

Tab 2	CS/SB 60 by CF, Bean (CO-INTRODUCERS) Rodriguez ; (Identical to CS/H 00217) Children Obtaining Driver Licenses					
Tab 3	CS/CS/SB 118 by CJ, JU, Steube ; (Similar to CS/H 00857) Criminal History Records					
844898	A	S	RCS	AP, Steube	Delete L.29 - 34:	03/16 01:16 PM
Tab 4	CS/SB 164 by TR, Grimsley (CO-INTRODUCERS) Baxley ; (Identical to CS/H 00097) Certificates of Title for Motor Vehicles					
Tab 5	SB 174 by Artiles ; Enterprise Information Technology Services Management Act					
Tab 6	SB 350 by Clemens ; (Similar to CS/H 00345) Criminal Justice Standards and Training Commission					
Tab 7	SB 358 by Garcia ; (Compare to H 01327) Mental Health and Substance Abuse					
Tab 8	SB 1020 by Powell ; (Identical to H 07081) Collective Bargaining Impasses					
Tab 9	SB 7006 by HP (CO-INTRODUCERS) Benacquisto ; Direct-support Organization of the Prescription Drug Monitoring Program					
Tab 10	SB 7008 by MS ; (Identical to H 07031) Department of Veterans' Affairs Direct-support Organization					
Tab 11	SB 7010 by MS ; (Identical to H 07029) Department of Military Affairs Direct-support Organization					
Tab 12	SB 78 by Flores (CO-INTRODUCERS) Brandes, Rodriguez, Stewart, Steube, Farmer, Bracy, Garcia, Mayfield, Latvala, Book, Grimsley, Passidomo, Benacquisto, Torres, Bean, Campbell, Rouson, Young ; (Identical to H 00067) Public School Recess					
Tab 13	CS/SB 220 by RI, Latvala (CO-INTRODUCERS) Grimsley, Garcia ; (Similar to H 00199) Veterinary Medicine					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS
Senator Latvala, Chair
Senator Flores, Vice Chair

MEETING DATE: Thursday, March 16, 2017

TIME: 10:00 a.m.—12:00 noon

PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Latvala, Chair; Senator Flores, Vice Chair; Senators Bean, Benacquisto, Book, Bracy, Bradley, Brandes, Braynon, Gainer, Galvano, Gibson, Grimsley, Montford, Powell, Simmons, Simpson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Presentation on Security Issues by the Department of Corrections		Presented
Bills to be considered after the presentation:			
2	CS/SB 60 Children, Families, and Elder Affairs / Bean (Identical CS/H 217)	Children Obtaining Driver Licenses; Revising a pilot program to make it permanent; revising the applicability of the program to include children in out-of-home care; authorizing the program to pay for a child to complete a driver education program and obtain a driver license or the related costs of licensure under certain circumstances; revising a child's transition plan to include options to use in obtaining a driver license under certain circumstances; providing that a guardian ad litem authorized by a minor's caregiver to sign for the minor's learner's driver license does not assume any obligation or liability for damages, etc. CF 01/23/2017 Fav/CS AHS 02/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Health and Human Services			
3	CS/CS/SB 118 Criminal Justice / Judiciary / Steube (Similar CS/H 857, Compare H 395)	Criminal History Records; Prohibiting a person or entity engaged in publishing or disseminating arrest booking photographs from soliciting or accepting a fee or other payment to remove the photograph; revising the elements that must be attested to by a petitioner in a statement submitted in support of the expunction of criminal history records, etc. JU 01/24/2017 Fav/CS CJ 03/06/2017 Fav/CS AP 03/16/2017 Fav/CS	Fav/CS Yeas 18 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, March 16, 2017, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 164 Transportation / Grimsley (Identical CS/H 97)	Certificates of Title for Motor Vehicles; Prohibiting the Department of Highway Safety and Motor Vehicles and tax collector from charging any fee or service charge, except for the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle solely to remove a deceased coowner from a title registered in the name of two persons if the other coowner is the surviving spouse, etc. TR 02/07/2017 Fav/CS ATD 03/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Transportation, Tourism, and Economic Development			
5	SB 174 Artiles	Enterprise Information Technology Services Management Act; Revising certain powers, duties, and functions of the Agency for State Technology in collaboration with the Department of Management Services; authorizing certain service-level agreements entered into by the state data center to be extended for a specified duration, etc. GO 01/24/2017 Favorable AGG 02/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – General Government			
6	SB 350 Clemens (Similar CS/H 345)	Criminal Justice Standards and Training Commission; Requiring the Criminal Justice Standards and Training Commission to implement, administer, maintain, and revise a basic abilities examination by a specified date; requiring that examination fees be deposited in the Criminal Justice Standards and Training Trust Fund; reenacting provisions relating to examinations, administration, and materials not being public records, to incorporate the amendment made to provisions in a reference thereto, etc. CJ 02/21/2017 Favorable ACJ 03/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Criminal and Civil Justice			

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, March 16, 2017, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 358 Garcia (Compare H 1327)	Mental Health and Substance Abuse; Authorizing the Department of Children and Families to approve receiving systems for behavioral health care; deleting an obsolete provision requiring a report by the department and the Agency for Health Care Administration; requiring the department to post certain data on its website; specifying that certain court hearings must be scheduled within 5 court working days unless a continuance is granted, etc. CF 02/06/2017 Favorable AHS 02/22/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Health and Human Services			
8	SB 1020 Powell	Collective Bargaining Impasses; Revising notice requirements for issues at impasse, etc. GO 03/06/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 16 Nays 0
9	SB 7006 Health Policy	Direct-support Organization of the Prescription Drug Monitoring Program; Abrogating the repeal of provisions authorizing the Department of Health to establish a direct-support organization for the prescription drug monitoring program, etc. AHS 03/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Health and Human Services			
10	SB 7008 Military and Veterans Affairs, Space, and Domestic Security (Identical H 7031)	Department of Veterans' Affairs Direct-support Organization; Abrogating the scheduled repeal of provisions governing a direct-support organization established by the department, etc. AHS 03/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Health and Human Services			
11	SB 7010 Military and Veterans Affairs, Space, and Domestic Security (Identical H 7029)	Department of Military Affairs Direct-support Organization; Abrogating the scheduled repeal of provisions governing a direct-support organization established under the department, etc. ATD 03/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Appropriations

Thursday, March 16, 2017, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
With subcommittee recommendation – Transportation, Tourism, and Economic Development			
12	SB 78 Flores (Identical H 67)	Public School Recess; Requiring each district school board to provide students in certain grades with a minimum number of minutes of free-play recess per week and with a minimum number of consecutive minutes of free-play recess per day, etc. ED 02/21/2017 Favorable AED 03/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – Pre-K – 12 Education			
13	CS/SB 220 Regulated Industries / Latvala (Similar H 199)	Veterinary Medicine; Defining “complementary or alternative and integrative therapies,” “physical examination,” “veterinary dentistry,” and “veterinary telemedicine”; revising the definitions of “veterinarian/client/patient relationship,” and “veterinary medicine”, etc. RI 02/08/2017 Fav/CS AGG 03/08/2017 Favorable AP 03/16/2017 Favorable	Favorable Yeas 18 Nays 0
With subcommittee recommendation – General Government			
Other Related Meeting Documents			



Recruitment and Retention Pay Plan

FACILITY SAFETY AND SECURITY



Governor's Recommended Budget

We have three goals for the department for the remaining 661 days of Governor Rick Scott's administration.

Goal #1 Improve Safety of Staff and Inmates.

Goal #2: Continue reducing recidivism to keep Florida communities safe.

Goal #3: Increase operational efficiency.

Budget Issue #1 is a Retention and Recruitment Pay Plan for Correctional Officers and Correctional Probationer Officers.



The Plan

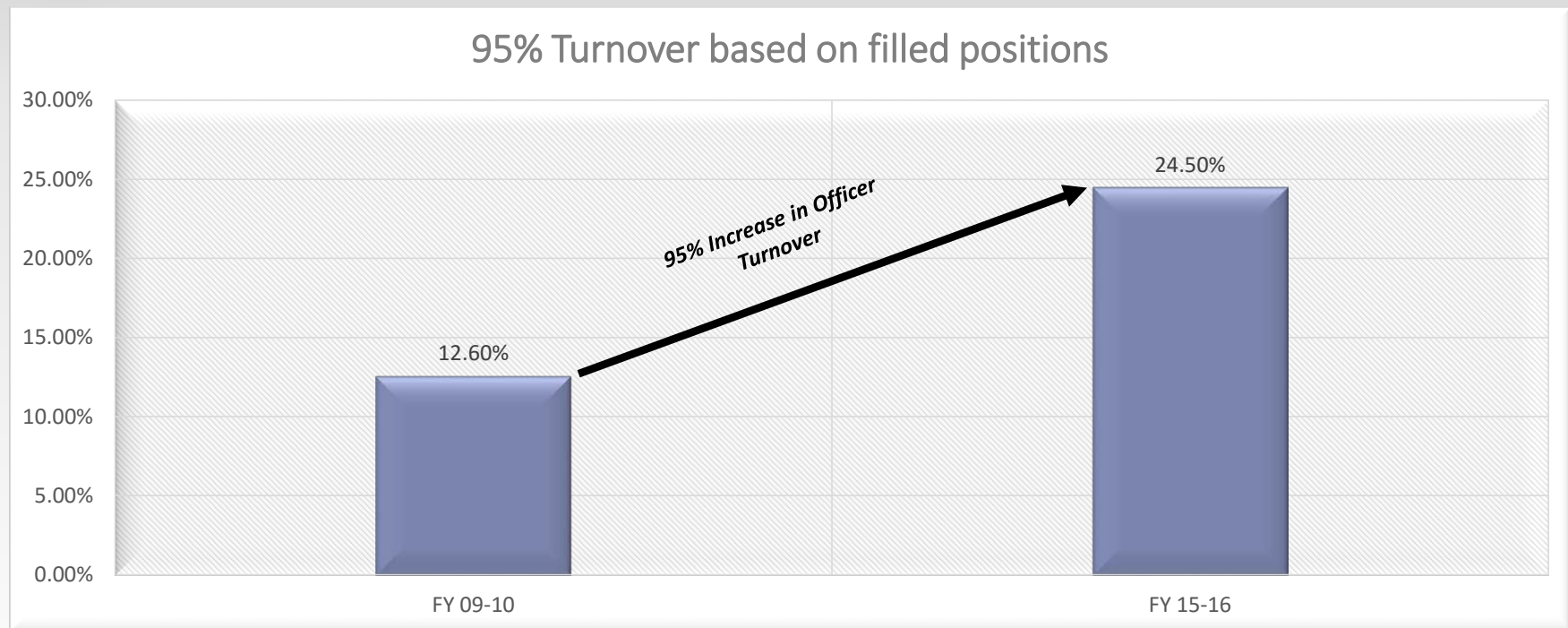
Hiring and maintaining critical staffing levels is the department's number one priority this year.

The plan includes a three-pronged approach to recruitment and retention:

- **An increase to the Correctional Officer and Correctional Probation Officer base pay**
- **A \$1000 hiring bonus to be implemented at correctional institutions with vacancy rates of 10% or more.**
- **A 10% additive for corrections officers working in our mental health units.**



95% TURNOVER for COs

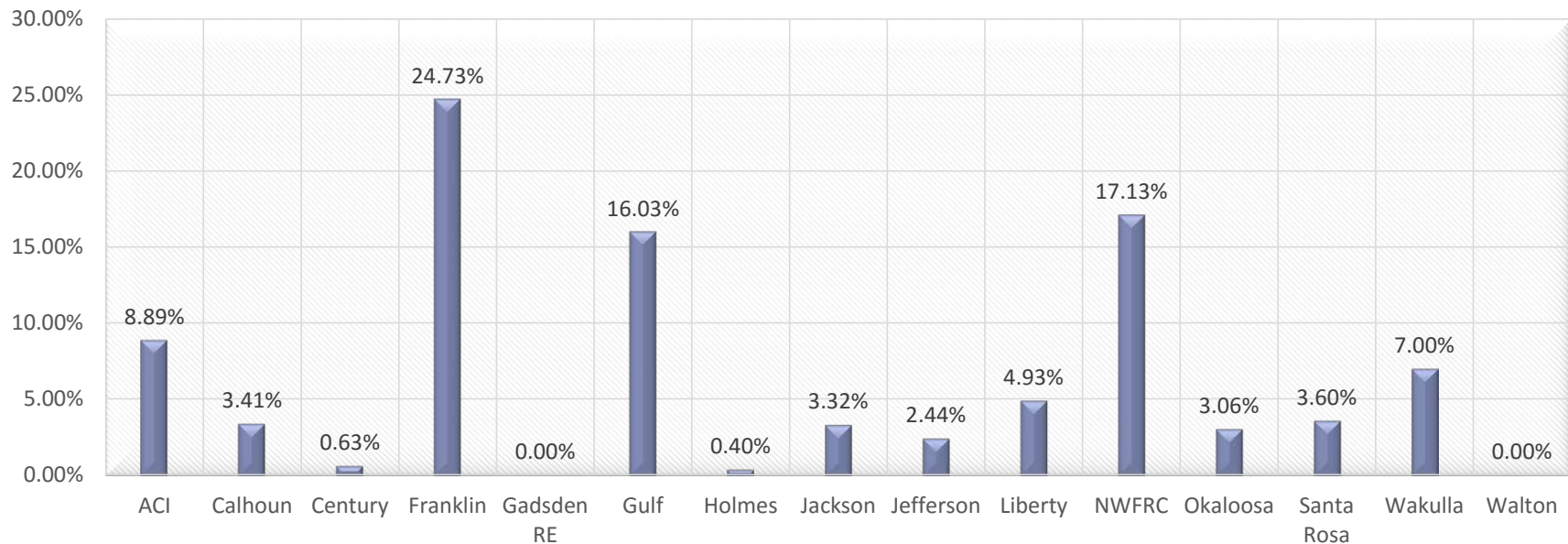




Region One Vacancies

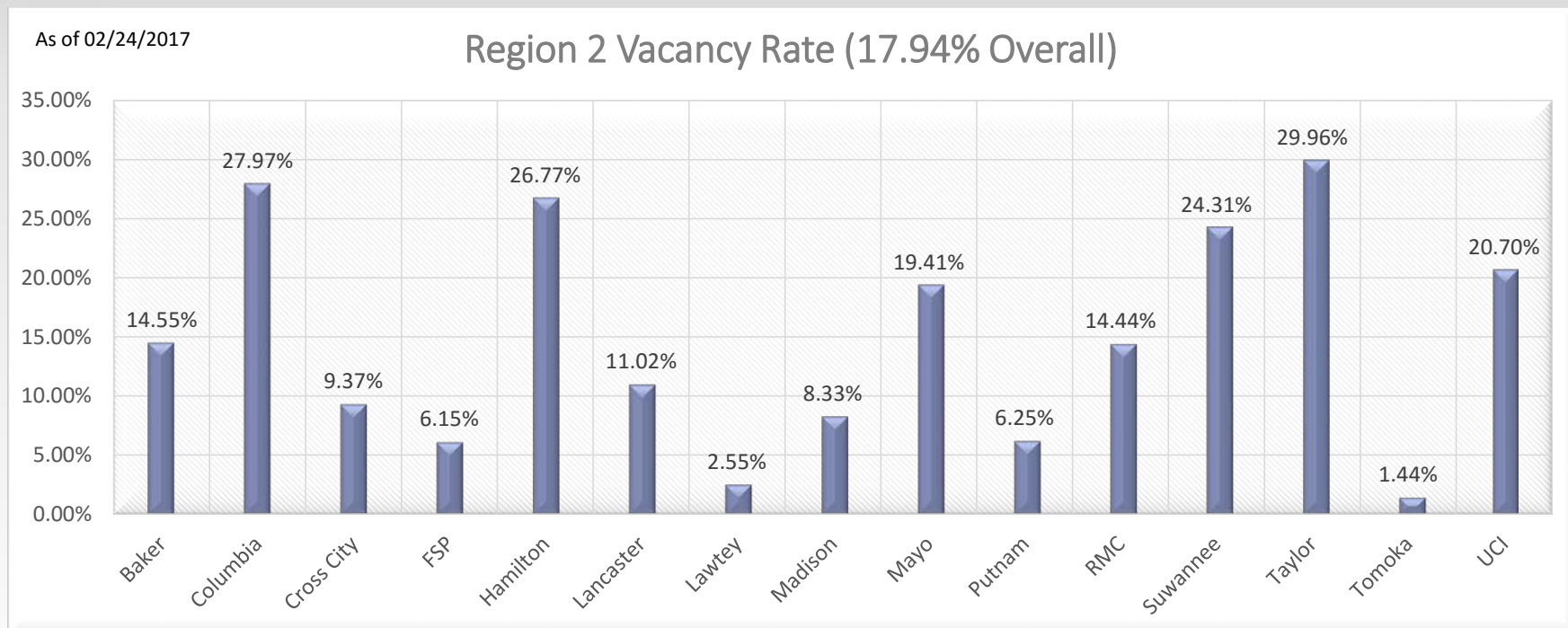
As of 02/24/2017

Region 1 Vacancy Rate (7.31% Overall)



