason of any  
 638 decree or settlement in any Racketeer Influenced and Corrupt  
 639 Organization Act or state or federal antitrust action prosecuted  
 640 by the Attorney General, but excludes attorney ~~attorneys'~~ fees  
 641 and costs.

642 Section 8. For the purpose of incorporating the amendment  
 643 made by this act to section 895.05, Florida Statutes, in a  
 644 reference thereto, subsection (1) of section 27.345, Florida  
 645 Statutes, is reenacted to read:

646 27.345 State Attorney RICO Trust Fund; authorized use of  
 647 funds; reporting.—

648 (1) Subject to the provisions of s. 895.09, when a state  
 649 attorney files an action pursuant to s. 895.05, funds provided  
 650 to the state attorney pursuant to s. 895.09(2)(a) or,

651 | alternatively, attorneys' fees and costs, whichever is greater,  
 652 | shall be deposited in the State Attorney RICO Trust Fund.

653 |         Section 9. For the purpose of incorporating the amendment  
 654 | made by this act to section 895.05, Florida Statutes, in a  
 655 | reference thereto, subsection (3) of section 92.142, Florida  
 656 | Statutes, is reenacted to read:

657 |             92.142 Witnesses; pay.—

658 |             (3) Any witness subpoenaed to testify on behalf of the  
 659 | state in any action brought pursuant to s. 895.05 or chapter 542  
 660 | who is required to travel outside his or her county of residence  
 661 | and more than 50 miles from his or her residence, or who is  
 662 | required to travel from out of state, shall be entitled to per  
 663 | diem and travel expenses at the same rate provided for state  
 664 | employees under s. 112.061 in lieu of any state witness fee.

665 |         Section 10. This act shall take effect July 1, 2016.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 573 Allocation of Court Costs

**SPONSOR(S):** Stone

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

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

### SUMMARY ANALYSIS

Current law allows each county to assess an additional court cost of up to \$65 imposed against a person who pleads guilty or nolo contendere to, or is found guilty of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense. Funds collected must be split into equal funds to supplement state and local funding of expenditures in 4 categories. The categories are court innovation, legal aid, law library, and juvenile alternative programs.

This bill eliminates the mandatory even split and allows each participating county to determine the allocation of funds received. The categories are unchanged.

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

The effective date of the bill is July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Section 939.185(1), F.S., allows each county to assess an additional court cost of up to \$65 imposed against a person who pleads guilty or nolo contendere to, or is found guilty of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense. Only 3 counties do not assess the additional court cost.

Funds collected must be split into 4 equal funds to supplement state and local funding of expenditures, and may only be used for purposes specified by statute. The four funds are for:

- Court innovations, as determined by the chief judge of the circuit, to supplement state funding for the elements of the state courts system.
- Legal aid programs required by law.<sup>1</sup>
- Personnel and legal materials for the public as part of a law library.
- Teen court programs, juvenile assessment centers, and other juvenile alternative programs.

Unspent monies in a fund at the end of a fiscal year must be transferred to the court innovation fund.

The funds provided to counties pursuant to s. 939.185(1), F.S., do not fully fund the listed programs. In FY 2013-14,<sup>2</sup> counties collected \$17.9 million in assessments authorized by s. 939.185(1), F.S., and expended \$44.5 million total for programs within the four categories.<sup>3</sup>

#### Effect of the Bill

The bill eliminates the mandatory split of monies collected, thereby allowing a county commission to determine the allocation of monies collected pursuant to s. 939.185, F.S. Unspent monies at the end of a fiscal year are carried forward for future allocation to one or more of the authorized purposes at the discretion of the county commission.

#### B. SECTION DIRECTORY:

Section 1 amends s. 939.185, F.S., regarding assessment of additional court costs and surcharges.

Section 2 amends s. 938.19, F.S., regarding teen courts, to change a cross-reference.

Section 3 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.

<sup>1</sup> A county may not reduce legal aid funding below that expended in the FY 2002-03. s. 29.008(3)(a), F.S.

<sup>2</sup> Note that the fiscal year for counties differs from that of the state. County fiscal years start on October 1.

