

Tab 2 CS/SB 98 by JU, Steube (CO-INTRODUCERS) Mayfield; (Similar to H 00199) Health Insurer Authorization

636818	A	S	L	RCS	RC, Steube	Delete L.40 - 71:	01/11 10:48 AM
453946	A	S	L	RCS	RC, Steube	Delete L.201:	01/11 10:48 AM

Tab 3 SB 186 by Hutson; (Similar to CS/H 00105) Resign-to-run Law

267106	A	S		WD	RC, Hutson	btw L.84 - 85:	01/11 10:53 AM
754428	A	S	L	WD	RC, Hutson	Delete L.69 - 71:	01/11 10:53 AM

Tab 4 SB 192 by Baxley; (Similar to H 00079) Public Meetings

Tab 5 SB 220 by Passidomo; (Identical to H 00271) Bankruptcy Matters in Foreclosure Proceedings

Tab 6 CS/SB 568 by CM, Young; (Compare to H 00315) Telephone Solicitation

567576	A	S		RCS	RC, Young	Delete L.50 - 60:	01/11 11:02 AM
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Tab 7 SCR 184 by Thurston (CO-INTRODUCERS) Hutson; (Identical to H 00073) Joint Committee on the Library of Congress/Statue Replacement Approval

Tab 8 SB 472 by Thurston (CO-INTRODUCERS) Book, Taddeo, Farmer, Rodriguez; (Identical to CS/H 00139) National Statuary Hall

Tab 9 CS/SB 140 by JU, Benacquisto (CO-INTRODUCERS) Simpson, Book, Hutson, Perry, Bracy, Torres, Rodriguez, Campbell, Taddeo, Baxley, Farmer; (Similar to H 00335) Marriage Licenses

267844	A	S		RCS	RC, Benacquisto	Delete L.99 - 100:	01/11 11:10 AM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Benacquisto, Chair
Senator Braynon, Vice Chair

MEETING DATE: Thursday, January 11, 2018
TIME: 9:00—11:00 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Braynon, Vice Chair; Senators Book, Bradley, Brandes, Flores, Galvano, Lee, Montford, Perry, Rodriguez, Simpson, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Consideration of a Rules Change concerning ethics training		Recommend Favorable
2	CS/SB 98 Judiciary / Steube (Similar H 199)	Health Insurer Authorization; Prohibiting prior authorization forms from requiring certain information; requiring health insurers and pharmacy benefits managers on behalf of health insurers to provide certain information relating to prior authorization by specified means; requiring health insurers to publish on their websites and provide to insureds in writing a procedure for insureds and health care providers to request protocol exceptions, etc. BI 11/07/2017 Favorable JU 12/05/2017 Fav/CS RC 01/11/2018 Fav/CS	Fav/CS Yeas 11 Nays 0
3	SB 186 Hutson (Identical H 105)	Resign-to-run Law; Requiring an officer who qualifies for federal public office to resign from the office he or she presently holds if the terms, or any part thereof, run concurrently; prescribing requirements for the written resignation; providing for an automatic irrevocable resignation in the event of noncompliance, etc. EE 10/10/2017 Favorable JU 10/24/2017 Favorable RC 01/11/2018 Favorable	Favorable Yeas 9 Nays 1
4	SB 192 Baxley (Similar H 79)	Public Meetings; Specifying conditions under which members of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision may participate in fact-finding exercises or excursions, etc. EE 10/10/2017 Favorable CA 10/24/2017 Favorable RC 01/11/2018 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, January 11, 2018, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 220 Passidomo (Identical H 271)	Bankruptcy Matters in Foreclosure Proceedings; Authorizing lienholders to use certain documents as an admission in an action to foreclose a mortgage; providing that submission of certain documents in a foreclosure action creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure; requiring a court to take judicial notice of orders entered in bankruptcy cases under certain circumstances, etc. BI 11/07/2017 Favorable JU 12/05/2017 Favorable RC 01/11/2018 Favorable	Favorable Yeas 10 Nays 0
6	CS/SB 568 Commerce and Tourism / Young (Compare H 315, CS/H 553, S 740)	Telephone Solicitation; Revising the definition of the term "telephonic sales call" to include voicemail transmissions; prohibiting the transmission of voicemails to specified persons who communicate to a telephone solicitor that they would not like to receive certain voicemail solicitations or requests for donations, etc. CM 11/13/2017 Fav/CS RC 01/11/2018 Fav/CS	Fav/CS Yeas 11 Nays 0
7	SCR 184 Thurston (Identical HCR 73, Compare CS/H 139, S 472)	Joint Committee on the Library of Congress/Statue Replacement Approval; Requesting the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune, etc. AP 11/15/2017 Favorable RC 01/11/2018 Favorable	Favorable Yeas 10 Nays 0
8	SB 472 Thurston (Identical CS/H 139, Compare HCR 73, SCR 184)	National Statuary Hall; Requesting the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune; providing that the act is an official request to the Joint Committee on the Library of Congress, etc. AP 11/15/2017 Favorable RC 01/11/2018 Favorable	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, January 11, 2018, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 140 Judiciary / Benacquisto (Similar H 335, Compare H 71, S 208)	Marriage Licenses; Providing that a marriage license may not be issued to a person under the age of 18 years; requiring each party to a marriage to provide his or her social security number or an alien registration number for purposes of child support enforcement; providing that the effective date of a marriage license must be delayed by 3 days if the parties to the marriage have not submitted valid certificates of completion of a premarital preparation course, etc. JU 10/24/2017 Fav/CS CF 11/06/2017 CF 11/13/2017 Favorable RC 01/11/2018 Fav/CS	Fav/CS Yeas 11 Nays 0

Other Related Meeting Documents

Draft Rule Change:

1.40 – Ethics training

Prior to the opening day of a regular session in odd-numbered years, all Senators shall complete a course of at least four hours in length which addresses the requirements of law under the Code of Ethics for Public Officers and Employees, open meetings, public records, and any other subject approved by the President. Prior to the opening day of every regular session, all Senators shall complete a course of at least one (1) hour in length which addresses workplace harassment, sexual harassment, sensitivity and the proper handling of such issues in the workplace. Senators filling a vacant seat shall complete the course prior to being sworn into office.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 98

INTRODUCER: Rules Committee, Judiciary Committee and Senator Steube

SUBJECT: Health Insurer Authorization

DATE: January 11, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 98 revises provisions of the Insurance Code relating to prior authorization and step therapy or fail-first protocols. The bill creates an expedited, standard process for the approval or denial of prior authorizations and protocol exceptions, which provides greater transparency for consumers and providers regarding the policies and procedures of health insurers. The bill defines the term, “health insurers,” to include health insurers, health maintenance organizations, and Medicaid managed care plans.

A prior authorization process requires a health care provider to seek approval from an insurer before a patient may receive a specified treatment or prescription drugs under an insurance policy or contract. Some health insurers require an insured to use a step therapy or “fail-first” protocol for drugs or a medical treatment, requiring the insured to try a specific drug or medical procedure first before the insurer will cover another drug or procedure. However, timely access to appropriate health care can be critical for individuals who have chronic conditions that may cause death, disability, or serious discomfort.

The bill:

- Requires a health insurer or a pharmacy benefit manager (PBM) on behalf of a health insurer to authorize or deny a prior authorization request or a protocol, exception request form, or appeal from a denial in nonurgent care situation within 72 hours after receipt of a completed prior authorization form or protocol exception request. In urgent circumstances, a health insurer must authorize or deny a request within 24 hours.

- Provides greater transparency for consumers by requiring health insurers or PBMs to provide public access to current prior authorization requirements, restrictions, and forms on their websites and in a written or electronic form when requested.
- Provides that if a health insurer or PBM intends to amend or implement a new prior authorization requirement or restriction, the entity must update the website 60 days before the effective date of the new requirement or restriction. Notification of the change must be provided to all insureds or enrollees using the affected service and to all contract providers who provide the affected services at least 60 days before the effective date.
- Requires a health insurer to grant a protocol exception request under certain conditions.
- Provides that if the health insurer authorizes the request for a protocol exception, the health insurer must specify the approved medical procedure, course of treatment, or prescription drug benefits.
- Requires that, if the health insurer denies the protocol exception request, the health insurer must provide specified information, including procedures on appealing the denial.

The bill will have an indeterminate fiscal impact on the Florida Medicaid program.

The State Group Insurance program indicates that the bill will have a fiscal impact on the program.

There is no fiscal impact on the Office of Insurance Regulation.

II. Present Situation:

Regulation of Insurers and Health Maintenance Organizations in Florida

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.¹ The Agency for Health Care Administration (agency) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from the OIR, an HMO must receive a Health Care Provider Certificate from the agency.² As part of the certification process used by the agency, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.³

The Florida Insurance Code⁴ provides that no person may transact insurance in this state or relative to a subject of insurance resident, located or to be performed in this state, without complying with the applicable provisions of the Florida Insurance Code.⁵ Health insurers and HMOs are required to provide an outline of coverage or other information describing the benefits, coverages, exclusions, and limitations of a policy or contract. This may include an outline of coverage describing the principal exclusions and limitations of the policy.⁶ Further,

¹ Section 20.121(3)(a), F.S.

² Section 641.21(1), F.S.

³ Section 641.495, F.S.

⁴ Section 624.01, F.S. (Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.”)

⁵ Section 624.11, F.S.

⁶ Section 627.642, F.S.

each contract, certificate, or member handbook of an HMO must delineate the services for which a subscriber is entitled and any limitations under the contract.⁷

Health Insurance Cost Containment

The Florida Insurance Code also requires health insurers and HMOs to provide cost containment measures. Section 627.4234, F.S., requires a health insurance policy or health care services plan, which provides medical, hospital, or surgical expense coverage delivered or issued for delivery in this state to contain one or more of the following procedures or provisions to contain health insurance costs or cost increases:

- Coinsurance.
- Deductible amounts.
- Utilization review.
- Audits of provider bills to verify that services and supplies billed were furnished and that proper charges were made.
- Scheduled benefits.
- Benefits for preadmission testing.
- Any lawful measure or combination of measures for which the insurer provides to the office information demonstrating that the measure or combination of measures is reasonably expected to contain health insurance costs or cost increases.

Insurers use many cost containment and utilization review strategies to manage medical and drug spending and patient safety. For example, plans may place utilization management requirements on the use of certain medical treatments or drugs on their formulary. Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under a plan. In some cases, plans require an insured to use a step therapy protocol for drugs or a medical treatment, which requires the insured to try one drug or medical procedure first to treat the medical condition before the insurer or HMO will authorized coverage for another drug or procedure for that condition.

Pursuant to s. 627.42392, F.S., any “health insurer” (health insurer, HMO, Medicaid managed care plan) or pharmacy benefit manager, on behalf of the health insurer, that does not use an online prior authorization form must use a standardized form adopted by the Financial Services Commission to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit. The form must include all clinical documentation necessary for the health insurer to make a decision.

Florida’s Statewide Medicaid Managed Care Program⁸

The Florida Medicaid program is a partnership between the federal and state governments. In Florida, the Agency for Health Care Administration (agency) oversees the Medicaid program.⁹

⁷ Section 641.31(4), F.S.

⁸ Agency for Health Care Administration, *2018 Legislative Bill Analysis of SB 98* (Oct. 31, 2017) (on file with the Senate Judiciary Committee and the Banking and Insurance Committee)

⁹ Part III of ch. 409, F.S., governs the Medicaid program.

The Statewide Medicaid Managed Care (SMMC) program is comprised of the Managed Medical Assistance (MMA) program and the Long-term Care (LTC) managed care program. The agency contracts with managed care plans to provide services to eligible enrollees.¹⁰

Managed Care Covered Services

The benefit package offered by the MMA plans is comprehensive and covers all Medicaid state plan benefits (with very limited exceptions). This includes all medically necessary services for children. Most Florida Medicaid enrollees who are eligible for the full array of Florida Medicaid benefits are enrolled in an MMA plan. The agency maintains coverage policies for most Florida Medicaid services, which are incorporated by reference into Rule 59G-4, F.A.C. Florida Medicaid managed care plans cannot be more restrictive than these policies or the Florida Medicaid state plan (which is approved by the federal Centers for Medicare and Medicaid Services) in providing services to their enrollees.

The agency is required to purchase goods and services in the most cost-effective manner consistent with the delivery of quality medical care.¹¹ Specifically, the agency may mandate step-therapy, drug therapy management, or disease management. The agency is required to implement a “step-therapy prior authorization approval process for medications excluded from the preferred drug list”¹² with the assistance of the Pharmaceutical and Therapeutics (P&T) committee.¹³ The P&T committee meets quarterly, reviews all drug classes included in the formulary at least every 12 months, and may recommend additions to and deletions from the agency’s Medicaid PDL, such that the PDL provides for medically appropriate drug therapies for Florida Medicaid enrollees and an array of choices for prescribers within each therapeutic class. The agency also manages the federally required Medicaid Drug Utilization Board, which meets quarterly, and develops and reviews clinical prior authorization criteria, including step-therapy protocols for drugs that are not on the Medicaid PDL.

Florida Medicaid managed care plans serving MMA enrollees are required to provide all prescription drugs listed on the agency’s PDL and otherwise covered by Medicaid.¹⁴ As such, the Florida Medicaid managed care plans have not implemented their own plan-specific formulary or PDL. The Florida Medicaid managed care plan’s prior authorization criteria and protocols related to prescription drugs cannot be more restrictive than the criteria established by the agency.

Prior Authorization Requirements

Florida Medicaid managed care plans may implement service authorization and utilization management requirements for the services they provide under the SMMC program. However, Florida Medicaid managed care plans are required to ensure that service authorization decisions

¹⁰ A managed care plan that is eligible to provide services under the SMMC program must have a contract with the agency to provide services under the Medicaid program and must also be a health insurer; an exclusive provider organization or a HMO authorized under ch. 624, 627, or 641, F.S., respectively; a provider service network authorized under s. 409.912(2), F.S., or an accountable care organization authorized under federal law. Section 409.962, F.S.

¹¹ Section 409.912, F.S.

¹² *Id.*

¹³ Section 409.91195, F.S.

¹⁴ See Agency for Health Care Administration Pharmacy Policy available at:

http://ahca.myflorida.com/Medicaid/Policy_and_Quality/Policy/pharmacy_policy/index.shtml (last viewed Nov. 5, 2017).

are based on objective evidenced-based criteria; utilization management procedures are applied consistently; and all decisions to deny or limit a requested service are made by health care providers who have the appropriate clinical expertise in treating the enrollee's condition. The Florida Medicaid managed care plans are also required to adopt practice guidelines that are based on valid and reliable clinical evidence or a consensus of health care professionals in a particular field. These practice guidelines must consider the needs of the enrollees. Further, the guidelines must be adopted in consultation with providers and be reviewed and updated periodically, as appropriate.¹⁵

Florida Medicaid managed care plans must establish and maintain a utilization management system to monitor utilization of services, including an automated service authorization system for denials, service limitations, and reductions of authorization. Section 627.42392, F.S., requires the use of a standard prior authorization form by health insurers. A health insurer that does not provide an electronic prior authorization process for use by its providers is required to use the prior authorization form adopted by the Financial Services Commission for authorization of procedures, treatments, or prescription drugs. Currently, Medicaid managed care plans are required by contract to have electronic authorization processes and are therefore exempt from this provision.

The SMMC contract requires managed care plans to authorize or deny a standard request for prior authorization for services other than prescribed drugs within 7 days and authorize or deny an expedited request within 48 hours after receiving the request. Within 24 hours after receipt of a request, a managed care plan must respond (deny, approve, or request additional information) to a request for prior authorization for prescription drugs. The timeframe for standard authorization decisions can be extended up to 7 additional days if the enrollee or the provider requests an extension or the managed care plan justifies the need for additional information and describes how the extension is in the enrollee's interest.

Enrollee Materials and Services

Managed care plans are contractually required to notify enrollees via the enrollee handbook of any procedures for obtaining required services and authorization requirements, including any services available without prior authorization. All enrollee communications, including written materials, spoken scripts, and websites, must be at or near the fourth grade reading level. Managed care plans are required by contract to issue a provider handbook to all providers that includes prior authorization and referral procedures, including required forms. Managed care plans are required to keep all provider handbooks and bulletins up to date and in compliance with state and federal laws. The managed care plans must notify its enrollees in writing of any changes to covered services or service authorization protocols at least 30 days in advance of the change.

The managed care plan must send a written notice of adverse benefit determination to the enrollee to inform the enrollee about a decision to deny, reduce, suspend, or terminate a requested service and provide directions on how the enrollee may ask for a plan appeal to dispute

¹⁵ These guidelines are consistent with requirements found in federal and state regulations (See 42 CFR s. 438.236(b)). All service authorization decisions made by the managed care plans must be consistent with the State's Medicaid medical necessity definition. Rule 59G-1.010, F.A.C.

the managed care plan's adverse benefit determination. The enrollee has 60 days after the plan's adverse benefit determination to ask for a plan appeal. For decisions that are appealed, the managed care plan must have a second health care professional who was neither involved in any previous level of review or decision-making, nor a subordinate of any such individual. The managed care plan then has 30 days from the date of the enrollee's request to make a final decision. The managed care plan has 72 hours to respond to the enrollee or his or her authorized representative's request for an expedited plan appeal. The enrollee must complete the plan appeal process before asking for a Medicaid fair hearing.

Florida State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with s. 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a PBM for the state employees' prescription drug program pursuant to s. 110.12315, F.S.

Contractually, health plans and contracted third party administrators are required to review urgent or emergency prior authorization requests within 24 hours after receipt and within 14 calendar days after initial receipt for routine requests. Current industry standards for utilization review change notices to plan participants or enrollees is 30 days.¹⁶

Federal Patient Protection and Affordable Care Act

Health Insurance Reforms

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.¹⁷ The PPACA requires health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates required essential health benefits¹⁸ and other provisions.

The PPACA requires insurers and HMOs that offer qualified health plans (QHPs) to provide ten categories of essential health benefits (EHB), which includes prescription drugs.¹⁹ In Florida, the federal Health Insurance Marketplace must certify such plans of an insurer or HMO as meeting the EHB and other requirements.²⁰ The federal deadline for insurers and HMOs to submit 2018

¹⁶ Department of Management Services, *2018 Legislative Bill Analysis SB 98* (Oct. 31, 2017) (on file with the Senate Judiciary Committee and the Senate Banking and Insurance Committee).

¹⁷ The Patient Protection and Affordable Care Act (Pub. L. No. 111-148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.

¹⁸ 42 U.S.C. s.18022.

¹⁹ See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* <https://www.cms.gov/ccio/resources/data-resources/ehb.html> (last viewed Nov. 5, 2017) for Florida's benchmark plan.

²⁰ Center for Consumer Information & Insurance Oversight, *Qualified Health Plans*, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/qhp.html> (last viewed Nov. 5, 2017).

annual rates and forms to the Florida Office of Insurance Regulation was May 3, 2017.^{21,22} Recently, the U.S. Department of Health and Human Services (HHS) proposed federal regulations that included provisions to provide states with additional flexibility in the definition of EHBs for 2019 and 2020 and increase affordability of health insurance in the individual and small group markets.²³

Prescription Drug Coverage

For purposes of complying with the federal EHB for prescription drugs, plans must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan. Plans must have a Pharmacy and Therapeutics Committee design formularies using scientific evidence that will include consideration of safety and efficacy, cover a range of drugs in a broad distribution of therapeutic categories and classes, and provide access to drugs that are included in broadly accepted treatment guidelines. The PPACA also requires plans to implement an internal appeals and independent external review process if an insured is denied coverage of a drug on the formulary.²⁴

Plans are required to publish a current and complete list of all covered drugs on its formulary drug list, including any tiered structure and any restrictions on the way a drug can be obtained, in a manner that is easily accessible to insureds, prospective insureds, the state, and the public.²⁵ Restrictions include prior authorization, step therapy, quantity limits and access restrictions.

III. Effect of Proposed Changes:

Prior Authorization

Section 1 revises s. 627.42392, F.S., relating to prior authorization by a health insurer. A health insurer is defined as an authorized insurer offering an individual or group health insurance policy that provides major medical or similar comprehensive coverage, a Medicaid managed care plan, or an HMO. The section defines the term, "urgent care situation," which has the same meaning as in s. 627.42393, F.S. (see section 2, below).

²¹ Office of Insurance Regulation, *Guidance to Insurers*, available at <http://www.floir.com/sitedocuments/PPACANoticeToIndustry201802032017.pdf> (last viewed Nov. 5, 2017).