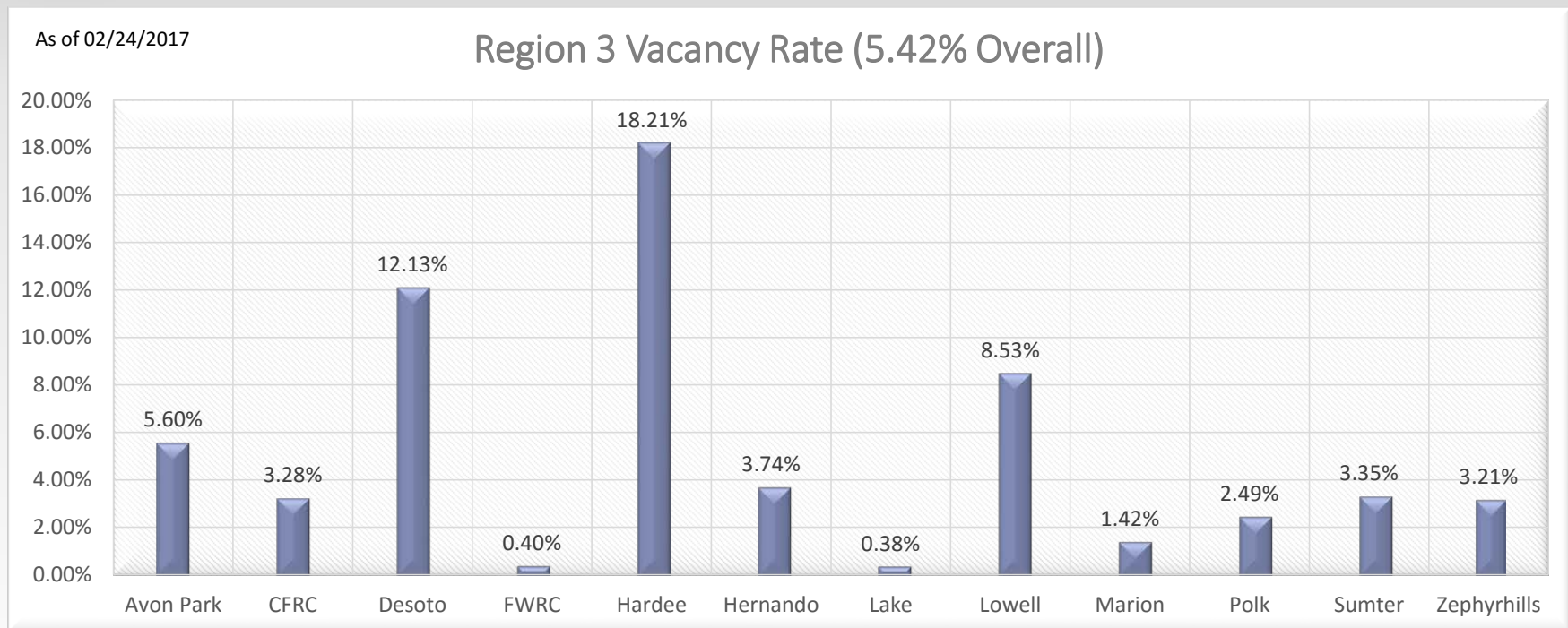


Region Two Vacancies



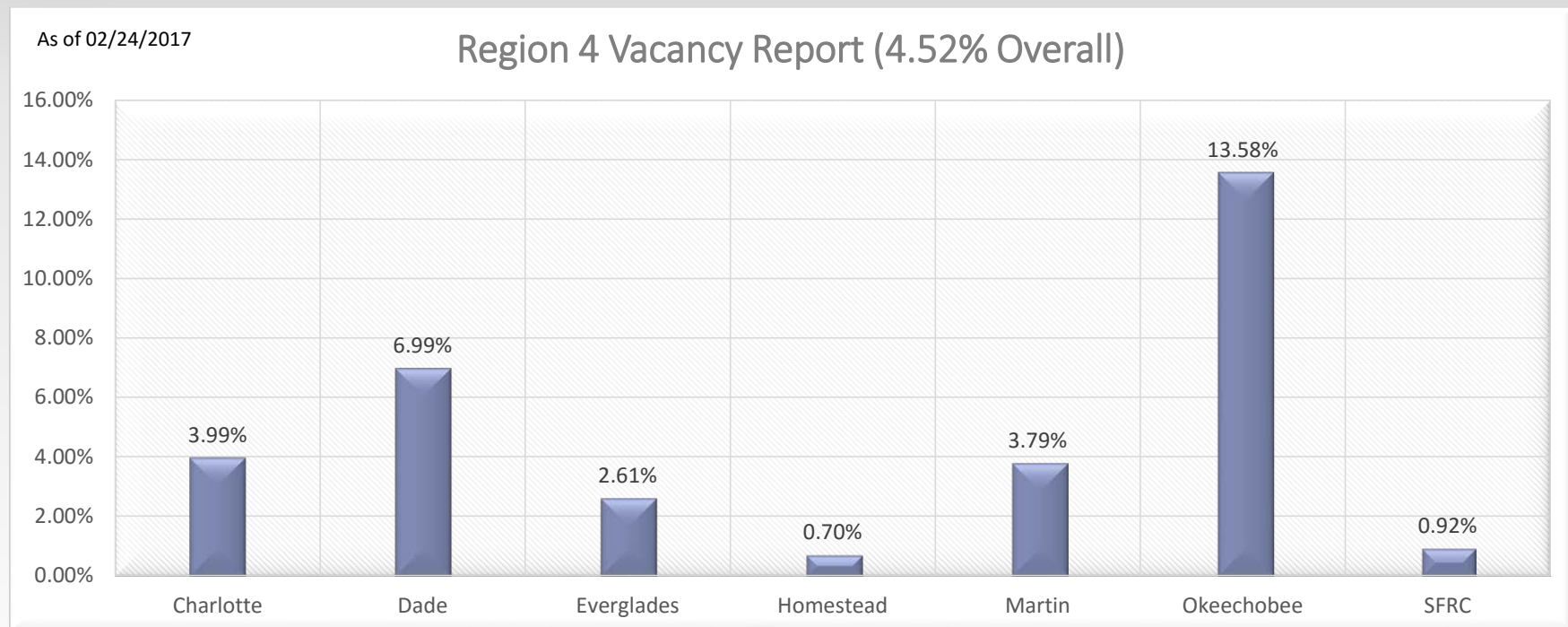


Region Three Vacancies



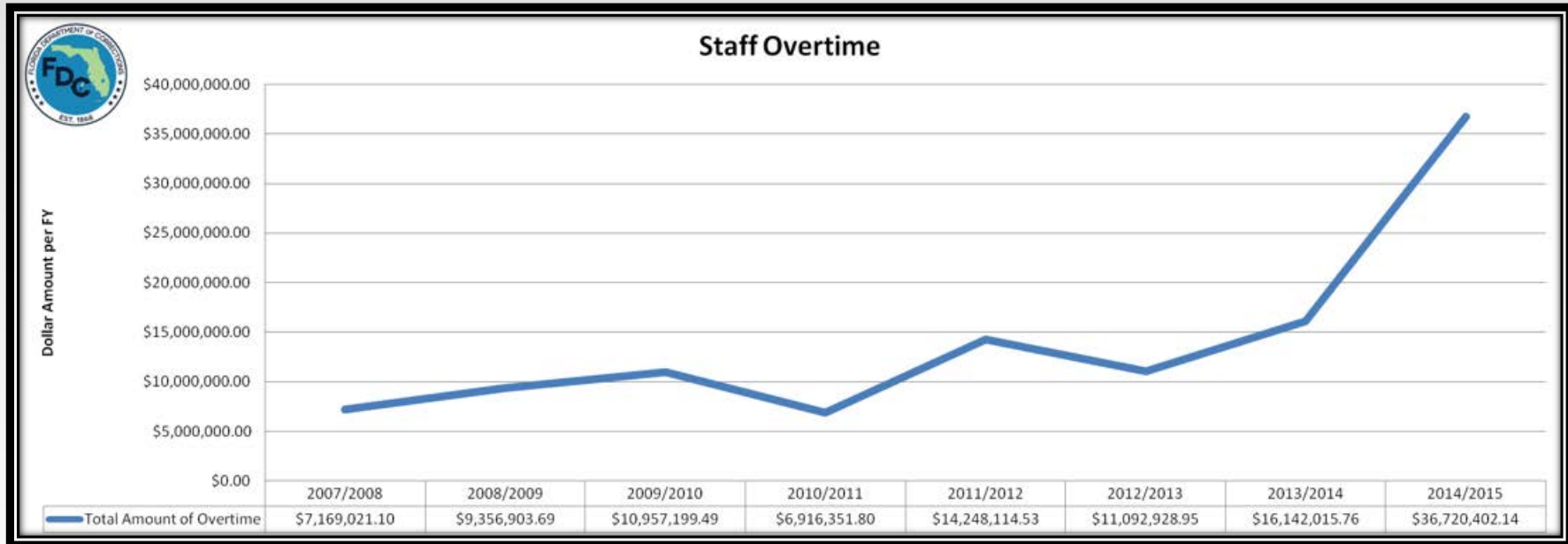


Region Four Vacancies



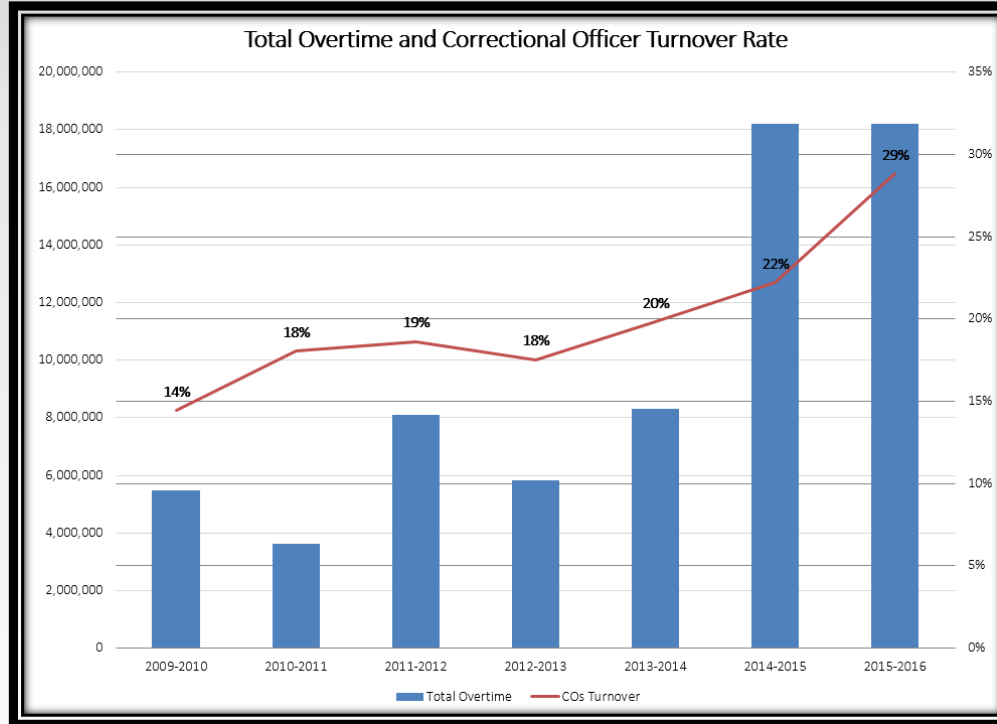


Cost of High Turnover





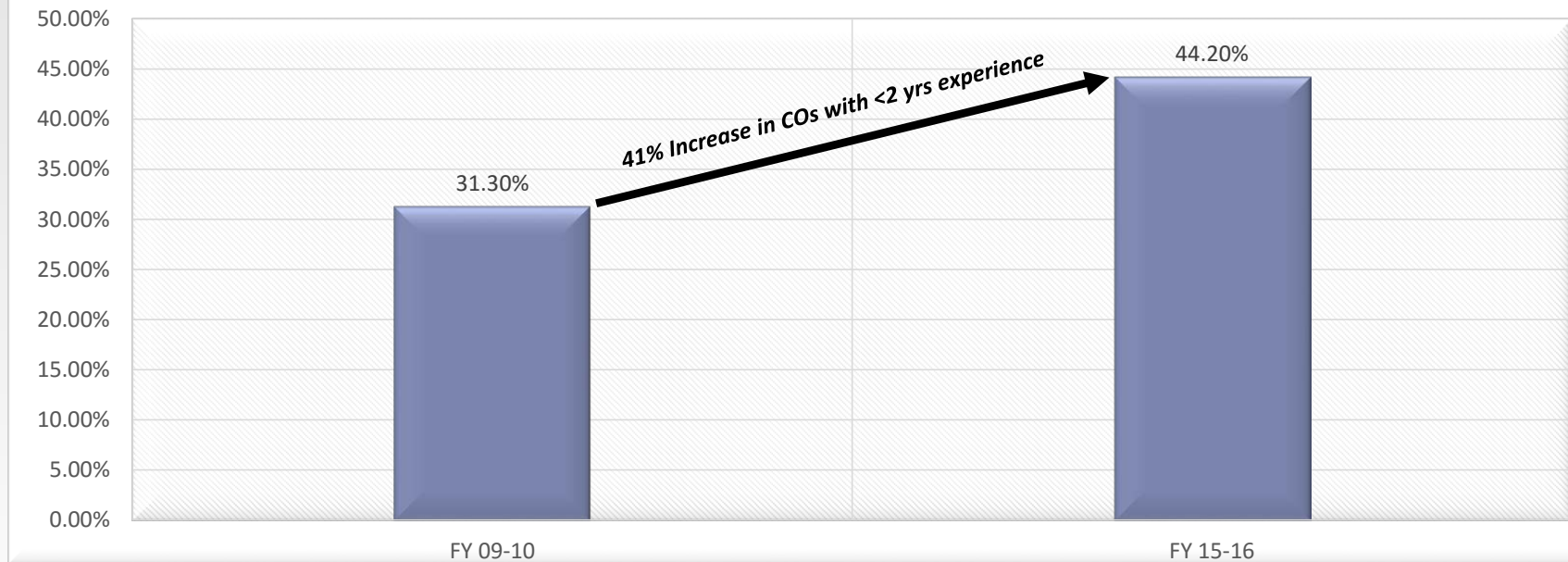
Cost of High Turnover





Operational Consequences

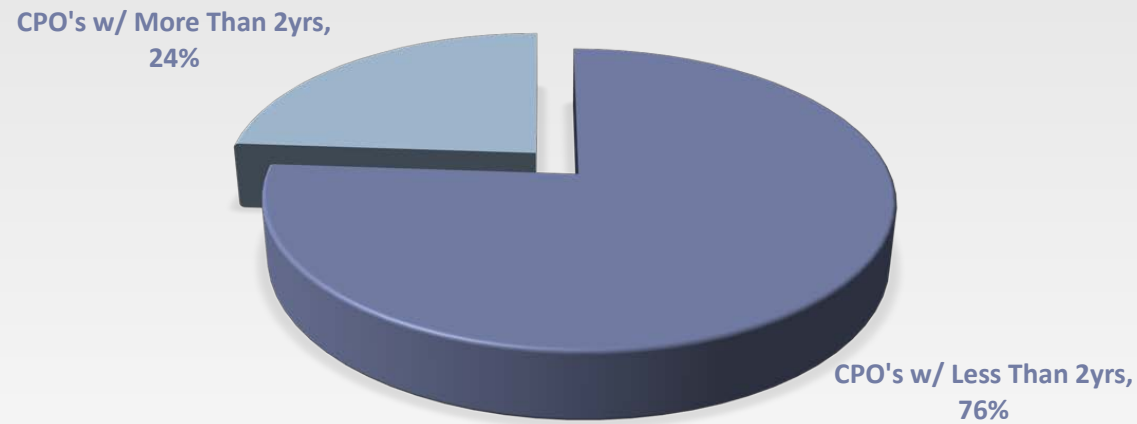
Two Years or Less in Class Series COs





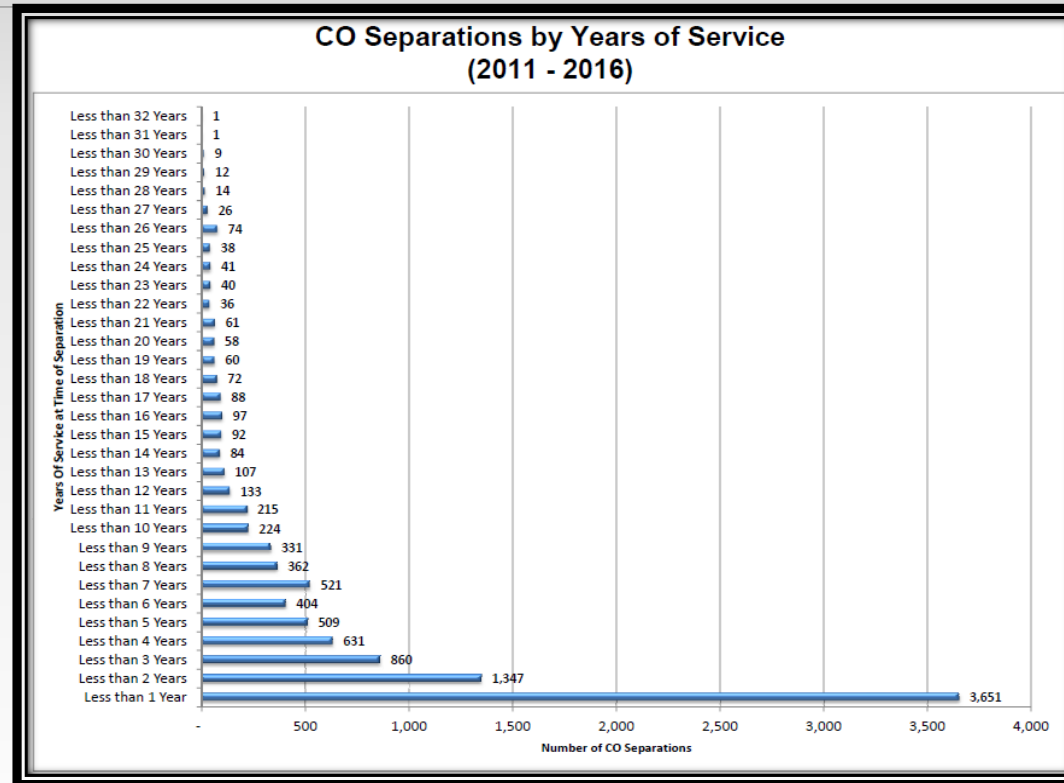
Operational Consequences

PROBATION OFFICER EXPERIENCE



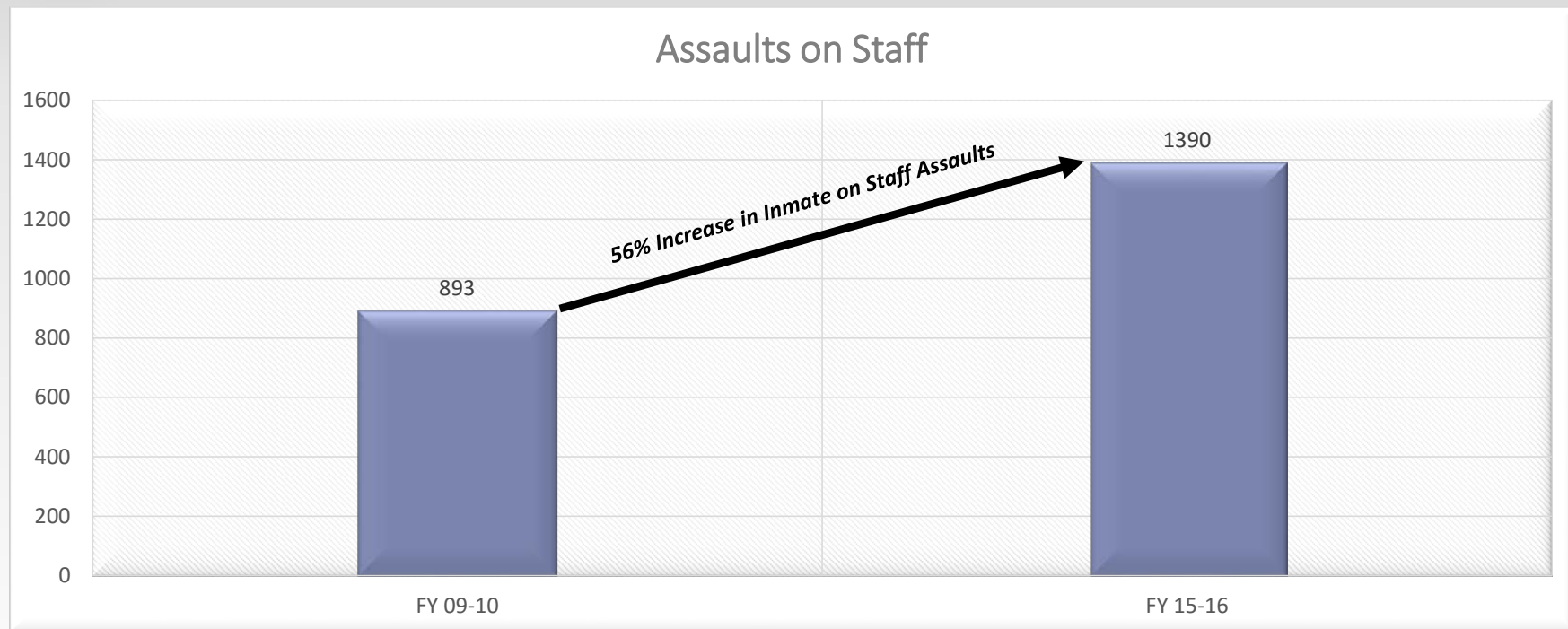


Separation by Years of Service



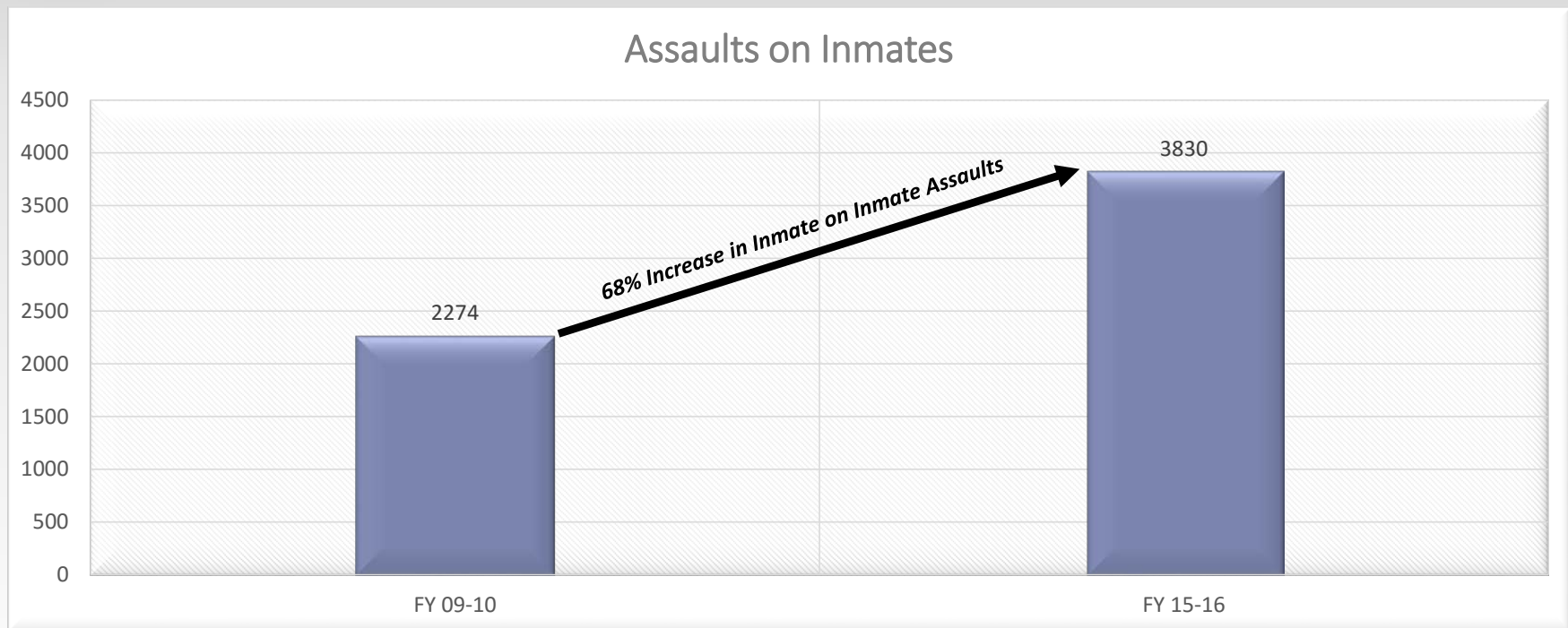


The Toll on Staff Due to High Turnover



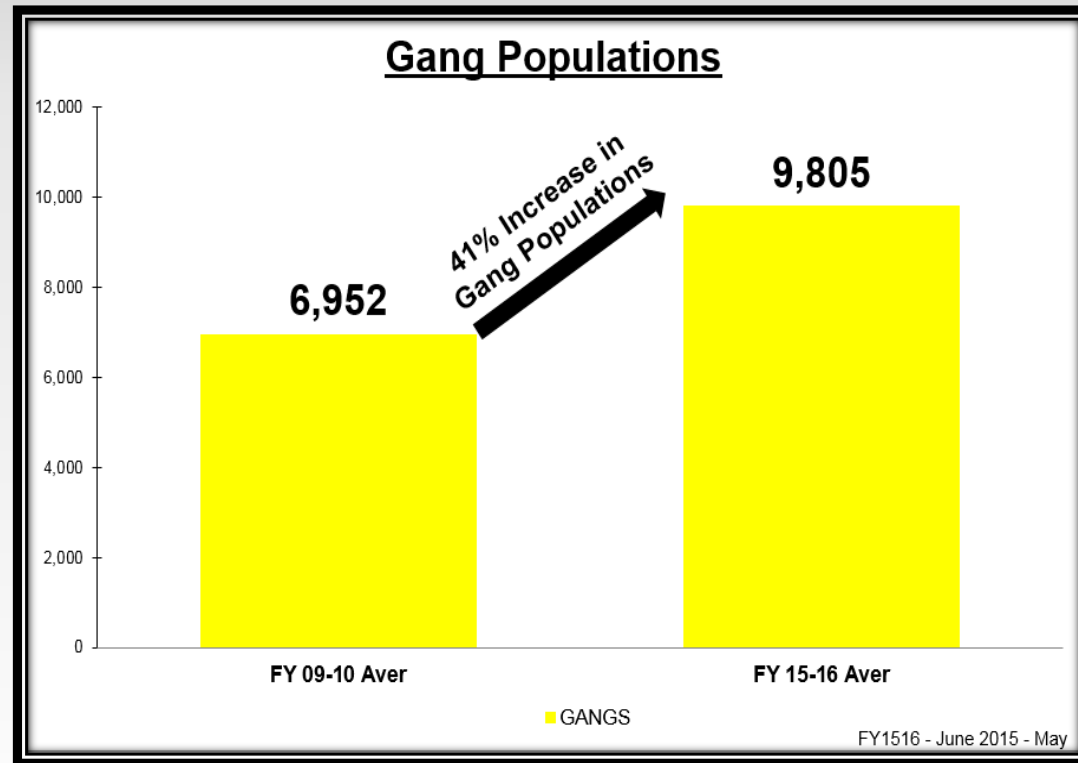


The Toll on Staff Due to High Turnover



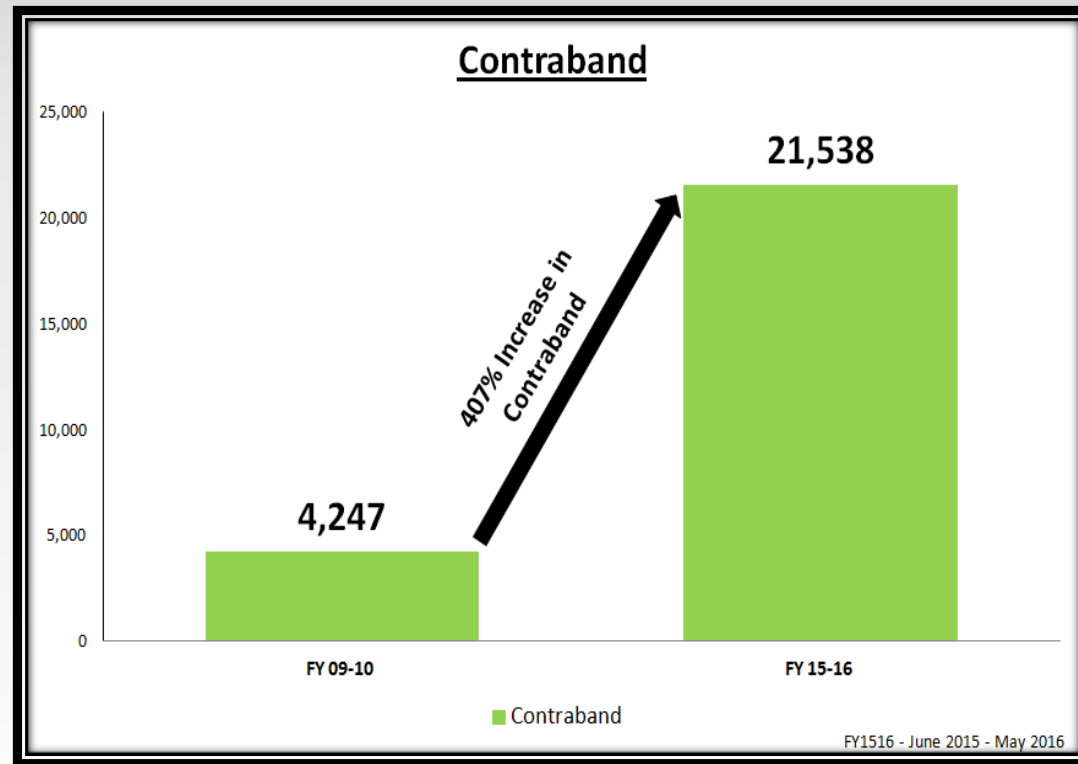


The Toll on Staff Due to High Turnover





The Toll on Staff Due to High Turnover





Starting Pay Comparison with County Jails - COs







In summary:

- I am not retaining experienced staff.
- In some places I can't hire any staff.
- I have a young inexperienced staff, working under difficult circumstances with a dangerous inmate population.
- My supervisors are increasingly less tenured and inexperienced.



Solutions – Increase in Base Pay

- Raise the base pay of the Correctional Officer class to \$33,500 and the Correctional Probation Officer class to \$36,850.
- Set Promotional levels at 10% increments (currently at 7.5%).

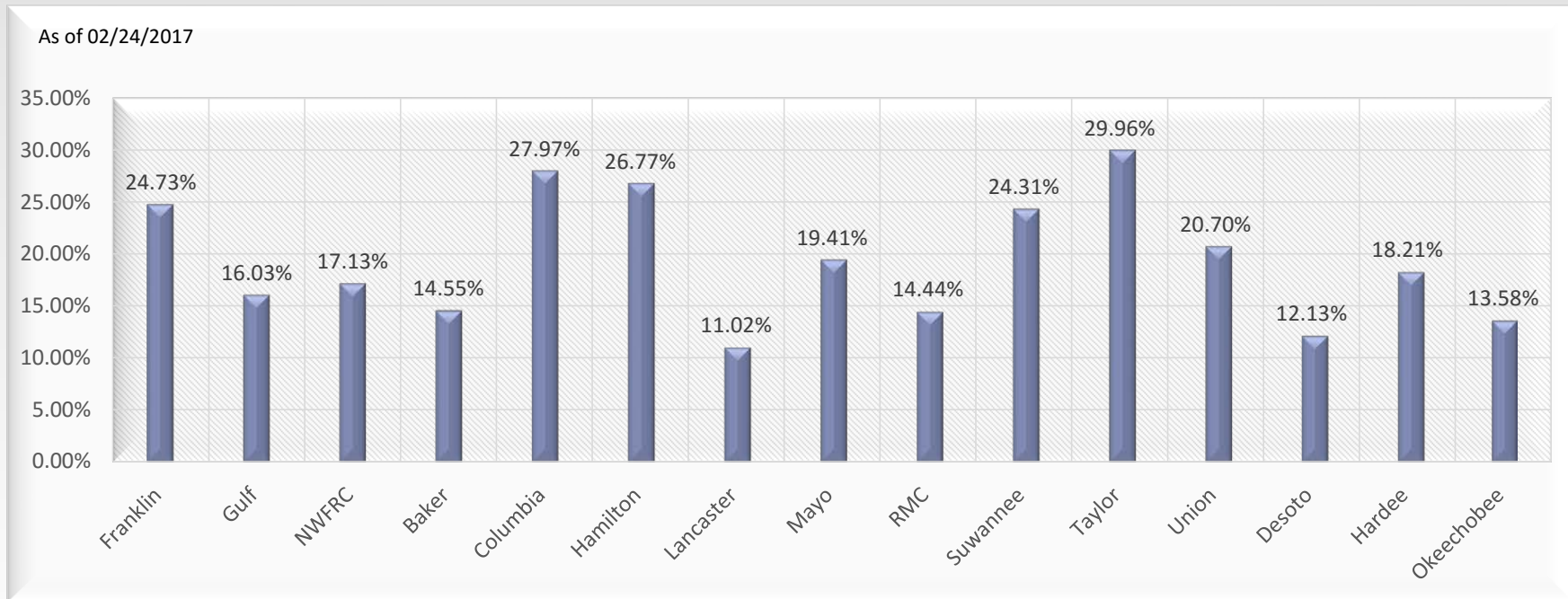
The plan effects members currently covered by the bargaining unit.

The plan has the greatest effect on the Correctional Officer and Correctional Probations Officer and first line supervisor ranks.



Solutions – High Vacancy Hiring Bonus

Summary of # 15 over 10%





Solution - Mental Health Units-Pay Additive

As the total inmate population has decreased the number of inmates with severe mental disorders has drastically increased. Between 2010 and 2016, there was a **51% increase** in the percentage of all mentally ill inmates with the most severe and persistent mental disorders.

- The plan includes a request for the authority to implement a 10% pay additive for officer posts within our 10 inpatient housing units.

Due to high stress and the sensitive nature of dealing with a vulnerable but dangerous inmate population, facilities have noted difficulty in attracting and retaining qualified staff in these housing assignments. This is both a retention and recruitment issue.



Questions

The plan includes a three-pronged approach to recruitment and retention:

- **An increase to the Correctional Officer and Correctional Probation Officer base pay**
- **A \$1000 hiring bonus to be implemented at correctional institutions with vacancy rates of 10% or more.**
- **A 10% additive for corrections officers working in our mental health units.**

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/17

Meeting Date

Bill Number (if applicable)

Topic Florida Department of Corrections

Amendment Barcode (if applicable)

Name Julie Jones

Job Title Secretary of the Florida Department of Corrections

Address 501 South Calhoun Street

Phone 850-717-3030

Street

Tallahassee

FL

32399

City

State

Zip

Email julie.jones@fdc.myflorida.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida Department of Corrections

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 Appropriations

BILL: CS/SB 60

INTRODUCER: Children, Families, and Elder Affairs Committee and Senators Bean and Rodriguez

SUBJECT: Children Obtaining Driver Licenses

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.	Sneed	Williams	AHS	Recommend: Favorable
3.	Sneed	Hansen	AP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 60 expands the program that provides motor vehicle insurance and driver licenses to children in out-of-home care who are in relative and non-relative placements. It also provides assistance to children who have reached permanency or turned 18 under certain circumstances. The program is authorized to pay for a child in out-of-home care to complete a driver education program and obtain a driver license or the related costs of licensure under certain circumstances. The bill continues the program beyond the 3-year pilot period.

The bill requires the child's transition plan and the court to address the issue of a child in care being able to obtain a driver license.

The bill also provides that a guardian ad litem authorized by a minor's caregiver may sign for the minor's learner's driver license and not assume any obligation or liability for damages caused by the minor.

The current program is funded with an annual appropriation of \$800,000 and should require no additional resources for the proposed expansion.

The bill takes effect upon becoming a law.

II. Present Situation:

Background

Children in the foster care system often face barriers to participating in everyday life experiences common to other young people their age. These life experiences are a part of how all children are prepared for the responsibilities they will assume as adults. The Florida State Youth Advisory Board has long identified barriers to driving an automobile that are experienced by the children in Florida's foster care system as a concern. The Department of Children and Families (department) concurs that foster care children who are not able to learn or gain experience driving miss an important part of learning how to be independent, including being able to work. Florida law supports the efforts of teens in foster care to engage in age-appropriate activities.¹

At the end of January 2014, before the beginning of the pilot program, the department reported that there were 385 15-year-olds, 458 16-year-olds, and 517 17-year-olds in foster care. The department has contracted with Cby25, a private not-for-profit corporation, to survey youth in foster care every six months and to publish findings.²

According to the spring 2013 report:

- 5 percent of 15-year-old respondents (11 children of 243 surveyed) had learner's permits;
- 8 percent of 16-year-olds (25 children of 300 surveyed) had learner's permits; and
- 13 percent of 17-year-olds (52 children of 387 surveyed) had learner's permits.

Children surveyed reported the following regarding driver licenses:

- 1 percent of 16-year-olds (4 children of 300 surveyed) had driver licenses; and
- 4 percent of 17-year-olds (16 children of 387 surveyed) had driver licenses.³

The pilot program was limited to children in licensed out-of-home care, which would include foster homes and other residential group homes or facilities.

Special Driver License and Insurance Provisions for Foster Children and Foster Parents

Among the primary obstacles to these children being able to drive are the potential liability of the foster parents when the children drive vehicles owned by the foster parent and the attendant cost of insurance to protect foster parents from this liability.

Section 322.09(2), F.S., provides that any negligence or willful misconduct of the child operating a motor vehicle will be imputed to the adult who signed the application. That adult is jointly and severally liable with the child for any damages caused by the negligent or willful misconduct.

In 2001, s. 322.09, F.S., was amended to provide that foster parents or authorized representatives of a residential group home who sign for a foster child's license do not become liable for any

¹ See s. 409.145(3), F.S.

² My Services, Answers from Youth in Foster Care, available at <http://www.dcf.state.fl.us/programs/indliving/docs/MyServicesSpring2013SurveyReport.pdf>. (last visited Jan. 17, 2017).

³ *Id.*

damages or misconduct of the child.⁴ While this provision relieves the foster parent of liability resulting directly from the signature on the driver license application, it does not address any vicarious liability that the foster parent may have because of the foster parent's ownership of the vehicle that the child drives.⁵ This liability arises whenever an insured individual allows another to operate his or her motor vehicle and is independent of the provisions of s. 322.09, F.S. Thus, the foster parent who owns the motor vehicle continues to be subject to vicarious liability for the actions of the child while operating the foster parent's vehicle, in the same way the foster parent would be vicariously liable for the actions of any other person operating that vehicle. This vicarious liability is one of the risks for which insurance coverage is purchased.

Also in 2001, s. 627.746, F.S., was created to prohibit a motor vehicle insurance company from charging an additional premium on a motor vehicle owned by a foster parent for coverage of a child operating the vehicle while the child is holding a learner's permit.⁶ This prohibition is only applicable until the child obtains a regular driver license.

Results from the Pilot

Community Based Care of Central Florida (CBCCF) was selected through a competitive bid process to manage the development and implementation of this statewide pilot, overseen by the department. CBCCF began accepting applications for enrollment on October 15, 2014.

CBCCF publicizes the availability of the program through many outlets, including through a dedicated website, social media, targeted emails, and at trainings and outreach events held throughout the state. Program staff have conducted in-person trainings in 100% of Florida's community-based care lead agency (CBC) regions, offering multiple presentations to groups of case managers, Guardians ad Litem, foster parents, residential providers, CBC staff and other stakeholders. As of December 31, 2016, a total of 1,276 youth in licensed foster care were enrolled in the program, well above the target the department originally set for the program. Chart 1 below summarizes the results of the pilot by year.⁷

Chart 1. Number of clients receiving specified services

	Actual FY 2014-15 (Pilot Year 1)	Actual FY 2015-16 (Pilot Year 2)	Projected FY 2016-17 (Pilot Year 3)
4-Hour Course Achieved	45	126	149
Learner's License	74	127	154
Driver's Education	32	82	120
Driver License	30	65	104
Insurance⁸	17	36	42

⁴ Chapter 2001-83, Laws of Florida.

⁵ See *Hertz Corp. vs. Jackson*, 617 So.2d 105 (Fla. 1993).

⁶ Chapter 2001-83, Laws of Florida.

⁷ Community Based Care Keys to Independence Program, Mid-Year Snapshot, December 2016.

⁸ Insurance is reflective of those insurance policies for which the Keys to Independence program has provided reimbursement. Youth over the age of 18 are not required to have auto insurance in the State of Florida unless they own a vehicle.

The department was appropriated \$800,000 each year to implement the pilot program. Chart 2 shows the amounts expended each year during the pilot program.

Chart 2. Actual and projected expenditures of the pilot program

	Actual Expenditures FY 2014-15	Actual Expenditures FY 2015-16	Projected Expenditures FY 2016-17
Fixed Expenses	\$161,060	\$225,923	\$384,889
Cost-Reimbursed Expenses	30,923	104,262	138,568
Total Expenses	\$191,983	\$330,185	\$523,457

CBCCF maintains the enrollment report for youth ages 15 to 17. According to CBCCF, an additional 344 youth ages 18 to 21 have been enrolled in the program through November 30, 2016. Chart 3 compares the number of youth enrolled in the program to the total number that are currently eligible.⁹

Chart 3. Eligible Youth Enrolled in Program as of November 30, 2016.

Circuit	Counties	Lead Agency	# of Enrolled Youth	Total Eligible	Percent Enrolled
1	Escambia, Okaloosa, Santa Rosa, Walton	Families First Network	24	96	25.0%
2, 14	Franklin, Gadsden, Jefferson, Leon, Liberty, Wakulla, Bay, Calhoun, Gulf, Holmes, Jackson, Washington	Big Bend CBC	23	53	43.4%
3, 8	Columbia, Dixie, Hamilton, Lafayette, Madison, Suwannee, Taylor, Alachua, Baker, Bradford, Gilchrist, Levy, Union	Partnership for Strong Families	16	34	47.1%
4	Clay	Kids First of Florida	10	14	71.4%
4	Duval, Nassau	Family Support Services of North Florida	47	52	90.4%
7	St. Johns	St. Johns County Board of Commissioners	8	9	88.9%
7	Flagler, Putnam, Volusia	Community Partnership of Children	58	61	95.1%

⁹ Community Based Care Keys to Independence Program, Mid-Year Snapshot, December 2016.

Circuit	Counties	Lead Agency	# of Enrolled Youth	Total Eligible	Percent Enrolled
5	Citrus, Hernando, Lake, Marion, Sumter	Kids Central	76	82	92.7%
9	Orange, Osceola	CBC of Central Florida	71	92	77.2%
10	Hardee, Highlands, Polk	Heartland for Children	44	54	81.5%
18	Seminole	CBC of Central Florida	26	27	96.3%
18	Brevard	Brevard Family Partnership	16	41	39.0%
6	Pasco, Pinellas	Eckerd Community Alternatives	104	125	83.2%
12	DeSoto, Manatee, Sarasota	Sarasota Family YMCA	22	62	35.5%
13	Hillsborough	Eckerd Community Alternatives	95	132	72.0%
20	Charlotte, Collier, Glades, Hendry, Lee	Children's Network of Southwest Florida	38	97	39.2%
15	Palm Beach	ChildNet	32	104	30.8%
17	Broward	ChildNet	62	168	36.9%
19	Indian River, Martin, Okeechobee, St. Lucie	Devereux Families	29	34	85.3%
11, 16	Miami-Dade, Monroe	Our Kids of Miami-Dade/Monroe	40	174	23.0%
All	Youth ages 18 to 21 not included above. ¹⁰		344		
		Statewide Total	1,185	1511	55.6%

III. Effect of Proposed Changes:

Section 1 amends s. 409.1454, F.S., to remove the pilot status of the program and expand eligibility to include children placed in non-licensed out-of-home care settings. Additionally, it allows children to continue to receive benefits for up to six months after having achieved permanency or turning 18 years of age.

The only condition to this expansion impacts those young adults in Extended Foster Care. Although the enhancement would allow for young adults to live in non-licensed settings,

¹⁰ An additional 344 youth ages 18 to 21 in licensed out-of-home care settings have been enrolled in the program through November 30, 2016. The data for this age group is not currently available by county or lead agency.

eligibility is contingent upon their demonstration that the costs of obtaining licensure are a barrier to obtaining employment or completing their educational goals.

Due to the expanded eligibility, enrollment is projected to reach 1,848 by June 2018. Chart 4 shows projected program expenditures for the next two fiscal years based on expanded eligibility and extension of benefits for up to 6 months for participating youth that are aging out of care.¹¹

Chart 4. Projected program expenditures

	Projected FY 2017-18 Expenditures	Projected FY 2018-19 Expenditures
Fixed Expenses	\$467,569	\$482,070
Cost-Reimbursed Expenses	235,578	275,795
Total Expenses	\$703,147	\$757,865

Section 2 amends s. 39.6035, F.S., to require services relating to obtaining a driver license to be specifically addressed in the child's transition plan.

Section 3 amends s. 39.701, F.S., to require a determination of steps for a child who is 15 years of age or older to have obtained a driver license or learner's permit during judicial reviews. Review hearings for 17-year-olds will require written verification that information is provided to the child explaining how to obtain a license.

Section 4 amends s. 322.09, F.S., to allow a guardian ad litem authorized by a minor's caregiver to sign for the minor's learner's driver license and not assume any obligation or liability for damages caused by the minor.

Section 5 reenacts s. 409.1451(5)(a), F.S., to incorporate the amendment made by the bill to s. 39.6035, F.S.

Section 6 reenacts s. 322.05(3), F.S., to incorporate the amendment made by the bill to s. 322.09, F.S.

Section 7 reenacts s. 322.56(8)(a), F.S., to incorporate the amendment made by the bill to s. 322.09, F.S.

Section 8 provides for an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ See the email from CBCCF to committee staff dated February 4, 2017. (On file in the Senate Appropriations Subcommittee on Health and Human Services.)

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:

The department reported that, according to the Florida Safe Families Network (FSFN),¹² as of November 2016, there were approximately 3,000 youth residing in out-of-home care who were in the eligible age range. Almost 900 of those youth were in non-licensed placements such as relative and non-relative placements¹³. CS/SB 60 expands participation in the program to foster youth in non-licensed placements and extends for six months the length of time a youth is eligible to receive benefits. The department anticipates that the increased costs can be funded within existing resources.¹⁴

CBCCF, the manager of the contract with the department for the program, provided the following expenditure information.¹⁵ The current program is funded with an annual appropriation of \$800,000 from the General Revenue Fund and should require no additional resources for the proposed expansion.