<sup>3</sup> *Statewide Analysis of F.S. 939.185 / Assessment of Additional Court Costs, FY 2014 Year End Summary*, prepared by the Florida Chief Financial Officer, on file with the Civil Justice 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 bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

In FY 2013-14, counties collected \$17,886,304 million in assessments authorized by s. 939.185(1), F.S., and expended for programs within the four categories:<sup>4</sup>

Court Innovation	\$18,533,699
Legal Aid	\$10,809,292
Law Library	\$ 6,416,841
Juvenile Alternative Programs	\$ 8,766,417
Total FY 2013-14 Expenditures	\$44,526,249

**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:**

County fiscal years start on October 1, but the effective date of the bill is July 1, 2015. This bill may impact existing county budgets for the period of July 1, 2015 to September 30, 2015.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

n/a

<sup>4</sup> *Statewide Analysis of F.S. 939.185 / Assessment of Additional Court Costs, FY 2014 Year End Summary*, prepared by the Florida Chief Financial Officer, on file with the Civil Justice Subcommittee.

1   A bill to be entitled  
 2           An act relating to allocation of court costs; amending  
 3           s. 939.185, F.S.; deleting fixed allocations of the  
 4           proceeds of a specified additional court cost and  
 5           authorizing boards of county commissioners to allocate  
 6           such proceeds for specified purposes; deleting an  
 7           obsolete provision; providing boards of county  
 8           commissioners with discretion concerning allocation of  
 9           additional court cost proceeds carried forward to the  
 10          next fiscal year; amending s. 938.19, F.S.; conforming  
 11          provisions to changes made by the act; providing an  
 12          effective date.

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

15  
 16           Section 1. Paragraph (a) of subsection (1) of section  
 17   939.185, Florida Statutes, is amended to read:

18           939.185 Assessment of additional court costs and  
 19   surcharges.—

20           (1)(a) The board of county commissioners may adopt by  
 21   ordinance an additional court cost, not to exceed \$65, to be  
 22   imposed by the court when a person pleads guilty or nolo  
 23   contendere to, or is found guilty of, or adjudicated delinquent  
 24   for, any felony, misdemeanor, delinquent act, or criminal  
 25   traffic offense under the laws of this state. Such additional  
 26   assessment shall be accounted for separately by the county in

27 | which the offense occurred and be used only in the county  
 28 | imposing this cost, to be allocated by the board of county  
 29 | commissioners for the following purposes as follows:

30 |       1. ~~Twenty-five percent of the amount collected shall be~~  
 31 | ~~allocated~~ To fund innovations, as determined by the chief judge  
 32 | of the circuit.7

33 |       2. ~~to supplement state funding~~ For the elements of the  
 34 | ~~state courts system identified in s. 29.004~~ and county funding  
 35 | for local requirements under s. 29.008(2)(a)2., including  
 36 | support for teen court programs, except as provided in s.  
 37 | 938.19(7); juvenile assessment centers and other juvenile  
 38 | alternative programs; or problem-solving courts as defined in s.  
 39 | 910.035(5).

40 |       3.2. ~~Twenty-five percent of the amount collected shall be~~  
 41 | ~~allocated~~ To assist counties in providing legal aid programs  
 42 | required under s. 29.008(3)(a).

43 |       4.3. ~~Twenty-five percent of the amount collected shall be~~  
 44 | ~~allocated~~ To fund personnel and legal materials for the public  
 45 | as part of a law library.

46 |       4. ~~Twenty-five percent of the amount collected shall be~~  
 47 | ~~used as determined by the board of county commissioners to~~  
 48 | ~~support teen court programs, except as provided in s. 938.19(7),~~  
 49 | ~~juvenile assessment centers, and other juvenile alternative~~  
 50 | ~~programs.~~

51 |  
 52 | Each county receiving funds under this section shall report the

53 amount of funds collected pursuant to this section and an  
 54 itemized list of expenditures for all authorized programs and  
 55 activities. The report shall be submitted in a format developed  
 56 by the Supreme Court to the Governor, the Chief Financial  
 57 Officer, the President of the Senate, and the Speaker of the  
 58 House of Representatives on a quarterly basis ~~beginning with the~~  
 59 ~~quarter ending September 30, 2004.~~ Quarterly reports shall be  
 60 submitted no later than 30 days after the end of the quarter.  
 61 Any unspent funds at the close of the county fiscal year  
 62 ~~allocated under subparagraphs 2., 3., and 4.,~~ shall be carried  
 63 forward to the next fiscal year to be allocated at the  
 64 discretion of the board of county commissioners toward the  
 65 programs specified in subparagraphs 1., 2., 3., and 4.  
 66 ~~transferred for use pursuant to subparagraph 1.~~