²² President Trump, Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal*, <https://www.whitehouse.gov/the-press-office/2017/01/2/executive-order-minimizing-economic-burden-patient-protection-and> (Jan. 20, 2017). President Trump issued an executive order indicating that it is the intent of his administration to seek the prompt repeal of PPACA. (last viewed: Nov. 5, 2017).

²³ See Proposed Rule, 82 FR 51052 (Nov. 2, 2017). The U.S. Department of Health and Human Services is soliciting comments on different applications of the state mandate policy to the proposed policy for EHB benchmark plan selections that would increase state flexibility, while also being cost effective for states, consumers, and the federal government. For plan years further in the future, the HHS is considering establishing a Federal default definition of EHBs that would better align medical risk in insurance products by balancing costs to the scope of benefits. Available at <https://www.federalregister.gov/documents/2017/11/02/2017-23599/patient-protection-and-affordable-care-act-hhs-notice-of-benefit-and-payment-parameters-for-2019> (last viewed Nov. 5, 2017).

²⁴ 45 C.F.R. s. 147.136.

²⁵ 45 C.F.R. s. 156.122(d).

A health insurer or a pharmacy benefits manager (PBM), on behalf of a health insurer, is required to provide current prior authorization requirements, restrictions, and forms on a publicly accessible website and in written or electronic format upon request. The requirements must be described in clear and easily understandable language. Further, the bill requires any clinical criteria to be described in language easily understandable by a provider.

If a health insurer or a PBM on behalf of a health insurer intends to amend or implement new prior authorization requirements or restrictions, the health insurer or PBM must:

- Ensure that the new or amended requirements or restrictions are available on its website at least 60 days before the effective date of the changes.
- Provide notice to policyholders and providers who are affected by the changes at least 60 days before the effective date. Notice may be delivered electronically or by other methods mutually agreed upon by the insured or provider.

These notice requirements do not apply to an expansion of coverage.

Health insurers or PBMs on behalf of health insurers must approve or deny prior authorization requests in urgent and nonurgent care circumstances within 24 hours and 72 hours, respectively, after receipt of the prior authorization form. Notice must be given to the patient and the treating provider of the patient.

Step Therapy or “Fail-First” Protocols

Section 2 creates s. 627.42393, F.S., relating to step therapy or fail-first protocols. The bill defines the following terms:

- “Fail-first protocol,” is a written protocol that specifies the order in which a certain medical procedure, prescription drugs, or course of treatment must be used to treat an insured’s condition.
- “Health insurer” has the same meaning as provided in s. 627.42392, F.S. (see section 1, above).
- “Preceding prescription drug or medical treatment,” is a medical procedure, course of treatment, or prescription drug that must be used pursuant to a health insurer’s fail-first protocol as a condition of coverage under a health insurance policy or HMO contract to treat an insured’s condition.
- “Protocol exception” is a determination by a health insurer that a fail-first protocol is not medically appropriate or indicated for treatment of an insured’s condition, and the health insurer authorizes the use of another medical procedure, course of treatment, or prescription drug prescribed or recommended by the treating provider for the insured’s condition.
- “Urgent care situation” is an injury or condition of an insured which, if medical care and treatment is not provided earlier than the time generally considered by the medical profession to be reasonable for a nonurgent situation, in the opinion of the insured’s treating physician, physician assistant, or advanced registered nurse practitioner, would seriously jeopardize the insured’s life or health or ability to regain maximum function or subject the patient to severe pain that cannot be managed adequately.

A health insurer is required to publish on its website and provide to an insured in writing the procedure for requesting a protocol exception, including the following:

- A description of the manner in which an insured may request a protocol exception.
- The manner and timeframe in which a health insurer is required to authorize or deny a protocol exception request or respond to an appeal to a health insurer's authorization or denial of a request.
- The conditions in which the protocol exception request must be granted.

As is the case for a response to a request for a prior authorization, the health insurer must authorize or deny a protocol exception request or respond to an appeal of a health insurer's authorization or denial of a request within 24 hours after receipt in an urgent care situation; or within 72 hours after receipt in a nonurgent care situation. The health insurer must include a detailed written explanation of the reason for the denial and the procedure to appeal the denial.

A health insurer must grant a protocol exception request if:

- A preceding prescription drug or medical treatment is contraindicated or will likely cause an adverse reaction or physical or mental harm to the insured;
- A preceding prescription drug is expected to be ineffective based on the medical history of the insured and the clinical evidence of the characteristics of the preceding prescription drug or medical treatment;
- The insured previously received a preceding prescription drug or another prescription drug or medical treatment that is in the same pharmacologic class or that has the same mechanism of action as a preceding prescription drug, respectively, and the drug or treatment lacked efficacy or effectiveness or adversely affected the insured; or
- A preceding prescription drug or medical treatment is not in the best interest of the insured because the insured's use of the drug or treatment is expected to:
 - Cause a significant barrier to the insured's adherence to or compliance with the insured's plan of care;
 - Worsen the medical condition of the insured that exists simultaneously but independently with the condition under treatment; or
 - Decrease the ability of the insured to achieve or maintain his or her ability to perform daily activities.

The health insurer may request a copy of relevant documentation from the insured's medical record in support of a protocol exception request.

Effective Date

Section 3 provides that the bill will take effect January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill does not address whether its provisions apply prospectively to future contracts between a person and an insurer or an HMO or to contracts in existence on the effective date of the bill. However, section 624.21, F.S., provides that any amendment to the Insurance Code²⁶ will be deemed to operate prospectively where no contrary intent is specified.

Article I, section 10 of the State Constitution provides:

Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

This bill may potentially be challenged to the extent that its provisions substantially alter existing contracts. In *Pomponio v. Claridge of Pompano Condominium, Inc.*,²⁷ the Florida Supreme Court reviewed a statute which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court invalidated the law as an unconstitutional impairment of contract, after applying a three-prong test.²⁸ The court noted that the inquiry is not required and the law will stand if the court initially finds that the alteration of contractual obligations is minimal.²⁹ However, a substantial or severe impairment of an existing contract requires the court to consider whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.³⁰

In *United States Fidelity & Guaranty Co. v. Department of Insurance*, the Florida Supreme Court followed *Pomponio*.³¹ In so doing, the court stated that the overall query involves a balancing of a person's interest to not have his or her contracts impaired, with the state's interest in exercising legitimate police power.³² As provided in *Pomponio*, the severity of the impairment increases the level of scrutiny.³³

²⁶ See s. 624.01, F.S. (“Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the ‘Florida Insurance Code.’”)

²⁷ *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979).

²⁸ *Id.* at 779, 782.

²⁹ In so doing, the court concluded, “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.” *Id.*

³⁰ *Id.*

³¹ *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355, 1360 (Fla. 1984).

³² *Id.* at 1360.

³³ *Id.*

Relevant to whether an impairment of contract is constitutional is the degree to which the plaintiff's industry had been regulated in the past. If the industry of the plaintiff was already heavily regulated at the time the plaintiff entered into the contract, further regulation is expected, and therefore considered to be reasonable by the court.³⁴

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Implementation of the bill may give health care providers greater flexibility in prescribing medications to meet the unique medical needs of their patients and reduce the administrative burden associated with the prior authorization process and the current step therapy or fail-first therapy protocols.

Insurers and HMOs may experience an indeterminate increase in costs associated with changes in the step therapy protocols provided in the bill, which could increase premiums for purchasers of health insurance, such as consumers,³⁵ which may include individuals and employers.

The provisions of the bill do not apply to self-insured health plans because plans are preempted from state regulation under the federal Employee Retirement Income Security Act of 1974.

C. Government Sector Impact:

Office of Insurance Regulation³⁶

The bill does not have a fiscal impact on the Office of Insurance Regulation.

Agency for Health Care Administration³⁷

According to the Agency for Health Care Administration, the bill will have an indeterminate fiscal impact on the agency. The bill will require the agency to amend the Statewide Medicaid Managed Care Program (SMMC) contracts to modify the prior authorization requirements and the utilization review timeframes. The agency will use current agency resources to amend the contract. The bill will significantly affect the business (staffing, systems, etc.) and clinical operations of the Medicaid managed care

³⁴ *Id.* at 1361.

³⁵ Office of Insurance Regulation, *2018 Legislative Bill Analysis of SB 98* (Aug. 30, 2017) (on file with the Senate Judiciary Committee).

³⁶ *Id.*

³⁷ Agency for Health Care Administration, *2018 Legislative Bill Analysis of SB 98* (Oct. 31, 2017) (on file with the Senate Judiciary Committee and the Banking and Insurance Committee).

plans. The bill requires the plans to shorten the time to review authorizations, which will increase the administrative costs.

Chapter 409, F.S., does not define urgent care. The bill defines an “urgent care situation” to have the same meaning as in s. 627.42393, F.S. As the Medicaid plans are required to comply with s. 627.42392, F.S., with regard to prior authorization, these proposed changes would impact the SMMC plans. This will require amendments to the SMMC contracts to revise existing contractual definitions of these terms and to incorporate their meanings within the scope of work under the SMMC program. While the definition for urgent care will have a minor operational impact and will not have a fiscal impact to the Medicaid program, the application of the urgent care definition to the proposed authorization timeframes will have both a fiscal and operational impact.

The agency notes that the situations specified in the bill, for which a plan would be required to authorize a request for a “protocol exception,” should already be contemplated in the plans’ clinical or evidence based authorization criteria under the SMMC program and are factors addressed in the application of the State’s Medicaid medical necessity definition. All Medicaid managed care plans must use the State’s Medicaid medical necessity definition in their approval and denial of services. The timely response standards for protocol exceptions will expedite authorization decisions and require the plans to increase their authorization staff and will result in an increase in administrative expenses. These increased costs will need to be reflected in the SMMC capitation rates as administrative expenses.

Florida State Group Insurance Program/DMS³⁸

The State Group Insurance program indicates that the bill will have a fiscal impact on the program. The program’s fully insured health maintenance organization (HMO) vendor, Capital Health Plan (CHP), estimated a fiscal impact of \$256,000 annually, based upon the need to employ an additional four medical staff and three support staff employees. The bill would not impact the self-insured plans. The program’s pharmacy benefit manager, CVS Caremark, indicated that the bill would adversely impact it, and any fiscal impacts to State Group Insurance would be the result of an increase in approvals of claims.

VI. Technical Deficiencies:

None.

³⁸ Department of Management Services, *2018 Legislative Bill Analysis of SB 98* (Oct. 31, 2017) (on file with the Senate Judiciary Committee and Banking and Insurance Committee).

VII. Related Issues:**Implementation*****Office of Insurance Regulation***

The provisions of section 1 of the bill apply to health insurers and pharmacy benefit managers on behalf of health insurers. The Office of Insurance Regulation (OIR) licenses and regulates health insurers. Insurers may contract with third parties to provide services or functions. Ultimately, the insurer must comply with the provisions of the Insurance Code. The OIR does not license or regulate pharmacy benefits managers (PBMs). Currently no agency licenses or regulates PBMs. It is unclear whether the health insurer is responsible for the actions of the PBM.

State Group Insurance³⁹

The Department of Management Services noted concerns of some of its contracted vendors. Specifically, CVS/caremark, a PBM for the State Group Insurance program had concerns regarding lines 83-88, which require “detailed descriptions of requirements and restrictions to obtain prior authorization.” CVS/caremark stated that clinical criteria could be specific to each medication and burdensome to a prescriber or member to identify and understand. CVS/caremark also indicated that this language also suggests that the insurer or PBM’s confidential and proprietary clinical criteria must be released to the public, which could be in conflict with what is required by our manufacturer agreements. CVS/caremark raised similar concerns regarding the requirement to post publicly the conditions under which the protocol exception request must be granted. CVS/caremark stated that clinical exceptions criteria could be specific to each medication and burdensome to a prescriber or member to identify and understand. Further, CVS/caremark stated that this language also suggests that the insurer or PBM’s confidential and proprietary clinical exceptions criteria must be released to the public, which could be in conflict with what is required by the manufacturer agreements of CVS/caremark.

Notice of Prior Authorization Changes

Section 1 of the bill requires health insurers or a PBM to provide at least 60 days’ prior notice to insureds and physicians prior to implementing new requirements or restrictions to the prior authorization process. However, the bill does not allow for exceptions in circumstances where a drug or procedure is found to be hazardous or could result in harm to an insured.

VIII. Statutes Affected:

This bill substantially amends section 627.42392 of the Florida Statutes.

This bill creates section 627.42393 of the Florida Statutes.

³⁹ *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules January 11, 2018:

The CS provides rulemaking authority for the Office of Insurance Regulation relating to prior authorization; provides a technical change to the definition of “health insurer;” and changes the effective date of the bill from July 1, 2018 to January1, 2019.

CS by Judiciary December 5, 2017:

The CS amends the definition of “urgent care situation” in s. 627.42393(1)(e), F.S., to clarify that, not just a treating physician, but a physician’s assistant or advanced registered nurse practitioner may also determine whether a health situation is urgent.

- B. **Amendments:**

None.



636818

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2018	.	
	.	
	.	
	.	

The Committee on Rules (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 71
and insert:
an individual or group health insurance policy that provides
major medical or similar comprehensive coverage ~~health insurance~~
~~as defined in s. 624.603~~, a managed care plan as defined in s.
409.962(10), or a health maintenance organization as defined in
s. 641.19(12).

(b) "Urgent care situation" has the same meaning as in s.
627.42393.



636818

12 (2) Notwithstanding any other provision of law, effective
13 January 1, 2017, or six (6) months after the effective date of
14 the rule adopting the prior authorization form, whichever is
15 later, a health insurer, or a pharmacy benefits manager on
16 behalf of the health insurer, which does not provide an
17 electronic prior authorization process for use by its contracted
18 providers, shall only use the prior authorization form that has
19 been approved by the Financial Services Commission for granting
20 a prior authorization for a medical procedure, course of
21 treatment, or prescription drug benefit. Such form may not
22 exceed two pages in length, excluding any instructions or
23 guiding documentation, and must include all clinical
24 documentation necessary for the health insurer to make a
25 decision. At a minimum, the form must include: (1) sufficient
26 patient information to identify the member, date of birth, full
27 name, and Health Plan ID number; (2) provider name, address and
28 phone number; (3) the medical procedure, course of treatment, or
29 prescription drug benefit being requested, including the medical
30 reason therefor, and all services tried and failed; (4) any
31 laboratory documentation required; and (5) an attestation that
32 all information provided is true and accurate. The form, whether
33 in electronic or paper format, may not require information that
34 is not necessary for the determination of medical necessity of,
35 or coverage for, the requested medical procedure, course of
36 treatment, or prescription drug. The commission may adopt rules
37 prescribing such necessary information.

38
39 ===== T I T L E A M E N D M E N T =====

40 And the title is amended as follows:



636818

41 Delete line 6
42 and insert:
43 requiring certain information; authorizing the
44 Financial Services Commission to adopt certain rules;
45 requiring health



453946

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2018	.	
	.	
	.	
	.	

The Committee on Rules (Steube) recommended the following:

Senate Amendment

Delete line 201

and insert:

Section 3. This act shall take effect January 1, 2019.

By the Committee on Judiciary; and Senator Steube

590-01814-18

201898c1

1 A bill to be entitled
 2 An act relating to health insurer authorization;
 3 amending s. 627.42392, F.S.; redefining the term
 4 "health insurer"; defining the term "urgent care
 5 situation"; prohibiting prior authorization forms from
 6 requiring certain information; requiring health
 7 insurers and pharmacy benefits managers on behalf of
 8 health insurers to provide certain information
 9 relating to prior authorization by specified means;
 10 prohibiting such insurers and pharmacy benefits
 11 managers from implementing or making changes to
 12 requirements or restrictions to obtain prior
 13 authorization except under certain circumstances;
 14 providing applicability; requiring such insurers and
 15 pharmacy benefits managers to authorize or deny prior
 16 authorization requests and provide certain notices
 17 within specified timeframes; creating s. 627.42393,
 18 F.S.; defining terms; requiring health insurers to
 19 publish on their websites and provide to insureds in
 20 writing a procedure for insureds and health care
 21 providers to request protocol exceptions; specifying
 22 requirements for such procedure; requiring health
 23 insurers, within specified timeframes, to authorize or
 24 deny a protocol exception request or respond to
 25 appeals of their authorizations or denials; requiring
 26 authorizations or denials to specify certain
 27 information; requiring health insurers to grant
 28 protocol exception requests under certain
 29 circumstances; authorizing health insurers to request

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-01814-18

201898c1

30 documentation in support of a protocol exception
 31 request; providing an effective date.
 32

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

34
 35 Section 1. Section 627.42392, Florida Statutes, is amended
 36 to read:

37 627.42392 Prior authorization.—

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

39 (a) "Health insurer" means an authorized insurer offering
 40 an individual or group insurance policy that provides major
 41 medical or similar comprehensive coverage health insurance as
 42 defined in s. 624.603, a managed care plan as defined in s.
 43 409.962(10), or a health maintenance organization as defined in
 44 s. 641.19(12).

45 (b) "Urgent care situation" has the same meaning as in s.
 46 627.42393.

47 (2) Notwithstanding any other provision of law, effective
 48 January 1, 2017, or six (6) months after the effective date of
 49 the rule adopting the prior authorization form, whichever is
 50 later, a health insurer, or a pharmacy benefits manager on
 51 behalf of the health insurer, which does not provide an
 52 electronic prior authorization process for use by its contracted
 53 providers, shall only use the prior authorization form that has
 54 been approved by the Financial Services Commission for granting
 55 a prior authorization for a medical procedure, course of
 56 treatment, or prescription drug benefit. Such form may not
 57 exceed two pages in length, excluding any instructions or
 58 guiding documentation, and must include all clinical

Page 2 of 7

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590-01814-18

201898c1

59 documentation necessary for the health insurer to make a
 60 decision. At a minimum, the form must include: (1) sufficient
 61 patient information to identify the member, date of birth, full
 62 name, and Health Plan ID number; (2) provider name, address and
 63 phone number; (3) the medical procedure, course of treatment, or
 64 prescription drug benefit being requested, including the medical
 65 reason therefor, and all services tried and failed; (4) any
 66 laboratory documentation required; and (5) an attestation that
 67 all information provided is true and accurate. The form, whether
 68 in electronic or paper format, may not require information that
 69 is not necessary for the determination of medical necessity of,
 70 or coverage for, the requested medical procedure, course of
 71 treatment, or prescription drug.

72 (3) The Financial Services Commission in consultation with
 73 the Agency for Health Care Administration shall adopt by rule
 74 guidelines for all prior authorization forms which ensure the
 75 general uniformity of such forms.

76 (4) Electronic prior authorization approvals do not
 77 preclude benefit verification or medical review by the insurer
 78 under either the medical or pharmacy benefits.

79 (5) A health insurer or a pharmacy benefits manager on
 80 behalf of the health insurer must provide the following
 81 information in writing or in an electronic format upon request,
 82 and on a publicly accessible Internet website:

83 (a) Detailed descriptions of requirements and restrictions
 84 to obtain prior authorization for coverage of a medical
 85 procedure, course of treatment, or prescription drug in clear,
 86 easily understandable language. Clinical criteria must be
 87 described in language easily understandable by a health care

Page 3 of 7

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590-01814-18

201898c1

88 provider.89 (b) Prior authorization forms.

90 (6) A health insurer or a pharmacy benefits manager on
 91 behalf of the health insurer may not implement any new
 92 requirements or restrictions or make changes to existing
 93 requirements or restrictions to obtain prior authorization
 94 unless:

95 (a) The changes have been available on a publicly
 96 accessible Internet website at least 60 days before the
 97 implementation of the changes.

98 (b) Policyholders and health care providers who are
 99 affected by the new requirements and restrictions or changes to
 100 the requirements and restrictions are provided with a written
 101 notice of the changes at least 60 days before the changes are
 102 implemented. Such notice may be delivered electronically or by
 103 other means as agreed to by the insured or health care provider.

104
 105 This subsection does not apply to expansion of health care
 106 services coverage.

107 (7) A health insurer or a pharmacy benefits manager on
 108 behalf of the health insurer must authorize or deny a prior
 109 authorization request and notify the patient and the patient's
 110 treating health care provider of the decision within:

111 (a) Seventy-two hours of obtaining a completed prior
 112 authorization form for nonurgent care situations.

113 (b) Twenty-four hours of obtaining a completed prior
 114 authorization form for urgent care situations.

115 Section 2. Section 627.42393, Florida Statutes, is created
 116 to read:

Page 4 of 7

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590-01814-18

201898c1

117 627.42393 Fail-first protocols.-

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

119 (a) "Fail-first protocol" means a written protocol that
 120 specifies the order in which a certain medical procedure, course
 121 of treatment, or prescription drug must be used to treat an
 122 insured's condition.