	Actual Expenditures FY 2014-15	Actual Expenditures FY 2015-16	Projected Expenditures FY 2016-17	Projected Expenditures FY 2017-18	Projected Expenditures FY 2018-19
Fixed Expenses	\$161,060	\$225,923	\$384,889	\$467,569	\$482,070
Cost-Reimbursed Expenses	30,923	104,262	138,568	235,578	275,795
Total Expenses	\$191,983	\$330,185	\$523,457	\$703,147	\$757,865

¹² The FSFN system is the automated child welfare information system administered by the Department of Children and Families.

¹³ Department of Children and Families, 2017 Agency Legislative Bill Analysis, SB 60, November 28, 2016.

¹⁴ *Id.*

¹⁵ Community Based Care Keys to Independence Program, Mid-Year Snapshot, December 2016.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.1454, 39.6035, 39.701, and 322.09.

This bill reenacts the following sections of the Florida Statutes: 322.05, 322.56, and 409.1451.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Children, Families, and Elder Affairs on January 23, 2017:

The amendment was technical to leave the program in chapter 409, Florida Statutes.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Bean

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A bill to be entitled

An act relating to children obtaining driver licenses; amending s. 409.1454, F.S.; revising legislative findings; revising a pilot program to make it permanent; revising the applicability of the program to include children in out-of-home care; authorizing the program to pay for a child to complete a driver education program and obtain a driver license or the related costs of licensure under certain circumstances; revising the duties of the Department of Children and Families under the program; deleting the requirement for an annual report by the department to the Governor and the Legislature; amending s. 39.6035, F.S.; revising a child's transition plan to include options to use in obtaining a driver license under certain circumstances; amending s. 39.701, F.S.; revising a required determination made by the court and a citizen review panel; requiring the department to include specified information in the social study report for judicial review under certain circumstances; amending s. 322.09, F.S.; providing that a guardian ad litem authorized by a minor's caregiver to sign for the minor's learner's driver license does not assume any obligation or liability for damages; making technical changes; reenacting s. 409.1451(5)(a), F.S., to incorporate the amendment made to s. 39.6035, F.S., in a reference thereto; reenacting ss. 322.05(3) and 322.56(8)(a), F.S., to incorporate the amendment made to s. 322.09, F.S., in references thereto; providing an effective date.

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

Section 1. Section 409.1454, Florida Statutes, is amended, to read:

409.1454 MOTOR VEHICLE INSURANCE AND DRIVER LICENSES FOR CHILDREN IN CARE.—

(1) The Legislature finds that the costs of driver education, licensure and costs incidental to licensure, and motor vehicle insurance for a child in ~~licensed~~ out-of-home care after such child obtains a driver license create ~~creates~~ an additional barrier to engaging in normal age-appropriate activities and gaining independence and may limit opportunities for obtaining employment and completing educational goals. The Legislature also finds that the completion of an approved driver education course is necessary to develop safe driving skills.

(2) To the extent that funding is available, the department shall establish a ~~3-year pilot~~ program to pay the cost of driver education, licensure and other costs incidental to licensure, and motor vehicle insurance for children in ~~licensed~~ out-of-home care who have successfully completed a driver education program.

(3) If a caregiver, or an individual or not-for-profit entity approved by the caregiver, adds a child to his or her existing insurance policy, the amount paid to the caregiver or approved purchaser may not exceed the increase in cost attributable to the addition of the child to the policy.

(4) Payment shall be made to eligible recipients in the order of eligibility until available funds are exhausted. If a child determined to be eligible reaches permanency status or turns 18 years of age, the program may pay for that child to

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complete a driver education program and obtain a driver license for up to 6 months after the date the child reaches permanency status or 6 months after the date the child turns 18 years of age. A child continuing in care under s. 39.6251 may be eligible to have the costs of licensure and costs incidental to licensure paid if the child demonstrates that such costs are creating barriers for obtaining employment or completing educational goals.

(5) The department shall contract with a not-for-profit entity whose mission is to support youth aging out of foster care to develop procedures for operating and administering the pilot program, including, but not limited to:

(a) Determining eligibility, including responsibilities for the child and caregivers.

(b) Developing application and payment forms.

(c) Notifying eligible children, caregivers, group homes, and residential programs of the pilot program.

(d) Providing technical assistance to lead agencies, providers, group homes, and residential programs to support removing obstacles that prevent children in foster care from driving.

(e) Publicizing the program, engaging in outreach, and providing incentives to youth participating in the program to encourage the greatest number of eligible children to obtain driver licenses.

~~(6) By July 1, 2015, and annually thereafter for the duration of the pilot program, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives evaluating the success~~

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~~of and outcomes achieved by the pilot program. The report shall include a recommendation as to whether the pilot program should be continued, terminated, or expanded.~~

Section 2. Subsection (1) of section 39.6035, Florida Statutes, is amended to read:

39.6035 Transition plan.—

(1) During the 180-day period after a child reaches 17 years of age, the department and the community-based care provider, in collaboration with the caregiver and any other individual whom the child would like to include, shall assist the child in developing a transition plan. The required transition plan is in addition to standard case management requirements. The transition plan must address specific options for the child to use in obtaining services, including housing, health insurance, education, a driver license, and workforce support and employment services. The plan must also consider establishing and maintaining naturally occurring mentoring relationships and other personal support services. The transition plan may be as detailed as the child chooses. In developing the transition plan, the department and the community-based provider shall:

(a) Provide the child with the documentation required pursuant to s. 39.701(3); and

(b) Coordinate the transition plan with the independent living provisions in the case plan and, for a child with disabilities, the Individuals with Disabilities Education Act transition plan.

Section 3. Paragraph (c) of subsection (2) and paragraph

(a) of subsection (3) of section 39.701, Florida Statutes, are

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amended to read:

39.701 Judicial review.—

(2) REVIEW HEARINGS FOR CHILDREN YOUNGER THAN 18 YEARS OF AGE.—

(c) *Review determinations.*—The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem or surrogate parent for educational decisionmaking if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

1. If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

2. If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

3. If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously

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been appointed or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed.

4. Who holds the rights to make educational decisions for the child. If appropriate, the court may refer the child to the district school superintendent for appointment of a surrogate parent or may itself appoint a surrogate parent under the Individuals with Disabilities Education Act and s. 39.0016.

5. The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

6. The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any noncompliance.

7. The frequency, kind, and duration of contacts among siblings who have been separated during placement, as well as any efforts undertaken to reunite separated siblings if doing so is in the best interest of the child.

8. The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply, if applicable.

9. Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including

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maintaining stability in the child's educational placement, as documented by assurances from the community-based care provider that:

a. The placement of the child takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement.

b. The community-based care agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement.

10. A projected date likely for the child's return home or other permanent placement.

11. When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.

12. For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living. For a child who is 15 years of age or older, the court shall determine if appropriate steps are being taken for the child to obtain a driver license or learner's driver license.

13. If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

(3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—

(a) In addition to the review and report required under paragraphs (1)(a) and (2)(a), respectively, the court shall hold

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a judicial review hearing within 90 days after a child's 17th birthday. The court shall also issue an order, separate from the order on judicial review, that the disability of nonage of the child has been removed pursuant to ss. 743.044, 743.045, 743.046, and 743.047, and for any of these disabilities that the court finds is in the child's best interest to remove. The court shall continue to hold timely judicial review hearings. If necessary, the court may review the status of the child more frequently during the year before the child's 18th birthday. At each review hearing held under this subsection, in addition to any information or report provided to the court by the foster parent, legal custodian, or guardian ad litem, the child shall be given the opportunity to address the court with any information relevant to the child's best interest, particularly in relation to independent living transition services. The department shall include in the social study report for judicial review written verification that the child has:

1. A current Medicaid card and all necessary information concerning the Medicaid program sufficient to prepare the child to apply for coverage upon reaching the age of 18, if such application is appropriate.

2. A certified copy of the child's birth certificate and, if the child does not have a valid driver license, a Florida identification card issued under s. 322.051.

3. A social security card and information relating to social security insurance benefits if the child is eligible for those benefits. If the child has received such benefits and they are being held in trust for the child, a full accounting of these funds must be provided and the child must be informed as

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to how to access those funds.

4. All relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, information on participation, and assistance in gaining admission to the program. If the child is eligible for the Road-to-Independence Program, he or she must be advised that he or she may continue to reside with the licensed family home or group care provider with whom the child was residing at the time the child attained his or her 18th birthday, in another licensed family home, or with a group care provider arranged by the department.

5. An open bank account or the identification necessary to open a bank account and to acquire essential banking and budgeting skills.

6. Information on public assistance and how to apply for public assistance.

7. A clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and the educational program or school in which he or she will be enrolled.

8. Information related to the ability of the child to remain in care until he or she reaches 21 years of age under s. 39.013.

9. A letter providing the dates that the child is under the jurisdiction of the court.

10. A letter stating that the child is in compliance with financial aid documentation requirements.

11. The child's educational records.

12. The child's entire health and mental health records.

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13. The process for accessing his or her case file.

14. A statement encouraging the child to attend all judicial review hearings occurring after the child's 17th birthday.

15. Information on how to obtain a driver license or learner's driver license.

Section 4. Subsection (4) of section 322.09, Florida Statutes, is amended to read:

322.09 Application of minors; responsibility for negligence or misconduct of minor.—

(4) Notwithstanding ~~the provisions of~~ subsections (1) and (2), if a foster parent of a minor who is under the age of 18 years and is in foster care as defined in s. 39.01, an authorized representative of a residential group home at which such a minor resides, ~~or~~ the caseworker at the agency at which the state has placed the minor, or a guardian ad litem specifically authorized by the minor's caregiver to sign for a learner's driver license signs the minor's application for a learner's driver license, that foster parent, group home representative, ~~or~~ caseworker, or guardian ad litem does not assume any obligation or become liable for any damages caused by the negligence or willful misconduct of the minor by reason of having signed the application. ~~Before~~ Prior to signing the application, the caseworker shall notify the foster parent or other responsible party of his or her intent to sign and verify the application.

Section 5. For the purpose of incorporating the amendment made by this act to section 39.6035, Florida Statutes, in a reference thereto, paragraph (a) of subsection (5) of section

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409.1451, Florida Statutes, is reenacted to read:

409.1451 The Road-to-Independence Program.—

(5) PORTABILITY.—The services provided under this section are portable across county lines and between lead agencies.

(a) The service needs that are identified in the original or updated transition plan, pursuant to s. 39.6035, shall be provided by the lead agency where the young adult is currently residing but shall be funded by the lead agency who initiated the transition plan.

Section 6. For the purpose of incorporating the amendment made by this act to section 322.09, Florida Statutes, in a reference thereto, subsection (3) of section 322.05, Florida Statutes, is reenacted to read:

322.05 Persons not to be licensed.—The department may not issue a license:

(3) To a person who is at least 16 years of age but who is under 18 years of age, unless the parent, guardian, or other responsible adult meeting the requirements of s. 322.09 certifies that he or she, or another licensed driver 21 years of age or older, has accompanied the applicant for a total of not less than 50 hours' behind-the-wheel experience, of which not less than 10 hours must be at night. This subsection is not intended to create a private cause of action as a result of the certification. The certification is inadmissible for any purpose in any civil proceeding.

Section 7. For the purpose of incorporating the amendment made by this act to section 322.09, Florida Statutes, in a reference thereto, paragraph (a) of subsection (8) of section 322.56, Florida Statutes, is reenacted to read:

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322.56 Contracts for administration of driver license examination.—

(8) The department shall contract with providers of approved online traffic law and substance abuse education courses to serve as third-party providers to conduct online, on behalf of the department, examinations required pursuant to ss. 322.12 and 322.1615 to applicants for Class E learner's driver licenses.

(a) The online testing program shall:

1. Use personal questions before the examination, which the applicant is required to answer during the examination, to strengthen test security to deter fraud;

2. Require, before the start of the examination, the applicant's parent, guardian, or other responsible adult who meets the requirements of s. 322.09 to provide the third-party administrator with his or her driver license number and to certify that the parent, guardian, or responsible adult will monitor the applicant during the examination; and

3. Require, before issuance by the department of a learner's driver license to an applicant who has passed an online examination, the applicant's parent, guardian, or other responsible adult who meets the requirements of s. 322.09 to certify to the department that he or she monitored the applicant during the online examination. This certification shall be similar to the certification required by s. 322.05(3). This subsection does not preclude the department from continuing to provide written examinations at driver license facilities.

Section 8. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: February 16, 2017

I respectfully request that **Senate Bill # 60**, relating to Children Obtaining Driver Licenses, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean". The signature is written in a cursive style.

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/17
Meeting Date

60
Bill Number (if applicable)

Topic Chair "Keys to Independence" Bill

Amendment Barcode (if applicable)

Name Chair ALAN ABRAMOWITZ

Job Title Executive Director

Address 600 CALHOUN AV

Phone 850-241-3232

Street

Tallah FL 3230

City

State

Zip

Email Alan.Abramowitz@goi.fl.gov

Speaking: ☒ For ☐ Against ☐ Information

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

Representing GUARDIAN AD LITEM PROGRAM

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 Appropriations

BILL: CS/CS/CS/SB 118

INTRODUCER: Appropriations Committee; Criminal Justice Committee; Judiciary Committee; and Senator Steube

SUBJECT: Criminal History Records

DATE: March 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
3.	<u>Harkness</u>	<u>Hansen</u>	<u>AP</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 118 prohibits any person or entity that publishes arrest booking photographs to solicit or accept a fee to remove the photographs. Within ten calendar days of receiving a written request by the person in the photograph or his or her legal representative, the publisher of the photograph must remove the photograph. A person seeking removal of his or her arrest booking photograph must mail, by registered mail, the written request along with sufficient proof of identification to the registered agent of the publisher.

If the publisher does not remove the photograph, the person whose arrest booking photograph was published or otherwise disseminated may bring a civil action to have the court issue an injunction. The court may also impose a civil penalty of \$1,000 per day for noncompliance with the injunction and must award reasonable attorney fees and court costs related to issuing and enforcing the injunction. Any money recovered for the civil penalties must be deposited into the General Revenue Fund.

Refusal to remove an arrest booking photograph after a written request constitutes an unfair or deceptive trade practice and subjects the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act.

Currently, criminal history records relating to charges disposed of by a trial are ineligible for expunction, regardless of the verdict in the case. Under the bill, a case resolved by a judgment of acquittal or a not guilty verdict is eligible for expunction.

The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated guilty for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in section 943.051(3)(b), Florida Statutes, in the past ten years.

The provisions of the bill relating to expunction will have minimal fiscal impact on the Florida Department of Law Enforcement (FDLE) and an indeterminate impact on the court system. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2017.

II. Present Situation:

Public Disclosure of Criminal Record Information

All “materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge” are public records and open for public inspection, unless a specific exemption applies.¹

Criminal record information may be obtained and published by non-governmental publishers. This information includes booking photographs, arrest reports, charging documents, sentencing orders, and criminal history information.² Like all other records prepared by Florida government agencies, criminal record information is subject to public disclosure unless specifically exempted.³

Arrest Record Information

Public record information pertaining to a person’s arrest for the alleged commission of a crime includes the arrest report and booking photograph (“mugshot”). With few exceptions, arrest record information (including booking photographs) must be disclosed pursuant to a public records request.⁴

¹ Office of the Attorney General (Florida), *Public Records: A Guide for Law Enforcement Agencies* (2012 Edition), at p. 1. and endnote 1 (citing *Shevin v. Byron, Harless, Schaffer, Reid and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980)) and endnote 2 (citing *Wait v. Fla. Power & Light Co.*, 372 So. 2d 420 (Fla. 1979)), available at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/\\$file/2012LEGuide.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-935PV5/$file/2012LEGuide.pdf) (last visited on February 13, 2017).

² The Florida Department of Law Enforcement is the central repository of criminal history information for the State of Florida. For a fee, a search of Florida criminal history information regarding a person may be performed. Excluded from the search is sealed or expunged information. Florida Department of Law Enforcement, Criminal History Information, *Search Florida’s Criminal Histories*, available at <https://web.fdle.state.fl.us/search/app/default> (last visited on February 13, 2017).

³ Office of the Attorney General, *Public Records: A Guide for Law Enforcement Agencies*, at p. 15 and endnote 67 (citing *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994)).

⁴ Op. Att’y Gen. 94-90 (October 25, 1994) (footnotes omitted), available at <http://www.myfloridalegal.com/ago.nsf/Opinions/83A1D5004064269D852562210063168E> (last visited on February 13, 2017).

Arrest record information is requested by many persons and entities, including members of the public, traditional news companies, companies that provide criminal history or criminal record information for a service or subscriber fee (e.g., so that a private employer may determine if a job applicant has a criminal history), and companies that are often referred to as “mugshot” companies.

Mugshot companies operate commercial websites that repost booking photographs. The companies make a profit by charging a fee to remove the image. Photos posted on one site may also be reposted to other sites, causing continuing harm to the reputation of the individual. Florida law does not specifically prohibit this practice.⁵

Laws and Legislation of Other States

Some states have passed laws that say public records cannot be used for commercial purposes. Thirteen states have enacted legislation designed to prohibit commercial website operators from posting mugshot photos on a website and charging a removal fee.⁶

An American Bar Association article suggests that there is no legal solution to this problem, and instead, the solution will develop through private sector activity.⁷ For example, Google has adjusted its algorithms so that the mugshot companies will not appear as prominently in the search results. In addition, some credit card companies such as MasterCard, American Express, and Discover are cutting ties with these types of websites.⁸

Other Actions

In 2014, the Pinellas County Sheriff’s Office announced that it would no longer post booking photographs on its website. The names, addresses, and initial charges of those arrested are still available on the website. The agency still provides access to the mugshots to other law enforcement agencies and the media, but those entities must request access to those photographs. Members of the public may also submit requests for mugshots.⁹

The Lee County Sheriff’s Office website indicates that it will remove a booking photograph once notified the arrest record information is sealed or expunged.¹⁰

⁵ National Conference of State Legislatures, *Mug Shots and Booking Photo Websites, Overview*, February 3, 2017, available at <http://www.ncsl.org/research/telecommunications-and-information-technology/mug-shots-and-booking-photo-websites.aspx> (last visited on February 13, 2017).

⁶ *Id.* The thirteen states are California, Colorado, Georgia, Illinois, Kentucky, Maryland, Missouri, Oregon, South Carolina, Texas, Utah, Virginia, and Wyoming.

⁷ Stephanie Francis Ward, *Hoist Your Mug: Websites Will Post Your Name and Photo; Others Will Charge You to Remove Them*, ABA Journal, August 1, 2012, available at http://www.abajournal.com/magazine/article/hoist_your_mug_websites_will_post_your_name_and_photo_others_will_charge_you (last visited on February 13, 2017).

⁸ *Supra* note 5.

⁹ Stephen Thompson, *Pinellas Sheriff Limiting Access to Mugshots Online*, The Tampa Tribune, January 10, 2014, available at <http://tbo.com/pinellas-county/pinellas-sheriff-targeting-websites-limits-access-to-mug-shots-20140109/> (last visited on February 13, 2017).

¹⁰ Lee County Sheriff’s Office, *FAQ, How can I have my arrest photo or information removed from the Lee County Sheriff’s Office website?*, October 22, 2015, available at <http://www.sheriffleefl.org/main/index.php?r=faqs/index&cat=1&id=524> (last visited on February 13, 2017).

Case Law

Persons having their booking photographs posted by commercial entities have sought relief based on various causes of action. These include claims for an invasion of privacy based on false light, invasion of privacy based on unauthorized appropriation of name or likeness, defamation by slander, and unjust enrichment.¹¹

In 2008, the Florida Supreme Court indicated that Florida does not recognize tort claims based on false light, “because we conclude that false light is largely duplicative of existing torts, but without the attendant protections of the First Amendment.”¹² The Court specifically noted that the key elements of a false claim are nearly identical to the elements required in a defamation case.¹³ Florida does recognize defamation claims.¹⁴

Right of Publicity

Section 540.08(1), F.S., prohibits a person from publishing, printing, displaying, or otherwise publicly using for purposes of trade or for any commercial or advertising purpose the name, portrait, photograph, or other likeness of any natural person without the person’s express written or oral consent to such use. There are exceptions for:

- Publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;
- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use on or in connection with the initial sale or distribution; and
- Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.¹⁵

When necessary consent is not obtained, the person whose name, portrait, photograph, or other likeness is used may bring an action to enjoin the unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.¹⁶

In 2014, a Florida federal district court denied the defendant’s motion to dismiss a cause of action alleging a violation of s. 540.08, F.S., for publishing the plaintiff’s booking photograph without her consent and advertising “unpublishing services” that required the payment of a fee to remove the photograph.¹⁷ In a later proceeding, the court denied the plaintiff’s Motion to Certify

¹¹ A claim of false light is a type of a claim of invasion of privacy based in tort. For example, to prevail in a false light claim in Pennsylvania, a defendant must establish that a highly offensive false statement was publicized by a defendant with knowledge or in reckless disregard of its falsity. *Santillo v. Reedel*, 430 Pa. Super. 290, 295-296 (Pa. Super. Ct.1993).

¹² *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1100 (Fla. 2008).

¹³ *Id.* at 1105-1106.

¹⁴ *Id.* at 1111-1112. See ch. 770, F.S.

¹⁵ Section 540.08(4), F.S.

¹⁶ Section 540.08(2), F.S.

¹⁷ *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 3229 (M.D. Fla. Jan. 10, 2014).

Class (to allow the case to proceed as a class action) without prejudice.¹⁸ The case did not have a trial on the merits of the cases so it is unknown whether the plaintiff would have succeeded on her claim.

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.¹⁹ The FDUTPA is based on federal law.²⁰ The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.²¹ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.²² Consumers may also file suit through private actions.²³

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;
- Cease and desist orders; and
- Civil penalties of up to \$10,000 per willful violation.²⁴

Remedies for private parties are limited to:

- A Declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.²⁵

¹⁸ *Bilotta v. Citizen Info. Assocs., LLC*, 2014 U.S. Dist. LEXIS 68495 (M.D. Fla. May 19, 2014).

¹⁹ Chapter 73-124, L.O.F., and s. 501.202, F.S.

²⁰ D. Matthew Allen, et. al., *The Federal Character of Florida's Deceptive and Unfair Trade Practices Act*, 65 U. Miami L. Rev. 1083, Summer 2011.

²¹ Section 501.207, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage*; *State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on February 13, 2017).

²² Section 501.203(2), F.S.

²³ Section 501.211, F.S.

²⁴ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

²⁵ Section 501.211(1) and (2), F.S.

Expunction of Criminal Records

A court may order a criminal record to be expunged.²⁶ A person seeking to have a criminal record expunged must first obtain a valid certificate of eligibility from the FDLE. To do so, the person must provide the FDLE:

- A written, certified statement from the appropriate state attorney or statewide prosecutor that:
 - An indictment, information, or other charging document was not filed or issued in the case.
 - An indictment, information, or other charging document, if filed or issued in the case, was dismissed or dropped by the state attorney or the court, and that none of the charges resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.
 - The applicant does not have a criminal history record relating to certain delineated violations.²⁷
- A \$75 processing fee, unless the fee is waived.
- A certified copy of the disposition of the charge.²⁸

The person also must not:

- Before the date the application for a certificate of eligibility is filed, have been adjudicated guilty of a criminal offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.²⁹
- Have been adjudicated guilty or delinquent of committing any of the acts stemming from the arrest or alleged criminal activity to which the petition to expunge pertains.
- Be under court supervision for the arrest or crime to which the petition to expunge pertains.
- Have secured a prior sealing or expunction other than the required 10-year sealing for the offense sought to be expunged.³⁰

Additionally, the person must have had the record sealed for at least 10 years by court order. The requirement for the record to have been sealed for 10 years does not apply if a plea was not entered or all charges related to the arrest or offense to which the petition to expunge pertains were dismissed before trial.³¹

²⁶ “Expunction of a criminal history record” is defined in s. 943.045(16), F.S.

²⁷ These violations include sexual misconduct, luring or enticing a child, sexual battery, lewd or lascivious offenses, voyeurism, violations of the Florida Communications Fraud Act, sexual performance by a child, offenses by public officers or employees, acts in connection with obscenity and minors, pornography, traveling to meet a minor, selling or buying of minors, drug trafficking, a pretrial detention violation, and any violation specified as a predicate offense for registration as a sexual predator or sexual offender. Section 943.0585(2)(a)3., F.S.

²⁸ Section 943.0585(2)(a)-(c), F.S.

²⁹ These crimes include assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; neglect of a child; assault or battery on a law enforcement officer, firefighter, or certain other officers; open carry of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; arson; and unlawful possession or discharge of a weapon or firearm at a school-sponsored event or school property. Section 943.051(3)(b), F.S.

³⁰ Section 943.0585(2)(d)-(g), F.S.

³¹ Section 943.0585(2)(h), F.S.

After receiving the certificate of eligibility, the person must file a petition with the court to expunge the record. The petition must include a sworn statement attesting that he or she:

- Has never been adjudicated guilty of a crime or comparable ordinance violation, or been adjudicated delinquent for committing any felony or a misdemeanor specified in s. 943.051(3)(b), F.S.;³²
- Has never been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest of alleged criminal activity to which the petition pertains;
- Has never secured a prior sealing or expunction of a criminal history record unless the petition for expunction is for a criminal history record previously sealed for 10 years, provided the record is otherwise eligible for expunction; and
- Is eligible for such an expunction and does not have any other petition to expunge or petition to seal before any court.³³

Effect of an Expunction of a Criminal History Record

If the court grants a petition to expunge, several entities are required to forward copies of the expunction order to relevant persons or entities. The clerk of the court must provide the expunction order to the state attorney or statewide prosecutor, the arresting agency, and any entity that previously received the criminal history record from the court. The arresting agency must provide the expunction order to any entity to which the agency previously disseminated the criminal history record information. Finally, the FDLE must provide the expunction order to the Federal Bureau of Investigation.³⁴

Any criminal justice agency that has a record that is expunged must physically destroy or obliterate the record. The FDLE, however, must maintain the record. The record is protected as confidential and exempt from disclosure requirements under the public records laws.³⁵

A person who has had a record expunged may deny or fail to report the arrests expunged, unless the person is:

- Seeking appointment as a guardian, a position with a criminal justice agency, a license by the Division of Insurance Agent and Agent Services of the Department of Financial Services, or a position with an agency which is responsible for the protection of vulnerable persons, including children, disabled persons, and elderly persons;
- A defendant in a criminal prosecution;
- Petitioning for an expunction of a criminal history record, or of an offense as a victim of human trafficking, or a sealing of a criminal history record; or
- Applying for admission to The Florida Bar.³⁶

³² *Supra* note 27.

³³ Section 943.0585(1)(b), F.S.

³⁴ Section 943.0585(3), F.S.

³⁵ Section 943.0585(4), F.S.

³⁶ Section 943.0585(4)(a), F.S.

III. Effect of Proposed Changes:

Arrest Booking Photographs

The bill prohibits any person or entity that disseminates arrest booking photographs to solicit or accept a fee to remove the photographs. Within ten calendar days of receiving a written request by the person in the photograph or his or her legal representative, the publisher of the photograph must remove the photograph without charge. A person seeking removal of his or her arrest booking photograph must mail, by registered mail, the written request along with sufficient proof of identification to the registered agent of the publisher.

If the publisher does not remove the photograph, the person whose arrest booking photograph was published or otherwise disseminated may bring a civil action to have the court issue an injunction. The court may also impose a civil penalty of \$1,000 per day for noncompliance with the injunction. The court must also award reasonable attorney fees and court costs related to the issuance and enforcement of the injunction. Any money recovered for the civil penalties shall be deposited into the General Revenue Fund.

Refusal to remove an arrest booking photograph after a written request constitutes an unfair or deceptive trade practice and subjects the publisher to additional penalties under the FDUTPA.

The bill states that the provisions discussed above do not apply to a person or entity that publishes or disseminates information relating to arrest booking photographs, unless the person or entity solicits or accepts a fee to remove the information.

Eligibility for Expunction

The bill enables a person to seek expunction of a criminal history record associated with a judgment of acquittal or a not guilty verdict.³⁷ Currently, the criminal history records of cases disposed of by a judgement of acquittal or in a trial are ineligible for expunction, regardless of the verdict in the trial.

The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated guilty for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years. Currently, a person cannot seek the expunction of a criminal history record if he or she has ever been adjudicated of a misdemeanor or adjudicated delinquent for a misdemeanor specified in s. 943.051(3)(b), F.S.

The bill is effective July 1, 2017.

³⁷ A judgment of acquittal may occur after the state concludes its case if the evidence in the light most favorable to the state is insufficient for conviction. BLACK'S LAW DICTIONARY, 6th ed.

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:

Requiring private entities to remove booking arrest photos may result in a constitutional challenge based on the First Amendment to the extent that the bill regulates protected speech. However, the absence of a sufficiently analogous case on point makes the potential outcome of a First Amendment challenge speculative.³⁸

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

None.

B. Private Sector Impact:

CS/CS/CS/SB 118 may reduce costs for people who have their booking photographs published and want the photographs removed because the bill prohibits publishers of the photographs from charging removal fees. The bill also authorizes a civil cause of action, with an entitlement to reasonable attorney fees and costs, against those who, after a written request, fail to remove the photographs.

C. Government Sector Impact:

The bill allows a court to impose a civil penalty of \$1,000 per day on the publisher for noncompliance with an injunction requiring the removal of a posted photograph. If a court orders this civil penalty, the monies will be remitted to the General Revenue Fund. Any workload increases for the courts because of the civil cause of action created by the bill are not expected to require additional judicial resources and are therefore expected to have no fiscal impact.

³⁸ For comparison, see *Fla. Star v. B.J.F.*, 491 U.S. 524, 526 (1989) (holding that a newspaper was not liable for disclosing a victim's identity obtained from a police report released by law enforcement in violation of law, and further that the matter was of public concern and that imposing damages on the newspaper violated the First Amendment); *Bartnicki v. Vopper*, 532 U.S. 514, 535 (2001), (holding that if a publisher lawfully obtains the information in question, the speech is protected by the First Amendment provided it is a matter of public concern, even if the source recorded it unlawfully).

The bill allows a person to seek expunction of a criminal history record associated with a judgment of acquittal or a not guilty verdict. The bill also allows a person to seek expunction of a criminal history record if he or she has not been adjudicated for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years. This will require the FDLE to make information system changes but the FDLE estimates these changes will have a minimal fiscal impact.³⁹

FDLE also estimates an indeterminate increase in workload associated with increased applications for expunctions. While FDLE may require additional staffing in the future to address this uncertain workload, staffing would be funded from the revenues derived from the \$75 expunction processing fee that accrues to FDLE's Operating Trust Fund.

The Office of the State Courts Administrator expects an increase in judicial workload because more people will be eligible for expunction of their criminal history records. However, the fiscal impact of these changes is indeterminate due to the unavailability of data needed to determine the increase in judicial workload.⁴⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of Florida Statutes.

This bill substantially amends section 943.0585 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/CS by Appropriations on March 16, 2017:

The committee substitute requires a person seeking removal of his or her arrest booking photograph from a publisher of the photograph to:

- Send the written request to the registered agent of the publisher by registered mail; and
- Include in his or her request for removal sufficient proof of identification.

³⁹ Florida Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis for SB 118*, December 19, 2016 (on file with the Senate Criminal Justice Committee).

⁴⁰ Office of the State Courts Administrator, *2017 Judicial Impact Statement for SB 118*, January 23, 2017 (on file with the Senate Criminal Justice Committee).

CS/CS by Criminal Justice on March 6, 2017:

The Committee Substitute:

- Allows a person to seek expunction of a criminal history record if they have not been adjudicated for a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b), F.S., in the past ten years; and
- Makes technical and stylistic changes.