67 Section 2. Subsection (7) of section 938.19, Florida  
 68 Statutes, is amended to read:

69 938.19 Teen courts.—

70 (7) A teen court administered in a county that adopts an  
 71 ordinance to assess court costs under this section may not  
 72 receive court costs collected under s. 939.185(1)(a)  
 73 ~~939.185(1)(a)4.~~

74 Section 3. 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 Stone offered the following:

**Amendment**

5 Remove line 74 and insert:

6 Section 3. This act shall take effect October 1, 2016.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CJS 16-01 Marketable Record Title Act  
**SPONSOR(S):** Civil Justice Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

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

### SUMMARY ANALYSIS

The Marketable Record Title Act \*(MRTA) was enacted to simplify real estate transactions. In general, it provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. One effect of MRTA is that covenants and restrictions are extinguished 30 years after their creation.

Current law allows residential homeowners associations to extend and renew their covenants, and provides a means by which expired covenants of a homeowners association may be revived if previously extinguished by MRTA. The bill:

- creates an exception to the applicability of MRTA by which covenants and restrictions of a homeowners association are not extinguished by operation of law;
- provides that a property owners association is treated as a homeowners association under MRTA, that is, the covenants and restrictions of such an association are exempt from extinguishment and may similarly be extended or revived.

The bill may have a minimal positive fiscal impact on state government should the number of revitalizations decrease as anticipated. The bill does not appear to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.<sup>1</sup> In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims or encumbrances against the land. Current law includes 9 exceptions to the applicability MRTA.<sup>2</sup>

One effect of MRTA is that homeowner association covenants can lose effect after 30 years unless the association timely files a renewal. A homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner in a form set by statute;<sup>3</sup>
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;<sup>4</sup>
- The board of directors of the association must approve the renewal by a two-thirds vote;<sup>5</sup> and
- Notice of the renewal must be recorded in the Official Records of the county.<sup>6</sup>

Additionally, s. 712.06(3), F.S. requires that either the clerk of the court furnish (at the association's expense) notice by certified mail to each homeowner member of the association a copy of the notice, or a copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.<sup>7</sup>

However, many homeowners associations file to timely file a renewal of their covenants. Formerly, MRTA would apply in such cases and accordingly the covenants and restrictions expired and were unenforceable. In 2004, part III of ch. 720, F.S., was enacted to provide a means by which covenants and restrictions of a mandatory homeowners association may be revived.<sup>8</sup> In 2007, nonmandatory homeowners associations became eligible for revitalization.<sup>9</sup> Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.<sup>10</sup>

There is a category of property owners who enact and enforce covenants and restrictions regarding their property and that of their neighbors who are impacted by MRTA but have not been included in the laws regarding renewal or revival of their covenants and restrictions. These property owners are commercial landowners in office parks, industrial parks, and other commercial districts.

#### **Effect of the Bill - Residential Homeowners Associations**

The bill amends s. 712.03, F.S., to add a new exception to MRTA to provide that the covenants and restrictions of a homeowners association are not extinguished by operation of MRTA. The bill also

---

<sup>1</sup> *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).

<sup>2</sup> s. 712.03, F.S.

<sup>3</sup> s. 712.06(1)(b), F.S.

<sup>4</sup> s. 712.05(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> s. 712.06(2), F.S.

<sup>7</sup> s. 712.06(3)(b), F.S.

<sup>8</sup> ch. 2004-345, L.O.F.

<sup>9</sup> ch. 2007-173, L.O.F.

<sup>10</sup> part III of ch. 720, F.S.

amends the renewal provisions of s. 712.05, F.S., to only apply where renewal is required by the terms of the association documents.

### **Effect of the Bill - Commercial Properties**

This bill adds a new definition to s. 712.01, F.S. that defines the term "mandatory property owners association" as

a Florida corporation responsible for the operation of property in which the voting membership is made up of the owners of property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the property. The term does not include a community development district or similar special taxing district created by law.

The bill provides that the covenants and restrictions of a mandatory property owners association are, like those of a residential homeowners association, not subject to expiration by operation of MRTA. Also, like a residential homeowners association, the bill provides that a mandatory property owners association may renew covenants and restrictions that are about to expire on their own terms and may revive covenants and restrictions that have expired.

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

Section 1 amends s. 712.01, F.S., regarding definitions applicable to the Marketable Record Title Act.

Section 2 amends s. 712.03, F.S., regarding exceptions to marketability.

Section 3 amends s. 712.05, F.S., regarding effect of filing notice.

Section 4 amends s. 712.11, F.S., regarding covenant revitalization.

Section 5 provides an effective date of July 1, 2015.