123 (b) "Health insurer" has the same meaning as provided in s.
 124 627.42392.

125 (c) "Preceding prescription drug or medical treatment"
 126 means a medical procedure, course of treatment, or prescription
 127 drug that must be used pursuant to a health insurer's fail-first
 128 protocol as a condition of coverage under a health insurance
 129 policy or a health maintenance contract to treat an insured's
 130 condition.

131 (d) "Protocol exception" means a determination by a health
 132 insurer that a fail-first protocol is not medically appropriate
 133 or indicated for treatment of an insured's condition and the
 134 health insurer authorizes the use of another medical procedure,
 135 course of treatment, or prescription drug prescribed or
 136 recommended by the treating health care provider for the
 137 insured's condition.

138 (e) "Urgent care situation" means an injury or condition of
 139 an insured which, if medical care and treatment are not provided
 140 earlier than the time generally considered by the medical
 141 profession to be reasonable for a nonurgent situation, in the
 142 opinion of the insured's treating physician, physician
 143 assistant, or advanced registered nurse practitioner, would:

144 1. Seriously jeopardize the insured's life, health, or
 145 ability to regain maximum function; or

Page 5 of 7

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590-01814-18

201898c1

146 2. Subject the insured to severe pain that cannot be
 147 adequately managed.

148 (2) A health insurer must publish on its website and
 149 provide to an insured in writing a procedure for an insured and
 150 health care provider to request a protocol exception. The
 151 procedure must include:

152 (a) A description of the manner in which an insured or
 153 health care provider may request a protocol exception.

154 (b) The manner and timeframe in which the health insurer is
 155 required to authorize or deny a protocol exception request or
 156 respond to an appeal of a health insurer's authorization or
 157 denial of a request.

158 (c) The conditions under which the protocol exception
 159 request must be granted.

160 (3) (a) The health insurer must authorize or deny a protocol
 161 exception request or respond to an appeal of a health insurer's
 162 authorization or denial of a request within:

163 1. Seventy-two hours of obtaining a completed prior
 164 authorization form for nonurgent care situations.

165 2. Twenty-four hours of obtaining a completed prior
 166 authorization form for urgent care situations.

167 (b) An authorization of the request must specify the
 168 approved medical procedure, course of treatment, or prescription
 169 drug benefits.

170 (c) A denial of the request must include a detailed,
 171 written explanation of the reason for the denial, the clinical
 172 rationale that supports the denial, and the procedure to appeal
 173 the health insurer's determination.

174 (4) A health insurer must grant a protocol exception

Page 6 of 7

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590-01814-18

201898c1

175 request if:

176 (a) A preceding prescription drug or medical treatment is
177 contraindicated or will likely cause an adverse reaction or
178 physical or mental harm to the insured;

179 (b) A preceding prescription drug is expected to be
180 ineffective, based on the medical history of the insured and the
181 clinical evidence of the characteristics of the preceding
182 prescription drug or medical treatment;

183 (c) The insured has previously received a preceding
184 prescription drug or medical treatment that is in the same
185 pharmacologic class or has the same mechanism of action, and
186 such drug or treatment lacked efficacy or effectiveness or
187 adversely affected the insured; or

188 (d) A preceding prescription drug or medical treatment is
189 not in the best interest of the insured because the insured's
190 use of such drug or treatment is expected to:

191 1. Cause a significant barrier to the insured's adherence
192 to or compliance with the insured's plan of care;

193 2. Worsen an insured's medical condition that exists
194 simultaneously but independently with the condition under
195 treatment; or

196 3. Decrease the insured's ability to achieve or maintain
197 his or her ability to perform daily activities.

198 (5) The health insurer may request a copy of relevant
199 documentation from the insured's medical record in support of a
200 protocol exception request.

201 Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/11/18

Meeting Date

98

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Muland

Job Title _____

Address 1000 Riverside Ave #240

Phone 904-233-3051

Street

Jacksonville, FL 32204

Email mulandlaw@aol.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Chapter, American College of Physicians / College of Surgeons / FL Chapter, American

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-12-2018

Meeting Date

SB 98

Bill Number (if applicable)

Topic HEALTH INSURER AUTHORIZATION

Amendment Barcode (if applicable)

Name STEPHEN R. WIANN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAKESTONE PINES DRIVE

Phone 878-7364

Street

TALCAHASSEE

FL

State

32301

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

January 11, 2018
Meeting Date

SB 98
Bill Number (if applicable)

Topic Health Insurer Authorization

Amendment Barcode (if applicable)

Name Dorene Barker

Job Title Associate State Director

Address 200 W. College Ave
Street

Phone 850-228-6387

Gallahussee FL 32301
City State Zip

Email dobarker@aarps.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing AARP Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/17

Meeting Date

SB 98

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jeff Scott

Job Title _____

Address 1430 Piedmont Dr. E.

Phone ESU 251-2439

Street

Tallahassee

FL

32308

Email j.scott@modone.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

SB 98

Meeting Date

Bill Number (if applicable)

Topic Health Insurer Authorization

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

Meeting Date

98

Bill Number (if applicable)

Topic Health Insurer Authorization

Amendment Barcode (if applicable)

Name Alisa Labolt

Job Title Executive Director

Address PO Box 961

Phone 850-671-4445

Street Tallahassee FL

Email alisa@nami-florida.org

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing National Alliance on Mental Illness

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/17
Meeting Date

SB 98
Bill Number (if applicable)

Topic SB 98

Amendment Barcode (if applicable)

Name Anne Swerlick

Job Title Health Policy Analyst

Address 255 Primera Blvd

Phone 850-524-0602

Street Lake Mary, Fl.
City State Zip

Email swerlick@fpi.institute

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Policy Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11/11/17
Meeting Date

98
Bill Number (if applicable)

Topic patient access

Amendment Barcode (if applicable)

Name Danielle McGill

Job Title _____

Address 1336 Vickers Rd.

Phone _____

Street

Tallahassee FL 32303

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Sickle Cell Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/17
Meeting Date

98
Bill Number (if applicable)

Topic patient access

Amendment Barcode (if applicable)

Name Tatiana Jean-Louis

Job Title ~~PA~~

Address 1336 Vickers Rd.
Street

Phone _____

Tallahassee FL 32303
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Sickle Cell Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

Meeting Date

98

Bill Number (if applicable)

Topic patient access

Amendment Barcode (if applicable)

Name Cheryl Elias

Job Title Executive Director

Address 2011 Park Blvd

Phone _____

Street

Miami FL 32303

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing US Rural Health Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

Meeting Date

98

Bill Number (if applicable)

Topic patient access

Amendment Barcode (if applicable)

Name Christopher Wells

Job Title _____

Address 1334 Vickers Rd.

Phone _____

Street

Tallahassee

FL

32303

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing SICKU Cell Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

Meeting Date

98

Bill Number (if applicable)

Topic patient access

Amendment Barcode (if applicable)

Name Mandy Bianchi

Job Title Executive Director

Address 1302 E 6ⁿ Ave.

Phone _____

Street

Tallahassee

City

FL

State

32303

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Epilepsy Association of the Big Bend

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/17
Meeting Date

98
Bill Number (if applicable)

Topic patient access

Amendment Barcode (if applicable)

Name Deborah Cozart-Hawkins

Job Title _____

Address 1336 Vicken Rd.
Street

Phone _____

Tallahassee, FL 32303
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Sickle Cell Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

Jan 11, 2018

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

98

Meeting Date

Bill Number (if applicable)

Topic Prior Authorization

Amendment Barcode (if applicable)

Name Alli Liby-Schoenover

Job Title Metz, Husband + Daughters

Address 119 S Monroe St. Suite 200

Phone

Street

City

Tallah

FL

State

32301

Zip

Email

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing BIO FLORIDA

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-11-18

Meeting Date

98

Bill Number (if applicable)

Topic Prior Authorization

Amendment Barcode (if applicable)

Name Marnie George

Job Title Sr. Advisor - Buchanan Ingersoll & Rooney

Address 101 N. Monroe St, Suite 1090

Phone 850-510-8866

Street

Tallahassee FL 32303

Email marnie.george@bipe.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Chapter, American College of Cardiology

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-11

Meeting Date

98

Bill Number (if applicable)

Topic Health Insures Auth

Amendment Barcode (if applicable)

Name Matt Jordan

Job Title GRD

Address 1922 Dellwood Dr

Phone 850-519-2801

Street

Tall FL 32303

City

State

Zip

Email mat.jordan@ca

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing American Cancer Society

Appearing at request of Chair: [] Yes [X] No ; Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

Meeting Date

99

Bill Number (if applicable)

Topic Health Insurer Authorization

Amendment Barcode (if applicable)

Name Wences Trancoso

Job Title Vice President + General Counsel

Address 200 W. College Ave

Phone 850-386-2904

Street

Tallahassee

FL

32309

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Florida Association of Health Plans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 186

INTRODUCER: Senator Hutson

SUBJECT: Resign-to-run Law

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fox</u>	<u>Ulrich</u>	<u>EE</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Fox</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 186 requires a state or local officer who seeks a federal public office to submit his or her resignation at least 10 days before the first day of qualifying for the federal office if the terms of the two offices overlap. A state officer's qualifying for a federal office while not submitting this resignation constitutes an automatic, immediately-effective resignation from his or her office. A similar "resign-to-run" law already applies to state or local officers who seek another state, district, county, or municipal public office.

The only substantive difference between the current bill language and a pre-2008 resign-to-run law applicable to state or local officers seeking federal office is that under the bill the resignation deadline is 10 days before qualifying.¹ Under the pre-2008 law, an officer had until the time of qualifying to submit his or her resignation.

II. Present Situation:

The resign-to-run law requires a state or local officer to submit his or her resignation before qualifying for another state, district, county, or municipal public office if the terms of the offices overlap.² However, a state or local officer seeking a *federal* office is not required to resign before qualifying for a federal office having a term that overlaps that of his or her current office.

The resignation required of a state or local officer who seeks a state, district, county, or municipal public office having an overlapping term is irrevocable and must be submitted at least 10 days before the first day of the qualifying period for the office he or she intends to seek.³ The

¹ This is the same deadline that is in the current resign-to-run law.

² Section 99.012(3), F.S.

³ A candidate must "qualify" for federal, state, or multi-county public office by filing the necessary paperwork with, and paying the qualifying fee to, the Florida Secretary of State. This must be done within the qualifying period. For a candidate seeking federal office, this period begins on at the moment after noon on the 120th day before the primary election and ends

resignation need not be effective upon its submission, but it must be effective by the earlier of two dates: the date on which the officer would take the other office, if elected, or the date the officer's successor is required to take office.

A Resign-to-Run Law Formerly Applied to State Officers Seeking Federal Office

Through the end of 2007, state or local officers seeking an overlapping-term *federal* office were subject to a resign-to-run law that was similar to the current resign-to-run law.⁴ However, effective January 1, 2008, the Legislature repealed the provision.

The 2008 change allows state senators and other state or local officers to qualify and run for a congressional office (U.S. Representative or U.S. Senator) without resigning from their current offices, regardless of whether the terms of the two offices would overlap. A run by a state officer seeking an overlapping-term federal office occurs most often in the case of an open congressional seat that is to be filled by a special election. If the officer wins the federal seat, a “domino effect” can result in multiple vacancies to be filled at historically low-turnout, special elections.⁵ The multiple special elections drain state resources because the state must reimburse the affected counties for the expenses of conducting the special elections in many instances.⁶

Examples Demonstrating Issues Stemming from the Lack of a Federal-Office Provision

A plausible hypothetical example and past elections demonstrate how the lack of a resign-to-run law for state or local officeholders seeking federal offices may result in multiple special elections.

A Hypothetical Example

Assume, for example, that an incumbent U.S. Representative decides not to seek re-election, leaving an open seat at the upcoming 2018 general election and a state senator whose 4-year term ends in 2020 runs for the congressional seat. Under current law, this senator does not have an incentive to resign from his or her Senate seat unless he or she wins the election. And if he or she wins, the Governor must call a special election after the general election to fill the vacant Senate seat.⁷ Then, one or more members of the Florida House of Representatives will likely resign and qualify to run for the Senate seat. As a result, the Governor must call another special election to

at noon on the 116th day before the primary election. For a candidate seeking state or multicounty district office, the qualifying period begins at noon of the 71st day before the primary election and ends at noon on the 67th day before the primary election. Section 99.061, F.S. And primary elections occur on the Tuesday 10 weeks before a general election. Section 100.061, F.S. However, the dates of special primary elections and special general elections are set by the Governor, after consultation with the Secretary of State. Section 100.111(2), F.S.

⁴ Chapter 2007-30, s. 14, Laws of Fla. The timeframe for submitting a resignation was slightly different than the one in current law; the resignation had to be submitted before qualifying (instead of 10 days before qualifying).

⁵ Sometimes these special elections can be set to coincide with other elections, such as primaries and general elections; other times, they cannot.

⁶ Section 100.102, F.S., requires the state to reimburse counties whenever “any special election or special primary election is held as required in s. 100.101 . . .” Section 100.101, F.S., requires a special election for certain vacancies, such as a state legislative office or a congressional office, but not, for example, a U.S. Senate office. As to the costs themselves, if the special election can be run on another election date like a primary, then the additional costs are likely to be minimal, if any.

⁷ Section 100.101(2), F.S.

fill any vacant *House* seat.⁸ This cascade of vacant offices and special elections to fill the offices could continue down to the local level.

Examples from the Recent Past

Depending on the timing of a U.S. Senate or U.S. House vacancy, a state legislator who wins a federal election could have to resign during a legislative session, leaving constituents unrepresented in Tallahassee. This happened on April 13, 2010, when State Sen. Ted Deutch won a special election to fill the Florida 19th Congressional District seat vacated by former Rep. Robert Wexler. Sen. Deutch not only missed the last 2 weeks of the 2010 Regular Session, but his constituents remained unrepresented for the subsequent July 20 Special Session called by Governor Charlie Crist to propose a constitutional amendment to ban offshore drilling in state waters.⁹ The office remained vacant until it was filled by Maria Lorts Sachs, who prevailed in the regular election in November, 2010.

Following the 2008 repeal of the resign-to-run law applying to state or local officers seeking federal office, staff was able to find one series of elections which occurred as a result of a state officer resigning only after winning a federal office.¹⁰ This occurred when State Sen. Fredrica Wilson won a U.S. House seat in the 2010 general election.

III. Effect of Proposed Changes:

SB 186 requires a state or local officer who seeks a federal public office to submit his or her resignation before qualifying for the federal office if the terms of the two offices overlap. Thus, as to these candidates, the bill imposes the same “resign-to-run” requirement that already applies to state or local officers who seek another state, district, county, or municipal public office.

Specifically, a state or local officer seeking to run for federal office must submit an irrevocable resignation at least 10 days before the beginning of the qualifying period for the office sought. However, the resignation need not be effective until the earlier of the date the resigning officer would take office or the date the resigning officer’s successor is required to take office. The bill further provides that the failure of a state officer to timely submit the resignation “constitutes an automatic, irrevocable resignation, effective immediately,” from his or her current office.¹¹

Regarding the bill’s technical and mechanical provisions, they closely track those of the current resign-to-run law—e.g., to whom resignations are submitted, when the current offices are deemed vacant for purposes of subsequent elections, and who must send and receive notice of the resignation.

⁸ *Id.*

⁹ Governor Crist called the special session for July 20, 2010, but the House of Representatives adjourned in less than 45 minutes after it convened. Associated Press, *Florida House quickly adjourns special session without voting on offshore drilling ban*, (July 20, 2010), FOX NEWS, <http://www.foxnews.com/us/2010/07/20/florida-house-quickly-adjourns-special-session-voting-offshore-drilling-ban.html> (last visited Oct. 17, 2017). Therefore, in this instance, Sen. Deutch’s constituents did not appear to have been affected.

¹⁰ The series of special elections included the Democratic Special Primary (Feb. 8, 2011) and Special General Election in State Senate District 33 (March 1, 2011) and the Democratic Special Primary in House District 103 (Feb. 8, 2011).

¹¹ Current law does not expressly state this is as consequence for a state officer who fails to resign before qualifying for another state, district, county, or municipal public office.

Lastly, the bill makes a conforming change to clarify that a state or local officer seeking to run for the office of U.S. President or Vice President must resign his or her office if the terms of the offices overlap.

Likely Impact of the Bill

It appears likely that the bill will decrease the occurrence of resignations by state officers, and thus the occurrence of special elections required to fill their offices and the offices of those who seek their offices—the “domino effect.”

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Reducing the number of special elections for federal and state legislative races will reduce the need for campaign contributions and could adversely impact businesses that derive revenue from elections, such as campaign consultants, media outlets, and direct-mail operations. The fiscal impact is unknown but is expected to be minimal, given the relatively small number of special elections since a similar resign-to-run law was repealed in 2008.

C. Government Sector Impact:

The bill may reduce the need for the state to reimburse counties for the costs of conducting special elections resulting from the early departure of a current state officeholder who successfully runs for federal office. However, since the law took effect

in 2008, the state has reimbursed counties just over \$1.7 million dollars for three special elections.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 99.012 and 121.121.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹² E-mail to Jonathan Fox, Chief Attorney, Senate Ethics and Elections Comm. from Rebecca Grissom, Budget and Legislative Analyst, Florida Department of State (Feb, 24, 2017).



267106

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/11/2018	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment (with title amendment)

Between lines 84 and 85
insert:

Section 3. Paragraph (c) of subsection (1), paragraph (b) of subsection (5), and paragraph (b) of subsection (8) of section 212.055, Florida Statutes, are amended, and subsection (10) is added to that section, to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales



267106

12 surtax shall be published in the Florida Statutes as a
13 subsection of this section, irrespective of the duration of the
14 levy. Each enactment shall specify the types of counties
15 authorized to levy; the rate or rates which may be imposed; the
16 maximum length of time the surtax may be imposed, if any; the
17 procedure which must be followed to secure voter approval, if
18 required; the purpose for which the proceeds may be expended;
19 and such other requirements as the Legislature may provide.
20 Taxable transactions and administrative procedures shall be as
21 provided in s. 212.054.

22 (1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM
23 SURTAX.—

24 (c) The proposal to adopt a discretionary sales surtax as
25 provided in this subsection and to create a trust fund within
26 the county accounts shall be placed on the ballot in accordance
27 with law and must be approved in a referendum held at a general
28 election as set forth in subsection (10) at a time to be set at
29 ~~the discretion of the governing body.~~

30 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined in
31 s. 125.011(1) may levy the surtax authorized in this subsection
32 pursuant to an ordinance either approved by extraordinary vote
33 of the county commission or conditioned to take effect only upon
34 approval by a majority vote of the electors of the county voting
35 in a referendum. In a county as defined in s. 125.011(1), for
36 the purposes of this subsection, "county public general
37 hospital" means a general hospital as defined in s. 395.002
38 which is owned, operated, maintained, or governed by the county
39 or its agency, authority, or public health trust.

40 (b) If the ordinance is conditioned on a referendum, the



41 proposal to adopt the county public hospital surtax shall be
42 placed on the ballot in accordance with subsection (10) ~~law at a~~
43 ~~time to be set at the discretion of the governing body.~~ The
44 referendum question on the ballot shall include a brief general
45 description of the health care services to be funded by the
46 surtax.

47 (8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.-

48 (b) Upon the adoption of the ordinance, the levy of the
49 surtax must be placed on the ballot by the governing authority
50 of the county enacting the ordinance. The ordinance will take
51 effect if approved by a majority of the electors of the county
52 voting in a referendum held for such purpose. The referendum
53 shall be placed on the ballot of a general ~~regularly scheduled~~
54 election. The ballot for the referendum must conform to the
55 requirements of s. 101.161.

56 (10) DATES FOR REFERENDA.-A referendum to adopt or amend a
57 local government discretionary sales surtax under this section
58 shall be held at a general election, as defined in s. 97.021.

59
60 ===== T I T L E A M E N D M E N T =====

61 And the title is amended as follows:

62 Delete lines 2 - 12

63 and insert:

64 An act relating to elections; amending s. 99.012,
65 F.S.; requiring an officer who qualifies for federal
66 public office to resign from the office he or she
67 presently holds if the terms, or any part thereof, run
68 concurrently; prescribing requirements for the written
69 resignation; providing for an automatic irrevocable



267106

70 resignation in the event of noncompliance; specifying
71 that a resignation creates a vacancy in office;
72 revising an exception to the resign-to-run law;
73 amending s. 121.121, F.S.; conforming a cross-
74 reference; amending s. 212.055, F.S.; requiring local
75 government discretionary sales surtax referenda to be
76 held at a general election; providing an effective
77 date.