CS by Judiciary on January 24, 2017:

The CS clarifies that a case in which a judge renders a judgment of acquittal or a case that the jury returns a not guilty verdict is eligible for expunction. The CS also:

- Removes the expunction requirement for cases for which a person may get an arrest booking photograph removed from publication or dissemination by a private publisher;
- Reduces from 14, to 10, the number of calendar days in which a publisher has to remove the photographs before a person can seek an injunction;
- Removes criminal penalties but increases from \$500 to \$1,000, the civil fine that a court may impose on a publisher who fails to comply with removal of the photographs; and
- Subjects the publisher to additional penalties under the Florida Deceptive and Unfair Trade Practices Act, including a civil penalty of up to \$10,000 per willful violation.

B. Amendments:

None.



844898

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2017	.	
	.	
	.	
	.	

The Committee on Appropriations (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete lines 29 - 34
and insert:

(2) A person whose arrest booking photograph is published or otherwise disseminated, or his or her legal representative, may request, in writing, for the removal of an arrest booking photograph to the registered agent of the person or entity who published or otherwise disseminated the photograph. The written request for removal of the arrest booking photograph must be



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sent by registered mail and include sufficient proof of
identification of the person whose arrest booking photograph was
published or otherwise disseminated and specific information
identifying the arrest booking photograph that the written
request is seeking to remove. Within 10 days of receipt of the
written request for removal of the arrest booking photograph,
the person or entity who published or otherwise disseminated the
photograph shall remove the arrest booking photograph without
charge.

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

And the title is amended as follows:

Between lines 8 and 9

insert:

requiring the written request be sent by registered
mail and include specified information;

By the Committees on Criminal Justice; and Judiciary; and
Senator Steube

591-02116A-17

2017118c2

A bill to be entitled

An act relating to criminal history records;
prohibiting a person or entity engaged in publishing
or disseminating arrest booking photographs from
soliciting or accepting a fee or other payment to
remove the photograph; requiring a person or entity,
within a specified timeframe, to remove an arrest
booking photograph after receipt of a written request;
authorizing a person to bring a civil action to enjoin
such publishing of a photograph; authorizing a court
to impose a civil penalty and award attorney fees and
court costs; providing applicability; amending s.
943.0585, F.S.; revising the elements that must be
attested to by a petitioner in a statement submitted
in support of the expunction of criminal history
records; revising the circumstances under which the
Department of Law Enforcement must issue a certificate
of eligibility for expunction of a criminal history
record; providing an effective date.

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

Section 1. (1) Any person or entity engaged in the business
of publishing or otherwise disseminating arrest booking
photographs of persons who have previously been arrested through
a publicly accessible print or electronic medium may not solicit
or accept a fee or other form of payment to remove the
photographs.

(2) Within 10 calendar days of receipt of a written request

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

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for removal of a booking photograph from a person whose booking
photograph is published or otherwise disseminated, or from his
or her legal representative, the person or entity who published
or otherwise disseminated the photograph shall remove the
photograph without charge.

(3) The person whose arrest booking photograph was
published or otherwise disseminated in the publication or
electronic medium may bring a civil action to enjoin the
continued publication or dissemination of the photograph if the
photograph is not removed within 10 calendar days after receipt
of the written request for removal. The court may impose a civil
penalty of \$1,000 per day for noncompliance with an injunction
and shall award reasonable attorney fees and court costs related
to the issuance and enforcement of the injunction. Monies
recovered for civil penalties under this section shall be
deposited into the General Revenue Fund.

(4) Refusal to remove an arrest booking photograph after
written request has been made constitutes an unfair or deceptive
trade practice in accordance with part II of chapter 501.

(5) This section does not apply to any person or entity
that publishes or disseminates information relating to arrest
booking photographs unless the person or entity solicits or
accepts payment to remove the photographs.

Section 2. Paragraph (b) of subsection (1) and paragraphs
(a) and (d) of subsection (2) of section 943.0585, Florida
Statutes, are amended to read:

943.0585 Court-ordered expunction of criminal history
records.—The courts of this state have jurisdiction over their
own procedures, including the maintenance, expunction, and

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

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correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2) or subsection (5). A criminal history record that relates to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than

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one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(1) PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each petition to a court to expunge a criminal history record is complete only when accompanied by:

(b) The petitioner's sworn statement attesting that the petitioner:

1. Has never, before ~~prior~~ to the date on which the petition is filed, been adjudicated guilty of a felony ~~criminal~~ offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony ~~or a misdemeanor specified in s. 943.051(3)(b)~~.

2. Has not been adjudicated guilty of a misdemeanor offense

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or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b) in the previous 10 years.

~~3.2-~~ Has not been adjudicated guilty of, or adjudicated delinquent for committing, any of the acts stemming from the arrest or alleged criminal activity to which the petition pertains.

~~4.3-~~ Has never secured a prior sealing or expunction of a criminal history record under this section, s. 943.059, former s. 893.14, former s. 901.33, or former s. 943.058, unless expunction is sought of a criminal history record previously sealed for 10 years pursuant to paragraph (2)(h) and the record is otherwise eligible for expunction.

~~5.4-~~ Is eligible for such an expunction to the best of his or her knowledge or belief and does not have any other petition to expunge or any petition to seal pending before any court.

Any person who knowingly provides false information on such sworn statement to the court commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Prior to petitioning the court to expunge a criminal history record, a person seeking to expunge a criminal history record shall apply to the department for a certificate of eligibility for expunction. The department shall, by rule adopted pursuant to chapter 120, establish procedures pertaining to the application for and issuance of certificates of eligibility for expunction. A certificate of eligibility for expunction is valid for 12 months after the date stamped on the certificate when issued by

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the department. After that time, the petitioner must reapply to the department for a new certificate of eligibility. Eligibility for a renewed certification of eligibility must be based on the status of the applicant and the law in effect at the time of the renewal application. The department shall issue a certificate of eligibility for expunction to a person who is the subject of a criminal history record if that person:

(a) Has obtained, and submitted to the department, a written, certified statement from the appropriate state attorney or statewide prosecutor which indicates:

1. That an indictment, information, or other charging document was not filed or issued in the case.

2. That an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction, that a judgment of acquittal was rendered by a judge, or that a verdict of not guilty was rendered by a judge or jury ~~and that none of the charges related to the arrest or alleged criminal activity to which the petition to expunge pertains resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.~~

3. That the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without

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regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

(d) 1. Has never, before ~~prior to~~ the date on which the application for a certificate of eligibility is filed, been adjudicated guilty of a felony ~~criminal~~ offense or comparable ordinance violation, or been adjudicated delinquent for committing any felony ~~or a misdemeanor specified in s. 943.051(3)(b).~~

2. Has not been adjudicated guilty of a misdemeanor offense or been adjudicated delinquent for committing a misdemeanor specified in s. 943.051(3)(b) in the previous 10 years.

Section 3. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

March 6, 2017

The Honorable Jack Latvala
Florida Senate
412 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Latvala,

I am writing this letter because my bill, CS/SB 118: Criminal History Records, has been referred to the Senate Appropriations Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

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

Very respectfully yours,

A handwritten signature in blue ink, appearing to read "Greg Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

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)

March 16, 2017

Meeting Date

CS/CS/SB 118

Bill Number (if applicable)

Topic Criminal History Records

Amendment Barcode (if applicable)

Name Nancy Daniels

Job Title Legislative Consultant

Address 103 N. Gadsden Street

Phone 850-488-6850

Street

Tallahassee

FL

32301

Email ndaniels@flpda.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Public Defender Association, 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)

THE FLORIDA SENATE
APPEARANCE RECORD

3/16/2017

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

118

Meeting Date

Bill Number (if applicable)

Topic Expunction

Amendment Barcode (if applicable)

Name Jorge Chamizo

Job Title Attorney

Address 108 South Monroe Street

Phone (850) 681-0024

Street Tallahassee, FL 32301

Email jorge@flapartners.com

City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Fla Assoc of Criminal Defense Lawyers

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 Appropriations

BILL: CS/SB 164

INTRODUCER: Transportation Committee and Senators Grimsley and Baxter

SUBJECT: Certificates of Title for Motor Vehicles

DATE: March 15, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Jones	Miller	TR	Fav/CS
2. Wells	Pitts	ATD	Recommend: Favorable
3. Wells	Hansen	AP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 164 prohibits the Department of Highway Safety and Motor Vehicles (DHSMV) and tax collectors from charging a surviving spouse any fee or service charge, excluding an expedited title fee, if applicable, for a motor vehicle certificate of title when the title is being issued solely to remove the deceased co-owner from the title.

The bill is expected to reduce, on an annual basis, revenues flowing to the General Revenue Fund by \$222,000; the Highway Safety Operating Trust Fund by \$100,000; and local trust funds by \$19,000.

This bill takes effect July 1, 2017.

II. Present Situation:

Most vehicles, with exceptions for mopeds, motorized bicycles, and trailers weighing less than 2,000 pounds, are required to have a certificate of title.¹ A person must apply for a title in his or her name after purchasing a new vehicle, bringing a vehicle into the state, or at any time the ownership of a vehicle changes.² A certificate of title is a record that proves ownership of a vehicle and can be a certificate in either paper or electronic form and authorized or stored by the

¹ DHSMV, *FAQs on Getting a Hassle Free Title*, <http://www.flhsmv.gov/dmv/faqtitle.html> (last visited Jan. 30, 2017).

² *Id.*

DHSMV.³ The application for a certificate of title requires, if applicable, information including, but not limited to, the⁴:

- Owner's, co-owner's, or lessee's names, mailing addresses, dates of birth, and driver license numbers;
- Vehicle identification number;
- Make, manufacturer, year, body, and color of the vehicle;
- Lienholder information; and
- Odometer declaration.

Certificate of Title Fees

Section 319.32, F.S., provides the fees, service charges, and disposition of funds for certificates of title. The DHSMV charges a \$70 fee for each original and duplicate certificate of title, except for motor vehicles for hire⁵, which are \$49, and \$2 for each salvage certificate of title. The DHSMV also charges \$2 to note a lien on the certificate, \$1 to cover the cost of materials, and \$2.50 for shipping and handling. Additionally, there is a \$4.25 service charge for each certificate of title application.

The \$70 fee is distributed between the State Transportation Trust Fund and the General Revenue Fund, excluding \$1 that is deposited into the Highway Safety Operating Trust Fund to fund the DHSMV's efforts to prevent and detect odometer fraud.⁶ The DHSMV or the tax collector who processes the application retains the \$4.25 service charge.⁷

Additionally, expedited service for title transfers, issuances, duplicates, and recordation of liens is an option available for a \$10 fee. If requested, expedited service ensures the title is issued within five working days after receipt of the application.⁸

Co-owning a Vehicle⁹

Motor vehicles can be registered in the names of two or more persons as co-owners of the vehicle. Names conjoined with the word "or" are held in joint tenancy. Co-owners are deemed to have granted one another absolute right to dispose of the title and interest in a motor vehicle or place a lien or encumbrance on the motor vehicle. As part of joint tenancy, the signature of any co-owner constitutes proper endorsement. Upon the death of any co-owner under this title, interest of the vehicle passes to the surviving co-owner. Names conjoined with the word "and" require the signature of each co-owner to transfer a title or place a lien or encumbrance on the vehicle.

³ Section 319.001(1), F.S.

⁴ DHSMV, *Application for Certificate of Title With/Without Registration*, <http://www.flhsmv.gov/dmv/forms/BTR/82040.pdf> (last visited Jan. 30, 2017).

⁵ Vehicles registered under s. 320.08(6), F.S.

⁶ Sections 319.32(5) and 319.324, F.S.; Section 319.32(5), F.S., provides that \$47 of each fee collected for an original or duplicate certificate of title is deposited into the State Transportation Trust Fund, which may receive up to \$200 million in any fiscal year. The remainder of the fee and any fees in excess of the \$200 million are deposited into the General Revenue Fund.

⁷ Section 319.32(2)(b), F.S.

⁸ Section 319.323, F.S.

⁹ Sections 319.22(2) and 319.235, F.S.

The DHSMV indicated 22.63 percent of Florida vehicles are co-owned, but the number of these vehicles co-owned by spouses is unknown.¹⁰

Transfer of Ownership- Death of Spouse

A surviving spouse who inherits the deceased spouse's motor vehicle may dispose of the vehicle without being required to obtain a certificate of title in his or her name.¹¹ If the married couple are co-owners of the vehicle with names appearing conjoined by an "or" on the title, it is not necessary for the surviving spouse to apply for a new title, as he or she already has absolute rights to the vehicle. However, if the names are conjoined by "and" and the surviving spouse wishes to maintain ownership of the vehicle, the surviving spouse will be required to apply for a certificate of title in order to remove the name of the deceased spouse.

III. Effect of Proposed Changes:

The bill prohibits the DHSMV and tax collectors from charging a surviving spouse any fee or service charge (excluding an expedited title fee, if applicable) for issuance of a motor vehicle certificate of title when the title is being issued solely to remove the deceased spouse as a co-owner. The fee waiver is only applicable if the vehicle is co-owned by the surviving and deceased spouse with both names on the certificate of title.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Because this bill requires tax collectors to issue a no-cost replacement motor vehicle certificate of title to a surviving spouse, the bill falls within the purview of Art. VII, s. 18(a), of the Florida Constitution, which provides that counties are not bound by certain general laws that require the expenditure of funds unless certain exceptions or exemptions are met. Subsection (d) provides an exemption from this prohibition for laws determined to have an "insignificant fiscal impact," and this bill appears to have an insignificant impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference: SB164/HB 97* (Jan. 20, 2017), http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page14-16.pdf (Jan. 31, 2017).

¹¹ Section 319.28(1)(c), F.S.

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

CS/SB 164 waives the certificate of title fee for a surviving spouse who is issued a certificate of title solely to remove his or her deceased spouse from the co-owned title.

B. Private Sector Impact:

A surviving spouse will no longer be required to pay a motor vehicle title fee or service charge for a title being issued solely to remove the deceased spouse from the title registered in the names of both spouses.

C. Government Sector Impact:

The number of married couples who jointly owned vehicles within the state is unknown. The DHSMV estimates the bill will have a negative fiscal impact that could be as much as \$222,182 to the General Revenue Fund, \$99,948 to the Highway Safety Operating Trust Fund and \$19,078 to local trust funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 319.32 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 by Transportation on February 7, 2017:**

The CS clarifies that the fee waiver is only applicable if the vehicle is co-owned by the surviving and deceased spouse with both names on the certificate of title. Additionally, the CS prohibits *tax collectors* and DHSMV from charging any fee or *service charge*, with an exception for expedited title fees, if applicable.

B. Amendments:

None.

By the Committee on Transportation; and Senators Grimsley and Baxley

596-01726-17

2017164c1

A bill to be entitled

An act relating to certificates of title for motor vehicles; amending s. 319.32, F.S.; prohibiting the Department of Highway Safety and Motor Vehicles and tax collector from charging any fee or service charge, except for the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle solely to remove a deceased coowner from a title registered in the name of two persons if the other coowner is the surviving spouse; providing an effective date.

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

Section 1. Subsection (7) is added to section 319.32, Florida Statutes, to read:

319.32 Fees; service charges; disposition.—

(7) Notwithstanding any other provision of this section, the department and tax collector may not charge any fee or service charge, except for the expedited title fee, if applicable, for a certificate of title issued for a motor vehicle solely to remove a deceased coowner from a title registered in the names of two persons if the other coowner is the surviving spouse.

Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 8, 2017

I respectfully request that **Senate Bill #CS/SB 164**, relating to Certificates of Title for Motor Vehicles, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 26

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 Appropriations

BILL: SB 174

INTRODUCER: Senator Artiles

SUBJECT: Enterprise Information Technology Services Management Act

DATE: March 15, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Peacock	Ferrin	GO	Favorable
2. Davis	Betta	AGG	Recommend: Favorable
3. Davis	Hansen	AP	Favorable

I. Summary:

SB 174 revises definitions of specified terms contained in the Enterprise Information Technology Services Management Act and revises certain powers, duties, and functions of the Agency for State Technology to provide for collaboration with the Department of Management Services.

The bill authorizes the Agency for State Technology's State Data Center to extend a service-level agreement with an existing customer for up to six months. The State Data Center must file a report with the Executive Office of the Governor within specified timeframes of the signing of an extension or the scheduled expiration of the service-level agreement with the customer. The report must outline issues preventing execution of new agreement and a schedule for resolving such issues.

The bill authorizes the Agency for State Technology to plan, design, and conduct testing with information technology resources to implement services that are within the scope of the services provided by the state data center, if cost-effective.

The bill has no known fiscal impact on state funds.

The bill takes effect July 1, 2017.

II. Present Situation:

Enterprise Information Technology Services Management Act

Chapter 282, F.S., is known as the Enterprise Information Technology Services Management Act.¹

¹ Section 282.003, F.S.

The State Technology Office (STO) was established in the Department of Management Services (DMS) in 1997.² During the 2000 and 2001 legislative sessions,³ the Legislature significantly amended statutes allowing for the consolidation and centralization of information technology (IT) assets and resources for executive branch agencies. While other sections of statute were amended to accomplish this policy direction, the primary chapter amended was Part I of Chapter 282, F.S., to either take existing powers and duties assigned to the DMS and transfer these powers and duties to the STO, or prescribe additional powers and duties to the STO to accomplish the policy direction of consolidating and centralizing IT. One of STO's new duties included developing and implementing service level agreements with each agency that the STO provided IT services.

In 2007, the Legislature created the Agency for Enterprise Information Technology (AEIT) to oversee policies for the design, planning, project management, and implementation of enterprise IT services, to include IT security.⁴ The State Data Center was created by the Legislature in 2008.⁵

In 2014, the Legislature abolished the AEIT and transferred its duties to the then newly created Agency for State Technology.⁶

Section 282.0041(2), F.S., defines the term "breach" as "a confirmed event that compromises the confidentiality, integrity, or availability of information or data."

Section 282.0041(10), F.S., defines the term "incident" as "a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology security policies, acceptable use policies, or standard security practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur."

The Florida Information Protection Act of 2014

The Florida Information Protection Act of 2014⁷ requires businesses and governmental entities to provide notice to affected customers and the Department of Legal Affairs (DLA) when a breach of security of personal information occurs.⁸ This act provides enforcement authority to the DLA under the Florida Deceptive and Unfair Trade Practices Act⁹ to prosecute violations and to impose civil penalties for failure to report data breaches within specified timeframes.¹⁰ Civil penalties under the Florida Deceptive and Unfair Trade Practices Act include \$1,000 per day for the first 30 days, \$50,000 for each subsequent 30-day period up to 180 days, and \$500,000

² Chapter 97-286, L.O.F.

³ Chapter 2000-164, L.O.F.; Chapter 2001-261, L.O.F.

⁴ Chapter 2007-105, L.O.F.

⁵ Chapter 2008-116, L.O.F.

⁶ Chapter 2014-221, L.O.F.

⁷ Chapter 2014-189, L.O.F.

⁸ Section 501.171(3) and (4), F.S.

⁹ Section 501.201, F.S.

¹⁰ Section 501.171(9)(a), F.S.

maximum penalty for violations continuing more than 180 days.¹¹ State governmental entities are not liable for civil penalties for failure to timely report security data breaches.¹² The Florida Information Protection Act requires the DLA to submit an annual report to the Legislature, by February 1 of each year, detailing any reported breaches of security by governmental entities or their third-party agents for the preceding year, along with any recommendations for security improvements.¹³ The report must also identify any governmental entity that has violated the breach notification provisions.¹⁴

Section 501.171(1)(a), F.S., defines the term “breach of security” or “breach” as “unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of the covered entity does not constitute a breach of security, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use.”

Section 501.171(1)(g)1., F.S., provides that “personal information” means either of the following:

- An individual’s first name or first initial and last name in combination with any one or more of the following data elements for that individual:
 - A social security number;
 - A driver license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
 - A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account;
 - Any information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
 - An individual’s health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
- A user name or e-mail address, in combination with a password or security question and answer that would permit access to an online account.

Section 501.171(1)(g)2., F.S., provides that the term (personal information) “does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.”

¹¹ Section 501.171(9)(b), F.S.

¹² Section 501.171(1)(b), F.S.

¹³ Section 501.171(7), F.S.

¹⁴ *Id.*

Agency for State Technology

The AST was created on July 1, 2014.¹⁵ The executive director of AST is appointed by the Governor and confirmed by the Senate. The duties and responsibilities of the AST include:¹⁶

- Developing and publishing information technology (IT) policy for management of the state's IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects.
- Performing project oversight on all state IT projects with total costs of \$10 million or more.
- Identifying opportunities for standardization and consolidation of IT services that support common business functions and operations.
- Establishing best practices for procurement of IT products in collaboration with the DMS.
- Participating with the DMS in evaluating, conducting and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Collaborating with the DMS in IT resource acquisition planning.
- Developing standards for IT reports and updates.
- Upon request, assisting state agencies in development of IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine compliance with IT standards and guidelines developed by the AST.
- Providing operational management and oversight of the state data center.
- Recommending other IT services that should be designed, delivered, and managed as enterprise IT services.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- In consultation with state agencies, proposing methodology for identifying and collecting current and planned IT expenditure data at the state agency level.
- Performing project oversight on any cabinet agency IT project that has a total project cost of \$25 million or more and impacts one or more other agencies.
- Consulting with departments regarding risks and other effects for IT projects implemented by an agency that must be connected to or accommodated by an IT system administered by a cabinet agency.
- Reporting annually to the Governor, the President of the Senate and the Speaker of the House regarding state IT standards or policies that conflict with federal regulations or requirements.
- Establishing policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services in collaboration with the DMS.¹⁷ The IT policy must include:
 - Identification of the IT product and service categories to be included in state term contracts.
 - Requirements to be included in solicitations for state term contracts.

¹⁵ Chapter 2014-221, L.O.F.

¹⁶ Section 282.0051, F.S.

¹⁷ Chapter 2016-138, L.O.F.

- Evaluation criteria for the award of IT-related state term contracts.
- The term of each IT-related state term contract.
- The maximum number of vendors authorized on each state term contract.
- In collaboration with the DMS, evaluating vendor responses for state term contract solicitations and invitations to negotiate, answering vendor questions on state term contract solicitations, and ensuring that IT policy is included in all solicitations and contracts that are administratively executed by the DMS.¹⁸

State Data Center Service-Level Agreements

The State Data Center is established within the AST and provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.¹⁹ The State Data Center must enter into a service-level agreement with each customer entity to provide required type and level of service or services. If a customer fails to execute an agreement within 60 days after commencement of service, the State Data Center may cease service.

Below is a table listing the customers of the AST's State Data Center. The customers include state agencies, a water management district, a county, local agencies and non-profit organizations.

AST Agency Customers	
Agency for Health Care Administration	Department of Veterans' Affairs
Agency for Persons with Disabilities	Executive Office of the Governor
Department of Citrus	Department of Emergency Management
Department of Business & Professional Regulation	Fish & Wildlife Conservation Commission
Department of Corrections	Florida Commission on Human Relations
Department of Children & Families	Department of Highway Safety & Motor Vehicles
Department of Economic Opportunity	Justice Administrative Commission
Department of Environmental Protection	Auditor General
Department of Juvenile Justice	Public Employees Relations Commission
Department of Military Affairs	Public Service Commission
Department of Management Services	Northwest Florida Water Management District
Department of Education	Santa Rosa County
Department of Elder Affairs	Miami-Dade Expressway Authority
Department of Health	Greater Orlando Aviation Authority
Department of Lottery	Children Home Society - Jacksonville
Department of Revenue	Chautauqua Offices of Psychotherapy and Evaluation
Department of State	Department of Transportation

¹⁸ *Id.*

¹⁹ Section 282.201, F.S.

From 2008 to 2014, s. 282.203, F.S., allowed an existing customer's service-level agreement with the AST to continue under the terms of the previous fiscal year's agreement, if a customer did not execute a new service-level agreement within 60 days of the agreement's expiration.

Funding Methodology

The Department of Financial Services (DFS) has responsibility for the preparation of the annual Statewide Cost Allocation Plan (SWCAP) required under the provisions of the U.S. Management and Budget (OMB) Circular A-87.²⁰ The circular establishes principles and standards for determining costs for federal awards carried out through grants, cost reimbursement contracts, and other agreements with state, local, and federally recognized Indian tribal governments. The SWCAP is the mechanism by which the state identifies, summarizes, and allocates statewide indirect costs. The SWCAP also includes financial and billing information for central services directly charged to agencies or programs. The DFS must ensure that the SWCAP represents the most favorable allocation of central services cost allowable to the state by the Federal government.²¹

Appendix C of OMB Circular A-87, defines "billed central services" as central services billed to benefited agencies and/or programs on an individual fee-for-service or similar basis. Typical expenditures of billed central services include computer services, transportation services, insurance, and fringe benefits.²²

The services provided by the State Data Center to state agencies are an example of "billed central services." The State Data Center must adhere to the SWCAP in accounting for agency resources utilized.

Pilot Projects

From 2008 to 2014, s. 282.203, F.S., allowed the primary data centers to plan, design, and establish pilot projects and conduct experiments with IT resources.

Cybercrime Office within the Florida Department of Law Enforcement

In 2011, the Cybercrime Office (Office) was established within the Florida Department of Law Enforcement (FDLE)²³ when the Department of Legal Affairs' Cybercrime Office was transferred to the FDLE.²⁴ The Office is tasked with the following:

- Investigating violations of state law pertaining to the sexual exploitation of children, which are facilitated by or connected to the use of any device capable of storing electronic data;²⁵
- Monitoring state IT resources and providing analysis on IT security, incidents, threats, and breaches;²⁶

²⁰ Section 215.195(1), F.S. Also, see 2 CFR Part 225, Appendix C, Appendix D, and Appendix E.

²¹ *Id.*

²² 2 CFR Part 225, Appendix C.

²³ Section 943.0415, F.S.

²⁴ Chapter 2011-132, L.O.F.

²⁵ Section 943.0415(1), F.S.

²⁶ Section 943.0415(2), F.S.

- Investigating violations of state law pertaining to IT security incidents²⁷ and assisting in incident response and recovery;²⁸
- Providing security awareness training and information to state agency employees concerning cybersecurity, online sexual exploitation of children, and security risks, and the responsibility of employees to comply with policies, standards, guidelines, and operating procedures adopted by the AST;²⁹ and
- Consulting with the AST in the adoption of rules relating to the IT security provisions in s. 282.318, F.S.³⁰

The Office may collaborate with state agencies to provide IT security awareness training to state agency employees.³¹ State agencies are required to report IT security incidents and breaches to the Office.³²

III. Effect of Proposed Changes:

Section 1 amends s. 282.0041(2), F.S., to narrow the definition of the term “breach” to include the unauthorized access to “personal information”. This term will have the same meaning of the term “breach” defined in s. 501.171(1)(a), F.S.

The term “incident” contained in s. 282.0041(10), F.S., is amended. The amended definition of “incident” means “a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.”

Section 2 amends s. 282.0051(18)(b), F.S., to clarify that the AST will evaluate vendor responses only for state term contract solicitations and invitations to negotiate that are specifically related to IT. This amendment removes ambiguity of whether the AST had a duty to evaluate state-term contract solicitations and invitation to bids that were not IT-related.

Section 282.0051(18)(c), F.S., is amended to provide that the AST will answer vendor questions only on IT-related state term contract solicitations. This amendment removes the ambiguity of whether the AST had a duty to answer vendor questions on state-term contract solicitations that were not IT-related.

Section 282.0051(18)(d), F.S., is amended to provide that the AST shall ensure all IT-related solicitations by the DMS are procured and state contracts are managed in accordance with existing policy established under s. 282.0051(18)(a). This amendment clarifies the AST’s duty does not apply to non-IT solicitations and state term contracts.

²⁷ In accordance with s. 282.0041, F.S.

²⁸ Section 943.0415(3), F.S.

²⁹ Section 943.0415(4), F.S.

³⁰ Section 931.0415(5), F.S.

³¹ Section 282.318(4)(i), F.S.

³² Section 282.318(4)(j), F.S.

Section 3 amends s. 282.201(2)(d), F.S., to provide a State Data Center service-level agreement may be extended for up to six months. If the State Data Center and an existing customer execute a service-level agreement extension or fail to execute a new service-level agreement, the State Data Center must submit a report to the Executive Office of the Governor within five days after the date of the executed extension, or 15 days before the scheduled expiration date of the service-level agreement. Such report must explain the specific issues preventing execution of a new service-level agreement and describing the plan and schedule for resolving those issues.

In addition, this section:

- Deletes the requirement within a service-level agreement to provide certain termination notice to the AST;
- Authorizes the AST to plan, design, and conduct testing with IT resources to implement services that are within the scope of services provided by the State Data Center, if cost effective; and
- Deletes obsolete provisions related to the schedule for consolidations of agency data centers.

Section 4 reenacts s. 943.0415(2) and (3), F.S., related to the Cybercrime Office within the FDLE, to incorporate the amended definitions of “breach” and “incident” made in s. 282.0041, F.S.

Section 5 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply, because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

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:

According to the AST, SB 174 has no fiscal impact.³³ The DMS states the bill has an unknown fiscal impact on state funds³⁴; however, these costs are most likely insignificant and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 282.0041, 282.0051, and 282.201.

This bill reenacts section 943.0415 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.

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

³³ See AST, *Senate Bill 174 Analysis*, p. 5, (on file with the Appropriations Subcommittee on General Government).

³⁴ See DMS, *Senate Bill 174 Analysis*, p. 4, (on file with the Appropriations Subcommittee on General Government).

By Senator Artiles

40-00297-17

2017174__

A bill to be entitled

An act relating to the Enterprise Information Technology Services Management Act; amending s. 282.0041, F.S.; revising definitions; amending s. 282.0051, F.S.; revising certain powers, duties, and functions of the Agency for State Technology in collaboration with the Department of Management Services; amending s. 282.201, F.S.; authorizing certain service-level agreements entered into by the state data center to be extended for a specified duration; requiring the state data center to submit a specified report to the Executive Office of the Governor under certain circumstances; deleting a requirement within a service-level agreement to provide a certain termination notice to the Agency for State Technology; requiring the state data center to plan, design, and conduct certain testing if cost-effective; deleting obsolete provisions relating to the schedule for consolidations of agency data centers; conforming provisions to changes made by the act; reenacting s. 943.0415(2) and (3), F.S., relating to the Cybercrime Office within the Department of Law Enforcement, to incorporate the amendment made to s. 282.0041, F.S., in references thereto; providing an effective date.

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

Section 1. Subsections (2) and (10) of section 282.0041, Florida Statutes, are amended to read:

282.0041 Definitions.—As used in this chapter, the term:

(2) "Breach" has the same meaning as defined in s. 501.171

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~~means a confirmed event that compromises the confidentiality, integrity, or availability of information or data.~~

(10) "Incident" means a violation or imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security ~~policies~~, ~~acceptable-use~~ policies, or ~~standard-security~~ practices. An imminent threat of violation refers to a situation in which the state agency has a factual basis for believing that a specific incident is about to occur.

Section 2. Subsection (18) of section 282.0051, Florida Statutes, is amended to read:

282.0051 Agency for State Technology; powers, duties, and functions.—The Agency for State Technology shall have the following powers, duties, and functions:

(18) In collaboration with the Department of Management Services:

(a) Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

1. Identification of the information technology product and service categories to be included in state term contracts.
2. Requirements to be included in solicitations for state term contracts.
3. Evaluation criteria for the award of information technology-related state term contracts.
4. The term of each information technology-related state term contract.

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5. The maximum number of vendors authorized on each state term contract.

(b) Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

(c) Answer vendor questions on information technology-related state term contract solicitations.

(d) Ensure that all information technology-related solicitations by the department are procured and state contracts are managed in accordance with the information technology policy established under ~~pursuant to~~ paragraph (a) ~~is included in all solicitations and contracts which are administratively executed by the department.~~

Section 3. Paragraph (d) of subsection (2) of section 282.201, Florida Statutes, is amended, paragraph (g) is added to that subsection, and subsection (4) of that section is amended, to read:

282.201 State data center.—The state data center is established within the Agency for State Technology and shall provide data center services that are hosted on premises or externally through a third-party provider as an enterprise information technology service. The provision of services must comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.