## **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:**

The bill slightly expands the authority and duties of the Department of Economic Opportunity by expanding the number of communities that are currently eligible for covenant revitalization. On the other hand, the provision of the bill exempting homeowners associations from future application of MRTA is likely to significantly lessen the number of revitalizations that will be filed in future years. It is anticipated that the net fiscal impact on the agency is positive.

The bill appears to impact the private sector in indirect means. The exemption from MRTA is likely to lower legal costs of associations, which will have a positive impact on the members of such associations. However, this may have a corresponding negative fiscal impact on the service providers that assisted associations in revitalization efforts.

**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**

n/a

1                                   A bill to be entitled  
 2           An act relating to the marketable record title act;  
 3           amending s. 712.01, F.S.; providing a definition;  
 4           amending s. 712.03, F.S.; adding an exception to the  
 5           marketable record title act relating to certain  
 6           associations; amending s. 712.05, F.S.; adding that  
 7           certain associations may file a notice to extend a  
 8           covenant or restriction; amending s. 712.11, F.S.;  
 9           extending provision regarding revitalization of  
 10          covenants to include restrictions and to include  
 11          certain associations; providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Subsection (7) is added to section 712.01,  
 16 Florida Statutes, to read:

17           712.01 Definitions.—As used in this law:

18           (7) The term "mandatory property owners association" means  
 19 a Florida corporation responsible for the operation of property  
 20 in which the voting membership is made up of the owners of  
 21 property or their agents, or a combination thereof, and in which  
 22 membership is a mandatory condition of property ownership, and  
 23 which is authorized to impose assessments that, if unpaid, may  
 24 become a lien on the property. The term does not include a  
 25 community development district or similar special taxing  
 26 district created by law.

27 Section 2. Subsection (10) is added to section 712.03,  
 28 Florida Statutes, to read:

29 712.03 Exceptions to marketability.—Such marketable record  
 30 title shall not affect or extinguish the following rights:

31 (10) Any covenant or restriction of a homeowners  
 32 association or a mandatory property owners association.

33 Section 3. Subsection (1) of section 712.05, Florida  
 34 Statutes, is amended to read:

35 712.05 Effect of filing notice.—

36 (1) A person claiming an interest in land, a mandatory  
 37 property owners association, or a homeowners' association that  
 38 is desiring to preserve a covenant or restriction may preserve  
 39 and protect the same from extinguishment by the operation of  
 40 this act or by operation of the covenant or restriction by  
 41 filing for record, during the 30-year period immediately  
 42 following the effective date of the root of title, a written  
 43 notice in accordance with this chapter. Such notice preserves  
 44 such claim of right or such covenant or restriction or portion  
 45 of such covenant or restriction for up to 30 years after filing  
 46 the notice unless the notice is filed again as required in this  
 47 chapter. A person's disability or lack of knowledge of any kind  
 48 may not delay the commencement of or suspend the running of the  
 49 30-year period. Such notice may be filed for record by the  
 50 claimant or by any other person acting on behalf of a claimant  
 51 who is:

52 (a) Under a disability;

53 (b) Unable to assert a claim on his or her behalf; or  
 54 (c) One of a class, but whose identity cannot be  
 55 established or is uncertain at the time of filing such notice of  
 56 claim for record.

57  
 58 Such notice may be filed by a homeowners' association or  
 59 mandatory property owners association only if the preservation  
 60 of such covenant or restriction or portion of such covenant or  
 61 restriction is approved by at least two-thirds of the members of  
 62 the board of directors of an incorporated ~~homeowners'~~  
 63 association at a meeting for which a notice, stating the  
 64 meeting's time and place and containing the statement of  
 65 marketable title action described in s. 712.06(1)(b), was mailed  
 66 or hand delivered to members of the ~~homeowners'~~ association at  
 67 least 7 days before such meeting. The ~~homeowners'~~ association or  
 68 clerk of the circuit court is not required to provide additional  
 69 notice pursuant to s. 712.06(3). The preceding sentence is  
 70 intended to clarify existing law.

71 Section 4. Section 712.11, Florida Statutes, is amended to  
 72 read:

73 712.11 Covenant and restriction revitalization.—A  
 74 homeowners' association or a property owners association not  
 75 otherwise subject to chapter 720 may use the procedures set  
 76 forth in ss. 720.403–720.407 to revive covenants and  
 77 restrictions that have lapsed under the terms of this chapter.

78 Section 5. This act shall take effect July 1, 2016.