754428

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/11/2018	.	
	.	
	.	
	.	

The Committee on Rules (Hutson) recommended the following:

Senate Amendment

Delete lines 69 - 71
and insert:

(8)(7) Subsections ~~Nothing contained in subsection (3) and~~
~~(4) do not apply~~ relates to persons holding any federal office
~~or seeking the office of President or Vice President.~~ Subsection
(4) does not apply to the Governor or any member of the Cabinet.

By Senator Hutson

7-00236B-18

2018186__

A bill to be entitled

An act relating to the resign-to-run law; amending s. 99.012, F.S.; requiring an officer who qualifies for federal public office to resign from the office he or she presently holds if the terms, or any part thereof, run concurrently; prescribing requirements for the written resignation; providing for an automatic irrevocable resignation in the event of noncompliance; specifying that a resignation creates a vacancy in office; revising an exception to the resign-to-run law; amending s. 121.121, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present subsections (4) through (7) of section 99.012, Florida Statutes, are renumbered as subsections (5) through (8), respectively, a new subsection (4) is added to that section, and present subsection (7) of that section is amended, to read:

99.012 Restrictions on individuals qualifying for public office.—

(4) (a) Any officer who qualifies for federal public office must resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other.

(b) The resignation is irrevocable.

(c) The resignation must be submitted at least 10 days before the first day of qualifying for the office he or she intends to seek.

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-00236B-18

2018186__

(d) The written resignation must be effective no later than the earlier of the following dates:

1. The date the officer would take office, if elected; or
2. The date the officer's successor is required to take office.

(e) 1. An elected district, county, or municipal officer shall submit his or her resignation to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State.

2. An appointed district, county, or municipal officer shall submit his or her resignation to the officer or authority which appointed him or her to the office he or she holds, with a copy to the Governor and the Department of State.

3. All other officers shall submit their resignations to the Governor with a copy to the Department of State.

(f) 1. The failure of an officer who qualifies for federal public office to submit a resignation pursuant to this subsection constitutes an automatic irrevocable resignation, effective immediately, from the office he or she presently holds.

2. The Department of State shall send a notice of the automatic resignation to the Governor, and in the case of a district, county, or municipal officer, a copy to:

- a. The officer before whom he or she qualified if the officer held an elective office; or
- b. The officer or authority who appointed him or her if the officer held an appointive office.

(g) Notwithstanding the provisions of any special act to the contrary, with regard to an elective office, the resignation

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

7-00236B-18

2018186__

59 creates a vacancy in office to be filled by election, thereby
60 authorizing persons to qualify as candidates for nomination and
61 election as if the officer's term were otherwise scheduled to
62 expire. With regard to an elective charter county office or
63 elective municipal office, the vacancy created by the officer's
64 resignation may be filled for that portion of the officer's
65 unexpired term in a manner provided by the respective charter.
66 The office is deemed vacant upon the effective date of the
67 resignation submitted by the official in his or her letter of
68 resignation.

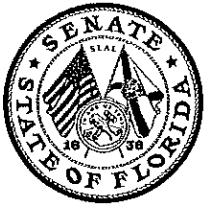
69 (8)(7) Nothing contained in subsection (3) or subsection
70 (4) relates to persons holding any federal office or seeking the
71 office of President or Vice President.

72 Section 2. Subsection (2) of section 121.121, Florida
73 Statutes, is amended to read:

74 121.121 Authorized leaves of absence.—

75 (2) A member who is required to resign his or her office as
76 a subordinate officer, deputy sheriff, or police officer because
77 he or she is a candidate for a public office which is currently
78 held by his or her superior officer who is also a candidate for
79 reelection to the same office, in accordance with s. 99.012(5)
80 s. 99.012(4), shall, upon return to covered employment, be
81 eligible to purchase retirement credit for the period between
82 his or her date of resignation and the beginning of the term of
83 office for which he or she was a candidate as a leave of absence
84 without pay, as provided in subsection (1).

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



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: January 8, 2018

I respectfully request that **Senate Bill #186**, relating to Resign-to-Run Law, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, appearing to read "Travis Hutson".

Senator Travis Hutson
Florida Senate, District 7

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 192

INTRODUCER: Senator Baxley

SUBJECT: Public Meetings

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Ulrich</u>	<u>EE</u>	Favorable
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Carlton</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 192 revises Florida’s “Government in the Sunshine Law”, or “Sunshine Law,” by codifying judicial interpretation and application of s. 286.011, F.S. Specifically, the bill provides from jurisprudence definitions for the terms: “de facto meeting,” “discussion,” “meeting,” “official act,” and “public business.” The bill also provides guidelines for boards to conduct permissible fact-finding exercises or excursions. Finally, the bill provides in statute that notice is not required when two or more members of a board are gathered if no official acts are taken and no public business is discussed.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³

¹ FLA. CONST., art. I, s. 24(b).

² *Id.*

³ Fla. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

The Florida Statutes also provide that governmental meetings must be open to the public. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”⁴ or the “Sunshine Law,”⁵ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ A failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.⁸ The minutes of a board or commission meeting also must be made available to the public.⁹ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹⁰

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of each house.¹¹ An exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹²

Who is Subject to the Sunshine Law?

Article I, s. 24(b) of the Florida Constitution, in pertinent part, provides that meetings of the following bodies must be open and noticed to the public:

[A]ny collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed.

Furthermore, s. 286.011, F.S., provides, in relevant part, that all meetings of the following entities must be open to the public:¹³

[A]ny board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, ... including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings.

The Sunshine Law applies to “[m]embers-elect of boards, commissions, agencies, etc.” as soon as they are elected, even if they have not yet been sworn into office.¹⁴ Any assemblage of members-elect or elected members of a collegial body who “discuss matters on which

⁴ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(3), F.S.

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Id.*

¹³ Not all meetings must be noticed to the public according to s. 286.011(1), F.S.; only board or commission meetings must be reasonably noticed.

¹⁴ *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

foreseeable action may be taken by that board or commission” constitutes a meeting subject to the Sunshine Law.¹⁵

The Sunshine Law has broad application, even to entities that are not normally considered a government body. Case law provides that a university is subject to the Sunshine Law, even if it is not usually considered a state agency.¹⁶ Therefore, since a university is subject to the Sunshine Law, any committee it delegates its powers to must also hold its meetings publicly.¹⁷

Florida courts have held that the intent behind the Sunshine Law is to provide public access to the entire decision-making process, because it is the “how and why” public officials decided to act which interests the public, not merely the final decision.¹⁸ Accordingly, if a government collegial body delegates its decision-making powers to another group, then those meetings must be public, even if the group is formed of private citizens.¹⁹

What is a “Meeting” that Should be Held in the Sunshine?

The Legislature has not defined the term “meeting” within the context of the Sunshine Law. However, the courts have. In *Sarasota Citizens for Responsible Gov't v. City of Sarasota* the Florida Supreme Court stated:

[M]eetings within the meaning of the Sunshine Law include any gathering, formal or informal, of two or more members of the same board or commission where the members deal with some matter on which foreseeable action will be taken by the Board.²⁰

The Court has also interpreted the intent of the Sunshine Law in relation to the types of assemblages that constitute a “meeting”:

The obvious intent of the Government in the Sunshine Law, *supra*, was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board.²¹

A meeting, within the meaning of the Sunshine Law, can occur even if the members of a collegial body do not speak to each other about a topic where foreseeable action may take place. Courts have ruled that the *opportunity* to make a decision was sufficient to make a gathering of school officials a public meeting.²² In one case, school board members, two school board candidates, a superintendent and his deputy, and members of the press, toured new school bus routes on a school bus. The school board members sat several rows away from each other as a precaution and none of the members discussed preferences, expressed opinions or voted on the bus trip.²³ Despite taking those precautions, the court opined that the school board “had ultimate decision-making authority,” gathered in a confined space, and had “the opportunity at that time

¹⁵ *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

¹⁶ *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

¹⁷ *Id.*

¹⁸ *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969).

¹⁹ *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

²⁰ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

²¹ *Bd. of Pub. Instruction v. Doran*, 224 So. 2d 693 (Fla. 1969).

²² *Finch v. Seminole County Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

²³ *Id.*

to make decisions outside of the public scrutiny.” Therefore, the court held that the bus ride was a meeting that violated the Sunshine Law.²⁴

A “sunshine meeting” may also occur even if the members of a board do not assemble or share information through an intermediary. In this case, a superintendent met individual school board members in succession to discuss redistricting, but denied acting as a “go-between” or sharing the opinions of one board member with another one.²⁵ Although board members did not exchange information or otherwise congregate, the court in finding a violation of the Sunshine Law, held:

The scheduling of six sessions of secret discussions, repetitive in content, in rapid-fire seriatim and of such obvious official portent, resulted in de facto meetings by two or more members of the board at which official action was taken.²⁶

Any meeting when public officials meet to avoid being seen or heard by the public violates the Sunshine Law, regardless of whether that meeting is formal or informal.²⁷ The judiciary has advised, “[i]f a public official is unable to know whether by convening two or more officials he is violating the law, he should leave the meeting forthwith.”²⁸

Not all meetings of government officials are subject to the Sunshine Law, and the presence of two government officials alone is not sufficient to require a public meeting.²⁹ In addition to the exemptions listed in statute, staff meetings and fact-finding meetings are exceptions to the Sunshine Law and there is no requirement that these meetings be open and noticed to the public.

Officials may also meet alone with their staff or employees for “fact-finding” purposes in order to execute their duties without violating the Sunshine Law.³⁰ In addition, case law states that as long as they do not have decision making authority, “fact-finding” committees are not subject to the Sunshine Law.³¹ The Florida Supreme Court ruled that “[w]hen a committee has been established for and conducts only information gathering and reporting, the activities of that committee are not subject to § 286.011, Fla. Stat.”³²

What Happens if a Meeting Violates the Sunshine Law?

Section 286.011(1), F.S., provides that the penalty for violating the Sunshine Law is to undo any business conducted in a meeting that should have been public. Specifically, it states, “no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.”

²⁴ *Id.*

²⁵ *Blackford v. Sch. Bd.*, 375 So. 2d 578, 580 (Fla. 5th DCA 1979).

²⁶ *Id.*

²⁷ *Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971).

²⁸ *Id.*

²⁹ *City of Sunrise v. News and Sun-Sentinel Co.*, 542 So. 2d 1354, 1355 (Fla. 4th DCA 1989).

³⁰ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010). See also *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976).

³¹ *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).

³² *Id.* at 757.

Courts have meted out a wide range of punishments to bodies who have violated the Sunshine Law, the most severe of which is to make a final action void. A violation of the Sunshine Law is “an irreparable public injury” and it does not matter if an entity did not intend to engage in such an act.³³ Additionally, courts may also order entities to stop meeting unless they meet in the open.³⁴

However, it is worth noting that some courts have been more lenient and permitted entities to “cure” the violations. For example, a court may permit a body to cure Sunshine Law violations by requiring that information be made public and that all the subject matter be “reexamined and rediscussed” in an open meeting.³⁵

III. Effect of Proposed Changes:

The bill creates s. 286.011(1)(a), F.S., codifying judicial interpretation and application of the terms: “de facto meeting,” “discussion,” “meeting,” “official act,” and “public business.” Those terms are defined as follows:

- “De facto meeting” means the use of board or commission staff or third parties, acting as intermediaries, to facilitate discussion of public business between board or commission members.
- “Discussion” means a conversation between or among board or commission members regardless of whether through oral, written, electronic, or any other form of communication.
- “Meeting” means a gathering, whether formal or informal, of two or more members of the same board or commission, even if they have not yet taken office.
- “Official act” means the adoption of a resolution or rule or other formal action being taken by the board or commission.
- “Public business” means any matter before, or foreseeably expected to come before, the board or commission.

The bill also specifies that members of a board may participate in “fact-finding” exercises or excursion to research public business, and may participate in meetings with a member of the Legislature if:

- The board provides reasonable notice;
- A vote, official act, or an agreement regarding a future action does not occur;
- There is no discussion of “public business” that occurs; and
- There are appropriate records, minutes, audio recordings, or video recordings made and retained as a public record.

Finally, the bill provides that, if there is a gathering of two or more board members where no official acts are taken and no public business is discussed, then no public notice or access is required.

This bill is effective upon becoming law.

³³ *Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974).

³⁴ *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983).

³⁵ *Blackford v. Sch. Bd.*, 375 So. 2d 578, 581 (Fla. 5th DCA 1979).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

Art. I, s.24(c) of the Florida Constitution provides the manner in which exemptions to Florida's Sunshine Laws may be created and requires a two-thirds vote of each house in order for such exemptions to be enacted. Because this bill does not create any new exemptions or codify existing jurisprudentially-created exemptions, neither the substantive requirements nor the two-thirds vote in each house requirement apply to this bill.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This bill merely codifies jurisprudence, so it is not anticipated that this bill will have a fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 286.011, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Baxley

12-00191-18

2018192__

1 A bill to be entitled
 2 An act relating to public meetings; amending s.
 3 286.011, F.S.; defining terms; specifying conditions
 4 under which members of any board or commission of any
 5 state agency or authority or of any agency or
 6 authority of any county, municipal corporation, or
 7 political subdivision may participate in fact-finding
 8 exercises or excursions; providing for construction;
 9 providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Subsection (1) of section 286.011, Florida
 14 Statutes, is amended, present subsections (2) through (8) of
 15 that section are renumbered as subsections (3) through (9),
 16 respectively, and a new subsection (2) is added to that section,
 17 to read:
 18 286.011 Public meetings and records; public inspection;
 19 criminal and civil penalties.-
 20 (1)(a) As used in this section, the term:
 21 1. "De facto meeting" means the use of board or commission
 22 staff or third parties, acting as intermediaries, to facilitate
 23 discussion of public business between board or commission
 24 members.
 25 2. "Discussion" means a conversation between or among board
 26 or commission members regardless of whether through oral,
 27 written, electronic, or any other form of communication.
 28 3. "Meeting" means a gathering, whether formal or informal,
 29 of two or more members of the same board or commission, even if

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

12-00191-18

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30 they have not yet taken office.
 31 4. "Official act" means the adoption of a resolution or
 32 rule or other formal action being taken by the board or
 33 commission.
 34 5. "Public business" means any matter before, or
 35 foreseeably expected to come before, the board or commission.
 36 (b) Except as otherwise provided in the State Constitution,
 37 all meetings or de facto meetings of any board or commission of
 38 any state agency or authority or of any agency or authority of
 39 any county, municipal corporation, or political subdivision at
 40 which official acts are to be taken or public business is to be
 41 transacted or discussed are declared to be public meetings open
 42 to the public, except as otherwise provided in the
 43 Constitution, including meetings with or attended by any person
 44 elected to such board or commission, but who has not yet taken
 45 office, at which official acts are to be taken are declared to
 46 be public meetings open to the public at all times, and
 47 (c) Members of the same board or commission may participate
 48 in fact-finding exercises or excursions to research public
 49 business, and may participate in meetings with a member of the
 50 Legislature, if:
 51 1. The board or commission provides reasonable notice;
 52 2. A vote, an official act, or an agreement regarding an
 53 action at a future meeting does not occur;
 54 3. A discussion of public business, as those terms are
 55 defined in paragraph (a), does not occur; and
 56 4. Appropriate records, minutes, audio recordings, or video
 57 recordings are made and retained as a public record.
 58 (d) A ~~no~~ resolution, rule, or formal action is not ~~shall be~~

Page 2 of 3

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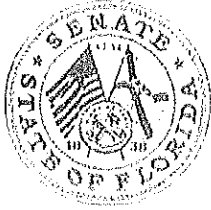
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59 considered binding unless ~~except as~~ taken or made at a public
60 ~~such~~ meeting. The board or commission must provide reasonable
61 notice of all such meetings.

62 (2) So long as no official acts are taken and any public
63 business is not discussed, subsection (1) may not be construed
64 to require public notice of and access to any gathering of two
65 or more members of the same board or commission.

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



THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

October 24, 2017

The Honorable Senator Lizbeth Benacquisto
400 Senate Office Building
Tallahassee, Florida 32399

Dear Chairman Benacquisto,

I respectfully request you place Senate Bill 192 Public Meetings on your next available agenda.

This bill allows two or more county commissioners to discuss issues pertaining to business as in fact-finding exercises or excursions to research public business, so long as no official acts are taken and any public business is not discussed, that would require public notice of, and access to, any gathering of two or more members of the same board or commission.

I appreciate your favorable consideration.

Onward & Upward,

A handwritten signature in black ink that reads "Dennis Baxley".

Dennis Baxley
Senator, District 12

DKB/dd

cc: John Phelps, Staff Director

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012

Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

Meeting Date

192

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address PO Box 1757

Phone 858 701 3701

Street

Tallahassee FL 32302

City

State

Zip

Email ccook@flcities.com

Speaking: [] For [] Against [] Information

Waive Speaking: [x] In Support [] Against (The Chair will read this information into the record.)

Representing FLORIDA LEAGUE OF CITIES

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

1/11/18

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

192

Meeting Date

Bill Number (if applicable)

Topic SB 192

Amendment Barcode (if applicable)

Name Brian Sullivan

Job Title Chief legal Counsel

Address 160 S. Monroe

Phone 810-335-0150

Street

Tallahassee

FL

32301

City

State

Zip

Email bsullivan@flcourtes.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Assoc. of Courtes

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 220

INTRODUCER: Senator Passidomo

SUBJECT: Bankruptcy Matters in Foreclosure Proceedings

DATE: January 9, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Stallard</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 220 specifies how certain documents from a person's bankruptcy proceeding may be used as evidence in a foreclosure action against the same person.

The bill provides that a document creates a rebuttable presumption that a foreclosure defendant has waived any defense to foreclosure if the document:

- Was filed in the defendant's bankruptcy case;
- Evidences the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Has not been withdrawn by the defendant; and
- Is submitted in the foreclosure proceeding together with a final bankruptcy order that discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

However, the filing of such a document in a foreclosure case "does not preclude" the defendant from raising a defense based upon the lienholder's conduct following the document's filing in the bankruptcy case.

Additionally, the bill ensures that any document that a debtor filed under penalty of perjury in a bankruptcy case may be filed in a foreclosure proceeding as an admission against this person.

II. Present Situation:

Bankruptcy Proceedings

In general, there are two purposes of bankruptcy proceedings. The first is to convert some of the debtor's assets to cash and distribute the cash to the creditors, thus discharging the debt. These nonexempt assets are called the bankruptcy "estate." The second purpose is to give the debtor a

fresh start, with the aid of those rights and exempt assets as the bankruptcy statute leaves untouched.¹

For individuals, there are two primary forms of bankruptcy, often referred to by the respective chapters in the United States Bankruptcy Code that govern them—Chapter 7 and Chapter 13. A petition filed under Chapter 7 of the code is used when the rehabilitative chapters of the code would not be applicable, such as when there is no non-exempt property to protect.² A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.³

In a Chapter 7 bankruptcy, if the debtor’s schedule of assets and liabilities includes debts that are secured by property of the estate, the debtor must file a statement of his or her intention regarding the retention or surrender of the property.⁴ This statement of intention must declare one of four things regarding secured property, or “collateral”:

- The collateral is exempt from the bankruptcy estate;
- The debtor will surrender the collateral;
- The debtor will reaffirm the debt, meaning the debtor keeps the collateral but is liable for the debt in the future (the debt is not discharged by bankruptcy); or
- The debtor will redeem the collateral, which is done by paying off the security interest in cash.⁵

The statement of intention must be made under penalty of perjury. The debtor must file the statement of intention within 30 days after the filing of the Chapter 7 petition or on or before the date of the meeting of the creditors to appoint a trustee for the estate, whichever is earlier.⁶ Within 30 days after the first date set for the meeting of the creditors, the debtor must “perform his intention” with respect to each piece of secured property.⁷

Instead of Chapter 7, a debtor may choose Chapter 13 bankruptcy because, among other reasons, it allows a debtor to stop, or “stay,” foreclosure proceedings on his or her home.

In Chapter 13 filings, the debtor must create a plan to restructure and repay his or her debt.⁸ For this plan to be confirmed by the court, one thing the plan must do is describe how the debtor is responding to each secured claim (such as that of a mortgagee).⁹ More specifically, the response to each secured claim must be:

- Accepted by the creditor;
- To pay the claim in the particular way set forth in statute; or
- To give up the property to the creditor.¹⁰

¹ 9 Am Jur 2d *Bankruptcy* s. 5.

² 9 Am Jur 2d *Bankruptcy* s. 68.

³ 9 Am Jur 2d *Bankruptcy* s. 72.