(2) STATE DATA CENTER DUTIES.—The state data center shall:

(d) Enter into a service-level agreement with each customer entity to provide the required type and level of service or services. If a customer entity fails to execute an agreement

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within 60 days after commencement of a service, the state data center may cease service. A service-level agreement may not have an original a term exceeding 3 years, but the service-level agreement may be extended for up to 6 months. If the state data center and an existing customer entity either execute an extension or fail to execute a new service-level agreement before the expiration of an existing service-level agreement, the state data center must submit a report to the Executive Office of the Governor within 5 days after the date of the executed extension or 15 days before the scheduled expiration date of the service-level agreement, as applicable, to explain the specific issues preventing execution of a new service-level agreement and to describe the plan and schedule for resolving those issues. A service-level agreement, and at a minimum, must:

1. Identify the parties and their roles, duties, and responsibilities under the agreement.
2. State the duration of the contract term and specify the conditions for renewal.
3. Identify the scope of work.
4. Identify the products or services to be delivered with sufficient specificity to permit an external financial or performance audit.
5. Establish the services to be provided, the business standards that must be met for each service, the cost of each service, and the metrics and processes by which the business standards for each service are to be objectively measured and reported.
6. Provide a timely billing methodology to recover the cost of services provided to the customer entity pursuant to s.

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215.422.

7. Provide a procedure for modifying the service-level agreement based on changes in the type, level, and cost of a service.

8. Include a right-to-audit clause to ensure that the parties to the agreement have access to records for audit purposes during the term of the service-level agreement.

9. Provide that a service-level agreement may be terminated by either party for cause only after giving the other party ~~and the Agency for State Technology~~ notice in writing of the cause for termination and an opportunity for the other party to resolve the identified cause within a reasonable period.

10. Provide for mediation of disputes by the Division of Administrative Hearings pursuant to s. 120.573.

(g) Plan, design, and conduct testing with information technology resources to implement services within the scope of the services provided by the state data center, if cost-effective.

(4) ~~SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.-~~

~~(a) Consolidations of agency data centers and computing facilities into the state data center shall be made by the dates specified in this section and in accordance with budget adjustments contained in the General Appropriations Act.~~

~~(b) During the 2013-2014 fiscal year, the following state agencies shall be consolidated by the specified date:~~

~~1. By October 31, 2013, the Department of Economic Opportunity.~~

~~2. By December 31, 2013, the Executive Office of the Governor, to include the Division of Emergency Management except~~

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~~for the Emergency Operation Center's management system in Tallahassee and the Camp Blanding Emergency Operations Center in Starke.~~

~~3. By March 31, 2014, the Department of Elderly Affairs.~~

~~4. By October 30, 2013, the Fish and Wildlife Conservation Commission, except for the commission's Fish and Wildlife Research Institute in St. Petersburg.~~

(a)(c) The following agency data centers are exempt from state data center consolidation under this section: the Department of Law Enforcement, the Department of the Lottery's Gaming System, Systems Design and Development in the Office of Policy and Budget, the regional traffic management centers as described in s. 335.14(2) and the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation.

(b)(d) A state agency that is consolidating its agency data center or computing facility into the state data center must execute a new or update an existing service-level agreement within 60 days after the commencement of the service. If a state agency and the state data center are unable to execute a service-level agreement by that date, the agency shall submit a report to the Executive Office of the Governor within 5 working days after that date which explains the specific issues preventing execution and describing the plan and schedule for resolving those issues.

(c)(e) Each state agency consolidating ~~scheduled for consolidation~~ into the state data center shall submit a

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 178 transition plan to the Agency for State Technology by July 1 of
 179 the fiscal year before the fiscal year in which the ~~scheduled~~
 180 consolidation will occur. Transition plans shall be developed in
 181 consultation with the state data center and must include:

182 1. An inventory of the agency data center's resources being
 183 consolidated, including all hardware and its associated life
 184 cycle replacement schedule, software, staff, contracted
 185 services, and facility resources performing data center
 186 management and operations, security, backup and recovery,
 187 disaster recovery, system administration, database
 188 administration, system programming, job control, production
 189 control, print, storage, technical support, help desk, and
 190 managed services, but excluding application development, and the
 191 agency's costs supporting these resources.

192 2. A list of contracts in effect, including, but not
 193 limited to, contracts for hardware, software, and maintenance,
 194 which identifies the expiration date, the contract parties, and
 195 the cost of each contract.

196 3. A detailed description of the level of services needed
 197 to meet the technical and operational requirements of the
 198 platforms being consolidated.

199 4. A timetable with significant milestones for the
 200 completion of the consolidation.

201 (d)-(f) Each state agency consolidating ~~scheduled for~~
 202 ~~consolidation~~ into the state data center shall submit with its
 203 respective legislative budget request the specific recurring and
 204 nonrecurring budget adjustments of resources by appropriation
 205 category into the appropriate data processing category pursuant
 206 to the legislative budget request instructions in s. 216.023.

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 207 Section 4. For the purpose of incorporating the amendment
 208 made by this act to section 282.0041, Florida Statutes, in
 209 references thereto, subsections (2) and (3) of section 943.0415,
 210 Florida Statutes, are reenacted to read:

211 943.0415 Cybercrime Office.—There is created within the
 212 Department of Law Enforcement the Cybercrime Office. The office
 213 may:

214 (2) Monitor state information technology resources and
 215 provide analysis on information technology security incidents,
 216 threats, and breaches as defined in s. 282.0041.

217 (3) Investigate violations of state law pertaining to
 218 information technology security incidents pursuant to s.
 219 282.0041 and assist in incident response and recovery.

220 Section 5. This act shall take effect July 1, 2017.

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 Appropriations

BILL: SB 350

INTRODUCER: Senator Clemens

SUBJECT: Criminal Justice Standards and Training Commission

DATE: March 15, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Hrdlicka	CJ	Favorable
2. McAuliffe	Sadberry	ACJ	Recommend: Favorable
3. McAuliffe	Hansen	AP	Favorable

I. Summary:

SB 350 requires the Criminal Justice Standards and Training Commission (CJSTC) to implement, administer, maintain, and revise a basic abilities examination for all applicants for basic recruit training in law enforcement and corrections. This examination is formally referred to as the Basic Abilities Test (BAT). The CJSTC must also establish by rule procedures for administering the BAT and standards for acceptable performance on the BAT.

The CJSTC must set a nonrefundable fee, not to exceed \$50, for the BAT. Funds collected from the examination fee must be deposited in the Criminal Justice Standards and Training Commission Trust Fund. The fee does not take effect until implementation of the revised BAT, which must occur on or before January 1, 2019. Current fees range from \$18 to \$75 with a statewide average of \$45.60.

The FDLE proposed the provisions of the bill in a recent report on the BAT. If the bill becomes law, the FDLE will develop and maintain the BAT and contract with Miami Dade College to administer the BAT statewide.

The Florida Department of Law Enforcement (FDLE) estimates that the bill will result in an additional \$800,000 to the Criminal Justice Standards and Training Trust Fund. Of that amount, \$400,000 will be used to contract with Miami-Dade College for the administration of the BAT. The FDLE will absorb the costs of data transfer modifications using current FDLE staff and resources.

The bill takes effect July 1, 2017.

II. Present Situation:

The Criminal Justice Standards and Training Commission

The 19-member Criminal Justice Standards and Training Commission (CJSTC) is established pursuant to s. 943.11, F.S.¹ The CJSTC has a number of responsibilities relating to the training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers, correctional officers, and correctional probation officers. Relevant to training responsibilities, s. 943.12, F.S., requires the CJSTC to:

- Adopt rules for the administration of ss. 943.085-943.255, F.S. (relating to officer standards, employment, training, certification, and discipline);
- Certify and revoke the certification of officers, instructors, including agency in-service training instructors, and criminal justice training schools;²
- Establish uniform minimum training standards for the training of officers in the various criminal justice disciplines;
- Consult and cooperate with municipalities or the state or any political subdivision of the state and with universities, colleges, community colleges, and other educational institutions concerning the development of criminal justice training schools and programs or courses of instruction, including education and training in the areas of criminal justice administration and all allied and supporting disciplines;
- Conduct official inquiries or require criminal justice training schools to conduct official inquiries of criminal justice training instructors who are certified by the CJSTC;
- Establish minimum curricular requirements for criminal justice training schools;
- Make, publish, or encourage studies on any aspect of criminal justice education and training or recruitment, including the development of defensible and job-related psychological, selection, and performance evaluation tests;
- With the approval of the FDLE Commissioner, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the CJSTC determines are necessary, expedient, or incidental to the performance of its duties or the execution of its powers; and
- Adopt rules for the certification, maintenance, and discipline of officers who engage in those specialized areas found to present a high risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency.³

Additionally, s. 943.17, F.S., requires the CJSTC to assure that entrance into the basic recruit training program for law enforcement and correctional officers is limited to those who have

¹ The 19 members include: the Secretary of the Department of Corrections (DOC) or a designated assistant; the Attorney General or a designee; the Director of the Division of the Florida Highway Patrol; and 16 members appointed by the Governor. The Governor's appointees include: three sheriffs; three police chiefs; five law enforcement officers who are of the rank of sergeant or below within the employing agency; two correctional officers, one of whom is an administrator of a state correctional institution and one of whom is of the rank of sergeant or below within the employing agency; one training center director; one person who is in charge of a county correctional institution; and one resident of the state who falls into none of the foregoing classifications. Prior to appointment, the sheriff, police chief, law enforcement officer, and correctional officer members must have had at least four years' experience as law enforcement officers or correctional officers.

² Section 943.10(16), F.S., defines "criminal justice training school" as any private or public criminal justice training school certified by the CJSTC.

³ This responsibility includes adopting rules relating to firearms proficiency by law enforcement officers.

passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the CJSTC.⁴ This examination is formally referred to as the Basic Abilities Test (BAT). The BAT predicts the likelihood for success in basic recruit training and the State Officer Certification Examination (SOCE).⁵ The BAT assesses written comprehension and expression, information ordering, spatial orientation, memorization, problem sensitivity, and inductive and deductive reasoning.⁶ The BATs is administered in Florida and tailored to the applicable discipline for which the recruit is seeking program admission.⁷

2017 FDLE Report on the BAT

Proviso language in the 2016-17 General Appropriations Act required the FDLE, on or before January 1, 2017, to report to the Governor and the Legislature “on the status of development of the basic abilities test for all applicants for basic recruit training in law enforcement and corrections. The report shall include recommendations regarding statutory language necessary for implementation of the basic abilities test, including establishment of a standardized fee structure that does not deter low-income and middle-income persons from taking the test.”⁸

The FDLE submitted its report to the Governor and the Legislature on December 30, 2016.⁹ The report, which is discussed in detail in this section of the analysis, includes but is not limited to, a brief legislative history regarding the basic skills examination; a discussion of the current system of developing and administering the BAT test and its fee structure; problems the FDLE identified with the current system; and the FDLE’s proposed changes to the current system, including proposed statutory language.

Current Status of the BAT and Problems Identified by the FDLE

The CJSTC, through the FDLE, contracted with three providers to develop and administer the BAT. Two of the providers, I/O Solutions and Morris & McDaniel, are out-of-state vendors. The third provider is Miami Dade College. The providers follow basic contractual requirements established by the FDLE.

The FDLE stated that the goal of the contract is to standardize testing between providers; however, the exam development process does not lend itself to extensive regulation and contract requirements are limited. The contract:

⁴ See Rule 11B-35.0011, F.A.C. This requirement does not apply to correctional probation officers. Correctional probation officers must have a bachelor’s degree. See “Officer Requirements,” Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Officer-Requirements/How-to-Become-an-Officer.aspx> (last visited on February 3, 2017).

⁵ “Basic Abilities Test (BAT),” Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Officer-Requirements/Basic-Abilities-Test.aspx> (last visited on February 3, 2017).

⁶ *Id.*

⁷ See Rule 11B-35.0011, F.A.C.

⁸ Proviso for specific appropriations 1267-1276, ch. 2016-66, L.O.F.

⁹ *Report on the Status of Development of the Basic Abilities Test*, Florida Department of Law Enforcement, and report transmittal letters to the Governor, President of the Senate, and Speaker of the House of Representatives (December 30, 2017) (on file with the Senate Committee on Criminal Justice). Unless otherwise indicated, all information in this section of the analysis is from this report.

- Specifies that the providers must develop and maintain a test that will measure minimum competency of individuals seeking enrollment in an academy or employment in Florida's criminal justice system;
- Requires that the test specifically assess an applicant's written comprehension and expression, as well as abilities in organizing information, spatial orientation, memorization, problem sensitivity, and inductive and deductive reasoning; and
- Specifies that items on the test must be based on a Florida job task analysis adopted by the CJSTC.

Although the FDLE provides the job task analysis to each provider, the department does not play a role in designing, administering, or delivering the BAT or the selection of exam site locations. This is the responsibility of the providers. The FDLE assists the CJSTC by providing oversight of the BAT providers to ensure compliance with the basic contractual requirements for development and delivery of the BAT. The FDLE also collects required data from each provider to ensure entry of examination results into the officer records system and correct errors in the data.¹⁰

The FDLE identified three problems with providers developing and administering the BAT:

- Three unique tests, each with their own level of difficulty cause confusing and unnecessary problems for the schools and agencies that administer the test, the test takers, and the employing agencies;
- Disparate testing standards and procedures result from training and selection centers having the discretion to choose which test to administer or endorse; and
- Because of these disparities and miscommunication, test centers and applicants often misunderstand the process, and these misunderstandings are time-consuming to resolve and unduly complicate the program.¹¹

Although the tests are developed and defended by the three providers, there are occasions when the FDLE can be held accountable for the providers' actions. The FDLE stated that this problem has been most pronounced in its interaction with the Department of Justice, Office for Civil Rights (OCR). On June 23, 2015, the OCR sent a letter to the FDLE requesting data concerning test results for the BAT. The OCR subsequently raised a concern that I/O Solutions' test exhibited a higher degree of adverse impact¹² compared to those of Morris & McDaniel and

¹⁰ When applicants register to take the BAT, they contact the school or agency that administers the test. The provider is responsible for providing applicant information and test results to the FDLE, including demographic information that is entered into the FDLE's Automated Training Management System. This produces the initial record of the applicant in the CJSTC officer records system and follows the applicant throughout his or her entire law enforcement or corrections career. Before manually uploading this key information, the FDLE must review the applicant information in detail to ensure its accuracy. The FDLE is required to troubleshoot any discrepancies in the data and respond to inquiries regarding test results. Any errors created by the provider must be resolved by the FDLE.

¹¹ The FDLE stated that it has conducted workshops and distributed memorandums to make the testing process more clear; however, in spite of explaining that a passing score from any of the providers qualifies the applicant to enter an academy, some academies are still hesitant to enroll the recruit unless he or she can show a passing score from a particular provider. Similarly, some agencies are reluctant to hire applicants unless they can show a passing score from a preferred provider.

¹² Federal Uniform Guidelines on employee selection procedures define "adverse impact" as "[a] selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate

Miami Dade College. The OCR recommended that the FDLE discontinue using I/O Solutions; however, this would have left a large void in service throughout the state. After several communications with the OCR and I/O Solutions, the parties agreed that I/O Solutions would change its test and lower the passing rate. The FDLE also agreed to retroactively apply the new passing rate to applicants who had taken the test during the previous five years.¹³

Because the providers are responsible for the entire development and delivery of the BAT, they establish and collect all examination fees. The FDLE does not recover any costs; the providers and test sites retain all revenue. The FDLE and the CJSTC do not currently have statutory authority to collect funds generated from the BAT or direct those funds to the Criminal Justice Standards and Training Commission Trust Fund.

The FDLE stated that the BAT fees are generally inconsistent, and in most cases, based on what the market can bear.¹⁴ The fees range from \$18 to \$75 and the statewide average is \$46. Two of the providers, I/O Solutions and Morris & McDaniel, rely on CJSTC-certified training schools and agencies to administer the test. Miami Dade College administers the BAT on campus but relies on CJSTC-certified training schools and agencies to administer the BAT at other locations. The training schools and agencies often apply a surcharge fee to administer the test. While this surcharge is also inconsistent statewide, a majority of test sites charge \$25. The DOC charges the lowest BAT fee, \$18, at test sites for its applicants. The DOC does not include an administrative surcharge.

FDLE's Proposed Changes

Based on the problems the FDLE identified, it concluded that the best alternative is to establish a single test developed and maintained by the FDLE,¹⁵ thereby eliminating a role of third-party providers in developing and maintaining the BAT. The FDLE would develop and maintain the BAT and contract for administrative services with a single provider.¹⁶

The FDLE's role in developing the BAT would include:

- Evaluating each question's validity based on the performance of the test takers;

will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.” 29 CFR 1607.4 (Information on Impact).

¹³ The FDLE stated that the OCR is aware of the proposal to develop a single test and sees this as a major part of the solution to address adverse impact. The OCR will continue to monitor the situation.

¹⁴ The FDLE stated that the fees and administrative charges are comparable to other similar exams. Examples cited by the FDLE include: the Test of Essential Academic Skills (TEAS), an assessment of entry-level skills and abilities required to enter a nursing program (standardized fee of \$55 and surcharges ranging from \$10 to \$55); the National Criminal Justice Officer Selection Inventory (NCJOSI), a cognitive abilities exam designed to measure minimum competency of people attempting to enter the field of criminal justice (fees ranging from \$50 to \$75); and the ACT and SAT, college-readiness exams (fees of \$43 and \$45, respectively, and substantial additional fees for scores, phone registration, test date changes, location changes, etc.).

¹⁵ Based on its prior experience in delivering both paper-and-pencil testing and computer-based testing, the FDLE determined computer-based testing is the best option.

¹⁶ As previously noted, the FDLE, through the CJSTC, already has oversight of the development and administration of the BAT and the contractual agreement with the vendors currently administering the examinations. This change would move FDLE's responsibility from contract monitoring for compliance to development and administration of the examinations. The CJSTC currently is responsible for the development and administration of the SOCE, so this added responsibility would be an extension of existing functions.

- Ensuring that test questions meet the rules and requirements in Florida Statutes and administrative rules;
- Reviewing the content on a regular basis to ensure the validity and applicability of the test questions to standardize the content and difficulty level of the BAT;
- Eliminating much of the confusion that now exists between stakeholders; and
- Having direct control over the management of adverse impact, which would make the FDLE better positioned to address any legal challenges to the test.

The FDLE's role in maintaining the BAT would include:

- Item development;
- Standards setting;
- Validation studies;
- Statistical analysis;
- Legal defensibility;
- Customer service to examinees;
- The processing of all public records requests; and
- Oversight and maintenance of the BAT results in the Automated Training Management System.

The FDLE determined that contracting with Miami Dade College, a current provider, would be the best option to administer to the BAT statewide.¹⁷ Miami Dade College would be responsible for registration and administration of the test; directing and managing the work efforts of subcontractor personnel and ensuring the quality of their work; and ensuring the security of the test items during testing. The FDLE stated that the existence of a single examination administrator would reduce execution errors; help prevent mistakes in the collection and dissemination of testing data; and increase the efficiency, expediency, and consistency of the testing process. If, for any reason, the FDLE is unable to finalize an agreement with Miami Dade College, it would seek an alternative vendor.

The FDLE proposed to cap the test fee for applicants at \$50, which includes an allowance for up to \$10 for the administrative surcharge. The fee is structured to allow all parties responsible for the development and administration of the BAT to recover some, if not all, of their costs. The fee is based on expected costs for both Miami Dade College¹⁸ and the FDLE.¹⁹ Miami Dade College proposed a fee of \$20 per test to cover their costs and the FDLE estimated its costs will also be covered by receiving \$20 per test.

III. Effect of Proposed Changes:

This bill adopts the proposed statutory language in the 2017 FDLE report on the BAT. The bill amends s. 943.12, F.S., to require the Criminal Justice Standards and Training Commission

¹⁷ The FDLE has been in formal discussion with college representatives and has a tentative agreement with them through a proposed memorandum of understanding. Under the agreement, Miami Dade College will assume sole responsibility for administration of the BAT and will ensure the test is consistently and fairly administered. As with any test proctoring, Miami Dade College will be responsible for ensuring security of the test items during testing.

¹⁸ Further details are provided in the "Private Sector Impact" statement in this analysis.

¹⁹ Further details are provided in the "Government Sector Impact" statement in this analysis.

(CJSTC) to implement, administer, maintain, and revise the BAT. The CJSTC must also establish by rule procedures for administering the BAT and standards for acceptable performance on the BAT.

The bill also amends s.943.17, F.S., to require the CJSTC to set a nonrefundable fee, not to exceed \$50, for the BAT. Funds collected from the examination fee must be deposited in the Criminal Justice Standards and Training Commission Trust Fund. The fee does not take effect until implementation of the revised BAT, which must occur on or before January 1, 2019.

The bill also amends s. 943.25, F.S., relating to criminal justice trust funds, to correct a reference to conform to changes made to s. 943.12, F.S., and reenacts s. 943.173(3), F.S.

The bill takes effect July 1, 2017.

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:

The FDLE reports that SB 350 will not have any impact on local government revenues or expenditures.²⁰ BAT fees are paid by the individuals taking the test.

B. Private Sector Impact:

The FDLE will contract for administrative services with Miami Dade College. Miami Dade College will be responsible for registration and administration of the test, as well as managing the relationship with all subcontractor organizations. Costs of administering the examinations will be borne by Miami-Dade College.

The two out-of-state vendors currently used, I/O Solutions and Morris & McDaniel, will no longer administer their tests for entrance into a basic recruit training program, which may impact their revenue from Florida.

²⁰ 2017 FDLE Legislative Bill Analysis (SB 350) (January 20, 2017) (on file with the Senate Committee on Criminal Justice). All information in this section of the analysis is from this document.

C. Government Sector Impact:

The bill caps the test fee for applicants at \$50, which includes an allowance for up to \$10 for the administrative surcharge. According to the FDLE, the fee is structured to allow all parties responsible for the development and administration of the BAT to recover some, if not all, of their costs. The fee is based on expected costs for both Miami Dade College and the FDLE. Miami Dade College proposes a fee of \$20 per test to cover their costs and the FDLE estimates its costs will also be covered by receiving \$20 per test. Current fees range from \$18 to \$75 with a statewide average of \$45.60.

The FDLE estimates that the bill will result in an additional \$800,000 to the Criminal Justice Standards and Training Trust Fund, assuming 20,000 examinees per year with an aggregate \$40 fee. From this sum, roughly \$400,000 will be used to contract with Miami-Dade College, and the remainder will be retained in the trust fund.

The FDLE will absorb the costs of data transfer modifications using current FDLE staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.12, 943.17, and 943.25.

This bill reenacts section 943.173 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 Clemens

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A bill to be entitled

An act relating to the Criminal Justice Standards and Training Commission; amending s. 943.12, F.S.;

requiring the Criminal Justice Standards and Training Commission to implement, administer, maintain, and

revise a basic abilities examination by a specified

date; requiring the commission to establish specified

procedures and standards; amending s. 943.17, F.S.;

requiring the commission to set a fee for the basic

abilities examination; requiring a nonrefundable fee

for each examination attempt; requiring that

examination fees be deposited in the Criminal Justice

Standards and Training Trust Fund; providing a

condition for when the examination fee takes effect;

reenacting s. 943.173(3), F.S., relating to

examinations, administration, and materials not being

public records, to incorporate the amendment made to

s. 943.17, F.S., in a reference thereto; reenacting

and amending s. 943.25(2), F.S., relating to criminal

justice trust funds; conforming a provision to changes

made by the act; providing an effective date.

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

Section 1. Subsection (18) is added to section 943.12, Florida Statutes, to read:

943.12 Powers, duties, and functions of the commission.—The commission shall:

(18) On or before January 1, 2019, implement, administer, maintain, and revise a basic abilities examination for all applicants for basic recruit training in law enforcement and corrections. The commission shall establish by rule procedures

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for the administration of the basic abilities examination. The commission shall also establish standards for acceptable performance on the examination.

Section 2. Paragraph (g) of subsection (1) of section 943.17, Florida Statutes, is amended, and paragraph (h) is added to that subsection, to read:

943.17 Basic recruit, advanced, and career development training programs; participation; cost; evaluation.—The commission shall, by rule, design, implement, maintain, evaluate, and revise entry requirements and job-related curricula and performance standards for basic recruit, advanced, and career development training programs and courses. The rules shall include, but are not limited to, a methodology to assess relevance of the subject matter to the job, student performance, and instructor competency.

(1) The commission shall:

(g) Assure that entrance into the basic recruit training program for law enforcement and correctional officers be limited to those who have passed a basic abilities ~~skills~~ examination ~~and assessment instrument~~, based on a job task analysis in each discipline and adopted by the commission.

(h) Set a fee, not to exceed \$50, for the basic abilities examination. The fee applies to one scheduled examination attempt and is not refundable. Fees collected pursuant to this paragraph shall be deposited in the Criminal Justice Standards and Training Trust Fund. This paragraph shall take effect upon the implementation of the revised basic abilities examination on or before January 1, 2019, as specified in s. 943.12(18).

Section 3. For the purpose of incorporating the amendment

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made by this act to section 943.17, Florida Statutes, in a reference thereto, subsection (3) of section 943.173, Florida Statutes, is reenacted to read:

943.173 Examinations; administration; materials not public records; disposal of materials.—

(3) All examinations, assessments, and instruments and the results of examinations, other than test scores on officer certification examinations, including developmental materials and workpapers directly related thereto, prepared, prescribed, or administered pursuant to ss. 943.13(9) or (10) and 943.17 are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Provisions governing access to, maintenance of, and destruction of relevant documents pursuant to this section shall be prescribed by rules adopted by the commission.

Section 4. Subsection (2) of section 943.25, Florida Statutes, is reenacted and amended to read:

943.25 Criminal justice trust funds; source of funds; use of funds.—

(2) There is created, within the Department of Law Enforcement, the Criminal Justice Standards and Training Trust Fund for the purpose of providing for the payment of necessary and proper expenses incurred by the operation of the commission and the Criminal Justice Professionalism Program and providing commission-approved criminal justice advanced and specialized training and criminal justice training school enhancements and of establishing the provisions of s. 943.17 and developing the specific tests provided under s. 943.12 ~~s. 943.12(9)~~. The program shall administer the Criminal Justice Standards and

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Training Trust Fund and shall report the status of the fund at each regularly scheduled commission meeting.

Section 5. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Community Affairs, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Higher Education
Communications, Energy, and Public Utilities
Criminal Justice

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JEFF CLEMENS

Democratic Whip
31st District

March 8, 2017

Senator Jack Latvala, Chair
Senate Committee on Appropriations
201 The Capitol
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Latvala:

I respectfully request that SB 350 – Criminal Justice Standards and Training Commission be added to the agenda for the next Senate Committee on Appropriations meeting.

SB 350, at the request of the Florida Department of Law Enforcement, authorizes the department to implement, administer, maintain and revise a basic abilities examination for all applicants for basic recruit training in law enforcement and corrections as required by law.

Please feel free to contact me with any questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens", written in a cursive style.

Senator Jeff Clemens
Florida Senate District 31

REPLY TO:

- ☐ 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- ☐ 210 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

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)

March 16, 2017

Meeting Date

SB 350

Bill Number (if applicable)

Topic Criminal Justice Standards + Training Commission

Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Government Affairs Coordinator

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

City

State

Zip

Email bhoward@fpcr.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs 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

APPEARANCE RECORD

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

3/16/17
Meeting Date

350
Bill Number (if applicable)

Topic Criminal Justice Standards + Training Amendment Barcode (if applicable)

Name Victoria Hernandez

Job Title Dir. of Gov't. Affairs

Address 300 NE 2 Ave

Phone 305-298-4878

Street

MIAMI

FL

33132

City

State

Zip

Email vhernand@mdc.edu

Speaking: ☒ For ☐ Against ☐ Information

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

Representing MIAMI DADE COLLEGE

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)

3.15.17

Meeting Date

350

Bill Number (if applicable)

Topic BASIC ABILITIES TEST BILL

Amendment Barcode (if applicable)

Name RON DRAA

Job Title EXTERNAL AFFAIRS DIRECTOR

Address 2331 PHILLIPS ROAD

Phone 850.410.7020

Street

TALL
City

FL
State

32308
Zip

Email RONALDDRAA@FDLE.STATE.FL.US

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FDLE

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 Appropriations

BILL: SB 358

INTRODUCER: Senator Garcia

SUBJECT: Mental Health and Substance Abuse

DATE: March 15, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Crosier	Hendon	CF	Favorable
2. Sneed	Williams	AHS	Recommend: Favorable
3. Sneed	Hansen	AP	Favorable

I. Summary:

SB 358 authorizes the Department of Children and Families to approve behavioral health care receiving systems, designate and monitor receiving and treatment facilities and suspend or withdraw such designation for non-compliance with the law or the department's rules. This bill revises the reporting requirements of the managing entities for the Acute Care Services Utilization Database. The department is required to post certain data on its website on a monthly basis.

The court is required to schedule a hearing on a petition for involuntary services for substance use disorder within five court working days unless a continuance is granted.

The bill is not expected to have a fiscal impact on the state.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Persons in crisis due to mental illness, who are a danger to themselves or others, are assessed and provided short-term treatment at a receiving facility. A receiving facility is a public or private facility or psychiatric hospital designated to receive and hold involuntary patients under the Baker Act.¹ Professional staff at receiving facilities determine if the person needs psychiatric care, what type of care is needed, and what type of setting is most appropriate. All receiving facilities are licensed to evaluate individuals. Some receiving facilities are also licensed as Crisis Stabilization Units (CSU) and can provide treatment and medication to stabilize an individual's condition. Once evaluated, a legal petition can be filed on behalf of the patient and the court can order the person to a treatment facility. Treatment facilities can be inpatient facilities, such as a

¹ Part 1 of Ch. 394, F.S.

state mental health hospital, or a community facility that provides inpatient and outpatient mental health treatment services. Indigent persons must be cared for under the Baker Act. These services are funded by the Department of Children and Families (department).

Persons in crisis for substance use disorders who are considered a danger to themselves or others may be taken to an addictions receiving facility, a detoxification facility, or a county jail. Similar to the Baker Act, persons in a crisis for substance use disorders may be held under the Marchman Act.² Indigent persons are provided care by publicly funded facilities and programs, but such services are not guaranteed and are limited in capacity.

The department designates receiving facilities to treat mental illness and substance use disorders. This designation is made when the facility has the capacity, staff, and procedures to care for such persons in crisis. The department may withdraw such designation for a receiving facility that fails to comply with the department's adopted rules. In addition to being designated as a receiving facility, mental health receiving facilities are licensed by the Agency for Health Care Administration, while addiction receiving facilities are licensed by the department.

In 2016, the Legislature passed Senate Bill 12 (chapter 2016-241, Laws of Florida) which addressed the fragmentation and inefficiency of the state's behavioral health services, making it difficult for persons with complex, persistent and co-occurring mental health and substance use disorders to obtain needed services. The legislative intent of SB 12 was, among other things, to create a coordinated system of care in regions or communities with a "No Wrong Door model" delivery system of behavioral health services.

When receiving facilities cannot care for a person in crisis, the facility shall refer the person to an appropriate facility. A collection of emergency behavioral health care providers make up a receiving system. SB 12 requires local communities to propose to the department what will constitute their local receiving system. The department will then designate this receiving system. This new duty for the department to "designate" the receiving systems has created some confusion in the behavioral health care system because the department also designates individual receiving facilities.

Public funding for local community mental health and substance use disorder services is managed by regional behavioral health managing entities under contract with the department.³ While the managing entities do not fund the state mental health hospitals, they do fund the receiving facilities. Because the care provided at receiving facilities is one of the most expensive behavioral health care services, the managing entities and the department maintain data to monitor the use of such services.⁴ Receiving facilities provide this utilization data to the managing entity in real time or at least daily. The facilities submit data on such things as the admissions and discharges of clients, the total number of licensed and utilized beds, the number of beds purchased by the managing entity, the number of clients qualifying as indigent who occupy any of those beds, the total number of unoccupied licensed beds, and the number in excess of licensed capacity. Facility beds licensed for both adult and children are combined in

² Ch. 397, F.S.