⁴ 11 U.S.C. s. 521(a)(2)(A)

⁵ *In re Failla*, 838 F. 3d 1170, 1175 (11th Cir. 2016).

⁶ 9 Am Jur 2d *Bankruptcy* s. 72.

⁷ 11 U.S.C. s. 521(2)(B).

⁸ *See* 11 U.S.C. ss. 1321 and 1322.

⁹ 11 U.S.C. s. 1325(a)(5).

¹⁰ 11 U.S.C. s. 1325(a)(5).

After the debtor fulfills his or her duties to the bankruptcy estate, the court must grant the debtor a discharge, unless the debtor acts wrongfully in one of the ways set forth in statute.¹¹ As a general matter, this discharge voids any dischargeable debt of the debtor.¹²

Mortgage Foreclosure

A mortgage creates a specific lien, held by the lender or servicer (the “mortgagee”) on the mortgaged property, such as a house.¹³ Thus, mortgagees hold a secured claim in bankruptcy.

Mortgages commonly include an “acceleration clause,” which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default of the borrower, who is called the mortgagor. Therefore, when a mortgagor fails to meet the terms of the mortgage, such as by missing a payment, the mortgagee has a right to payment of the entire balance of the loan. The legal action taken to obtain this payment is called a foreclosure. And the primary purpose of a foreclosure action is to compel the sale of the property, with the sale proceeds going toward payment of the loan balance.¹⁴

The following is a general outline of the judicial foreclosure process:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint;¹⁵
- Process is served on the defendant, which service must occur within 120 days after the filing of the initial pleadings;¹⁶
- The defendant must timely file an answer or another paper indicating an intent to respond to the suit; otherwise, the plaintiff is entitled to an entry of default against the defendant;¹⁷
- If an answer is filed, the plaintiff usually moves for summary judgment, though the plaintiff may instead elect to proceed toward trial;¹⁸
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, it holds a summary judgment hearing and renders a final judgment if it finds in the favor of the plaintiff;¹⁹
- If summary judgment is denied, the foreclosure proceeds to a non-jury trial;²⁰
- If the plaintiff prevails, the court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment;²¹
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least 5 days prior to the sale;²²

¹¹ 11 U.S.C. s. 727(a).

¹² 11 U.S.C. s. 727(b).

¹³ *Cukierman v. BankAtlantic*, 89 So. 3d 250, 251 (Fla. 3d DCA 2012).

¹⁴ *See, e.g., id.* at 251 (Fla. 3d DCA 2012).

¹⁵ Fla.R.Civ.P. Form 1.944.

¹⁶ Fla.R.Civ.P. 1.070(j).

¹⁷ Fla.R.Civ.P. 1.500.

¹⁸ Fla.R.Civ.P. 1.510(a).

¹⁹ Section 45.031, F.S.

²⁰ Section 702.01, F.S.

²¹ Section 45.031(1)(a), F.S.

²² Section 45.031(2), F.S.

- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale;²³
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure;²⁴
- After the 10 days have expired with no objection, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed, and the court may, in its discretion, enter a deficiency decree for the difference between the fair market value of the security received and the amount of the debt;²⁵
- The clerk may issue a writ of possession giving possession of the real property to the purchaser and directing the sheriff to assist the purchaser with obtaining possession; and
- Up to the point that a writ of possession is served on the property, the debtor who was property was foreclosed has the legal right to stay in possession of the real property.

Florida Evidence Code

The Florida Evidence Code governs what evidence may be admitted in this state's courts.²⁶ Under the code, courts may take "judicial notice" of certain facts.²⁷ Judicial notice is "the cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already know them."²⁸ In other words, if the court takes judicial notice of something, a party need not admit evidence to establish that thing as true. Among several other things, a court may take judicial notice of records of any court of this state or any court of record of the United States.²⁹

The Florida Evidence Code generally prohibits the admission of hearsay evidence.³⁰ Hearsay is an out-of-court statement admitted to prove the truth of the matter asserted in the statement.³¹ The general prohibition on the admission of hearsay is subject to many exceptions, including a written admission of an opposing party.³²

Recent Cases Involving the Problem Addressed by the Bill

In several recent cases, debtors in federal bankruptcy proceedings have agreed to surrender property, and yet continued to fight liquidation of the same property in state foreclosure proceedings.³³ For example, in *In re Failla*,³⁴ the debtors filed for bankruptcy in 2011. They admitted that they owned the home, that the home was collateral for the mortgage, and that the mortgage was valid. Moreover, they filed a statement of their intention to surrender the home in

²³ Section 45.031(8), F.S.

²⁴ Section 45.031(8), F.S.

²⁵ Section 702.06, F.S.

²⁶ Section 90.103, F.S.

²⁷ See s. 90.201 and 90.202, F.S.

²⁸ *Mitchum v. State*, 251 So. 2d 298, 300 (Fla. 1st DCA 1971).

²⁹ Section 90.202(6), F.S.

³⁰ Section 90.802, F.S.

³¹ Section 90.801(1)(c), F.S.

³² Section 90.803(18), F.S.

³³ See, e.g., *Green Tree Servicing v. Hardmon*, Case No. 162012-CA-13629-FC-E (Fla. 4th Judicial Circuit November 13, 2015); *In re Guerra*, 544 B.R. 707 (Bankr. M.D. Fla. 2016); *In re Metzler*, 530 B.R. 894 (Bankr. M.D. Fla. 2015).

³⁴ *In re Failla*, 838 F.3d 1170 (11th Cir. 2016).

the bankruptcy proceedings. After the filing of their intention to surrender, the debtors continued to live in the home and defend against the creditor's ongoing foreclosure action in state court. The debtors argued their surrender of the house in the bankruptcy proceeding was "not inconsistent" with their effort to stop the mortgagee from foreclosing on the house.³⁵ The 11th Circuit Court of Appeals held that stating an intention to surrender in bankruptcy court meant that the debtors could not contest the foreclosure action in state court.³⁶

III. Effect of Proposed Changes:

The bill specifies how certain documents from a person's bankruptcy proceeding may be used as evidence in a foreclosure action against the same person.

The bill provides that a document creates a rebuttable presumption that a foreclosure defendant has waived any defense to foreclosure if the document:

- Was filed in the defendant's bankruptcy case;
- Evidences the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;
- Has not been withdrawn by the defendant; and
- Is submitted in the foreclosure proceeding together with a final bankruptcy order that discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

However, the filing of such a document in a foreclosure case "does not preclude" the defendant from raising a defense based upon the lienholder's conduct following the document's filing in the bankruptcy case.

Additionally, the bill ensures that any document that a debtor filed under penalty of perjury in a bankruptcy case may be filed in a mortgage foreclosure proceeding as an admission against this person. Finally, the bill also requires the court in a foreclosure proceeding, upon the request of a lienholder, to take judicial notice of any order entered in a bankruptcy case.

The bill takes effect on October 1, 2018, and applies to foreclosure actions filed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁵ *In re Failla*, 838 F.3d at 1173-1175.

³⁶ *In re Failla*, 838 F.3d at 1178.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may expedite some foreclosure cases, thus decreasing the costs of these proceedings.

C. Government Sector Impact:

The bill may expedite some foreclosure cases, thus decreasing costs to the court system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 702.12 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Passidomo

28-00027-18

2018220__

1 A bill to be entitled
 2 An act relating to bankruptcy matters in foreclosure
 3 proceedings; creating s. 702.12, F.S.; authorizing
 4 lienholders to use certain documents as an admission
 5 in an action to foreclose a mortgage; providing that
 6 submission of certain documents in a foreclosure
 7 action creates a rebuttable presumption that the
 8 defendant has waived any defenses to the foreclosure;
 9 requiring a court to take judicial notice of orders
 10 entered in bankruptcy cases under certain
 11 circumstances; providing construction; providing
 12 applicability; providing an effective date.

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

15
 16 Section 1. Section 702.12, Florida Statutes, is created to
 17 read:

18 702.12 Actions in foreclosure.-

19 (1) (a) A lienholder, in an action to foreclose a mortgage,
 20 may submit any document the defendant filed under penalty of
 21 perjury in the defendant's bankruptcy case for use as an
 22 admission by the defendant.

23 (b) A rebuttable presumption that the defendant has waived
 24 any defense to the foreclosure is created if a lienholder
 25 submits documents filed in the defendant's bankruptcy case
 26 which:

27 1. Evidence the defendant's intention to surrender to the
 28 lienholder the property that is the subject of the foreclosure;
 29 2. Have not been withdrawn by the defendant; and

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

28-00027-18

2018220__

30 3. Show that a final order has been entered in the
 31 defendant's bankruptcy case which discharges the defendant's
 32 debts or confirms the defendant's repayment plan that provides
 33 for the surrender of the property.

34 (2) Pursuant to s. 90.203, a court shall take judicial
 35 notice of an order entered in a bankruptcy case upon the request
 36 of a lienholder.

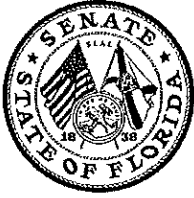
37 (3) This section does not preclude the defendant in a
 38 foreclosure action from raising a defense based upon the
 39 lienholder's action or inaction subsequent to the filing of the
 40 document filed in the bankruptcy case which evidenced the
 41 defendant's intention to surrender the mortgaged property to the
 42 lienholder.

43 (4) This section applies to any foreclosure action filed on
 44 or after October 1, 2018.

45 Section 2. This act shall take effect October 1, 2018.

Page 2 of 2

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The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: December 5, 2017

I respectfully request that **Senate Bill #220**, relating to Bankruptcy Matters in Foreclosure Proceedings, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

220

Meeting Date

Bill Number (if applicable)

Topic Bill

Amendment Barcode (if applicable)

Name Anthony DiMarco

Job Title EVP of Govt. Affairs

Address 1001 Thomasville Rd

Phone 224-7265

Street

City

State

Zip

Email admarco@flba.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 568

INTRODUCER: Rules Committee, Commerce and Tourism Committee, and Senator Young

SUBJECT: Telephone Solicitation

DATE: January 11, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 568 expands the Florida Do Not Call Act to:

- Prohibit the unsolicited ringless delivery of voicemail messages into consumers' voicemail boxes, in addition to phone calls and text messages; and
- Require a telephone sales call solicitor to provide on the call recipient's caller ID, a telephone number that is capable of receiving calls and that can connect the call recipient to the telephone solicitor.

The bill also increases permitted penalties for violations of the Do Not Call Act to up to \$10,000 for violations prosecuted administratively, and \$10,000 or more for those prosecuted civilly.

II. Present Situation:

During 2017, the Federal Communications Commission (FCC) received 155,282 consumer complaints about robocalls, including federal Do Not Call List violations, call spoofing, and solicitations made by an automated recording.¹ One organization estimates that in December 2017, 2.8 billion robocalls were made to U.S. consumers.^{2, 3}

¹ Federal Communications Commission, *Consumer Complaints Data- Unwanted Calls*, <https://opendata.fcc.gov/Consumer/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (last visited Jan. 11, 2018).

² YouMail, *Robocall Index*, <https://robocallindex.com/> (last visited Jan. 11, 2018).

³ A "robocall" is an unsolicited sales call, fax, or text message. A robocall can manifest as a prerecorded message played to a consumer once he or she accepts a call; a phone call made via a "spoofed" or falsified phone number, usually intended to trick the consumer into accepting the call; or an autodialed sales solicitation.

One form of telephone marketing is direct-to-voicemail transmissions, which deposit a message into consumers' voicemail boxes without ringing as a traditional phone call would.⁴ Current law does not expressly address direct-to-voicemail transmissions.

Call spoofing is the provision of a false phone number on a call recipient's caller ID service, generally done to trick the recipient into picking up the phone call.⁵ Legitimate uses of call spoofing include:⁶

- Hiding a professional's (e.g., doctor's) home phone number when he or she returns client calls;
- Law enforcement, including attempting to find those who are delinquent on child support payments;
- Allowing privacy to whistleblowers who call to make disclosures; and
- Providing protection to domestic violence shelters and victims.

Illegitimate uses can be as extreme as causing a phone call to an emergency line that appears to be from another's home, resulting in a storming of that home by emergency personnel.⁷ The most common use, however, is to induce a consumer to pick up a phone call so that a sales pitch can be made.

Federal Law

Telephone Consumer Protection Act

The Telephone Consumer Protection Act of 1991 (TCPA) protects U.S. consumers from unwanted communications by restricting the use of autodialers,⁸ prerecorded sales messages, and unsolicited sales calls, text messages, or faxes.

The TCPA prohibits telephone solicitations that:⁹

- Are made to residences before 8 am, and after 9 pm;
- Fail to provide the consumer with the solicitor's identity, including his or her true phone number via caller identification service,¹⁰ and an opportunity to opt out of the call, and all future calls made by that solicitor;
- Send artificial or pre-recorded messages to a residential line; and

⁴ Kaitlyn Johnson and Anne Lockner, *I'm Unavailable to Take Your Advertisement Right Now: FCC Regulation of Direct-To-Voicemail Marketing* (Oct. 11, 2017) <https://www.jdsupra.com/legalnews/i-m-unavailable-to-take-your-32721/> (last visited Jan. 11, 2018).

⁵ Federal Communications Commission, *Spoofing and Caller ID*, (Sept. 26, 2017) <https://www.fcc.gov/consumers/guides/spoofing-and-caller-id> (last visited Jan. 11, 2018).

⁶ Alicia Hatfield, *Phoney Business: Successful Caller ID Spoofing Regulation Requires More Than the Truth in Caller ID Act of 2009*, 19 J. Law & Policy 827, 833 (2011).

⁷ This practice is also known as "Swatting." *Id* at 827.

⁸ An autodialer is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).

⁹ 47 U.S.C. § 227(b). *See also*, 47 C.F.R. § 64.1200(8)(c) (2012).

¹⁰ 47 C.F.R. § 64.1601(e). *See also*, Federal Communications Commission, *Public Notice: FCC's Caller ID Rules for Telemarketers Become Effective* (Jan. 29, 2004) https://apps.fcc.gov/edocs_public/attachmatch/DA-04-206A1.pdf (last visited Jan. 11, 2018).

- Use an autodialer, artificial message, or pre-recorded messages to a cellular, emergency, or hospital room line.

The Federal Trade Commission (FTC), in concert with the FCC, administers the National Do Not Call Program as part of the TCPA's requirements.¹¹ Telephone solicitors may not contact a consumer who participates in the National Do Not Call Program, unless the calls are:¹²

- Made with a consumer's prior, express permission;
- Informational in nature, such as those made to convey a utility outage, school closing, or flight information; or
- Made by a tax-exempt organization.

The TCPA grants a private right of action to pursue actual monetary damages or up to \$500 per violation.¹³ State attorneys general and the FCC also have jurisdiction to investigate and file civil claims based on violations of the TCPA.¹⁴

In 2015, the FCC confirmed that the TCPA's protections extend to text messaging in the same manner that they apply to telephone calls.¹⁵ In March 2017, a company that provides direct-to-voicemail transmissions submitted a request for waiver under federal law to clarify the legality of the practice, but withdrew its request before the FCC made any determination.¹⁶ Members of a class filed suit against a Florida car dealership, based on the dealership's alleged violation of the TCPA for its use of direct-to-voicemail transmissions.¹⁷ However, the case was settled before the Court made a final determination.

Truth in Caller ID Act

The Truth in Caller ID Act of 2009 protects consumers by making it unlawful for any person to cause to be transmitted, or to knowingly transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value.¹⁸ The FCC investigates and prosecutes violations of the act under its rules.¹⁹ The FCC recently proposed fines of \$82 million and \$120 million to settle investigations against two call spoofers that allegedly made upwards of \$21 million telemarketing spoofed calls.²⁰

¹¹ Federal Communications Commission, *Stop Unwanted Calls and Texts—The National Do Not Call List*, (Dec. 5, 2017) <https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts> (last visited Jan. 11, 2018).

¹² 47 U.S.C. § 227(a)(4); *See also*, 47 C.F.R. § 64.1200 (2012).

¹³ 47 U.S.C. § 227 (c)(5).

¹⁴ 47 U.S.C. § 227 (f).

¹⁵ Federal Communications Commission, *FCC Strengthens Consumer Protections Against Unwanted Calls and Texts* (Jun. 18, 2015) https://apps.fcc.gov/edocs_public/attachmatch/DOC-333993A1.pdf (last visited Jan. 11, 2018).

¹⁶ All About the Message, LLC Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Mar. 31, 2017) *available at* <https://ecfsapi.fcc.gov/file/104010829816078/Petition%20for%20Declaratory%20Ruling%20of%20All%20About%20the%20Message%20LLC.pdf> (last visited Jan. 11, 2018).

¹⁷ *Tom Mahoney v. TT of Pine Ridge, Inc.*, No. 17-80029-CV-DMM (S.D. Fla. Filed Jan. 9, 2017). *See also*, <https://www.nntcpasettlement.com/> (last visited Jan. 11, 2018).

¹⁸ 47 U.S.C. § 227 (e),

¹⁹ *See*, 47 C.F.R. § 64.

²⁰ Federal Communications Commission, *FCC Proposes \$82 Million Fine for Spoofed Robocalls* (Aug 3, 2017) <https://www.fcc.gov/document/fcc-proposes-82-million-fine-spoofed-telemarketing-robocalls> (last visited Jan. 11, 2018); *FCC Proposes \$120 Million Fine of Massive Caller ID Spoofing Operation* (June 22, 2017)

However, to protect privacy concerns, an individual caller may still request to hide his or her phone number when making a call.²¹

Florida Law

The Department of Agriculture and Consumer Services (Department) administers the Florida Do Not Call Act (also called the “Do Not Call List”), which prohibits unsolicited phone calls and text messages.²² Residents who do not wish to receive sales calls may request to have their residential, mobile, or paging device telephone number included on the Department’s list.²³

A communication is unsolicited, and therefore prohibited under the Do Not Call List, unless the contact is made:

- At the consumer’s request;
- By a charitable or political organization that is seeking donations;
- As part of a survey, or for the purpose of research seeking an opinion;
- In connection with an existing debt or contract for which payment is due; or
- By a newspaper publisher, or his or her agent or employee, in connection with the publisher’s business.

Section 501.059(5), F.S., also prohibits a telephone solicitor from calling, text messaging, or using automated telephone equipment to contact any consumer, whether or not he or she is part of the Do Not Call List, who has previously communicated to the solicitor that he or she does not wish to receive a telephone call that is:

- Made by or on behalf of the seller who offers goods or services; or
- Made on behalf of a charity that is soliciting a charitable contribution.

A telephone solicitor who violates the provisions of the Do Not Call Act is subject to a civil penalty with a maximum fine of \$10,000 per violation, or an administrative fine with a maximum of \$1,000 per violation, in addition to attorney’s fees and costs.²⁴

III. Effect of Proposed Changes:

Section 1 expands the definition of a “telephonic sales call” to include a voicemail transmission, in addition to a telephone call and text message for purposes of the Do Not Call Program.

The bill makes conforming changes throughout the Florida Do Not Call Act to prohibit:

- Direct-to-voicemail transmissions to any consumer’s residential, mobile, or telephonic paging device, if the consumer previously requested to opt-out of such calls by inclusion on the Do Not Call List; and

<https://www.fcc.gov/document/fcc-proposes-120-million-fine-massive-caller-id-spoofing-operation> (last visited Jan. 11, 2018).

²¹ 47 C.F.R. § 64.1601

²² See, s. 501.059, F.S.. Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, <http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call> (last visited Jan. 11, 2018).

²³ Section 501.059(3)-(4), F.S.

²⁴ Section 501.059(9), F.S.

- Direct-to-voicemail transmissions to any consumer who has previously communicated that he or she does not wish to receive further sales calls made on behalf of the seller or charitable organization.

The bill also requires any telephone number reflected on a call recipient's caller ID service as the result of a telephone sales call to be capable of receiving phone calls, and able to connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was made.

The bill increases maximum penalties for violations of the Do Not Call Program from \$1,000 per violation that is administratively prosecuted and \$10,000 per violation that is civilly prosecuted, to \$10,000 and up to \$10,000 or more, respectively.

Section 2 of the bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Caller ID Anti-Spoofing Act (2008)²⁵ prohibited persons from:

- Making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call's recipient; and
- Entering false information into a telephone caller ID system "with the intent to deceive, defraud, or mislead" the call's recipient.

The Commerce Clause of the U.S. Constitution bars state laws that control conduct outside the state's boundaries, regardless of whether the Legislature intended the law's extraterritorial reach.²⁶ A U.S. District Court found that Florida's Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause because it had the effect of controlling spoofing practices that took place entirely outside of the state, wherein individuals or companies could not ascertain what telephone numbers are subject to

²⁵ Section 817.487, F.S. (2008).