³ S. 394.9082, F.S.

⁴ *id*

the report. The managing entity and the department use such data to plan and manage these services.

Under the Marchman Act, a petition for involuntary services for a substance abuse impaired person is filed with the Clerk of the Court. The court determines whether the respondent is represented by counsel or if the appointment of counsel for the respondent is appropriate. The court shall schedule a hearing on the petition within five days unless a continuance is granted.⁵ The statutes fail to specify whether the requirement is five court working days or calendar days.

III. Effect of Proposed Changes:

Section 1 amends s. 394.461, F.S., to clarify that the department will approve rather than designate receiving systems. The department will continue to designate receiving and treatment facilities and have the authority to suspend or withdraw a facility's designation for failure to comply with the law and rules adopted to administer the facilities. A facility designated as a public receiving or treatment facility is required to submit its initial report of certain data to the department within six months of such designation.

Section 2 amends s. 394.879, F.S., to delete an obsolete provision requiring a report by the department and the Agency for Health Care Administration on the efforts of the department and agency to develop a plan to provide options for a single, consolidated license for a provider that offers multiple types of mental health services or substance abuse services, or both.

Section 3 amends s. 394.9082, F.S., to remove the requirement that providers of public receiving facilities submit, in real time or at least daily, the number of clients qualifying as indigent occupying total licensed beds purchased by the department in excess of licensed capacity. The crisis stabilization units licensed for both adult and child use will report each unit separately. The bill requires the department to post the data collected from the managing entities on its website by facility, and update this data monthly.

Section 4 amends s. 397.6955, F.S., to clarify that a petition for involuntary services for a substance abuse impaired person will be scheduled by the court within five court working days rather than within five calendar days unless a continuance is granted.

Section 5 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵ s. 397.6955, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 358 is not expected to have a fiscal impact on the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.461, 394.879, 394.9082, and 397.6955.

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 Garcia

36-00566-17

2017358__

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.461, F.S.; authorizing the Department of Children and Families to approve receiving systems for behavioral health care; making technical changes; requiring the department to approve specified facilities as receiving systems under certain circumstances; authorizing the department to adopt rules for the approval and the suspension or withdrawal of approval of receiving systems; amending s. 394.879, F.S.; deleting an obsolete provision requiring a report by the department and the Agency for Health Care Administration; amending s. 394.9082, F.S.; revising the reporting requirements of the acute care services utilization database; requiring the department to post certain data on its website; amending s. 397.6955, F.S.; specifying that certain court hearings must be scheduled within 5 court working days unless a continuance is granted; providing an effective date.

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

Section 1. Section 394.461, Florida Statutes, is amended to read:

394.461 Designation of receiving and treatment facilities; and approval of receiving systems.—The department is authorized to designate and monitor receiving facilities, and treatment facilities, ~~and receiving systems~~ and may suspend or withdraw such designation for a facility's failure to comply with this part and rules adopted under this part. The department is authorized to approve receiving systems developed pursuant to s.

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394.4573. Unless designated by the department, facilities may ~~not are not permitted to~~ hold or treat involuntary patients under this part.

(1) RECEIVING FACILITY.—The department may designate any community facility as a receiving facility. Any other facility within the state, including a private facility or a federal facility, may be so designated by the department, provided that such designation is agreed to by the governing body or authority of the facility.

(2) TREATMENT FACILITY.—The department may designate any state-owned, state-operated, or state-supported facility as a state treatment facility. A civil patient may ~~shall~~ not be admitted to a state treatment facility without previously undergoing a transfer evaluation. Before a court hearing for involuntary placement in a state treatment facility, the court shall receive and consider the information documented in the transfer evaluation. Any other facility, including a private facility or a federal facility, may be designated as a treatment facility by the department, provided that such designation is agreed to by the appropriate governing body or authority of the facility.

(3) PRIVATE FACILITIES.—Private facilities designated as receiving and treatment facilities by the department may provide examination and treatment of involuntary patients, as well as voluntary patients, and are subject to all the provisions of this part.

(4) REPORTING REQUIREMENTS.—

(a) A facility designated as a public receiving or treatment facility under this section shall report to the

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department on an annual basis the following data, unless these data are currently being submitted to the Agency for Health Care Administration:

1. Number of licensed beds.
2. Number of contract days.
3. Number of admissions by payor class and diagnoses.
4. Number of bed days by payor class.
5. Average length of stay by payor class.
6. Total revenues by payor class.

(b) For the purposes of this subsection, "payor class" means Medicare, Medicare HMO, Medicaid, Medicaid HMO, private-pay health insurance, private-pay health maintenance organization, private preferred provider organization, the Department of Children and Families, other government programs, self-pay patients, and charity care.

(c) The data required under this subsection shall be submitted to the department no later than 90 days following the end of the facility's fiscal year. A facility designated as a public receiving or treatment facility shall submit its initial report for the 6-month period following such designation ~~ending June 30, 2008~~.

(d) The department shall issue an annual report based on the data required pursuant to this subsection. The report must ~~shall~~ include individual facilities' data, as well as statewide totals. The report shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(5) RECEIVING SYSTEM.—The department shall approve ~~designate~~ as a receiving system one or more facilities serving a

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defined geographic area developed pursuant to s. 394.4573 which is responsible for assessment and evaluation, both voluntary and involuntary, and treatment, stabilization, or triage for patients who have a mental illness, a substance use disorder, or co-occurring disorders. Any transportation plans developed pursuant to s. 394.462 must support the operation of the receiving system.

(6) RULES.—The department may adopt rules relating to:

(a) Procedures and criteria for receiving and evaluating facility applications for designation, which may include onsite facility inspection and evaluation of an applicant's licensing status and performance history, as well as consideration of local service needs.

(b) Minimum standards consistent with this part that a facility must meet and maintain in order to be designated as a receiving or treatment facility and procedures for monitoring continued adherence to such standards.

(c) Procedures and criteria for designating and approving receiving systems which may include consideration of the adequacy of services provided by facilities within the receiving system to meet the needs of the geographic area using available resources.

(d) Procedures for receiving complaints against a designated facility or designated receiving system and for initiating inspections and investigations of facilities or receiving systems alleged to have violated ~~the provisions of~~ this part or rules adopted under this part.

(e) Procedures and criteria for the suspension or withdrawal of designation as a receiving or treatment facility

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and for the suspension or withdrawal of approval of a ~~ex~~ receiving system.

Section 2. Subsection (6) of section 394.879, Florida Statutes, is amended to read:

394.879 Rules; enforcement.—

(6) The department and the Agency for Health Care Administration shall develop a plan to provide options for a single, consolidated license for a provider that offers multiple types of either mental health services or substance abuse services, or both, regulated under this chapter and chapter 397, respectively. In the plan, the department and the agency shall identify the statutory revisions necessary to accomplish the consolidation. To the extent possible, the department and the agency shall accomplish such consolidation administratively and by rule. ~~The department and the agency shall submit the plan to the Governor, the President of the Senate, and the Speaker of the House of Representatives by November 1, 2016.~~

Section 3. Paragraph (a) of subsection (10) of section 394.9082, Florida Statutes, is republished, paragraph (b) of that subsection is amended, and paragraph (f) is added to that subsection, to read:

394.9082 Behavioral health managing entities.—

(10) ACUTE CARE SERVICES UTILIZATION DATABASE.—The department shall develop, implement, and maintain standards under which a managing entity shall collect utilization data from all public receiving facilities situated within its geographical service area and all detoxification and addictions receiving facilities under contract with the managing entity. As used in this subsection, the term "public receiving facility"

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means an entity that meets the licensure requirements of, and is designated by, the department to operate as a public receiving facility under s. 394.875 and that is operating as a licensed crisis stabilization unit.

(a) The department shall develop standards and protocols to be used for data collection, storage, transmittal, and analysis. The standards and protocols shall allow for compatibility of data and data transmittal between public receiving facilities, detoxification facilities, addictions receiving facilities, managing entities, and the department for the implementation, and to meet the requirements, of this subsection.

(b) A managing entity shall require providers specified in paragraph (a) to submit data, in real time or at least daily, to the managing entity for:

1. All admissions and discharges of clients receiving public receiving facility services who qualify as indigent, as defined in s. 394.4787.

2. All admissions and discharges of clients receiving substance abuse services in an addictions receiving facility or detoxification facility pursuant to parts IV and V of chapter 397 who qualify as indigent.

3. The current active census of total licensed ~~and utilized~~ beds, the number of beds purchased by the department, the number of clients qualifying as indigent occupying ~~who occupy any of~~ those beds, and the total number of unoccupied licensed beds, regardless of funding, ~~and the number in excess of licensed capacity. Crisis units licensed for both adult and child use will report as a single unit.~~

(f) The department shall post on its website, by facility,

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178 the data collected pursuant to this subsection and update such
179 posting monthly.

180 Section 4. Subsection (2) of section 397.6955, Florida
181 Statutes, is amended to read:

182 397.6955 Duties of court upon filing of petition for
183 involuntary services.—

184 (2) The court shall schedule a hearing to be held on the
185 petition within 5 court working days unless a continuance is
186 granted. The court may appoint a magistrate to preside at the
187 hearing.

188 Section 5. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/17

Meeting Date

358

Bill Number (if applicable)

Topic Substance Abuse / Mental Health

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Policy Dir

Address 2868 Mahan Dr

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Tallahassee

State

FL

Zip

Email jill@myfbha.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FL Behavioral Health 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 Appropriations

BILL: SB 1020

INTRODUCER: Senator Powell

SUBJECT: Collective Bargaining Impasses

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ferrin	Ferrin	GO	Favorable
2.	McVaney	Hansen	AP	Favorable

I. Summary:

SB 1020 changes the timeline for portions of the Legislature's process to resolve impasses in collective bargaining negotiations between public employees and the state. The bill requires the parties at impasse to notify the presiding officers of the legislature of all unresolved issues by the first day of the regular session rather than five days after an impasse is declared.

The bill also changes the date by which a committee of the legislature must meet to conduct a public hearing and take testimony regarding the issues at impasse from no later than ten days prior to the start of the Regular Session to no later than the 14th day of the Regular Session.

The bill does not impact state revenues or expenditures.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Collective Bargaining

Public employees in Florida may not strike but have a constitutional right to collectively bargain.¹ Statewide regulations for collective bargaining amongst public employees are addressed in part II of ch. 447, F.S.² The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.³

¹ FLA. CONST. Art. I, s. 6.

² See s. 447.201, F.S., The Public Employees Relations Act provides statutory implementation of the 1968 amendment to Art. I, s. 6 of the State Constitution.

³ Section 447.201, F.S., See also, Public Employees Relations Commission, A Practical Handbook on Florida's Public Employment Collective Bargaining Law, at 3 (2d ed. 2004).

Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith. Collective bargaining pursuant to ch. 447, F.S., consists of a series of negotiations between a public employer's chief executive officer⁴ and the selected bargaining agent⁵ for an employee organization regarding the terms and conditions of employment.⁶

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.⁷

Impasse

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, an impasse is declared. The procedural guidelines to resolve a collective bargaining impasse between the parties are outlined in s. 447.403, F.S.

When the public employer is not the state, either party can declare a written impasse to the Public Employees Relations Commission (PERC)⁸. The PERC is an independent agency created to assist in resolving disputes between public employers and their employees.⁹ The impasse may be resolved through mediation or the use of a special magistrate¹⁰. Should mediation fail to achieve resolution, and either party rejects all or part of the special magistrate's recommendations, the employer's chief executive officer is required to direct the dispute to the appropriate legislative body¹¹ for a final disposition.¹² The legislative body must hold a public hearing where each party has an opportunity to present its argument before the legislative body issues a final resolution pursuant to "the public interest [and] the interest of the public employees involved."¹³

⁴ Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer."

⁵ The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employees Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative. Section 447.203(8), F.S., defines "bargaining unit" as a unit determined by either the PERC, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization; that is approved by the PERC to be appropriate for the purposes of collective bargaining.

⁶ Section 447.203(14), F.S.

⁷ Section 447.309(5), F.S.

⁸ Section 447.403(1), F.S.

⁹ Section 447.201(3), F.S.

¹⁰ Sections 447.403(1)-(3), F.S.

¹¹ Section 447.203(10), F.S., defines "legislative body" as the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and, which as the case may be, is the appropriate legislative body for the bargaining unit. For purposes of s. 447.403, F.S., the Board of Governors of the State University System, or the board's designee, shall be deemed to be the legislative body with respect to all employees of each constituent state university. For purposes of s. 447.403, F.S., the board of trustees of a community college shall be deemed to be the legislative body with respect to all employees of a community college.

¹² Section 447.403(4), F.S.

¹³ Section 447.403(4)(c)-(e), F.S.

When the Governor is the public employer, either party may declare impasse. However, if there are unresolved issues at the time the Governor is required to submit the recommended budget, a “statutory” impasse is declared in all collective bargaining negotiations.¹⁴ Absent written approval from the President of the Senate and the Speaker of the House of Representatives, the Governor must submit a recommended budget to the Legislature at least 30 days before the start of the scheduled annual legislative session.¹⁵ After a declaration of impasse, the parties proceed directly to the Legislature for resolution.¹⁶ Section 447.403(5)(a), F.S., requires parties at impasse to send unresolved issues to the President of the Senate and the Speaker of the House of Representatives within five days of the declaration of impasse. The presiding officers then appoint a joint select committee to review the parties’ positions and return a report no later than ten days before the start of the legislative session.¹⁷ During the Session, the Legislature is required to issue a final resolution pursuant to “the public interest [and] the interest of the public employees involved.”¹⁸

Sessions of the Legislature

The time to convene the 60-day Regular Session¹⁹ of the Legislature is prescribed by the State Constitution. Specifically, Article III, s. 3(b) of the Florida Constitution provides:

A regular session of the legislature shall convene on the first Tuesday after the first Monday in March of each odd-numbered year, and on the first Tuesday after the first Monday in March, or such other date as may be fixed by law, of each even-numbered year.²⁰

Chapter 2016-218, L.O.F., set January 9, 2018, as the date to convene the 2018 Regular Session. That law applies only to the 2018 Regular Session. However, the legislature historically convenes in January during reapportionment years²¹ and elected to begin its regular session in January in 2016 as well.²²

III. Effect of Proposed Changes:

Section 1 amends 447.403(a), F.S., to require the parties at impasse to notify the presiding officers of the legislature of all unresolved issues by the first day of the regular session instead of five days after the Governor is required to produce a recommended budget. The bill also changes the date by which a committee of the legislature must meet to conduct a public hearing and take testimony regarding the issues at impasse to no later than the 14th day of the regular session.

Section 2 provides an effective date of July 1, 2017.

¹⁴ Section 216.163(6), F.S.

¹⁵ Section 216.162(1).

¹⁶ Section 447.403(2)(b), F.S.

¹⁷ Section 447.403(5)(a), F.S.

¹⁸ Section 447.403(4)(c)-(e), F.S.

¹⁹ The length of the regular session is prescribed in Article III, s. 3(d), Florida Constitution.

²⁰ FLA. CONST Art. III, s. 3(b).

²¹ Chapter 2010-91, Laws of Fla.

²² Chapter 2014-106, Laws of Fla.

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:

Changes in SB 1020 provide impacted parties with 30 days to continue negotiating issues at impasse before sending those issues to the legislature for resolution, which may result in additional agreements being reached prior to legislative resolution. However, it is likely that economic issues like salaries, overtime compensation, retirement benefits, health insurance benefits, deferred compensation benefits, leave policies, and other compensation issues will still require legislative resolution.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill allows the legislative committee to meet during the first two weeks of regular session instead of ten days before the start of session. When the legislature opts to convene itself in January, this will prevent the jointly appointed committee from having to conduct a public hearing the week between the Christmas and New Year's holidays.

VIII. Statutes Affected:

This bill substantially amends section 447.403 of the Florida Statutes.

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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 Powell

30-01766-17

20171020__

A bill to be entitled

An act relating to collective bargaining impasses;
amending s. 447.403, F.S.; revising notice
requirements for issues at impasse; providing an
effective date.

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

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

447.403 Resolves.—

(5) (a) By the first day of the regular session of the
Legislature within 5 days after the beginning of the impasse
period in accordance with s. 216.163(6), each party shall notify
the President of the Senate and the Speaker of the House of
Representatives as to all unresolved issues. Upon receipt of the
notification, the presiding officers shall appoint a ~~joint~~
~~select~~ committee to review the position of the parties relating
to and render a recommended resolution of all issues remaining
at impasse. No later than the 14th day of the regular session of
the Legislature, the committee shall conduct a public hearing to
take testimony regarding the issues at impasse ~~The recommended~~
~~resolution shall be returned by the joint select committee to~~
~~the presiding officers not later than 10 days prior to the date~~
~~upon which the legislative session is scheduled to commence.~~
During the legislative session, the Legislature shall take
action in accordance with this section.

Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

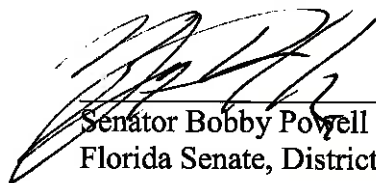
To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 8, 2017

I respectfully request that **Senate Bill #1020**, relating to Collective Bargaining Impasses, be placed on the:

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



Senator Bobby Powell
Florida Senate, District 30



The Florida Senate
Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriation

Subject: Committee Agenda Request

Date: March 15, 2017

I respectfully request that **Senate Bill # 1020**, relating to revised notice requirements for issues at impasses, providing an effective date, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Bobby Powell", is written over a horizontal line.

Senator Bobby Powell
Florida Senate, District 30

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 Appropriations

BILL: SB 7006

INTRODUCER: Health Policy Committee

SUBJECT: Direct-support Organization of the Prescription Drug Monitoring Program

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Lloyd	Stovall		HP Submitted as Committee Bill
1.	Loe	Williams	AHS	Recommend: Favorable
2.	Loe	Hansen	AP	Favorable

I. Summary:

SB 7006 removes a repeal date of October 1, 2017, and re-enacts authority for the Department of Health (department) to establish and contract with a direct-support organization for fundraising and support of the prescription drug monitoring program (PDMP).

The bill also removes references to an obsolete Program Implementation and Oversight Task Force created upon enactment of the PDMP in 2009.

The bill has no fiscal impact.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Citizen Support Organization (CSOs) and Direct Support Organizations (DSOs)

Citizen support organizations (CSOs) and direct support organizations (DSOs) are private entities created to assist or support governmental entities in carrying out their duties. Prior to 2014, CSOs and DSOs had similar organizational and reporting requirements but no single standard or operational requirement, except that such organizations were often Florida not-for-profit corporations that required approval by the Department of State.¹

In 2014, the legislature conducted a review of the existing relationship between CSOs and DSOs and their governmental partners. One of the results of that review was legislation that established operational requirements and standards for CSOs and DSOs with an automatic review and repeal

¹ See Section 258.015(1), F.S.; Section 257.43(1), F.S.; specific CSOs and DSOs have the authority to operate and conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer fund and property; and make expenditures.

date for each organization.² Effective in August 2014, a CSO or DSO created or authorized pursuant to law or executive order and created, approved, or administered by an agency must submit annually the following to the appropriate agency:

- The name, mailing address, telephone number, and website address of the organization.
- The statutory authority or executive order that created the organization.
- A brief description of the mission and results obtained by the organization.
- A brief description of the plans of the organization for the next 3 fiscal years.
- A copy of the organization's code of ethics.
- A copy of the organization's most recent federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).³

Each agency receiving the above information from a CSO or DSO must make the information available to the public through the agency's website. The agency's website must provide a link to the organization's website if the organization maintains a website.

Each agency must report the above required information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability annually by August 15. The report must also include a recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each organization.

Any contract between an agency and a CSO or DSO must be contingent upon the organization submitting and posting the required information. The agency head must terminate any contract between the agency and the organization if an organization fails to submit the required information for two consecutive years.

A law creating or authorizing the creation of a CSO or DSO is repealed on October 1 of the fifth year after enactment unless reviewed and saved from repeal through reenactment by the legislature. CSOs and DSOs in existence on July 1, 2014, must be reviewed and saved from repeal through reenactment by the legislature.

The 2014 law repeals existing statutory authority for specified CSOs and DSOs on October 1, 2017, October 1, 2018, and October 1, 2019, unless reviewed and saved from repeal by the legislature.

Audits of State Agency CSOs and DSOs

Section 215.981, F.S., provides that each CSO and DSO with annual expenditures in excess of \$100,000 created or authorized pursuant to law, and created, approved, or administered by a state agency – other than universities, community colleges, or district school boards – must provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor

² Chapter 2014-96, s. 3, Laws of Fla. (creating s. 20.058, effective June 13, 2014).

³ See Section 20.058(1), F.S.

General and to the state agency responsible for creation, administration, or approval of the DSO or CSO.

Notwithstanding the above, CSOs and DSOs for the Department of Environmental Protection or the Department of Agriculture and Consumer Services that are not-for-profit with annual expenditures of less than \$300,000 are not required to have an independent audit. These departments establish accounting and financial management guidelines for the organizations under their jurisdiction and conduct operational and financial reviews of a selected number of CSOs and DSOs that fall below the \$300,000 threshold.

Florida PDMP Foundation, Inc.

The Florida PDMP Foundation, Inc., (Foundation) is a DSO that is a Florida not-for-profit corporation incorporated under ch. 617, F.S. Created by the legislature in 2009, its purpose is to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest – in its own name – securities, funds, objects of value or other property, either real or personal, and make expenditures to provide funding to or for the indirect benefit of the department in furtherance of the PDMP, pursuant to s. 893.055(11)(a), F.S.⁴

The PDMP uses an electronic database system to monitor the prescribing and dispensing of certain controlled substances. In the first half of calendar year 2015, Florida reported more than 4,600 drug-related deaths.⁵ Prescription drugs continue to be found more often than illicit drugs both as the cause of death and present at death. Prescription drugs account for 68.9 percent of all drug occurrences in the Florida Department of Law Enforcement (*FDLE*) *Medical Examiners Interim Drug Report*.⁶

The overall mission of the Foundation as the DSO for the PDMP is to fundraise for the benefit of the PDMP in order to reduce drug abuse and diversion. Through June 2016, the Foundation reports assets over \$1.5 million in private and corporate contributions, of which \$1.4 million are currently being invested to provide for future funding needs.⁷ The Foundation also provided over \$11,000 in supplemental contributions to the state's prescription drug monitoring database, E-FORCSE (Electronic-Florida Online Reporting of Controlled Substances Evaluation), operations to support special event marketing and promotional projects.

The PDMP Foundation has two major goals. The first goal is to raise funds for the operation of E-FORCSE. The yearly cost to maintain the database is approximately \$600,000.⁸ The Foundation seeks funding from a number of sources, including corporations, individuals, and law

⁴ Florida PDMP Foundation, Inc., *Annual Report to the Department of Health*, (2016) p. 3, available at http://www.flpdmpfoundation.com/wp-content/uploads/2016/08/PDMPF_Annual_Report_2016.pdf (last visited Jan. 19, 2017).

⁵ Florida Department of Law Enforcement, *Drugs Identified in Deceased Persons by Florida Medical Examiners - Interim Report 2015*, pg. ii, available at <http://www.flpdmpfoundation.com/wp-content/uploads/2016/04/Medical-Examiner-Commissions-Interium-Report-2015.pdf>, (last visited Jan. 20, 2017).

⁶ Id.

⁷ Id.

⁸ Florida PDMP Foundation, *Goals*, <http://www.flpdmpfoundation.com/goals/> (last visited Jan. 20, 2017).

enforcement; however, the Foundation cannot receive funds from any corporation representing the pharmaceutical industry.⁹

Since inception, the E-FORCSE has received over \$2.4 million in federal grants for database enhancements and special projects.¹⁰ Several corporations have also donated funding for the initial start-up of the database, which became fully functional in September 2011.¹¹ The legislature appropriated \$500,000 in nonrecurring funds from the General Revenue Fund in Fiscal Year 2013-2014 towards its ongoing maintenance. The legislature also authorized the use of nonrecurring funds from the General Revenue Fund for Fiscal Year 2015-2016 and appropriated \$500,000 in recurring funds from the General Revenue Fund in Fiscal Year 2016-2017 to administer the PDMP. The department reports that the PDMP has sustainable funding through fiscal year 2019-2020.¹²

Major marketing of the PDMP by the Foundation began in 2014, which helped bring donations from sheriff's offices and police departments that donated Asset Forfeiture Funds.¹³ The Florida Sheriff's Association contributed \$20,000. In 2014, Attorney General Pam Bondi provided the PDMP Foundation with a \$1.973 million contribution from a pharmaceutical settlement.¹⁴

The second goal of the Foundation is to educate licensed health care providers and law enforcement officials about how to utilize the database in the management of controlled substances in patient care and active criminal investigations.¹⁵ Foundation representatives attend major conferences and trade shows with entities such as the Florida Medical Association, the Florida City and County Management Association, the Florida Sheriffs Association, the Florida Police Chiefs Association, the Florida Public Health Association, the Florida Dental Association, and the Florida Pharmacy Association to market the PDMP database and to seek corporate donations.¹⁶ The Foundation also uses these opportunities to market its online courses on the PDMP.

An Executive Director and a board of directors appointed by the State Surgeon General lead the Foundation. The statute permits a minimum of five members. The Foundation's board of directors currently has nine members.¹⁷ The members represent health care providers, physicians, the pharmaceutical industry, and a consumer advocate.¹⁸ The State Surgeon General provides guidance to the board members to ensure inappropriate sources, such as those who may benefit

⁹ Id. and s. 893.055(10), F.S. *But see* s. 893.055(17), F.S., where the legislature appropriated recurring general revenue funds in the 2016-2017 fiscal year to administer the PDMP. A similar provision was included in the 2015 Implementing Bill for the 2015-2016 fiscal year, and in 2013 the legislature appropriated \$500,000 for the 2013-2014 fiscal year only.

¹⁰ Florida PDMP Foundation, *Board of Directors Meeting Minutes* (Dec. 15, 2016) (on file with the Senate Committee on Health Policy).

¹¹ Florida PDMP Foundation, *Donations*, <http://www.flpdmpfoundation.com/donations/> (last visited: Jan. 20, 2017).

¹² Florida Department of Health, *EFORCSE 2015-2016 Prescription Drug Monitoring Program Annual Report*, December 1, 2016, p. 8, <http://www.floridahealth.gov/statistics-and-data/e-forcse/documents/2016PDMPAnnualReport.pdf> (last visited: Jan. 22, 2017).

¹³ *Supra* note 11.

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 8.

¹⁶ *Supra* note 4.

¹⁷ Florida PDMP Foundation, *About Florida PDMP Foundation, Inc.*, <http://www.flpdmpfoundation.com/about/> (last visited: Jan. 19, 2017).

¹⁸ Id.

from the purchase of goods or services by the department in furtherance of the program, do not donate funds for the PDMP.

The Foundation has executed a two-year contract with the department and operates tax-exempt under section 501(c)(3) of the federal Internal Revenue Code.¹⁹ The department must certify annually that the Foundation is in compliance with its contract with the department and that continuation of that contract is in the best interest of the State of Florida. On August 15, 2016, the department sent its annual certification letters to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Accountability.²⁰

The Foundation's Annual Report includes a brief description of its *Three Year Strategic Plan* as required in s. 20.058, F.S., and a copy of its current two-year contract with the department.

The Foundation's annual expenditures have been less than \$100,000; therefore, no financial audit has been or is required to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General.²¹ To comply with other state reporting rules, the Foundation submits the end-of-the-fiscal year's (June 30) bank statements to the state Treasury.²²

III. Effect of Proposed Changes:

The bill amends s. 893.055, F.S., to remove the scheduled repeal date of October 1, 2017, for the PDMP DSO, and the Foundation is saved from repeal. The bill deletes obsolete language regarding an expired task force.

The effective date of the bill is July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ Florida PDMP Foundation, *Attachment A - Certification of Direct Support Organization Contract Compliance*, http://www.flpdmpfoundation.com/wp-content/uploads/2016/08/PDMPF_Annual_Report_2016.pdf (last visited: Jan. 20, 2017).

²⁰ Florida Department of Health, *Cover Letters for 2016 Florida PDMP Foundation, Inc., Annual Report and Annual Certification Letters to Governor Rick Scott, Senate President Andy Gardiner, Speaker Steve Crisafulli, and R. Phillip Twogood (August 15, 2016)* (on file with Senate Health Policy Committee).

²¹ Transfers from the Foundation to the department for PDMP activities are not classified as expenditures of the Foundation.

²² Email between Department of Health staff, PDMP Foundation staff, and Department of Financial Services staff (July and August 2013) (on file with Senate Committee on Health Policy).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Foundation's annual expenditures have been less than \$100,000; therefore, no financial audit has been or is required to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. To be compliant with other state reporting rules, the Foundation submits the end-of-the-fiscal year's (June 30) bank statements to the state Treasury.²³ Transfers to the department, which in some years have exceeded \$100,000 cumulatively, have not counted toward triggering an independent audit of the Foundation.

VIII. Statutes Affected:

This bill substantially amends section 893.055, 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.

²³ Id.

By the Committee on Health Policy

588-00921-17

20177006__

A bill to be entitled

An act relating to the direct-support organization of the prescription drug monitoring program; amending s. 893.055, F.S.; deleting language that has become obsolete due to the expiration of the task force; abrogating the repeal of provisions authorizing the Department of Health to establish a direct-support organization for the prescription drug monitoring program; providing an effective date.

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

Section 1. Subsection (11) of section 893.055, Florida Statutes, is amended to read:

893.055 Prescription drug monitoring program.—

(11) The department may establish a direct-support organization that has a board consisting of at least five members to provide assistance, funding, and promotional support for the activities authorized for the prescription drug monitoring program.

(a) As used in this subsection, the term "direct-support organization" means an organization that is:

1. A Florida corporation not for profit incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.

2. Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures or provide funding to or for the direct or indirect benefit of the department in the furtherance of the prescription drug

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monitoring program.

(b) The direct-support organization is not considered a lobbying firm within the meaning of s. 11.045.

(c) The State Surgeon General shall appoint a board of directors for the direct-support organization. Members of the board shall serve at the pleasure of the State Surgeon General. The State Surgeon General shall provide guidance to members of the board to ensure that moneys received by the direct-support organization are not received from inappropriate sources. Inappropriate sources include, but are not limited to, donors, grantors, persons, or organizations that may monetarily or substantively benefit from the purchase of goods or services by the department in furtherance of the prescription drug monitoring program.

(d) The direct-support organization shall operate under written contract with the department. The contract must, at a minimum, provide for:

1. Approval of the articles of incorporation and bylaws of the direct-support organization by the department.

2. Submission of an annual budget for the approval of the department.

3. Certification by the department that the direct-support organization is complying with the terms of the contract in a manner consistent with and in furtherance of the goals and purposes of the prescription drug monitoring program and in the best interests of the state. Such certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

4. The reversion, without penalty, to the state of all

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62 moneys and property held in trust by the direct-support
 63 organization for the benefit of the prescription drug monitoring
 64 program if the direct-support organization ceases to exist or if
 65 the contract is terminated.

66 5. The fiscal year of the direct-support organization,
 67 which must begin July 1 of each year and end June 30 of the
 68 following year.

69 6. The disclosure of the material provisions of the
 70 contract to donors of gifts, contributions, or bequests,
 71 including such disclosure on all promotional and fundraising
 72 publications, and an explanation to such donors of the
 73 distinction between the department and the direct-support
 74 organization.

75 7. The direct-support organization's collecting, expending,
 76 and providing of funds to the department for the administration
 77 ~~development, implementation,~~ and operation of the prescription
 78 drug monitoring program as described in this section ~~and s. 2,~~
 79 ~~chapter 2009-198, Laws of Florida, as long as the task force is~~
 80 ~~authorized.~~ The direct-support organization may collect and
 81 expend funds to be used for the functions of the direct-support
 82 organization's board of directors, as necessary and approved by
 83 the department. In addition, the direct-support organization may
 84 collect and provide funding to the department in furtherance of
 85 the prescription drug monitoring program by:

86 a. Establishing and administering the prescription drug
 87 monitoring program's electronic database, including hardware and
 88 software.

89 b. Conducting studies on the efficiency and effectiveness
 90 of the program to include feasibility studies as described in

588-00921-17

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91 subsection (13).

92 c. Providing funds for future enhancements of the program
 93 within the intent of this section.

94 d. Providing user training of the prescription drug
 95 monitoring program, including distribution of materials to
 96 promote public awareness and education and conducting workshops
 97 or other meetings, for health care practitioners, pharmacists,
 98 and others as appropriate.

99 e. Providing funds for travel expenses.

100 f. Providing funds for administrative costs, including
 101 personnel, audits, facilities, and equipment.

102 g. Fulfilling all other requirements necessary to implement
 103 and operate the program as outlined in this section.

104 (e) The activities of the direct-support organization must
 105 be consistent with the goals and mission of the department, as
 106 determined by the department, and in the best interests of the
 107 state. The direct-support organization must obtain a written
 108 approval from the department for any activities in support of
 109 the prescription drug monitoring program before undertaking
 110 those activities.

111 (f) The department may permit, without charge, appropriate
 112 use of administrative services, property, and facilities of the
 113 department by the direct-support organization, subject to this
 114 section. The use must be directly in keeping with the approved
 115 purposes of the direct-support organization and may not be made
 116 at times or places that would unreasonably interfere with
 117 opportunities for the public to use such facilities for
 118 established purposes. Any moneys received from rentals of
 119 facilities and properties managed by the department may be held

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120 in a separate depository account in the name of the direct-
121 support organization and subject to the provisions of the letter
122 of agreement with the department. The letter of agreement must
123 provide that any funds held in the separate depository account
124 in the name of the direct-support organization must revert to
125 the department if the direct-support organization is no longer
126 approved by the department to operate in the best interests of
127 the state.

128 (g) The department may adopt rules under s. 120.54 to
129 govern the use of administrative services, property, or
130 facilities of the department or office by the direct-support
131 organization.

132 (h) The department may not permit the use of any
133 administrative services, property, or facilities of the state by
134 a direct-support organization if that organization does not
135 provide equal membership and employment opportunities to all
136 persons regardless of race, color, religion, gender, age, or
137 national origin.

138 (i) The direct-support organization shall provide for an
139 independent annual financial audit in accordance with s.
140 215.981. Copies of the audit shall be provided to the department
141 and the Office of Policy and Budget in the Executive Office of
142 the Governor.

143 (j) The direct-support organization may not exercise any
144 power under s. 617.0302(12) or (16).

145 ~~(k) This subsection is repealed October 1, 2017, unless~~
146 ~~reviewed and saved from repeal by the Legislature.~~

147 Section 2. This act shall take effect July 1, 2017.

APPEARANCE RECORD

3-16-2017

Meeting Date

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

SB 7006

Bill Number (if applicable)

Topic DIRECT SUPPORT ORGANIZATION FOR THE PDMP

Amendment Barcode (if applicable)

Name STEPHEN R. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DRIVE

Street

Phone 878-7344

TALLAHASSEE

City

FL

State

32301

Zip

Email

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist 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)

March 16, 2017

Meeting Date

SB 7006

Bill Number (if applicable)

Topic Direct-Support organization of the
Prescription Drug Monitoring Program

Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Government Affairs Coordinator

Address 2636 Mitcham Dr

Street

Tallahassee

FL

32308

City

State

Zip

Phone 850-219-3631

Email bhoward@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs 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 Appropriations

BILL: SB 7008

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: Department of Veterans' Affairs Direct-support Organization

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Sanders	Ryon		MS Submitted as Committee Bill
1.	Sneed	Williams	AHS	Recommend: Favorable
2.	Sneed	Hansen	AP	Favorable

I. Summary:

SB 7008 removes a repeal date of October 1, 2017, and re-enacts authority for the Florida Department of Veterans' Affairs to establish and contract with a direct-support organization for assistance, fundraising, and support to assist the department in carrying out its mission.

The bill has no fiscal impact on state government.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Citizen Support Organizations and Direct-Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and also, for most, by a written contract with the agency the CSO or DSO was created to support.

CSO and DSO Transparency and Reporting Requirements (s. 20.058, F.S.)

In 2014, the Legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.¹ Specifically, the law requires each CSO and DSO to annually submit, by August 1, the following information to the agency it supports:²

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;

¹ Chapter 2014-96, Laws of Fla.

² Section 20.058(1), F.S.

- A brief description of the mission and results obtained by the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;
- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.³

Additionally, the information submitted annually by a CSO or DSO must be available on the respective agency's website along with a link to the CSO or DSO's website, if one exists.⁴ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting the required information to the agency and posting the information on the agency's website.⁵ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the CSO or DSO.⁶

By August 15 of each year, the agency must report the above required information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability along with the agency's recommendation to continue, terminate, or modify the agency's association with the CSO or DSO.⁷

Laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.⁸

CSO and DSO Audit Requirements (s. 215.981, F.S.)

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.⁹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the DSO or CSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹⁰

CSO and DSO Ethics Code Requirement (s. 112.3251, F.S.)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures

³ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

⁴ Section 20.058(2), F.S.

⁵ Section 20.058(4), F.S.

⁶ Id.

⁷ Section 20.058(3), F.S.

⁸ Section 20.058(5), F.S.

⁹ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹⁰ Section 11.45(3)(d), F.S.

provided in ss. 112.313 and 112.3143(2), F.S.¹¹ A CSO or DSO may adopt additional or more stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.¹²

Florida Department of Veterans' Affairs

The Florida Department of Veterans' Affairs (FDVA) was established in 1988 as a cabinet agency charged with providing advocacy and representation for Florida's veterans and to intercede on their behalf with the U.S. Department of Veterans Affairs (USDVA).¹³ The FDVA primarily engages in advocacy activities through its benefits and assistance program to provide professional assistance to Florida veterans and their dependents in obtaining financial benefits and health care treatments from the USDVA.¹⁴ Additionally, the FDVA is responsible for operating State Veterans' Homes. These facilities provide comprehensive and cost-effective health care to include both skilled nursing care and assisted living services.

Direct-support Organization for the Department of Veterans' Affairs

In 2008, the Legislature created s. 292.055, F.S., authorizing the FDVA to establish a DSO to provide assistance, funding, and support for the FDVA in carrying out its mission. The law requires the FDVA DSO to be a Florida non-profit corporation¹⁵ that operates exclusively to:

- Obtain funds and request and receive grants, gifts, and bequests of moneys;
- Acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and
- Make expenditures to or for the direct or indirect benefit of the FDVA, Florida veterans, and congressionally chartered veteran service organizations.¹⁶

The FDVA DSO is also tasked in statute to administer the Florida Veterans' Walk of Honor and Memorial Garden without funding from the state.¹⁷ Additionally, s. 265.003, F.S., directs the FDVA to administer the Florida Veterans' Hall of Fame without state appropriations. The FDVA utilizes the FDVA DSO to fund Hall of Fame activities.

The statutory authority for the FDVA DSO is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the Legislature.¹⁸

¹¹ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

¹² Section 112.3251, F.S.

¹³ Florida Department of Veterans' Affairs, *About Us*, available at <http://floridavets.org/benefits-services/> (last visited Feb. 1, 2017).

¹⁴ Florida Department of Veterans' Affairs, *Annual Report: Fiscal Year 2014-15*, 6 (Nov. 11, 2015), available at <http://floridavets.org/wp-content/uploads/2012/08/Cabinet-Meeting-Material.pdf> (last visited Feb. 1, 2017).

¹⁵ Section 292.055(2)(b)1., F.S.

¹⁶ Section 292.055(2)(b)2., F.S.

¹⁷ Section 265.0031, F.S.

¹⁸ Section 292.055(10), F.S.

Florida Veterans Foundation, Inc.

Florida Veterans Foundation, Inc., (FVF) was established as a non-profit corporation in June 2008 to serve as the DSO for the FDVA.¹⁹ The mission of the FVF is to:

- Provide direct and indirect services to veterans and their families;
- Partner with the U.S. Department of Veterans Affairs, state and local governments, veterans service organizations, and educational institutions to improve veterans' physical, financial, mental, emotional, and social wellbeing; and
- Support the FDVA's mission of advocacy by educating veterans, the public, and governmental entities, to increase awareness on veteran-related issues.²⁰

The FVF is currently governed by an eight-member board of directors each representing a defined geographic area encompassing all areas of the state. The FVF operates pursuant to a written contract with the FDVA²¹ and daily FVF operations are staffed by a combination of volunteers and three part-time, paid contract employees.²² The FVF occupies office space in the FDVA Tallahassee office and utilizes the FDVA computer network, phone access, and limited FDVA office supplies.²³

The FVF's operations are currently funded by individual and corporate charitable contributions and a two-year grant from the Florida Office of the Attorney General.²⁴ In November 2015, the FVF received a \$1,250,000 grant from the Attorney General for the purpose of providing emergency services to veterans.²⁵ The FVF must expend the grant funds by January 2018.²⁶ Previously, the FVF received a portion of the annual proceeds from the sale of the Florida Salutes Veterans license plate during Fiscal Year 2008-09 through Fiscal Year 2011-12.²⁷

Tables 1 and 2 below provide the FVF's total annual revenue and expenditure amounts, respectively, for Fiscal Year 2009-10 through Fiscal Year 2015-16.

¹⁹ FVF Articles of Incorporation (April 4, 2008) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

²⁰ 2016 Direct Support Organization Report (Aug. 4, 2016), available at <http://floridavets.org/about-us/florida-veterans-foundation/> (last visited Jan. 24, 2017).

²¹ Direct-support Contract between Florida Veterans Foundation, Inc. and Florida Department of Veterans' Affairs (Dec. 12, 2012) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

²² E-mail correspondence from FVF staff on Oct. 31, 2016 (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

²³ Senate Committee on Military and Veterans Affairs, Space, and Domestic Security, *FVF Request for Additional Information* (Sept. 30, 2016), Question 16.

²⁴ Grant funds available as a result of a 2013 settlement agreement between the State of Florida and Chase Bank. The State of Florida received \$15.3 million to be distributed to 47 non-profit organizations to be used for legal services, financial literacy, and other programs related to assisting Floridians with managing debt. Attorney General press release, available at <http://myfloridalegal.com/pages.nsf/Main/E96978109D350A7385257F02008387F7> (last visited Jan. 24, 2017).

²⁵ Agreement between the Florida Office of the Attorney General and the FVF (Dec. 18, 2015) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

²⁶ Id.

²⁷ For FYs 2008-09 and 2009-10, the FVF was entitled to 20 percent of the Florida Salutes Veterans license plate revenue (Ch. 2008-84, L.O.F.). For FYs 2010-11 and 2011-12, the FVF was entitled to 10 percent of the license plate revenue (Ch. 2010-168, L.O.F.).

Table 1: Florida Veterans Foundation Total Annual Revenues²⁸ FY 2009-10 through FY 2015-16								
Fiscal Year	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>Total</u>
Total Revenue	\$129,018	\$65,448	\$239,700	\$392,404	\$257,333	\$335,407	\$837,447	\$2,256,757

Table 2: Florida Veterans Foundation Total Annual Expenditures²⁹ FY 2009-10 through FY 2015-16								
Fiscal Year	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>2015-16</u>	<u>Total</u>
DSO Services Expenses³⁰	\$59,665	\$20,664	\$107,361	\$134,285	\$248,515	\$210,402	\$468,385	\$1,249,277
Administrative Expenses³¹	\$18,066	\$30,061	\$50,929	\$70,490	\$102,903	\$101,358	\$179,659	\$553,466
Fundraising Expenses	\$0	\$0	\$0	\$0	\$31,850	\$8,129	\$1,788	\$41,767
Total Expenditures	\$77,731	\$50,725	\$158,290	\$204,775	\$383,268	\$319,889	\$649,832	\$1,844,510

For Fiscal Year 2015-16, FVF services expenditures were 72 percent of the organization's total expenditures. Administrative expenses and fundraising expenses were 27.7 percent and 0.3 percent, respectively.

Florida Veterans Foundation Services

The FVF's core function is to provide emergency financial assistance for veterans and their families during times of serious financial need. The FVF awards one-time grants to cover expenses relating to housing, utilities, food, relocation, education, medical, transportation, and other needs that constitute a true emergency. The FVF requires veterans to request assistance from a minimum of three alternative sources prior to receiving approval for FVF financial assistance.³² From Fiscal Year 2011-12 to present, the FVF distributed approximately \$590,000 in emergency financial assistance grants to 1,010 recipients.³³

The FVF also hosts and contributes funding for Veterans Stand Down events and Veterans Summits held across the state. Veterans Stand Downs are typically one- to three-day events

²⁸ Data retrieved from FVF's IRS Form 990, Part VIII for FY 2009-10 through FY 2014-15 and FVF's annual financial audit for FY 2015-16. The FVF's FY 2015-16 IRS Form 990 is not yet available.

²⁹ Data retrieved from FVF's IRS Form 990, Part IX for FY 2009-10 through FY 2014-15 and FVF's annual financial audit for FY 2015-16. The FVF's FY 2015-16 IRS Form 990 is not yet available.

³⁰ DSO services expenses include, but are not limited to, emergency financial assistance grants for veterans, Veterans Summits, Veterans Stand Downs, Florida Veterans' Hall of Fame expenses, Florida Veterans Walk of Honor and Memorial Garden expenses, FDVA Benefits Guide printing expenses, and other FVF non-administrative activities.

³¹ Administrative expenses include, but are not limited to, personnel support, travel and meetings, advertising, office expenses and supplies, audit and legal fees, facilities expenses, and other miscellaneous expenses.

³² FVF, *General Eligibility Guidelines*, available at <https://floridaveteransfoundation.org/wp-content/uploads/2016/10/FVF-Eligibility-Requirements.pdf> (last visited Jan. 24, 2017).

³³ E-mail correspondence from FVF staff on Nov. 15, 2016 (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

providing supplies and services to homeless veterans such as food, shelter, clothing, health screenings, and veterans' benefits counseling. Veterans can also receive referrals for other assistance such as health care, housing solutions, employment, substance use treatment, and mental health counseling.³⁴ Veterans Summits are informational sessions for veterans that provide an opportunity for subject matter experts in various areas to educate participants on benefits available to veterans and how to apply for them.

As required by law, the FVF administers the Florida Veterans' Walk of Honor (Walk of Honor) and the Florida Veterans' Memorial Garden (Memorial Garden).³⁵ In October 2016, the Medal of Honor Node, the first of three phases planned for the Walk of Honor, was completed. Construction of the remainder of the Walk of Honor and the Memorial Garden is on hold due to ongoing Capitol Complex construction projects.

The FVF annually provides funding for the Florida Veterans' Hall of Fame (Hall of Fame), which is administered by the FDVA, pursuant to s. 265.003, F.S. The inaugural class of the Hall of Fame was inducted in 2013, followed by the Hall of Fame classes of 2014, 2015, and 2016. The FVF expended \$8,500 for the 2016 Hall of Fame class induction.³⁶

Other FVF services include sponsoring events such as the Florida Women's Veterans Conference and a veterans' spouses event, annually printing the FDVA's Florida Veterans' Benefit Guide, establishing a veterans' outreach program, and providing general referral services to veterans seeking assistance.³⁷

Senate Professional Staff Review of the FDVA and the FVF

Section 292.055, F.S., the statutory authority for the FDVA DSO, is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the Legislature. Professional staff of the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security reviewed the FVF to verify its compliance with applicable Florida Statutes.

Senate professional staff reviewed relevant FVF records from Fiscal Year 2009-10 to present, and found that the FVF is an active DSO that supports the FDVA primarily by providing emergency financial assistance and outreach programs to Florida veterans.

Senate professional staff identified five deficiencies in which the FDVA and the FVF were not in full compliance with the applicable Florida Statutes.³⁸ These deficiencies are largely administrative or procedural. The FDVA and the FVF resolved each deficiency presented by Senate professional staff and intend to comply with the applicable Florida Statutes moving forward.

³⁴ Veterans Stand Down events are collaborative events, coordinated between local U.S. Department of Veterans Affairs medical centers, other government agencies, and community-based homeless service providers.

³⁵ Section 265.0031, F.S.

³⁶ Supra note 23, Question 11.

³⁷ Supra note 20.

³⁸ See Florida Senate Review of the Department of Veterans' Affairs Direct-support Organization, Staff Findings and Recommendations (Feb. 6, 2017) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

III. Effect of Proposed Changes:

The bill amends s. 292.055, F.S., to save from repeal the Florida Department of Veterans' Affairs direct-support organization, which is currently scheduled for repeal on October 1, 2017.

The effective date of the bill is July 1, 2017.

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:

By saving the DSO from repeal, SB 7008 sustains a source of financial and other direct assistance for veterans.

C. Government Sector Impact:

The bill has no fiscal impact on state government. By saving the DSO from repeal, the bill enables the DSO to continue to fund and administer projects and activities such as the Florida Veterans' Walk of Honor, the Florida Veterans' Memorial Garden, and the Florida Veterans' Hall of Fame without an appropriation of state funds. If the DSO is not saved from repeal, the FDVA may need to find another source of funding for these and other veterans' projects and activities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 292.055, 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 the Committee on Military and Veterans Affairs, Space, and Domestic Security

583-01720-17

20177008__

A bill to be entitled

An act relating to the Department of Veterans' Affairs direct-support organization; amending s. 292.055, F.S.; abrogating the scheduled repeal of provisions governing a direct-support organization established by the department; providing an effective date.

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

Section 1. Section 292.055, Florida Statutes, is amended to read:

292.055 Direct-support organization.—

(1) SHORT TITLE; DIRECT-SUPPORT ORGANIZATION ESTABLISHED.—

This section may be cited as the "Sergeant First Class Paul R. Smith Memorial Act." The Department of Veterans' Affairs may establish a direct-support organization to provide assistance, funding, and support for the department in carrying out its mission. This section governs the creation, use, powers, and duties of the direct-support organization.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Department" means the Department of Veterans' Affairs.

(b) "Direct-support organization" means an organization that is:

1. A Florida corporation not for profit, incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.

2. Organized and operated exclusively to obtain funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and make expenditures to or for the direct or indirect benefit of the department, the veterans

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of this state, and congressionally chartered veteran service organizations having subdivisions that are incorporated in this state.

3. Determined by the department to be operating in a manner consistent with the goals of the department and in the best interest of the state.

(c) "Personal services" includes full-time or part-time personnel.

(3) BOARD OF DIRECTORS.—The direct-support organization shall be governed by a board of directors.

(a) The board of directors shall consist of no fewer than five members appointed by the executive director of the department. Veteran service organizations in this state may recommend nominees to the executive director of the department.

(b) The term of office of the board members shall be 3 years, except that the terms of the initial appointees shall be for 1 year, 2 years, or 3 years in order to achieve staggered terms. A member may be reappointed when his or her term expires. The executive director of the department or his or her designee shall serve as an ex officio member of the board of directors.

(c) Members must be current residents of this state. A majority of the members must be veterans, as defined in s. 1.01(14), and highly knowledgeable about the United States military, its service personnel, its veterans, and its missions. The executive director of the department may remove any member of the board for cause and with the approval of a majority of the members of the board of directors. The executive director of the department shall appoint a replacement for any vacancy that occurs.

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(4) CONTRACT.—A direct-support organization shall operate under a written contract with the department. The written contract must provide for:

(a) Certification by the department that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the department and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

(b) The reversion of moneys and property held by the direct-support organization:

1. To the department if the direct-support organization is no longer approved to operate for the department;

2. To the department if the direct-support organization ceases to exist; or

3. To the state if the department ceases to exist.

(c) The disclosure of the material provisions of the contract, and the distinction between the department and the direct-support organization, to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications.

(5) USE OF PROPERTY.—

(a) The department may permit the use of property, facilities, and personal services of the department by the direct-support organization, subject to this section.

(b) The department may prescribe by contract any condition with which the direct-support organization must comply in order to use property, facilities, or personal services of the department.

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(c) The department may not permit the use of its property, facilities, or personal services by any direct-support organization organized under this section which does not provide equal employment opportunities to all persons regardless of race, color, national origin, gender, age, or religion.

(6) ACTIVITIES; RESTRICTIONS.—Any transaction or agreement between the direct-support organization organized under this section and another direct-support organization or other entity must be approved by the executive director of the department.

(7) ANNUAL BUDGETS AND REPORTS.—

(a) The fiscal year of the direct-support organization shall begin on July 1 of each year and end on June 30 of the following year.

(b) The direct-support organization shall submit to the department its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

(8) ANNUAL AUDIT.—The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

(9) CONFIDENTIALITY OF DONORS.—

(a) Any information identifying a donor or prospective donor to the direct-support organization who desires to remain anonymous is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Portions of meetings of the direct-support organization during which the identity of a donor or prospective donor, whose identity is confidential and exempt pursuant to paragraph (a),

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119 is discussed are exempt from s. 286.011 and s. 24(b), Art. I of
120 the State Constitution.

121 ~~(10) REPEAL. This section is repealed October 1, 2017,~~
122 ~~unless reviewed and saved from repeal by the Legislature.~~

123 Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE
COMMITTEE ON MILITARY AND VETERANS
AFFAIRS, SPACE, AND DOMESTIC SECURITY

Location
215 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5785

Senator Audrey Gibson, *Chair*
Senator Doug Broxson, *Vice Chair*

Professional Staff: Elizabeth Ryon, *Staff Director*

Senate's Website: www.flsenate.gov

March 13, 2017

Senator Jack Latvala, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Latvala:

I respectfully request that **SB 7008: Department of Veterans' Affairs Direct-support Organization** by the Military and Veterans Affairs, Space, and Domestic Security Committee be placed on the Appropriations Committee's agenda at your earliest convenience.

SB 7008 saves from repeal provisions of law authorizing the Florida Department of Veterans' Affairs to establish a direct-support organization.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Senator Audrey Gibson
Chair

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/17

Meeting Date

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

7008

Bill Number (if applicable)

Topic FDVA DSO

Amendment Barcode (if applicable)

Name Jessica Kraynak (Cray-nack)

Job Title Deputy Legislative Director

Address Suite 2105, The Capitol

Phone (850) 487-1533

Street

Tallahassee

City

State

FL

Zip

Email KRAYNAKJ2@fdva.state.fl.us

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Department of Veterans' Affairs

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 Appropriations

BILL: SB 7010

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee

SUBJECT: Department of Military Affairs Direct-support Organization

DATE: March 15, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Sanders	Ryon		MS Submitted as Committee Bill
1.	Wells	Pitts	ATD	Recommend: Favorable
2.	Wells	Hansen	AP	Favorable

I. Summary:

SB 7010 saves from repeal the statutory authority granted to the Florida Department of Military Affairs to establish a direct-support organization.

The bill has no fiscal impact on state funds. The direct-support organization is funded through private sector contributions.

II. Present Situation:

Citizen Support Organizations and Direct-Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purpose of a CSO or DSO are prescribed by its enacting statute and also, for most, by a written contract with the agency the CSO or DSO was created to support.

CSO and DSO Transparency and Reporting Requirements (s. 20.058, F.S.)

In 2014, the legislature created s. 20.058, F.S., establishing a comprehensive set of transparency and reporting requirements for CSOs and DSOs.¹ Specifically, the law requires each CSO and DSO to annually submit by August 1, the following information to the agency it supports:²

- The CSO or DSO's name, mailing address, telephone number, and website address;
- The statutory authority or executive order that created the CSO or DSO;
- A brief description of the mission of, and results obtained by, the CSO or DSO;
- A brief description of the CSO or DSO's plans for the next three fiscal years;

¹ Chapter 2014-96, Laws of Fla.

² Section 20.058(1), F.S.

- A copy of the CSO or DSO's code of ethics; and
- A copy of the CSO or DSO's most recent Internal Revenue Service (IRS) Form 990.³

Additionally, the information submitted annually by a CSO or DSO must be available on the respective agency's website along with a link to the CSO or DSO's website if one exists.⁴ Any contract between an agency and a CSO or DSO must be contingent upon the CSO or DSO submitting the required information to the agency and posting of the information on the agency's website.⁵ If a CSO or DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the CSO or DSO.⁶

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the above information submitted by the CSO or DSO along with the agency's recommendation to continue, terminate, or modify the agency's association with the CSO or DSO.⁷

Laws creating or authorizing a CSO or DSO repeal on October 1 of the fifth year after enactment unless reviewed and saved from repeal by the legislature. CSOs and DSOs in existence prior to July 1, 2014, must be reviewed by the legislature by July 1, 2019.⁸

CSO and DSO Audit Requirements (s. 215.981, F.S.)

Section 215.981, F.S., requires each CSO and DSO created or authorized pursuant to law with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.⁹ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the CSO or DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a CSO's or DSO's accounts and records.¹⁰

CSO and DSO Ethics Code Requirement (s. 112.3251, F.S.)

Section 112.3251, F.S., requires a CSO or DSO created or authorized pursuant to law to adopt its own ethics code. The ethics code must contain the specified standards of conduct and disclosures provided in ss. 112.313 and 112.3143(2), F.S.¹¹ A CSO or DSO may adopt additional or more

³ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

⁴ Section 20.058(2), F.S.

⁵ Section 20.058(4), F.S.

⁶ Id.

⁷ Section 20.058(3), F.S.

⁸ Section 20.058(5), F.S.

⁹ The independent audit requirement does not apply to a CSO or DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a CSO or DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹⁰ Section 11.45(3)(d), F.S.

¹¹ Some of the standards of conduct and disclosures in ss. 112.313 and 112.3143(2), F.S., include misuse of public position, solicitation or acceptance of gifts, unauthorized compensation, and voting conflicts.

stringent standards of conduct and disclosure requirements and must conspicuously post its code of ethics on its website.¹²

Florida Department of Military Affairs and Florida National Guard

The Florida Department of Military Affairs (DMA) is a state agency created to provide management oversight and administrative support to the Florida National Guard.¹³ The DMA is responsible for:

- Combat readiness and emergency preparedness of the Florida National Guard;
- Responding to disasters and civil disturbances;
- Drug interdiction operations; and
- Assisting Floridians at risk.¹⁴

The Adjutant General, who is a federally recognized general officer, is an appointee of the Governor and serves as both the agency head of the DMA and the commanding officer of the Florida National Guard. Under the Adjutant General's command are nearly 12,000 servicemembers of the Army and Air Force National Guard and over 400 DMA state employees.¹⁵ Members of the Florida National Guard may be called to state active duty by the Governor¹⁶ or activated by the federal government to support national security objectives, protect the public safety of citizens and their property, or defend the State of Florida.

Direct-support Organization for the Department of Military Affairs

In 2000, the legislature created s. 250.115, F.S., authorizing a DSO for the DMA.¹⁷ The law requires the DMA DSO to be a Florida non-profit corporation¹⁸ that operates exclusively to:

- Raise funds and request and receive grants, gifts, and bequests of moneys;
- Acquire, receive, hold, invest, and administer in its own name securities, funds, or property;
- Support the processing of requests for assistance from the Soldiers and Airmen Assistance Program¹⁹ or similar programs, as directed by the Adjutant General; and
- Make expenditures for the direct or indirect benefit of the DMA or the Florida National Guard.²⁰

The statutory authority for the DMA DSO is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the legislature.²¹

¹² Section 112.3251, F.S.

¹³ DMA, *Adjutant General's Report: Fiscal Year 2014*, 4 (March 10, 2015), available at <http://dma.myflorida.com/wp-content/uploads/2015/04/AGReport2014.pdf> (last visited Jan. 30, 2017).

¹⁴ Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Government Program Summaries: Department of Military Affairs*, available at <http://www.oppaga.state.fl.us/profiles/4109> (last visited Jan. 30, 2017).

¹⁵ Florida Department of Military Affairs, *Department of Military Affairs Mission*, available at <http://dma.myflorida.com/about-us/> (last visited Jan. 30, 2016).

¹⁶ See s. 250.01(21), F.S.

¹⁷ Chapter 2000-258, Laws of Fla.

¹⁸ Section 250.115(1)(a)1., F.S.

¹⁹ The Soldiers and Airmen Assistance Program is established in s. 250.116, F.S., to provide emergency financial assistance to Florida National Guard members who are on or were recently on federal active duty orders and their families.

²⁰ Section 250.115(1)(a)2., F.S.

²¹ Section 250.115(8), F.S.

Soldiers and Airmen Assistance Program

Section 250.116, F.S., assigns the DMA DSO funding and administration responsibilities for the Soldiers and Airmen Assistance Program (Program). The legislature established the Program in 2010 as a means to provide financial assistance and services to certain Florida National Guard members on federal active duty orders and their families.²² Program eligibility is limited to Florida National Guard members who are currently, or were recently on federal active duty orders, and their dependent family members.²³

The Program is funded by the DMA DSO²⁴ and administered by both the DMA and the DMA DSO.²⁵ The types of assistance available under the Program may include housing, basic living needs, vehicles, health care, and other reasonable services or expenses.²⁶ The financial committee of the DMA DSO board of directors is required to review the financial transactions of the Program on a quarterly basis and provide the review to the DMA.²⁷

Florida National Guard Foundation, Inc.

Florida National Guard Foundation, Inc., (FLNGF) serves as the DSO for the DMA. The FLNGF was initially founded as a non-profit corporation in 1983 to support Florida National Guard members and their families²⁸ and became the DMA DSO following enactment of s. 250.115, F.S., in 2000, which authorizes and prescribes the duties of the DMA DSO.

The mission of the FLNGF is to:

- Provide support to Florida National Guard members in times of emergencies and deployments;
- Honor and assist those soldiers and airmen who have sacrificed their health and well-being for the security of the state and nation; and
- Preserve the Florida National Guard's rich history so the sacrifices of the soldiers and airmen are not forgotten.²⁹

The FLNGF is currently governed by an eight-member board of directors and operates pursuant to a written contract with the DMA.³⁰ The FLNGF occupies a small office in the DMA

²² Chapter 2010-98, Laws of Fla.

²³ See s. 250.116(4), F.S. Eligible Florida National Guard members include those who are on federal active duty serving in the Global War on Terrorism or Overseas Contingency Operations, or are within 120 days of termination of such orders; and those deployed by the Federal Government and participating in state operations for homeland defense, or are within 120 days of return from such deployment. Dependent family members must be designated on the servicemember's U.S. Department of Defense Form 93.

²⁴ Section 250.116(2), F.S.

²⁵ Section 250.116(1), F.S.

²⁶ Section 250.116(3), F.S.

²⁷ Section 250.116(6), F.S.

²⁸ FLNGF Articles of Incorporation (March 29, 1983) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

²⁹ FLNGF website, *Our Mission*, available at <http://www.floridanationalguardfoundation.org/index.html> (last visited Jan. 11, 2017).

³⁰ DMA-FLNGF Contract (June 20, 2011) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

headquarters building in St. Augustine, Florida, which is staffed by a part-time employee of the DMA who serves as the FLNGF executive director.

The FLNGF is funded primarily by individual and corporate charitable contributions. However, for FY 2016-17, the FLNGF received state funding for the first time, in the amount of \$500,000, to be used exclusively to support Florida National Guard members and their immediate families in circumstances of exceptional financial need.³¹

Tables 1 and 2 below provide the FLNGF's total annual revenue and expenditure amounts, respectively, for fiscal year 2009-10 through fiscal year 2014-15.³²

Table 1: Florida National Guard Foundation Revenue Totals³³ FY 2009-10 through FY 2014-15							
Fiscal Year	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>Total</u>
Total Revenue	\$755,323	\$89,403	\$242,990	\$290,902	\$295,407	\$166,820	\$1,840,845

Table 2: Florida National Guard Foundation Total Annual Expenditures³⁴ FY 2009-10 through FY 2014-15							
Fiscal Year	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>	<u>2013-14</u>	<u>2014-15</u>	<u>Total</u>
DSO Services Expenses³⁵	\$770,041	138,233	\$111,556	\$245,724	\$243,745	\$120,935	\$1,630,234
Administrative Expenses³⁶	\$79,585	\$18,662	\$10,387	7,856	\$9,313	\$8,762	\$134,565
Fundraising Expenses	\$0	\$0	\$0	\$92,735	\$51,643	\$1,000	\$145,378
Total Expenditures	\$849,626	\$156,895	\$121,943	\$346,315	\$304,701	\$130,697	\$1,910,177

For fiscal year 2014-15, the FLNGF's services expenditures were 93 percent of the organization's total expenditures. Administrative and fundraising expenses were 6 percent and 1 percent, respectively.