²⁶ *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336 (1989).

Florida law, and would have to subject all of their call practices to Florida law to avoid liability.²⁷

In 2011, a Mississippi court struck its anti-spoofing law, which was substantially similar to Florida's.²⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Companies that provide voicemail transmission services may see a reduction in revenue.

C. Government Sector Impact:

The Department may see an increase in prosecutions for violations of the Florida Do Not Call Program, but this will not increase the Department's expenditures.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 501.059 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules Committee on January 11, 2018:

- Clarifies that a telephone solicitor is responsible for any incorrect phone number made available to a subscriber on his or her caller identification service.

²⁷ *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).

²⁸ *TelTech Systems, Inc. v. Barbour*, 866 F.Supp.2d 571 (S.D. Miss 2011), *aff'd sub nom Teltech Systems, Inc. v. Bryant*, 702 F. 2d 232 (5th Cir. 2012).

²⁹ Florida Department of Agriculture and Consumer Services, *SB 568 Agency Bill Analysis*, (Oct. 26, 2017) (on file with the Senate Committee on Commerce and Tourism).

CS by Commerce and Tourism Committee on November 13, 2017:

- Requires individuals who make telephone sales calls to provide a telephone number that is capable of receiving phone calls, and which a telephone sales call recipient may use to dial the sales call initiator back;
- Increases permitted penalties from up to \$1,000 for each administrative violations and up to \$10,000 for each civil violations to up to \$10,000 and \$10,000 or more, respectively; and

Makes a technical amendment to clarify that a voicemail transmission is any technology that delivers a voice message directly to a voicemail application, service, or device.

B. Amendments:

None.



567576

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2018	.	
	.	
	.	
	.	

The Committee on Rules (Young) recommended the following:

Senate Amendment (with title amendment)

1
2
3 Delete lines 50 - 60
4 and insert:
5 originating telephone number and, when made available by the
6 telephone solicitor's carrier, the name of the telephone
7 solicitor to any caller identification service in use by a
8 recipient of a telephonic sales call. However, it shall not be a
9 violation to substitute, for the name and telephone number used
10 in or billed for making the call, the name of the seller on
11 behalf of which a telephonic sales call is placed and the



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12 seller's customer service telephone number, which is answered
13 during regular business hours. If a telephone number is made
14 available through a caller identification service as a result of
15 a telephone sales call, the solicitor must ensure that telephone
16 number is capable of receiving phone

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 10

21 and insert:

22 for donations; requiring a solicitor to ensure that if
23 a telephone number is

By the Committee on Commerce and Tourism; and Senator Young

577-01302-18

2018568c1

1 A bill to be entitled
 2 An act relating to telephone solicitation; amending s.
 3 501.059, F.S.; revising the definition of the term
 4 "telephonic sales call" to include voicemail
 5 transmissions; defining the term "voicemail
 6 transmission"; prohibiting the transmission of
 7 voicemails to specified persons who communicate to a
 8 telephone solicitor that they would not like to
 9 receive certain voicemail solicitations or requests
 10 for donations; requiring that if a telephone number is
 11 available through a caller identification system, that
 12 telephone number must be capable of receiving calls
 13 and must connect the original call recipient to the
 14 solicitor; revising penalties; providing an effective
 15 date.

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

18
 19 Section 1. Paragraph (g) of subsection (1) of section
 20 501.059, Florida Statutes, is amended, a new paragraph (i) is
 21 added to that subsection, and subsection (5), paragraph (c) of
 22 subsection (8), and subsection (9) of that section are amended,
 23 to read:

24 501.059 Telephone solicitation.—

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

26 (g) "Telephonic sales call" means a telephone call, ~~or~~ text
 27 message, or voicemail transmission to a consumer for the purpose
 28 of soliciting a sale of any consumer goods or services,
 29 soliciting an extension of credit for consumer goods or

Page 1 of 4

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577-01302-18

2018568c1

30 services, or obtaining information that will or may be used for
 31 the direct solicitation of a sale of consumer goods or services
 32 or an extension of credit for such purposes.

33 (i) "Voicemail transmission" means technologies that
 34 deliver a voice message directly to a voicemail application,
 35 service, or device.

36 (5) A telephone solicitor or other person may not initiate
 37 an outbound telephone call, ~~or~~ text message, or voicemail
 38 transmission to a consumer or donor or potential donor who has
 39 previously communicated to the telephone solicitor or other
 40 person that he or she does not wish to receive an outbound
 41 telephone call, ~~or~~ text message, or voicemail transmission:

42 (a) Made by or on behalf of the seller whose goods or
 43 services are being offered; or

44 (b) Made on behalf of a charitable organization for which a
 45 charitable contribution is being solicited.

46 (8)

47 (c) It shall be unlawful for any person who makes a
 48 telephonic sales call or causes a telephonic sales call to be
 49 made to fail to transmit or cause not to be transmitted the
 50 telephone number and, when made available by the telephone
 51 solicitor's carrier, the name of the telephone solicitor to any
 52 caller identification service in use by a recipient of a
 53 telephonic sales call. However, it shall not be a violation to
 54 substitute, for the name and telephone number used in or billed
 55 for making the call, the name of the seller on behalf of which a
 56 telephonic sales call is placed and the seller's customer
 57 service telephone number, which is answered during regular
 58 business hours. If a telephone number is made available through

Page 2 of 4

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577-01302-18

2018568c1

59 a caller identification service as a result of a telephone sales
 60 call, that telephone number must be capable of receiving phone
 61 calls and must connect the original call recipient, upon calling
 62 such number, to the telephone solicitor or to the seller on
 63 behalf of which a telephonic sales call was placed. For purposes
 64 of this section, the term "caller identification service" means
 65 a service that allows a telephone subscriber to have the
 66 telephone number and, where available, the name of the calling
 67 party transmitted contemporaneously with the telephone call and
 68 displayed on a device in or connected to the subscriber's
 69 telephone.

70 (9) (a) The department shall investigate any complaints
 71 received concerning violations of this section. If, after
 72 investigating a complaint, the department finds that there has
 73 been a violation of this section, the department or the
 74 Department of Legal Affairs may bring an action to impose a
 75 civil penalty and to seek other relief, including injunctive
 76 relief, as the court deems appropriate against the telephone
 77 solicitor. The civil penalty shall be in the Class IV ~~III~~
 78 category pursuant to s. 570.971 for each violation and shall be
 79 deposited in the General Inspection Trust Fund if the action or
 80 proceeding was brought by the department, or the Legal Affairs
 81 Revolving Trust Fund if the action or proceeding was brought by
 82 the Department of Legal Affairs. This civil penalty may be
 83 recovered in any action brought under this part by the
 84 department, or the department may terminate any investigation or
 85 action upon agreement by the person to pay a stipulated civil
 86 penalty. The department or the court may waive any civil penalty
 87 if the person has previously made full restitution or

Page 3 of 4

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577-01302-18

2018568c1

88 reimbursement or has paid actual damages to the consumers who
 89 have been injured by the violation.

90 (b) The department may, as an alternative to the civil
 91 penalties provided in paragraph (a), impose an administrative
 92 fine in the Class III ~~II~~ category pursuant to s. 570.971 for each
 93 act or omission that constitutes a violation of this section. An
 94 administrative proceeding that could result in the entry of an
 95 order imposing an administrative penalty must be conducted
 96 pursuant to chapter 120.

97 Section 2. This act shall take effect July 1, 2018.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

November 14, 2017

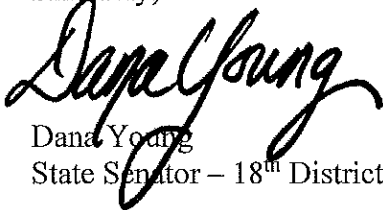
Senator Lizbeth Benacquisto, Chair
Rules Committee
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Benacquisto,

My Senate Bill 568 relating to Telephone Solicitation has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Should you have any questions, please do not hesitate to reach out to me.

Sincerely,



Dana Young
State Senator – 18th District

cc: John Phelps, Staff Director – Rules Committee

REPLY TO:

- 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SCR 184

INTRODUCER: Senators Thurston and Hutson

SUBJECT: Joint Committee on the Library of Congress/Statue Replacement Approval

DATE: January 9, 2018

REVISED: 11/16/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wells/Hrdlicka</u>	<u>Hansen</u>	<u>AP</u>	Favorable
2.	<u>Wells/Hrdlicka</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SCR 184 requests the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune.

The bill has no impact on state revenues or expenditures.

This bill takes effect upon becoming a law.

II. Present Situation:

National Statuary Hall

In 1864, Congress created the National Statuary Hall, which permits the display of two statues from each state within the Capitol of the United States.¹ Originally located in the Old Hall of the House of Representatives, the placement of statues has expanded throughout the corridors of the Capitol.² Each state is permitted to provide no more than two statues of a deceased citizen of that state who were “illustrious for their historic renown or for distinguished civic or military services, such as each State may deem to be worthy of this national commemoration.”³ An individual must have been deceased for 10 years before his or her statue may be displayed in the National Statuary Hall.⁴

¹ Architect of the Capitol, *About the National Statuary Hall Collection*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/about-national-statuary-hall-collection> (last viewed November 7, 2017).

² *Id.*

³ 2 U.S.C. s. 2131.

⁴ 2 U.S.C. s. 2131a(a).

Replacement of Statues

Enacted by Congress in 2000, a state may request that the United States Joint Committee on the Library of Congress approve the replacement of the state's statue.⁵ A statue must have been on display for at least a decade before it may be replaced.⁶ Like all current statues, a replacement statue must be made of marble or bronze and depict a distinguished, deceased citizen of the donating state.⁷

The state's request may only be considered by the Joint Committee if "the request has been approved by a resolution adopted by the legislature of the State and the request has been approved by the Governor of the state."⁸ Guidelines by the Architect of the Capitol provide that "[t]he State legislature enacts a resolution that identifies the statue to be replaced, names the individual to be newly commemorated and cites his or her qualifications, selects a committee or commission to represent the State in selecting the sculptor, and directs the method of obtaining the necessary funds to carry the resolution into effect."⁹ The state is responsible for costs related to the replacement, including the "design, construction, transportation, and placement of the new statue, the removal and transportation of the statue being replaced, and any unveiling ceremony."¹⁰ Then, "[a] duly authorized State official, typically the governor, shall submit to the Architect of the Capitol a written request to provide a new statue, a description of the location in the State where the replaced statue will be displayed after it is transferred, and a copy of the applicable enacted State legislation authorizing the replacement."¹¹

After the Joint Committee has approved the request, ownership of the replaced statue transfers to the state and the replaced statue may only be returned to the Capitol by federal law.¹²

Florida's Statues

The Florida statues in the National Statuary Hall Collection are Dr. John Gorrie and General Edmund Kirby Smith.¹³ Florida donated a statue of Dr. Gorrie to the National Statuary Hall Collection in 1914. Dr. Gorrie (1802-1855) was a physician in Apalachicola, Florida, who advocated draining swamps, the use of mosquito netting to prevent disease, and the cooling of sickrooms to reduce fever. Dr. Gorrie was granted a patent for a machine to make ice and is credited with being the father of refrigeration and air-conditioning.¹⁴

⁵ Pub. L. No. 106-554, s. 1(a)(2).

⁶ 2 U.S.C. s. 2132(a)(2)(B). The Joint Committee on the Library of Congress may grant a waiver of this requirement.

⁷ 2 U.S.C. s. 2132(b)(1).

⁸ 2 U.S.C. s. 2132(a).

⁹ Architect of the Capitol, Office of the Curator, *Procedure and Guidelines for Replacement of Statues in the National Statuary Hall Collection*, (January 2014), available at

http://www.aoc.gov/sites/default/files/statue_replacement_guidelines_2014.pdf (last viewed November 7, 2017).

¹⁰ 2 U.S.C. s. 2132(b)(2).

¹¹ *Id.*

¹² 2 U.S.C. s. 2132(d).

¹³ Architect of the Capitol, *The National Statuary Hall Collection*, available at <http://www.aoc.gov/the-national-statuary-hall-collection> (last viewed November 7, 2017).

¹⁴ Architect of the Capitol, National Statuary Hall Collection, John Gorrie, available at <https://www.aoc.gov/art/national-statuary-hall-collection/john-gorrie> (last viewed November 7, 2017).

Florida's second statue in the National Statuary Hall is of General Edmund Kirby Smith. General Smith (1824-1893) was born in St. Augustine, Florida, and was a soldier and educator. He served in the Mexican War and taught mathematics at the United States Military Academy (West Point). He resigned from the United States Army in 1861 to join the Military of the Confederate States of America. He rose to the rank of general and surrendered the last military force of the Confederacy in the Civil War. After the Civil War, he moved to Tennessee where he devoted the remainder of his life to an academic career; he served as Chancellor of the University of Nashville and then was a professor of mathematics at the University of the South.¹⁵ In 1907, the Florida Legislature passed a bill to create and donate a statue of General Smith to the National Statuary Hall, and the statue was donated in 1922.¹⁶

Chapter 2016-41, L.O.F., directed the ad hoc committee of the Great Floridians Program¹⁷ within the Department of State (DOS) to recommend three prominent Florida citizens for the Legislature to consider to commemorate as a replacement for the statue of General Edmund Kirby Smith in the National Statuary Hall Collection. The act directed the Florida Council on Arts and Culture¹⁸ within the DOS to select a sculptor.¹⁹

The act also directed the council and the DOS to estimate the costs associated with replacement of the statue, including the costs:

- To design, construct, transport, and place the new statue;
- To remove and transport the current statue;²⁰ and
- For any unveiling ceremony for the new statue.

In January 2017, the Great Floridians ad hoc committee submitted three names for consideration by the Legislature:

- Marjorie Stoneman Douglas, author;
- Dr. Mary McLeod Bethune, educator; and
- George Washington Jenkins, businessman.

¹⁵ Architect of the Capitol, National Statuary Hall Collection, Edmund Kirby Smith, available at <https://www.aoc.gov/art/national-statuary-hall-collection/edmund-kirby-smith> (last viewed November 7, 2017). Chapter 5714 (1907), L.O.F.

¹⁶ Id.

¹⁷ The Great Floridians Program recognizes and records the achievements of living and deceased Floridians who have made major contributions to the progress and welfare of Florida. Annually, the Division of Historical Resources of the DOS (division) must convene an ad hoc committee composed of representatives of specified government officials to nominate at least two present or former Florida citizens who made major contributions to the progress of the United States or Florida, which are submitted to the Secretary of State for designation as a "Great Floridian." See s. 267.0731, F.S.

¹⁸ The Florida Council on Arts and Culture (council) is a 15-member advisory body, appointed by specified government officials, housed within the DOS that promotes arts and culture throughout the state. The council advises the Secretary of the State regarding the administration of grants pertaining to arts and culture, and reviews applications for grants related to cultural facilities. See s. 267.285, F.S.

¹⁹ Nilda Comas of Ft. Lauderdale was chosen. Report to the Governor, Senate President, and Speaker of the House on the National Statuary Hall Recommendations and Artist Selection, prepared by the DOS, December 27, 2016

²⁰ The statue of General Smith will be relocated to Confederate Park in Jacksonville. Email from the DOS, dated November 13, 2017, on file with the Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

III. Effect of Proposed Changes:

This concurrent resolution requests the Joint Committee of the Library of Congress to approve the replacement of the statue of General Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune.

Mary McLeod Bethune was born July 10, 1875, in Mayesville, South Carolina. She studied at Scotia Seminary in North Carolina and Moody Bible Institute in Chicago with the goal of becoming a missionary. However, Ms. Bethune became a teacher when she could not find a church to sponsor her as a missionary. She taught in Georgia and in South Carolina, where she met and married a fellow teacher, Albertus Bethune, and had a son. The family moved to Palatka, Florida, and Ms. Bethune worked at a Presbyterian church and sold insurance. In the early 1900s, when her marriage ended, Ms. Bethune moved to Daytona (now Daytona Beach), Florida, and founded a boarding school for girls. Eventually, the school grew and merged with the all-male Cookman Institute of Jacksonville to form Bethune-Cookman College in 1929. Ms. Bethune was also active in civil rights and gender equality movements, appointed by President Franklin Roosevelt and President Harry S. Truman to positions in government, and served as the vice president of the National Association of Colored Persons (NAACP). She co-owned a resort in Daytona and co-founded the Central Life Insurance Company of Tampa.²¹

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²¹ Michals, Debra, National Women's History Museum, Mary McLeod Bethune (1875-1955), (2015), available at <https://www.nwhm.org/education-resources/biographies/mary-mcleod-bethune> (last viewed November 7, 2017). Bethune-Cookman University, History: Our Founder – Dr. Bethune, available at http://www.cookman.edu/about_BCU/history/our_founder.html (last viewed November 7, 2017).

B. Private Sector Impact:

Under ch. 2016-41, L.O.F., the Florida Council on Arts and Culture is permitted to raise funds from private sources to fund the costs associated with the replacement of the statue. The estimated costs associated with the replacement of the statue is \$388,000.²² Such funds will be needed if the Joint Committee of the Library of Congress approves the state's request to replace the statue made by this bill.

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures. If the Joint Committee of the Library of Congress approves the state's request, spending authority must be approved in order to pay the costs associated with replacement of the statue.

The funds collected from private donations collected pursuant to ch. 2016-41, L.O.F., must be placed into the Grants and Donations Trust Fund within the Department of State and may be used only for the limited purposes associated with replacing the statue.²³ However, nothing limits the Legislature from appropriating other state funds to fund the costs associated with the replacement of the statue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 1907, when the statue of General Smith was approved by the Legislature to be given to the National Statuary Hall Collection, the request was made by a general bill.²⁴ However, that involved the initial gift of a statue to the collection. That bill directed placement of the statue in the National Statuary Hall and also directed the Governor to appoint a commission "to consider and ascertain the appropriate kind of statue to be selected and its costs." The commission was required to report to the Legislature in 1909.

The 2016 Legislature directed programs within the executive agency of the Department of State to select a Floridian to replace the General Smith statue, to select a sculptor, and to estimate the costs, and permitted the collection of private donations to replace the statue.²⁵

This concurrent resolution to request the replacement of a statue *seems* to meet the requirements of the federal law, which requires that such a request may only be considered by the Joint Committee if "the request has been approved by a resolution adopted by the legislature of the State and the request has been approved by the Governor of the state." Pursuant to the guidelines of the Architect of the Capitol, the Governor must still submit a written request to provide the

²² Report to the Governor, Senate President, and Speaker of the House on the National Statuary Hall Recommendations and Artist Selection, prepared by the DOS, December 27, 2016.

²³ Chapter 2016-41, L.O.F.

²⁴ See ch. 5714 (1907), L.O.F.

²⁵ Chapter 2016-41, L.O.F.

new statue, a description of the location in Florida where the replaced statue will be displayed after it is transferred, and a copy of the this resolution authorizing the replacement.

VIII. Statutes Affected:

This concurrent resolution creates an undesignated section of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Thurston

33-00363-18

2018184__

Senate Concurrent Resolution

A concurrent resolution requesting the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune.

WHEREAS, in March 2016, the Florida Legislature passed, and the Governor signed into law, Senate Bill 310, authorizing the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a prominent Florida citizen recommended by the ad hoc committee of the Great Floridians Program within the Division of Historical Resources of the Department of State, and

WHEREAS, one of the three prominent Florida citizens recommended by the ad hoc committee is Mary McLeod Bethune, and

WHEREAS, Mary McLeod Bethune was born on July 10, 1875, in Mayesville, South Carolina, and she was the first member of her family, including all of her 16 siblings, born free following the conclusion of the Civil War, and

WHEREAS, beginning at a young age, Mary McLeod Bethune became engaged with learning and teaching after receiving an opportunity to attend Trinity Presbyterian Mission School in her hometown, and her dedication was evidenced through attending as many classes as she could and teaching her parents and siblings what she had learned, and

WHEREAS, Mary McLeod Bethune was awarded a scholarship allowing her to enroll at the then-Scotia Seminary for Girls in Concord, North Carolina, from which she graduated in 1893, and

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

33-00363-18

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she went on to continue her studies at the Moody Bible Institute in Chicago, and

WHEREAS, upon graduating from the Moody Bible Institute, Mary McLeod Bethune became a teacher and taught at schools in Georgia and South Carolina before moving to Florida to teach at the Palatka Mission School, and

WHEREAS, through observing the burgeoning black population in the area prompted by labor needed for railroad construction, Mary McLeod Bethune decided to follow through with her dream of opening her own school, and

WHEREAS, Mary McLeod Bethune bought a small cottage in Daytona Beach to allow for the opening of the Daytona Literary and Industrial Training School for Negro Girls in 1904 and through her commitment to fundraising, the school's enrollment grew from 5 to 250 students in just 2 years, and

WHEREAS, the school continued to grow, which eventually resulted in its merger with the Cook Institute for Men in Jacksonville to form Bethune-Cookman College, where she later served as president, and

WHEREAS, Mary McLeod Bethune's advocacy continued with her founding of the National Council of Negro Women and her appointment as Director of the Division of Negro Affairs of the National Youth Administration by President Franklin Delano Roosevelt, and

WHEREAS, through her position as the highest ranking African-American woman in the Federal Government, Mary McLeod Bethune was able to assist African-American youth in finding employment and worked with the Women's Army Corps during World War II to recruit African-American female officers, and

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

33-00363-18

2018184__

59 WHEREAS, upon her death in 1955, Mary McLeod Bethune's
60 inspirational leadership was praised by many, including former
61 First Lady Eleanor Roosevelt, who lauded "her wisdom and her
62 goodness," and

63 WHEREAS, in 1995, the United States National Park Service
64 established the Mary McLeod Bethune Council House National
65 Historic Site in Washington, D.C., which has preserved the
66 townhouse that was once her personal residence and the first
67 headquarters of the National Council of Negro Women, and

68 WHEREAS, Mary McLeod Bethune's legacy continues to be felt
69 in Florida through the continued success of Bethune-Cookman
70 University, whose enrollment is currently approaching a record
71 high of 4,000 students, and

72 WHEREAS, it is appropriate to honor Mary McLeod Bethune as
73 one of two Floridians memorialized in statues in the National
74 Statuary Hall Collection given her significant and continuing
75 impact on this state, NOW, THEREFORE,

76

77 Be It Resolved by the Senate of the State of Florida, the House
78 of Representatives Concurring:

79

80 That the Legislature of the State of Florida hereby
81 respectfully requests the Joint Committee on the Library of
82 Congress to approve the replacement of the statue of Confederate
83 General Edmund Kirby Smith in the National Statuary Hall
84 Collection with a statue of Mary McLeod Bethune.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education
Judiciary
Regulated Industries
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR PERRY E. THURSTON, JR.
Democratic Caucus Rules Chair
33rd District

November 15, 2017

The Honorable Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing you this letter because my bill SCR 184: Joint Committee on the Library of Congress/Statue Replacement Approval, has been referred to the Senate Rules Committee. I am writing respectfully requesting you to place the bill on your committee's calendar for the next committee agenda.

Thank you for your consideration. Please contact me if you have any question.

Respectfully,

A handwritten signature in black ink, appearing to read "Perry E. Thurston, Jr.", written over a horizontal line.

Perry E. Thurston, Jr.
Florida Senate

CC: Vice Chair Oscar Braynon II

REPLY TO:

- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (888) 284-6086
- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-11-18
Meeting Date

184
Bill Number (if applicable)

Topic Statue Replacement

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title MS

Address 625 E. Broadway St

Phone 251-4280

Street

Tallah
City

FL 32308
State Zip

Email barbadevane1@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

Meeting Date

184

Bill Number (if applicable)

Topic Dr. Mary McLeod Bethune

Amendment Barcode (if applicable)

Name Mario J. Bailey / Yolande Jackson

Job Title Sen Gov Relations Consultant

Address 1 East Broward Blvd

Phone 205 246-3932

Street

Fort Lauderdale FL

City

State

Zip

Email mbailey@bplegal.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Bethune-Cookman Univ

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 472

INTRODUCER: Senator Thurston and others

SUBJECT: National Statuary Hall

DATE: January 9, 2018

REVISED: 11/16/17

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wells/Hrdlicka</u>	<u>Hansen</u>	<u>AP</u>	Favorable
2.	<u>Wells/Hrdlicka</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 472 requests the Joint Committee on the Library of Congress to approve the replacement of the statue of Confederate General Edmund Kirby Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune.

The bill has no impact on state revenues or expenditures.

This bill takes effect on July 1, 2018.

II. Present Situation:

National Statuary Hall

In 1864, Congress created the National Statuary Hall, which permits the display of two statues from each state within the Capitol of the United States.¹ Originally located in the Old Hall of the House of Representatives, the placement of statues has expanded throughout the corridors of the Capitol.² Each state is permitted to provide no more than two statues of a deceased citizen of that state who were “illustrious for their historic renown or for distinguished civic or military services, such as each State may deem to be worthy of this national commemoration.”³ An individual must have been deceased for 10 years before his or her statue may be displayed in the National Statuary Hall.⁴

¹ Architect of the Capitol, *About the National Statuary Hall Collection*, available at <http://www.aoc.gov/capitol-hill/national-statuary-hall-collection/about-national-statuary-hall-collection> (last viewed November 7, 2017).

² *Id.*

³ 2 U.S.C. s. 2131.

⁴ 2 U.S.C. s. 2131a(a).

Replacement of Statues

Enacted by Congress in 2000, a state may request that the United States Joint Committee on the Library of Congress approve the replacement of the state's statue.⁵ A statue must have been on display for at least a decade before it may be replaced.⁶ Like all current statues, a replacement statue must be made of marble or bronze and depict a distinguished, deceased citizen of the donating state.⁷

The state's request may only be considered by the Joint Committee if "the request has been approved by a resolution adopted by the legislature of the State and the request has been approved by the Governor of the state."⁸ Guidelines by the Architect of the Capitol provide that "[t]he State legislature enacts a resolution that identifies the statue to be replaced, names the individual to be newly commemorated and cites his or her qualifications, selects a committee or commission to represent the State in selecting the sculptor, and directs the method of obtaining the necessary funds to carry the resolution into effect."⁹ The state is responsible for costs related to the replacement, including the "design, construction, transportation, and placement of the new statue, the removal and transportation of the statue being replaced, and any unveiling ceremony."¹⁰ Then, "[a] duly authorized State official, typically the governor, shall submit to the Architect of the Capitol a written request to provide a new statue, a description of the location in the State where the replaced statue will be displayed after it is transferred, and a copy of the applicable enacted State legislation authorizing the replacement."¹¹

After the Joint Committee has approved the request, ownership of the replaced statue transfers to the state and the replaced statue may only be returned to the Capitol by federal law.¹²

Florida's Statues

The Florida statues in the National Statuary Hall Collection are Dr. John Gorrie and General Edmund Kirby Smith.¹³ Florida donated a statue of Dr. Gorrie to the National Statuary Hall Collection in 1914. Dr. Gorrie (1802-1855) was a physician in Apalachicola, Florida, who advocated draining swamps, the use of mosquito netting to prevent disease, and the cooling of sickrooms to reduce fever. Dr. Gorrie was granted a patent for a machine to make ice and is credited with being the father of refrigeration and air-conditioning.¹⁴

⁵ Pub. L. No. 106-554, s. 1(a)(2).

⁶ 2 U.S.C. s. 2132(a)(2)(B). The Joint Committee on the Library of Congress may grant a waiver of this requirement.

⁷ 2 U.S.C. s. 2132(b)(1).

⁸ 2 U.S.C. s. 2132(a).

⁹ Architect of the Capitol, Office of the Curator, *Procedure and Guidelines for Replacement of Statues in the National Statuary Hall Collection*, (January 2014), available at

http://www.aoc.gov/sites/default/files/statue_replacement_guidelines_2014.pdf (last viewed November 7, 2017).

¹⁰ 2 U.S.C. s. 2132(b)(2).

¹¹ *Id.*

¹² 2 U.S.C. s. 2132(d).

¹³ Architect of the Capitol, *The National Statuary Hall Collection*, available at <http://www.aoc.gov/the-national-statuary-hall-collection> (last viewed November 7, 2017).

¹⁴ Architect of the Capitol, National Statuary Hall Collection, John Gorrie, available at <https://www.aoc.gov/art/national-statuary-hall-collection/john-gorrie> (last viewed November 7, 2017).

Florida's second statue in the National Statuary Hall is of General Edmund Kirby Smith. General Smith (1824-1893) was born in St. Augustine, Florida, and was a soldier and educator. He served in the Mexican War and taught mathematics at the United States Military Academy (West Point). He resigned from the United States Army in 1861 to join the Military of the Confederate States of America. He rose to the rank of general and surrendered the last military force of the Confederacy in the Civil War. After the Civil War, he moved to Tennessee where he devoted the remainder of his life to an academic career; he served as Chancellor of the University of Nashville and then was a professor of mathematics at the University of the South.¹⁵ In 1907, the Florida Legislature passed a bill to create and donate a statue of General Smith to the National Statuary Hall, and the statue was donated in 1922.¹⁶

Chapter 2016-41, L.O.F., directed the ad hoc committee of the Great Floridians Program¹⁷ within the Department of State (DOS) to recommend three prominent Florida citizens for the Legislature to consider to commemorate as a replacement for the statue of General Edmund Kirby Smith in the National Statuary Hall Collection. The act directed the Florida Council on Arts and Culture¹⁸ within the DOS to select a sculptor.¹⁹

The act also directed the council and the DOS to estimate the costs associated with replacement of the statue, including the costs:

- To design, construct, transport, and place the new statue;
- To remove and transport the current statue;²⁰ and
- For any unveiling ceremony for the new statue.

In January 2017, the Great Floridians ad hoc committee submitted three names for consideration by the Legislature:²¹

- Marjorie Stoneman Douglas, author;
- Dr. Mary McLeod Bethune, educator; and
- George Washington Jenkins, businessman.

¹⁵ Architect of the Capitol, National Statuary Hall Collection, Edmund Kirby Smith, available at <https://www.aoc.gov/art/national-statuary-hall-collection/edmund-kirby-smith> (last viewed November 7, 2017). Chapter 5714 (1907), L.O.F.

¹⁶ Id.

¹⁷ The Great Floridians Program recognizes and records the achievements of living and deceased Floridians who have made major contributions to the progress and welfare of Florida. Annually, the Division of Historical Resources of the DOS (division) must convene an ad hoc committee composed of representatives of specified government officials to nominate at least two present or former Florida citizens who made major contributions to the progress of the United States or Florida, which are submitted to the Secretary of State for designation as a "Great Floridian." See s. 267.0731, F.S.

¹⁸ The Florida Council on Arts and Culture (council) is a 15-member advisory body, appointed by specified government officials, housed within the DOS that promotes arts and culture throughout the state. The council advises the Secretary of the State regarding the administration of grants pertaining to arts and culture, and reviews applications for grants related to cultural facilities. See s. 267.285, F.S.

¹⁹ Nilda Comas of Ft. Lauderdale was chosen. Report to the Governor, Senate President, and Speaker of the House on the National Statuary Hall Recommendations and Artist Selection, prepared by the DOS, December 27, 2016

²⁰ The statue of General Smith will be relocated to Confederate Park in Jacksonville. Email from the DOS, dated November 13, 2017, on file with the Appropriations Subcommittee on Transportation, Tourism, and Economic Development.

²¹ Report to the Governor, Senate President, and Speaker of the House on the National Statuary Hall Recommendations and Artist Selection, prepared by the DOS, December 27, 2016.

III. Effect of Proposed Changes:

The bill requests the Joint Committee of the Library of Congress to approve the replacement of the statue of General Smith in the National Statuary Hall Collection with a statue of Mary McLeod Bethune. The bill states that it is the “official request” to the Joint Committee pursuant to federal law, and requires the DOS to deliver a copy of the bill to the President of the United States Senate, the Speaker of the United States House of Representatives, the Joint Committee, and each member of the Florida Congressional delegation.

Mary McLeod Bethune was born July 10, 1875, in Mayesville, South Carolina. She studied at Scotia Seminary in North Carolina and Moody Bible Institute in Chicago with the goal of becoming a missionary. However, Ms. Bethune became a teacher when she could not find a church to sponsor her as a missionary. She taught in Georgia and in South Carolina, where she met and married a fellow teacher, Albertus Bethune, and had a son. The family moved to Palatka, Florida, and Ms. Bethune worked at a Presbyterian church and sold insurance. In the early 1900s, when her marriage ended, Ms. Bethune moved to Daytona (now Daytona Beach), Florida, and founded a boarding school for girls. Eventually, the school grew and merged with the all-male Cookman Institute of Jacksonville to form Bethune-Cookman College in 1929. Ms. Bethune was also active in civil rights and gender equality movements, appointed by President Franklin Roosevelt and President Harry S. Truman to positions in government, and served as the vice president of the National Association of Colored Persons (NAACP). She co-owned a resort in Daytona and co-founded the Central Life Insurance Company of Tampa.²²

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²² Michals, Debra, National Women’s History Museum, Mary McLeod Bethune (1875-1955), (2015), available at <https://www.nwhm.org/education-resources/biographies/mary-mcleod-bethune> (last viewed November 7, 2017). Bethune-Cookman University, History: Our Founder – Dr. Bethune, available at http://www.cookman.edu/about_BCU/history/our_founder.html (last viewed November 7, 2017).

B. Private Sector Impact:

Under ch. 2016-41, L.O.F., the Florida Council on Arts and Culture is permitted to raise funds from private sources to fund the costs associated with the replacement of the statue. The estimated costs associated with the replacement of the statue is \$388,000.²³ Such funds will be needed if the Joint Committee of the Library of Congress approves the state's request to replace the statue made by this bill.

C. Government Sector Impact:

The bill has no impact on state revenues or expenditures. If the Joint Committee of the Library of Congress approves the state's request, spending authority must be approved in order to pay the costs associated with replacement of the statue.

The funds collected from private donations collected pursuant to ch. 2016-41, L.O.F., must be placed into the Grants and Donations Trust Fund within the Department of State and may be used only for the limited purposes associated with replacing the statue.²⁴ However, nothing limits the Legislature from appropriating other state funds to fund the costs associated with the replacement of the statue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 1907, when the statue of General Smith was approved by the Legislature to be given to the National Statuary Hall Collection, the request was made by a general bill.²⁵ However, that involved the initial gift of a statue to the collection. That bill directed placement of the statue in the National Statuary Hall and also directed the Governor to appoint a commission "to consider and ascertain the appropriate kind of statue to be selected and its costs." The commission was required to report to the Legislature in 1909.

The 2016 Legislature directed programs within the executive agency of the Department of State to select a Floridian to replace the General Smith statue, to select a sculptor, and to estimate the costs, and permitted the collection of private donations to replace the statue.²⁶

This bill to request the replacement of a statue *may* meet the requirements of the federal law, which requires that such a request may only be considered by the Joint Committee if "the request has been approved by a resolution adopted by the legislature of the State and the request has been approved by the Governor of the state." Pursuant to the guidelines of the Architect of the Capitol, the Governor must still submit a written request to provide the new statue, a description

²³ Report to the Governor, Senate President, and Speaker of the House on the National Statuary Hall Recommendations and Artist Selection, prepared by the DOS, December 27, 2016.

²⁴ Chapter 2016-41, L.O.F.

²⁵ See ch. 5714 (1907), L.O.F.

²⁶ Chapter 2016-41, L.O.F.

of the location in Florida where the replaced statue will be displayed after it is transferred, and a copy of the this bill authorizing the replacement.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Thurston

33-00703-18

2018472__

1 A bill to be entitled
 2 An act relating to the National Statuary Hall;
 3 requesting the Joint Committee on the Library of
 4 Congress to approve the replacement of the statue of
 5 Confederate General Edmund Kirby Smith in the National
 6 Statuary Hall Collection with a statue of Mary McLeod
 7 Bethune; providing that the act is an official request
 8 to the Joint Committee on the Library of Congress;
 9 requiring the Department of State to deliver copies of
 10 the act to certain persons on the act's effective
 11 date; providing an effective date.
 12
 13 WHEREAS, in March 2016, the Florida Legislature passed, and
 14 the Governor signed into law, Senate Bill 310, authorizing the
 15 replacement of the statue of Confederate General Edmund Kirby
 16 Smith in the National Statuary Hall Collection with a statue of
 17 a prominent Florida citizen recommended by the ad hoc committee
 18 of the Great Floridians Program within the Division of
 19 Historical Resources of the Department of State, and
 20 WHEREAS, one of the three prominent Florida citizens
 21 recommended by the ad hoc committee is Mary McLeod Bethune, and
 22 WHEREAS, Mary McLeod Bethune was born on July 10, 1875, in
 23 Mayesville, South Carolina, and she was the first member of her
 24 family, including all of her 16 siblings, born free following
 25 the conclusion of the Civil War, and
 26 WHEREAS, beginning at a young age, Mary McLeod Bethune
 27 became engaged with learning and teaching after receiving an
 28 opportunity to attend Trinity Presbyterian Mission School in her
 29 hometown, and her dedication was evidenced through attending as

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

33-00703-18

2018472__

30 many classes as she could and teaching her parents and siblings
 31 what she had learned, and
 32 WHEREAS, Mary McLeod Bethune was awarded a scholarship
 33 allowing her to enroll at the then-Scotia Seminary for Girls in
 34 Concord, North Carolina, from which she graduated in 1893, and
 35 she went on to continue her studies at the Moody Bible Institute
 36 in Chicago, and
 37 WHEREAS, upon graduating from the Moody Bible Institute,
 38 Mary McLeod Bethune became a teacher and taught at schools in
 39 Georgia and South Carolina before moving to Florida to teach at
 40 the Palatka Mission School, and
 41 WHEREAS, through observing the burgeoning black population
 42 in the area prompted by labor needed for railroad construction,
 43 Mary McLeod Bethune decided to follow through with her dream of
 44 opening her own school, and
 45 WHEREAS, Mary McLeod Bethune bought a small cottage in
 46 Daytona Beach to allow for the opening of the Daytona Literary
 47 and Industrial Training School for Negro Girls in 1904 and
 48 through her commitment to fundraising, the school's enrollment
 49 grew from 5 to 250 students in just 2 years, and
 50 WHEREAS, the school continued to grow, which eventually
 51 resulted in its merger with the Cookman Institute for Men in
 52 Jacksonville to form Bethune-Cookman College, where she later
 53 served as president, and
 54 WHEREAS, Mary McLeod Bethune's advocacy continued with her
 55 founding of the National Council of Negro Women and her
 56 appointment as Director of the Division of Negro Affairs of the
 57 National Youth Administration by President Franklin Delano
 58 Roosevelt, and

Page 2 of 4

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33-00703-18

2018472__

59 WHEREAS, through her position as the highest ranking
60 African-American woman in the Federal Government, Mary McLeod
61 Bethune was able to assist African-American youth in finding
62 employment and worked with the Women's Army Corps during World
63 War II to recruit African-American female officers, and

64 WHEREAS, upon her death in 1955, Mary McLeod Bethune's
65 inspirational leadership was praised by many, including former
66 First Lady Eleanor Roosevelt, who lauded "her wisdom and her
67 goodness," and

68 WHEREAS, in 1995, the United States National Park Service
69 established the Mary McLeod Bethune Council House National
70 Historic Site in Washington, D.C., which has preserved the
71 townhouse that was once her personal residence and the first
72 headquarters of the National Council of Negro Women, and

73 WHEREAS, Mary McLeod Bethune's legacy continues to be felt
74 in Florida through the continued success of Bethune-Cookman
75 University, whose enrollment is currently approaching a record
76 high of 4,000 students, and

77 WHEREAS, it is appropriate to honor Mary McLeod Bethune as
78 one of two Floridians memorialized in statues in the National
79 Statuary Hall Collection given her significant and continuing
80 impact on this state, NOW, THEREFORE,

81
82 Be It Enacted by the Legislature of the State of Florida:

83
84 Section 1. The Legislature of the State of Florida hereby
85 respectfully requests the Joint Committee on the Library of
86 Congress to approve the replacement of the statue of Confederate
87 General Edmund Kirby Smith in the National Statuary Hall

Page 3 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

33-00703-18

2018472__

88 Collection with a statue of Mary McLeod Bethune.

89 Section 2. This act shall serve as an official request to
90 the Joint Committee on the Library of Congress pursuant to 2
91 U.S.C. s. 2132.

92 Section 3. On the effective date of this act, the
93 Department of State shall deliver a copy of this act to the
94 President of the United States Senate, the Speaker of the United
95 States House of Representatives, the Joint Committee on the
96 Library of Congress, and to each member of the Florida
97 delegation to the United States Congress.

98 Section 4. This act shall take effect July 1, 2018.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Education
Judiciary
Regulated Industries
Rules

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR PERRY E. THURSTON, JR.
Democratic Caucus Rules Chair
33rd District

November 15, 2017

The Honorable Lizbeth Benacquisto
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Benacquisto,

I am writing you this letter because my bill SB 472: National Statuary Hall, has been referred to the Senate Rules Committee. I am writing respectfully requesting you to place the bill on your committee's calendar for the next committee agenda.

Thank you for your consideration. Please contact me if you have any question.

Respectfully,

A large, stylized handwritten signature in black ink, appearing to read "Perry E. Thurston, Jr.".

Perry E. Thurston, Jr.
Florida Senate

CC: Vice Chair Oscar Braynon II

REPLY TO:

- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (888) 284-6086
- 208 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/11/18

472 ~~1000~~

Meeting Date

Bill Number (if applicable)

Topic Statuary Hall / Dr. Bethune

Amendment Barcode (if applicable)

Name Mario J. Bailey / Yolanda Gosh Jackson

Job Title Sen. Gov Relations Consultant

Address 1 East Broward Blvd

Phone 205-246-3932

Street

Ft Lauderdale FL

City

State

Zip

Email mbariley@bpllegal.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Bethune-Cookmen Univ

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 140

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Benacquisto and others

SUBJECT: Marriage Licenses

DATE: January 11, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Favorable</u>
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 140 prohibits a county court judge or clerk of the circuit court from issuing a marriage license to any person under the age of 18. Accordingly, a minor is not permitted to marry in the state. The current exceptions that permit a minor to marry, such as parental consent, the fact that a couple already has a child, or a physician's written verification of a pregnancy, are repealed. Under this bill, only a person 18 years of age or older is permitted to marry.

II. Present Situation:

According to the Bureau of Vital Statistics,¹ 1,828 marriage licenses were issued in the last 5 years to a couple in which at least one party was a minor. Of this total, 132 licenses were issued to a couple in which both parties were minors. In that same time period, 1 license was issued in which one party was 13 years old, 7 licenses were issued in which one party was 14 years old, 29 licenses were issued in which one party was 15 years old, and 1,807 licenses were issued in which one party was 16 or 17 years old.² A complete chart of data from the Bureau of Vital Statistics is provided below.

¹ *Marriages Under 18, Years 2012-2016*, Email attachment supplied by Gary Sammet, Bureau of Vital Statistics, Department of Health (Oct. 25, 2017) (on file with the Senate Committee on Judiciary). The Bureau of Vital Statistics is the state repository for all marriage records filed in the state. The licenses are filed with the clerks of courts who are legally bound to report them to the Bureau.

² The sum of these four categories, 1,844, exceeds the total number of licenses issued, 1,828, because 16 minors are represented in more than one category.

Marriage Licenses Issued to a Minor, Years 2012-2016³

Number of Marriages by Year by Spouse Age.		2012	2013	2014	2015	2016
Party 1	Party 2					
13 years	16-17 Years		1			
14 years	15 Years		1			
	18-19 years			1		
	20-24 years	3				
15 Years	16-17 years	4	2	2		1
	18-19 years					3
	20-24 years	2	1		1	
	25-29 years			1		
16-17 Years	35-39 years				1	
	15 Years	3	2			
	16-17 Years	30	21	21	19	25
	18-19 years	195	145	136	128	113
	20-24 years	163	135	118	124	85
	25-29 years	28	25	26	38	18
	30-34 years	7	2	2	3	4
	35-39 years	2	1	2	1	1
18-19 years	40-44 years					1
	90-94 years			1		
20-24 years	15 Years	1	1			
	16-17 Years	19	16	18	21	35
25-29 years	14 years		1			
	15 Years		1			
	16-17 Years	5	7	5	8	21
30-34 years	15 Years	1				
	16-17 Years	2	1	2	2	4
35-39 years	14 years	1				
	15 Years				1	
	16-17 Years	1	1		1	
40-44 years	16-17 Years			1	1	
	16-17 Years				1	
Totals		467	364	336	350	311

³ Bureau of Vital Statistics, Florida Department of Health.

Marriage Licenses

The authority to issue a marriage license in this state is vested solely in a county court judge or clerk of the circuit court.⁴ No one may marry without a valid license.⁵ In order to obtain a license, the single individuals must appear together in person, bring their valid government issued identification and social security numbers, and complete a marriage license application.

Applicants must generally be at least 18 years of age and single to obtain a marriage license. However, there are exceptions under which a minor may be issued a license to marry.

Applicants Who are 16 or 17 May Marry With Parental Consent

If an applicant for a marriage license is 16 or 17 years of age, he or she is entitled to a marriage license if both of his or her parents or a guardian provide consent to the marriage. However, the minor does not need parental consent if his or her parents are deceased or if the minor was married previously. The written consent must be acknowledged before a person authorized to take acknowledgments and administer oaths.⁶

Judicial Bypass in Cases of Pregnancy or Parentage

A minor applicant may receive a marriage license without parental consent in limited circumstances that depend upon the discretion of a county court judge. A county court judge may, in his or her discretion, issue a marriage license to a minor if both parties swear under oath that they are the parents of a child.⁷ Additionally, if a pregnancy is verified in writing by a licensed physician, a county court judge may issue a marriage license to:

- Any male or female younger than 18 years of age and the parties swear under oath that they are expecting a child; or
- Any female younger than 18 years of age and a male older than 18 years of age if the female provides a sworn application that she is expecting a child.⁸

The statutes do not set a minimum age requirement for a marriage license when the applicants for a license have a child together or are expecting a child.⁹ In these circumstances, the statutes permit a county court judge, in the exercise of his or her discretion, to issue a marriage license when one or both applicants for a license are younger than 16.

Penalty for Violations

Two statutes provide penalties for county court judges and clerks of the circuit court who do not abide by the laws for issuing marriage licenses. Section 741.03, F.S., prohibits a county court judge or clerk of the circuit court from sending blank, signed marriage licenses that will be issued to persons not in the office. Section 741.04(1), F.S., also prohibits a county court judge or clerk from issuing a marriage license before obtaining a signed affidavit containing the applicants' social security numbers or other identifying numbers and their ages.

⁴ Section 741.01, F.S.

⁵ Section 741.08, F.S.

⁶ Section 741.0405(1), F.S.

⁷ Section 741.0405(2), F.S.

⁸ Section 741.0405(3), F.S.

⁹ See s. 741.0405(4), F.S.

Section 741.05, F.S., provides that a county court judge, clerk of the circuit court, or other person who violates sections 741.03 *and* 741.04(1), F.S. is guilty of a first degree misdemeanor. As written, the penalty is only for persons who violate *both* statutes. This is most likely a scrivener's error and should provide a penalty for someone who violates *either* statute.

III. Effect of Proposed Changes:

Under this bill, a person, without exception, must be at least 18 years of age to marry or receive a marriage license in this state. The current exceptions that allow a minor to marry with parental consent or without parental consent when the couple has a child or is expecting a child are repealed.

By the use of "and" instead of "or," existing law suggests that a county court judge, court clerk, or other person must violate two unrelated statutes before having any criminal liability for improperly issuing a marriage license. One statute prohibits the issuance of marriage licenses signed in blank. The other prohibits the issuance of a marriage license without collecting the ages of the parties and their Social Security Numbers or other identifying numbers. By changing the "and" to "or," the bill clarifies that the person issuing the license may have criminal liability for violating either statute.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. **Government Sector Impact:**

If marriage licenses are not issued to minors, the clerks of court might receive less revenue than in the years in which licenses were issued to minors.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 741.02 of the Florida Statutes and repeals section 741.0405 of the Florida Statutes.

IX. **Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on January 11, 2018:

The committee substitute changes the word “and” to “or” to correct a scrivener’s error regarding the penalty for improperly issuing marriage licenses. Before this amendment, a judge, clerk, or someone else would have criminal liability only if he or she violated two unrelated statutes. This is corrected to provide that a violation of *either* statute is a first degree misdemeanor.

CS by Judiciary on October 25, 2017:

The committee substitute reorganizes the current bill structure but does not make substantive changes to the bill. The committee substitute removes from s. 741.0405(4), F.S., the new language in the underlying bill which prohibits anyone younger than 18 years of age from marrying, and places it as new subsection (1) in s. 741.04, F.S. Current s. 741.0405, F.S. is then repealed. Section 741.04, F.S., is substantially reworded to modernize the language and break the existing language into shorter paragraphs.

- B. **Amendments:**

None.



267844

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2018	.	
	.	
	.	
	.	

The Committee on Rules (Benacquisto) recommended the following:

Senate Amendment (with title amendment)

1 Delete lines 99 - 100
2
3 and insert:
4
5 or other person who violates s. 741.03 or s. 741.04(2) commits
6 ~~shall violate any provision of ss. 741.03 and 741.04(1) shall be~~
7 ~~guilty of a~~

8
9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 Delete line 22



267844

12 and insert:

13 amending s. 741.05, F.S.; clarifying that a county
14 court judge or clerk of a circuit court commits a
15 misdemeanor if he or she issues a blank marriage
16 license or if he or she issues a marriage license
17 without obtaining the ages and identification numbers
18 of the parties; conforming cross-references;

By the Committee on Judiciary; and Senators Benacquisto,
Simpson, Book, Hutson, Perry, and Bracy

590-00928-18

2018140c1

1 A bill to be entitled
2 An act relating to marriage licenses; amending s.
3 741.04, F.S.; providing that a marriage license may
4 not be issued to a person under the age of 18 years;
5 requiring parties to a marriage to file a written and
6 signed affidavit with the county court judge or clerk
7 of the circuit court before the judge or clerk may
8 issue a marriage license; requiring such affidavit to
9 include certain information; providing legislative
10 intent; requiring each party to a marriage to provide
11 his or her social security number or an alien
12 registration number for purposes of child support
13 enforcement; prohibiting a judge or clerk from issuing
14 a marriage license unless he or she is presented with
15 certain written statements; providing that the
16 effective date of a marriage license must be delayed
17 by 3 days if the parties to the marriage have not
18 submitted valid certificates of completion of a
19 premarital preparation course; providing exceptions;
20 repealing s. 741.0405, F.S., relating to the issuance
21 of marriage licenses to persons under 18 years of age;
22 amending s. 741.05, F.S.; conforming cross-references;
23 providing an effective date.

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

26
27 Section 1. Section 741.04, Florida Statutes, is amended to
28 read:
29 (Substantial rewording of section. See

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-00928-18

2018140c1

30 s. 741.04, F.S., for present text.)
31 741.04 Issuance of marriage license.--
32 (1) A county court judge or clerk of the circuit court may
33 not issue a license to marry to any person younger than 18 years
34 of age.
35 (2) A county court judge or clerk of the circuit court may
36 not issue a license to marry until the parties to the marriage
37 file with the county court judge or clerk of the court a written
38 and signed affidavit, made and subscribed before a person
39 authorized by law to administer an oath, which provides:
40 (a) The social security number or any other available
41 identification number for each person.
42 (b) The respective ages of the parties.
43 (3) The submission of social security numbers as provided
44 in this section is intended to support the federal Personal
45 Responsibility and Work Opportunity Reconciliation Act of 1996.
46 The state has a compelling interest in promoting not only
47 marriage, but also responsible parenting, which may include the
48 payment of child support. Any person who has been issued a
49 social security number shall provide that number in satisfying
50 the requirement in subsection (2). Social security numbers or
51 other identification numbers obtained under this section may be
52 used only for the purposes of administration in Title IV-D child
53 support enforcement cases.
54 (a) Any person who is not a citizen of the United States
55 may provide either a social security number or an alien
56 registration number issued by the United States Bureau of
57 Citizenship and Immigration Services.
58 (b) Any person who is not a citizen of the United States

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

590-00928-18 2018140c1

59 and who has not been issued a social security number or an alien
 60 registration number is encouraged to provide another form of
 61 identification.

62
 63 This subsection does not prohibit a county court judge or clerk
 64 of the circuit court from issuing a marriage license to
 65 individuals who are not citizens of the United States if one or
 66 both of them are unable to provide a social security number, an
 67 alien registration number, or another identification number.

68 (4) A county court judge or clerk of the circuit court may
 69 not issue a license for the marriage of any person unless the
 70 county court judge or clerk of the circuit court is first
 71 presented with both of the following:

72 (a) A written statement, signed by both parties, which
 73 specifies whether the parties, individually or together, have
 74 completed a premarital preparation course.

75 (b) A written statement that verifies that both parties
 76 have obtained and read or otherwise accessed the information
 77 contained in the handbook or other electronic media presentation
 78 of the rights and responsibilities of parties to a marriage
 79 specified in s. 741.0306.

80 (5) If a couple does not submit to the clerk of the circuit
 81 court valid certificates of completion of a premarital
 82 preparation course, the clerk shall delay the effective date of
 83 the marriage license by 3 days from the date of application, and
 84 the effective date must be printed on the marriage license in
 85 bold type. If a couple submits valid certificates of completion
 86 of a premarital preparation course, the effective date of the
 87 marriage license may not be delayed. The clerk shall grant

590-00928-18 2018140c1

88 exceptions to the delayed effective date requirement to non-
 89 Florida residents and to couples asserting hardship. Marriage
 90 license fee waivers are available to all eligible couples. A
 91 county court judge issuing a marriage license may waive the
 92 delayed effective date requirement for Florida residents who
 93 demonstrate good cause.

94 Section 2. Section 741.0405, Florida Statutes, is repealed.

95 Section 3. Section 741.05, Florida Statutes, is amended to
 96 read:

97 741.05 Penalty for violation of ss. 741.03, ~~741.04(1)~~
 98 ~~741.04(1)~~.--Any county court judge, clerk of the circuit court,
 99 or other person who violates ~~shall violate~~ any provision of ss.
 100 741.03 and 741.04(2) ~~commits 741.04(1)~~ shall be guilty of a
 101 misdeemeanor of the first degree, punishable as provided in s.
 102 775.082 or s. 775.083.

103 Section 4. This act shall take effect July 1, 2018.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1.11.18

Meeting Date

SB 140

Bill Number (if applicable)

Topic Marriage Licenses

Amendment Barcode (if applicable)

Name Jodi Stevens

Job Title Government Affairs Director

Address 1 West Adams St.

Phone 904-383-9403

Street

Jacksonville FL 32202

City

State

Zip

Email jodi.stevens@pacecenter.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing PACE Center For GNAS, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

1/11/18
HD

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

140

Meeting Date

Bill Number (if applicable)

Topic End Child Marriage

Amendment Barcode (if applicable)

Name Sherry Johnson

Job Title Advocate, Founder, Author, Speaker

Address 400 Capital Circle

Phone 850 320 7867

Street

Talle

State

FL

Zip

32301

Email Forgivingtheunforgivable

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing S Von Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-11-18

Meeting Date

SB140

Bill Number (if applicable)

Topic Child Marriage

Amendment Barcode (if applicable)

Name GUS CORBELLA

Job Title SR. DIRECTOR GREENBERG TRAVVIG

Address 101 E. COLLEGE AV

Phone 850-222-6891

Street

Tallahassee FL 32301

Email corbella@gtlaw.com

City

State

Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing TAHIRI (TAH-HOORAY) JUSTICE CENTER

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-11-18

Meeting Date

140

Bill Number (if applicable)

Topic Child Marriage

Amendment Barcode (if applicable)

Name Barbara Devane

Job Title Ms

Address 625 E. Brevard St

Phone 850-251-4280

Street

City

State

Zip

Tall FL 32308

Email barbdevane1@jabot.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

140
Bill Number (if applicable)

Meeting Date

Topic Children marriage act

Amendment Barcode (if applicable)

Name Celena Hart

Job Title Operations manager

Address 111 S Magnolia Dr Suite 109
Street

Phone 386 382 2273

City

State

Zip

Email contact@iamferkids.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing The childrens campaign

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Rules, *Vice Chair*
Appropriations
Appropriations Subcommittee on the Environment
and Natural Resources
Banking and Insurance
Ethics and Elections
Regulated Industries

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR OSCAR BRAYNON II

Democratic Leader
35th District

January 10, 2018

Senator Benacquisto, Chair
Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chair Benacquisto 

I respectfully request an excused absence for the *Rules* meeting on, January 11, 2018.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Oscar Braynon II,
District 35

cc.

John B Phelps, Staff Director
Cynthia Futch, Committee Administrative Asst., Rm 402 SOB

REPLY TO:

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (888) 284-8589
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ANITERE FLORES

President Pro Tempore
39th District

COMMITTEES:

Appropriations Subcommittee on Health and
Humans Services, Chair
Banking and Insurance Chair
Appropriations, Vice Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Judiciary
Rules
Joint Legislative Budget Commission

January 8, 2018

The Honorable Lizbeth Benacquisto
Chair of Committee on Rules
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Benacquisto: *AD*

I will not be able to attend the committee meeting on January 11, 2018. I respectfully request to be excused from the Committee on Rules on January 11, 2018.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Anitere Flores

Anitere Flores

CC: Mr. John B. Phelps, Staff Director, Committee on Rules, 402 Senate Office Building

REPLY TO:

□ 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5039

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Rules Committee

Judge:

Started: 1/11/2018 9:03:08 AM

Ends: 1/11/2018 9:44:58 AM Length: 00:41:51

9:03:35 AM Roll Call
9:03:58 AM Tab 5 by Senator Passidomo
9:04:28 AM Senator Passidomo explains SB 220
9:05:07 AM Senator Passidomo waives close
9:05:31 AM Bill passes Favorable
9:05:53 AM Tab 3 SB 186 by Senator Hutson
9:06:03 AM Senator Hutson explains bill
9:06:25 AM There is one amendment on this bill
9:06:33 AM Amendment is withdrawn
9:06:41 AM Senator Hutson closes on bill
9:07:13 AM Bill is reported favorable
9:07:46 AM Senator Steube explains bill
9:07:56 AM Amendment 1 is favorable
9:08:25 AM Amendment 2 is adopted
9:08:51 AM Amendment 3 is reported favorable
9:09:01 AM On the bill as amended
9:09:46 AM Brewster Bevis speaks on bill
9:11:19 AM Executive Director of Apalachee Big Bend speaks on bill
9:12:03 AM Back on the bill as amended
9:12:24 AM Senator Bradley asks question to Senator Steube
9:12:59 AM Senator Steube answers question
9:13:25 AM Senator Bradley asks another question
9:13:47 AM Senator Steube closes
9:14:02 AM Roll call on CS/SB 98
9:14:49 AM Tab 6 SB/CS 568 by Senator Young
9:15:01 AM Senator Young explains bill
9:16:23 AM Amendment 1 is adopted
9:16:32 AM Back on bill as amended
9:16:40 AM Senator Young closes on bill
9:16:52 AM Roll call on 568
9:17:24 AM Tab 7 for SB 184
9:17:38 AM Senator Thurston explains bill
9:20:01 AM Back on bill
9:20:27 AM Senator Thurston introduces members of Bethune Cookman
9:20:55 AM Roll call on SB 184
9:21:34 AM Tab 8 SB 472 by Senator Thurston
9:22:17 AM Back on the bill
9:22:23 AM Roll call for SB 472
9:22:39 AM Bill is reported favorably
9:22:55 AM Tab 1 Rules Change
9:23:15 AM Senator Bradley makes motion to vote favorable on 2 bills
9:23:29 AM Tab 1 Rules Change concerning ethics training

9:23:42 AM Chair explains rule change
9:24:36 AM Senator Rodriguez asks question
9:24:55 AM Chair answers
9:25:47 AM Senator Rodriguez asks another question
9:26:07 AM Chair explains rule change further
9:26:44 AM Senator Galvano speaks on rule change
9:27:31 AM Senator Rodriguez asks another question
9:28:58 AM Chair answers
9:30:06 AM Senator Rodriguez makes a statement
9:30:32 AM Senator Lee makes comment on rule change
9:31:58 AM Senator Galvano moves on rule change
9:32:07 AM Vote on rule change recommendation
9:32:20 AM Rule Change recommendation is approved
9:32:30 AM Tab 4 SB 192 by Senator Baxley
9:32:41 AM Senator Baxley explains bill
9:34:25 AM Back on bill
9:34:30 AM Senator Baxley waives close
9:34:39 AM Vote on SB 192
9:34:56 AM Bill is reported favorably
9:35:08 AM Turns chair over to Senator Galvano
9:35:46 AM Senator Benacquisto explains SB CS/SB 140
9:36:52 AM Senator Benacquisto explains amendment
9:37:03 AM Amendment is adopted
9:37:08 AM Back on bill as amended
9:37:33 AM Sherry Johnson speaks in favor of the bill
9:40:35 AM Barbara Devane Florida NOW
9:43:04 AM Back on bill as amended
9:43:13 AM Senator Book speaks on bill
9:44:06 AM Senator Benacquisto closes on bill
9:44:22 AM Roll on CS/SB 140
9:44:42 AM Bill is reported favorably as amended
9:44:56 AM Meeting Adjourned