Florida National Guard Foundation Program Services

The FLNGF's primary function is to fund and administer an emergency financial assistance program and a scholarship grant program for current members of the Florida National Guard,

³¹ See 2016 General Appropriations Act (HB 5001), Line 2952

³² The FLNGF FY 2015-16 financial audit and the FY 2015-16 IRS Form 990 are not yet available.

³³ Data retrieved from the FLNGF's IRS Form 990, Part VIII.

³⁴ Data retrieved from FLNGF's IRS Form 990, Part IX.

³⁵ DSO services expenses include, but are not limited to, emergency financial assistance and scholarship grants for Florida National Guard members, grants to other organizations, and other FLNGF non-administrative activities.

³⁶ Administrative expenses include, but is not limited to, contract services, travel and meetings, office expenses and supplies, audit and legal fees, insurance, and other miscellaneous expenses.

and in some cases their families. All current members of the Florida National Guard are eligible to apply for both grant types.

The FLNGF's emergency financial assistance program provides grants to current Florida National Guard members, and their families, during times of serious financial need. Grants are provided to cover expenses relating to housing, food, child care, utilities, transportation, medical, and other immediate needs. Grants are generally provided on a one-time basis and funds are paid directly to the appropriate vendor.³⁷ Only in extreme cases are funds issued directly to the servicemember.³⁸

The emergency financial assistance program serves those who are eligible for the Soldiers and Airmen Assistance Program³⁹ in addition to all other traditional Florida National Guard members not on federal active duty orders.⁴⁰ From fiscal year 2009-10 through fiscal year 2015-16, the FLNGF distributed approximately \$1.6 million in emergency financial assistance grants to 1,429 recipients.⁴¹ Of that amount, approximately \$42,260 was distributed to 40 recipients under the authority of the Soldiers and Airmen Assistance Program.⁴²

The FLNGF's scholarship program provides grants to Florida National Guard members and their dependents pursuing advanced academic and vocational opportunities. Current students in good standing at an accredited college, university, or vocational technical school in Florida, and graduating high school seniors, are eligible to receive a FLNGF scholarship grant.⁴³ Since fiscal year 2008-09, the FLNGF has awarded \$69,400 in scholarship grants to 43 participants.⁴⁴

Senate Professional Staff Review of the DMA and the FLNGF

Section 250.115, F.S., the statutory authority for the DMA DSO, is scheduled to repeal on October 1, 2017, unless reviewed and saved from repeal by the legislature. Professional staff of the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security reviewed the FLNGF to verify its compliance with applicable Florida Statutes.

Senate professional staff reviewed relevant FLNGF records from fiscal year 2009-10 to present, and found that the FLNGF is an active DSO that supports the DMA primarily by providing emergency financial assistance and scholarship grants to members of the Florida National Guard.

³⁷ FLNGF Standard Operating Procedures (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

³⁸ Id.

³⁹ See s. 250.116, F.S.

⁴⁰ See FLNGF website, available at <http://www.floridanationalguardfoundation.org/assistance.html> (last visited, Jan. 12, 2017).

⁴¹ Data retrieved from FLNGF's IRS Form 990, Schedule I, Part III, and e-mail correspondence from the Department of Military Affairs on January 10, 2017 (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

⁴² Data received from FLNGF staff (on file with the Senate Military and Veteran Affairs, Space, and Domestic Security Committee).

⁴³ Supra note 40.

⁴⁴ Supra note 41.

Senate professional staff identified eight deficiencies in which the DMA and the FLNGF were not in full compliance with the applicable Florida Statutes.⁴⁵ These deficiencies are largely administrative or procedural and may be easily addressed. In response to Senate professional staff's findings, the DMA and the FLNGF developed an internal checklist of statutory requirements to ensure future compliance.

III. Effect of Proposed Changes:

The bill amends s. 250.115, F.S., to save from repeal the Florida Department of Military Affairs direct-support organization, which is currently scheduled to repeal on October 1, 2017.

The effective date of the bill is July 1, 2017.

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:

By saving the DMA DSO from repeal, SB 7010 sustains a source of financial assistance and scholarship grants for Florida National Guard members and their families.

C. Government Sector Impact:

By saving the DMA DSO from repeal, the bill allows the DMA DSO to continue to provide funding for the Soldiers and Airmen Assistance Program, pursuant to s. 250.116, F.S.

⁴⁵ See Florida Senate Review of the Department of Military Affairs Direct-support Organization, Staff Findings and Recommendations (March 6, 2017) (on file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 250.115, 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 the Committee on Military and Veterans Affairs, Space, and Domestic Security

583-01721-17

20177010__

A bill to be entitled

An act relating to the Department of Military Affairs direct-support organization; amending s. 250.115, F.S.; abrogating the scheduled repeal of provisions governing a direct-support organization established under the department; providing an effective date.

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

Section 1. Section 250.115, Florida Statutes, is amended to read:

250.115 Department of Military Affairs direct-support organization.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Direct-support organization" means an organization that is:

1. A Florida corporation not for profit, incorporated under chapter 617, and approved by the Department of State.

2. Organized and operated exclusively to raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name securities, funds, or property; support the processing of requests for assistance from the Soldiers and Airmen Assistance Program or similar programs, as directed by the Adjutant General; and make expenditures to or for the direct or indirect benefit of the Department of Military Affairs or the Florida National Guard.

3. Determined by the Department of Military Affairs to be operating in a manner consistent with the goals of the Department of Military Affairs and the Florida National Guard and in the best interest of the state. Any organization that is

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denied certification by the Adjutant General may not use the name of the Florida National Guard or the Department of Military Affairs in any part of its name or its publications.

(b) "Personal services" includes full-time or part-time personnel as well as payroll processing.

(2) BOARD OF DIRECTORS.—The organization shall be governed by a board of directors. The Adjutant General, or his or her designee, shall appoint a president of the board. The board of directors shall be appointed by the president of the board.

(3) CONTRACT.—The direct-support organization shall operate under a written contract with the department. The written contract must provide for:

(a) Certification by the department that the direct-support organization is complying with the terms of the contract and is doing so consistent with the goals and purposes of the department and in the best interests of the state. This certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.

(b) The reversion of moneys and property held by the direct-support organization:

1. To the department if the direct-support organization is no longer approved to operate by the department;

2. To the department if the direct-support organization ceases to exist; or

3. To the state if the department ceases to exist.

(c) The disclosure of the material provisions of the contract and the distinction between the department and the direct-support organization to donors of gifts, contributions, or bequests, including such disclosure on all promotional and

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61 fundraising publications.

62 (4) USE OF PROPERTY.—

63 (a) The Department of Military Affairs may permit the use
64 of property, facilities, and personal services of the Department
65 of Military Affairs by the direct-support organization, subject
66 to the provisions of this section.

67 (b) The Department of Military Affairs may prescribe by
68 rule any condition with which a direct-support organization
69 organized under this section must comply in order to use
70 property, facilities, or personal services of the Department of
71 Military Affairs.

72 (c) The Department of Military Affairs may not permit the
73 use of its property, facilities, or personal services by any
74 direct-support organization organized under this section which
75 does not provide equal employment opportunities to all persons
76 regardless of race, color, national origin, gender, age, or
77 religion.

78 (5) ACTIVITIES; RESTRICTIONS.—Any transaction or agreement
79 between the direct-support organization organized pursuant to
80 this section and another direct-support organization must be
81 approved by the Department of Military Affairs.

82 (6) ANNUAL BUDGETS AND REPORTS.—The direct-support
83 organization shall submit to the Department of Military Affairs
84 its annual budget and financial reports, its federal Internal
85 Revenue Service Application for Recognition of Exemption form
86 (Form 1023), and its federal Internal Revenue Service Return of
87 Organization Exempt from Income Tax form (Form 990).

88 (7) ANNUAL AUDIT.—The direct-support organization shall
89 provide for an annual financial audit in accordance with s.

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90 215.981.

91 ~~(8) REPEAL. This section is repealed October 1, 2017,~~
92 ~~unless reviewed and saved from repeal by the Legislature.~~

93 Section 2. This act shall take effect July 1, 2017.



THE FLORIDA SENATE
COMMITTEE ON MILITARY AND VETERANS
AFFAIRS, SPACE, AND DOMESTIC SECURITY

Location
215 Knott Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5785

Senator Audrey Gibson, *Chair*
Senator Doug Broxson, *Vice Chair*

Professional Staff: Elizabeth Ryon, *Staff Director*

Senate's Website: www.flsenate.gov

March 13, 2017

Senator Jack Latvala, Chair
Committee on Appropriations
201 The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Chair Latvala:

I respectfully request that **SB 7010: Department of Military Affairs Direct-support Organization** by the Military and Veterans Affairs, Space, and Domestic Security Committee, be placed on the Appropriations Committee's agenda at your earliest convenience.

SB 7010 saves from repeal provisions of law authorizing the Florida Department of Military Affairs to establish a direct-support organization.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Audrey Gibson".

Senator Audrey Gibson
Chair

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 Appropriations

BILL: SB 78

INTRODUCER: Senator Flores and others

SUBJECT: Public School Recess

DATE: March 15, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Benvenisty	Graf	ED	Favorable
2. Sikes	Elwell	AED	Recommend: Favorable
3. Sikes	Hansen	AP	Favorable

I. Summary:

SB 78 adds an unstructured free-play recess requirement to district school boards' responsibilities regarding physical education. Specifically, the bill requires each district school board to provide at least 100 minutes of supervised, safe, and unstructured free-play recess each week for students in kindergarten through grade 5. Such recess must involve at least 20 consecutive minutes of free-play per day.

The bill has no impact on state funds.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida law requires each district school board to develop a physical education program and encourage all students in prekindergarten through grade 12 to participate in physical education.¹

Minimum Instructional Hour Requirements

A district school board must provide for the operation of public schools for a term of 180 days or the equivalent on an hourly basis as specified by rules of the State Board of Education.²

For purposes of the Florida Educational Finance Program (FEFP), a "full-time student" is a student on the membership roll of one school program or a combination of school programs for the school year or the equivalent for not less than 720 net hours of instruction for a student in kindergarten through grade 3 or not less than 900 net hours of instruction for a student in grades

¹ Section 1003.455(1), F.S.

² Sections 1003.02(1)(g)1. and 1001.42(4), F.S.; Rule 6A-1.045111, F.A.C.

4 through 12.³ As a result, a district school board must provide, on average, 4 hours of instructional time per day for students in kindergarten through grade 3 and 5 hours of instruction per day for students in grades 4 through 12 to achieve the required minimum instructional hours during a 180-day school year.⁴

Time-Based Physical Education Requirements

Each district school board must provide 150 minutes of physical education each week for students in kindergarten through grade 5, and for students in grade 6 who are enrolled in a school that contains one or more elementary grades, so that there are at least 30 consecutive minutes of physical education on any day during which physical education instruction is conducted.⁵

Physical education must consist of physical activities of at least a moderate intensity level and for sufficient duration,⁶ subject to the differing capabilities of students.⁷ All physical education programs and curricula must be reviewed by a certified physical education instructor.⁸ The Next Generation Sunshine State Standards (NGSSS) provide distinct grade level expectations for the knowledge and skills which a student is expected to acquire at each grade.⁹

Student enrollment in physical education instruction must be reported and audited pursuant to state law.¹⁰

The requirements for physical education in public elementary schools must be waived for a student who meets one of the following criteria:¹¹

- The student is enrolled or is required to enroll in a remedial course;
- The student's parent indicates, in writing, to the school that:
 - The student is enrolled in another course from among those courses offered as options by the school district; or
 - The student is participating in physical activities outside the school day, which are equal to or in excess of the mandated requirement.

While Florida law provides requirements related to physical education, provisions specific to unstructured free-play are not addressed. However, some school districts have chosen independently to adopt policies requiring school recess. During the 2015-2016 school year, 11 of

³ Section 1011.61(1)(a)1., F.S.

⁴ Sections 1003.02(1)(g)1. and 1001.42(4), F.S.; Rule 6A-1.045111, F.A.C.

⁵ Section 1003.455(3), F.S. The equivalent of one class period per day of physical education for one semester of each year is required for students in grades 6 through 8. *Id.*

⁶ Physical education instruction must be for a period of time sufficient to provide a significant health benefit to students. Section 1003.455(1), F.S.

⁷ Section 1003.455(1), F.S.

⁸ Section 1003.455(1), F.S.

⁹ Section 1003.41(1) and (2), F.S. Physical education standards are available at CPALMS. CPALMS is the State of Florida's official source for information on standards and course descriptions. CPALMS, *Homepage*, <http://www.cpalms.org/Public/> (last visited Feb. 20, 2017).

¹⁰ Section 1003.455(3), F.S.

¹¹ Section 1003.455(4), F.S.

Florida's 67 school districts had a school board-approved recess policy for students in kindergarten through grade 5.¹² Of these 11 school districts:

- Seven school districts required recess five days a week.¹³
- Two of the 11 school district policies varied in the days per week recess is required.¹⁴
- Two of the 11 school districts did not specify the number of days for requiring recess.¹⁵
- Two districts required a minimum of 100 minutes per week of recess.¹⁶

The Florida Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) surveyed 2,903 schools, including elementary, middle, and combination schools¹⁷ about their recess practices.¹⁸ Out of the 1,737 elementary schools surveyed, 738 (42%) schools responded.¹⁹ Based on the elementary schools that responded, 612 (83%) schools offered recess during the 2015-2016 school year.²⁰

The American Academy of Pediatrics found that well-supervised recess is necessary to optimize a child's social, emotional, physical, and cognitive development.²¹ The Center for Disease Control and Prevention and The Society of Health and Physical Educators (SHAPE) America recommend all elementary school children be provided with a minimum of one daily recess period of at least 20 minutes in length in addition to physical education and classroom activity.²²

III. Effect of Proposed Changes:

This bill adds an unstructured free-play recess requirement to district school boards' responsibilities regarding physical education. Specifically, the bill requires each district school

¹² The following school districts had a school board-approved recess policy during the 2015-2016 school year: Charlotte, Escambia, Gadsden, Lee, Levy, Miami-Dade, Nassau, Orange, Putnam, Union and Wakulla County school districts. Office of Program Policy Analysis and Government Accountability, *OPPAGA Review of Recess Policies and Practices*, presentation to the Senate Appropriations Subcommittee on Pre-K - 12 Education (Feb. 15, 2017) available at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket_3645_2.pdf, at 5.

¹³ Recess policies for Charlotte, Escambia, Gadsden, Lee, Levy, Putnam, and Union county school districts specify that recess must be offered 5 days a week. *Id.* at 8.

¹⁴ The school board-approved recess policies of Miami-Dade and Orange County school district varied in the number of days' recess is required at the time OPPAGA surveyed the school districts. *Id.*

¹⁵ Nassau and Wakulla county district school board-approved recess policies did not specify the number of days per week recess must be offered to students. *Id.*

¹⁶ Wakulla and Gadsden county district school board-approved recess policies require a minimum of 100 minutes per week of recess. Email, Office of Program Policy Analysis and Government Accountability (Feb. 20, 2017); see also Office of Program Policy Analysis and Government Accountability, *OPPAGA Review of Recess Policies and Practices*, presentation to the Senate Appropriations Subcommittee on Pre-K - 12 Education (Feb. 15, 2017) available at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket_3645_2.pdf, at 5.

¹⁷ A combination school combines both elementary and middle grades in their grade configuration. Email, Office of Program Policy Analysis and Government Accountability (Feb. 17, 2017).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Office of Program Policy Analysis and Government Accountability, *OPPAGA Review of Recess Policies and Practices*, presentation to the Senate Appropriations Subcommittee on Pre-K - 12 Education (Feb. 15, 2017) available at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket_3645_2.pdf, at 12.

²¹ American Academy of Pediatrics, *The Crucial Role of Recess in School* (2013) available at <http://pediatrics.aappublications.org/content/pediatrics/131/1/183.full.pdf>, at 183 and 186.

²² Centers for Disease Control and Prevention and SHAPE America, *Strategies for Recess in Schools* (2017), available at <http://portal.shapeamerica.org/uploads/pdfs/recess/SchoolRecessStrategies.pdf>.

board to provide at least 100 minutes of supervised, safe, and unstructured free-play recess each week for students in kindergarten through grade 5. Such recess must involve at least 20 consecutive minutes of free-play per day.²³

According to the Florida Department of Education, the master schedules at each school containing elementary grades would need to reflect the requirement for a minimum of 20 consecutive minutes of recess daily.²⁴

The bill may result in additional physical activity for students in kindergarten through grade 5.

This bill takes effect July 1, 2017.

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:

Recess is not instructional time and is not funded through the Florida Educational Finance Program.²⁵ Therefore, under SB 78, requiring recess does not have an impact on state funds. However, an elementary school that does not currently provide recess within its existing schedule may need to increase its hours of operation to continue to provide

²³ Florida Department of Education, 2017 Agency Legislative Bill Analysis for SB 78 (Dec. 8, 2016), at 2.

²⁴ Florida Department of Education, 2017 Agency Legislative Bill Analysis for SB 78 (Dec. 8, 2016), at 2.

²⁵ Department of Education, *Physical Education and Recess for Elementary Schools*, presentation to the Senate Appropriations Subcommittee on Pre-K - 12 Education (Feb. 15, 2017) available at http://www.flsenate.gov/PublishedContent/Committees/2016-2018/AED/MeetingRecords/MeetingPacket_3645_2.pdf, at 8.

the minimum number of instructional hours required by law.²⁶ The potential fiscal impact on school districts that may need to extend their school day to accommodate recess is indeterminate.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.455 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.

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

²⁶ Florida Department of Education, 2017 Agency Legislative Bill Analysis for SB 78 (Dec. 8, 2016), at 3. *See also* s. 1003.02(1)(g)1. and 1001.42(4), F.S.; Rule 6A-1.045111, F.A.C.

²⁷ Florida Department of Education, 2017 Agency Legislative Bill Analysis for SB 78 (Dec. 8 2016), at 3.

By Senator Flores

39-00067A-17

201778__

A bill to be entitled

An act relating to public school recess; amending s.
1003.455, F.S.; requiring each district school board
to provide students in certain grades with a minimum
number of minutes of free-play recess per week and
with a minimum number of consecutive minutes of free-
play recess per day; providing an effective date.

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

Section 1. Subsection (6) is added to section 1003.455,
Florida Statutes, to read:

1003.455 Physical education; assessment.—

(6) In addition to the requirements in subsection (3), each
district school board shall provide at least 100 minutes of
supervised, safe, and unstructured free-play recess each week
for students in kindergarten through grade 5 so that there are
at least 20 consecutive minutes of free-play recess per day.

Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Jack Latvala, Chair
Committee on Appropriations

Subject: Committee Agenda Request

Date: March 8, 2017

I respectfully request that **Senate Bill #78**, relating to Public School Recess, be placed on the:

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

A handwritten signature in cursive script that reads "Anitere Flores".

Senator Anitere Flores
Florida Senate, District 39

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/17

Meeting Date

78

Bill Number (if applicable)

Topic Recess

Amendment Barcode (if applicable)

Name Mark D. Landreth

Job Title Sr. Director, Gov't Relations

Address 2381 Remington Green Cir. #C

Phone 850 544 3376

Street

TLH

FLA

32308

City

State

Zip

Email mark.landreth@heart.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing American Heart 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
APPEARANCE RECORD

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

3/16/17

Meeting Date

SB 78

Bill Number (if applicable)

Topic RECESS

Amendment Barcode (if applicable)

Name DIANA PADGETT

Job Title GOV. CONSULTANT

Address 1371 MILLSTREAM RD.

Street

Phone 850-212-4204

TALLAHASSEE

City

FL

State

32312

Zip

Email DHPCONSULTING@
EARTHLINK.NET

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA SCHOOL NUTRITION 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
APPEARANCE RECORD

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

3/14/17
Meeting Date

78
Bill Number (if applicable)

Topic Recess

Amendment Barcode (if applicable)

Name Fely Curva Ph.D.

Job Title Partner, Curva i Associates LLC

Address 1212 Piedmont Dr.

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Street

Talkhousee
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32312
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Email fely.curva@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Society of Health & Physical Education (SHAPE) FL

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)

Meeting Date

Bill Number (if applicable)

Topic Recess / SB 78

Amendment Barcode (if applicable)

Name John Trombetta

Job Title CEO / Florida State Alliance of YMCA's

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Phone 850-320-8319

Street

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FL

33701

City

State

Zip

Email john@floridaymcas.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida State Alliance of YMCA's

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/16/17
Meeting Date

78
Bill Number (if applicable)

Topic RECESS

Amendment Barcode (if applicable)

Name RIVERS H. BUFORD, III

Job Title GOVERNMENTAL RELATIONS DIRECTOR

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Phone 850-566-9119

ALLANASSIS, FL
City State Zip

Email Rivers.Buford@heart.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AMERICAN HEART ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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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)

3/16/17

Meeting Date

78

Bill Number (if applicable)

Topic RECESS

Amendment Barcode (if applicable)

Name GRACE FRANCES

Job Title PARENT

Address 2038 WAHAWA NENE

Phone 445-8025

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TLH

City

State

32301

Zip

Email gracefrances@

not mail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Public school children

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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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)

3/16/17
Meeting Date

⁷⁸
SB 1020
Bill Number (if applicable)

Topic Public School Recess

Amendment Barcode (if applicable)

Name Paul Hamilton

Job Title Elementary Public School Teacher

Address 176 SE 27th Way
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City State Zip

Phone (561) 236-1534

Email Wade176@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Myself

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

3/16/17

Meeting Date

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

SB0078

Bill Number (if applicable)

Topic Recess

Amendment Barcode (if applicable)

Name Michelle Salzman

Job Title Legislative Committee

Address 1747 Orlando Central Pkwy
Street
Orlando FL 32809
City State Zip

Phone 407-855-7604

Email president@escambiapta.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida PTA

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 Appropriations

BILL: CS/SB 220

INTRODUCER: Regulated Industries Committee and Senator Latvala and others

SUBJECT: Veterinary Medicine

DATE: March 15, 2017

REVISED: 3/17/17

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kraemer	McSwain	RI	Fav/CS
2. Davis	Betta	AGG	Recommend: Favorable
3. Davis	Hansen	AP	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 220 revises the laws governing the practice of veterinary medicine in chapter 474, Florida Statutes, to include alternative veterinary medicine, veterinary dentistry, and veterinary telemedicine. Alternative veterinary medicine includes therapies outside of conventional medicine, such as veterinary acupuncture, and other therapies that are based on techniques practiced in osteopathy, chiropractic medicine, or physical therapy.

The bill specifies activities included in the practice of veterinary dentistry, which must be performed by a licensed veterinarian or by a person under his or her immediate supervision.

Veterinarians engaged in veterinary telemedicine provide animal patient care, treatment, or service through medical information that is exchanged from one site to another by means of electronic communications. The use of telemedicine for patient care and treatment is allowed if a physical examination is performed by a veterinarian and a valid patient relationship between a patient (an animal) and a veterinarian is established. The term “physical examination,” as defined in the bill, does not apply in the context of investigations pursuant to section 474.2185, Florida Statutes, concerning physical examinations related to lawful investigation of a complaint against a licensed veterinarian (or of an application for licensure).

The bill has no fiscal impact on state government. See Section V.

The bill takes effect July 1, 2017.

II. Present Situation:

Veterinary Medicine, the Practice of Veterinary Medicine, and Exempted Persons

In 1979, the Legislature determined the practice of veterinary medicine is potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners and that minimum requirements for the safe practice of veterinary medicine are necessary.¹ The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on Veterinary Medical Practice.² A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida under ch. 474, F.S.³

Veterinary medicine includes, with respect to animals:⁴

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);⁵ and
- Other branches or specialties of veterinary medicine.

The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.⁶ Veterinarians who are incompetent or present a danger to the public are subject to discipline and may be prohibited from practicing in the state.⁷

Eight categories of persons are exempt from complying with ch. 474, F.S.:⁸

- Faculty veterinarians when they have assigned teaching duties at accredited⁹ institutions;

¹ See s. 474.201, F.S.

² See ss. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.

³ See s. 474.202(11), F.S.

⁴ See s. 474.202(13), F.S. Section 474.202(1), F.S., defines “animal” as “any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead.”

⁵ The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. See <http://www.therio.org/> (last visited Feb. 1, 2017).

⁶ See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

⁷ See s. 474.213, F.S., on prohibited acts, and s. 474.214, F.S., on disciplinary proceedings.

⁸ See s. 474.203, F.S.

⁹ Sections 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the United States and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Feb. 1, 2017). The AVMA Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational

- Intern/resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;
- Students in a school or college of veterinary medicine who perform assigned duties by an instructor (no accreditation of the institution is required), or work as preceptors¹⁰ (if the preceptorship is required for graduation from an accredited institution);
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties at the installations for which the services were engaged;
- Persons or their employees caring for the persons' own animals, as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd/flock animals, with certain limitations; however, the exemption is not available to a person licensed as a veterinarian in another state and temporarily practicing in Florida, or convicted of violating ch. 828, F.S., on animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;
- Certain entities or persons¹¹ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine;
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employee of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹² of a licensed veterinarian; and
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, and are assisting upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.

Veterinarian/Client/Patient Relationship

Section 474.202(12), F.S., defines a “veterinarian/client/patient relationship” as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.

equivalency assessment certification program. See

<https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx> (last visited Feb. 1, 2017). In turn, the Council for Higher Education Accreditation, a national advocate for regulation of academic quality through accreditation, is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. See <http://chea.org/> (last visited Feb. 1, 2017).

¹⁰ A preceptor is a skilled practitioner or faculty member, who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. See also <https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary> (last visited Feb. 1, 2017).

¹¹ See s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof”

¹² The term “responsible supervision” is defined in s. 474.202(10), F.S., as the “control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services” delegated to unlicensed personnel.

Telemedicine

The use of electronic communications to facilitate patient health care (telemedicine) is not addressed in ch. 474, F.S., and is not authorized for practitioners of veterinary medicine in Florida. However, the Florida Mental Health Act (popularly known as “The Baker Act”),¹³ contains a legislative finding that “the use of telemedicine for patient evaluation, case management, and ongoing care will improve management of patient care and reduce costs of transportation.”¹⁴

III. Effect of Proposed Changes:

The bill amends s. 474.202(16), F.S., to include alternative veterinary medicine and veterinary telemedicine within the practice of veterinary medicine. The bill creates s. 474.202(4), F.S., to specify the practice of veterinary medicine includes “complementary or alternative and integrative therapies” (therapies), that are a diverse group of philosophies and practices that may be preventive, diagnostic, or therapeutic in nature, but are not part of conventional or Western medicine¹⁵ as practiced by most veterinarians.

The veterinary therapies added to the practice of veterinary medicine include:

- Acupuncture, acuthery;¹⁶ and acupressure;
- Homeopathy;¹⁷
- Manual or manipulative therapy, such as therapies based on techniques practiced in osteopathy,¹⁸ chiropractic medicine, or physical medicine and therapy;
- Nutraceutical¹⁹ therapy; and
- Physiotherapy.²⁰

A similar definition for “complementary, alternative and integrative therapies” is in the Standards of Practice adopted in 2005 by the DBPR.²¹

¹³ See s. 394.451, F.S.

¹⁴ See s. 394.453(3), F.S.

¹⁵ The term “Western medicine” has been defined as a system in which healthcare professionals treat symptoms and diseases using drugs, radiation, or surgery; alternative descriptions include conventional medicine, mainstream medicine, and orthodox medicine. See the *Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health*, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743> (last visited Feb. 1, 2017).

¹⁶ Acuthery utilizes needles or non-needle techniques with electrical stimulation or pressure. See <http://medical-dictionary.thefreedictionary.com/acuthery> (last visited Feb. 1, 2017).

¹⁷ *Id.* Homeopathy is an alternative approach to medicine based on the belief that natural substances, specially prepared and used in very small amounts, restore health, and that, in order for a remedy to be effective, it must cause in a healthy person the same symptoms being treated in the patient.

¹⁸ Section 459.003(3), F.S., defines the practice of osteopathic medicine by licensed osteopathic physicians for human patients as “the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental conditions.” The practice is based in part upon requirements that emphasize the importance of the musculoskeletal structure and manipulative therapy to maintain and restore health. *Id.*

¹⁹ A “nutraceutical” is a food or dietary supplement that is believed to provide health benefits. See the *Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health*, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743> (last visited Feb. 1, 2017).

²⁰ Section 486.021(8), F.S., defines “physiotherapy” as identical to and interchangeable with the term “physical therapy.”

²¹ See Fla. Admin. Code R. 61G18-19.002. The rule requires that a licensed veterinarian who offers such treatment must inform the owner of the patient of the treatment and explain (orally or in writing) the associated benefits and risks, along with the veterinarian’s education, experience, and credentials for the proposed treatment option.

The bill creates s. 474.202(17), F.S., to include veterinary telemedicine by licensed veterinarians within the practice of veterinary medicine. The bill requires performance of a physical examination and establishment of a valid patient relationship between a patient (an animal) and a veterinarian. Veterinarians engaged in veterinary telemedicine provide patient care, treatment, or service through medical information that is exchanged from one site to another by means of electronic communications.²²

The bill creates s. 474.202(10), F.S., to define “physical examination” as the evaluation of a patient by personal inspection, palpation,²³ and auscultation (listening to sounds using a stethoscope) by a veterinarian. The term “physical examination” does not apply in the context of investigations pursuant to s. 474.2185, F.S., concerning physical examinations related to lawful investigation of a complaint against a licensed veterinarian (or of an application for licensure).

The bill amends the current definition of “veterinarian/client/patient relationship” in s. 274.202(12), F.S., which is a relationship in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.²⁴ The existing definition is revised by the bill to be a definition of a “veterinarian relationship,” a “client relationship,” or a “patient relationship.”

The bill creates s. 474.202(15), F.S., to specify the following activities included in the practice of veterinary dentistry and performed either by a licensed veterinarian or by a person under his immediate supervision:²⁵

- The examination, evaluation, diagnosis, prevention, and treatment of the oral cavity, jaw and facial (maxillofacial) areas and associated structures; and
- Dental cleaning, which includes:
 - Removal of plaque and calcified dental plaque from gums and teeth;²⁶ and
 - Teeth polishing using power or hand instruments.

The treatment of diseased periodontal tissues (periodontal therapy) is also included in veterinary dentistry; periodontal therapy includes dental cleaning and one or more of the following treatments:

- Root planing (trimming);
- Gum trimming (gingival curettage);

²² Electronic communication” is defined in 18 U.S. Code s. 2510(10) to mean, in pertinent part, any transfer of signals, writing, images, sounds, data, or intelligence of any nature transmitted by a wire, radio, electromagnetic, photo-electronic or photo-optical system, excluding (a) any wire or oral communication; (b) any communication made through a tone-only paging device; (c) any communication from a tracking device; or (d) electronic funds transfer information stored by a financial institution in an electronic communications system used for the storage and transfer of funds;

²³ Palpation is an examination that includes pressing on the body to feel organs and tissues underneath. *See the Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743>* (last visited Feb. 1, 2017).

²⁴ See s. 474.202(12), F.S.

²⁵ The term “immediate supervision” is defined in s. 474.202(5), F.S., to mean, “a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.” Section 474.215, F.S., requires a premises permit from the DBPR for any permanent or mobile establishment where a licensed veterinarian practices. *See also* Fla. Admin. Code R. Ch. 61G18-15, for the requirements for issuance of a premises permit by the DBPR.

²⁶ The technical terms in the bill are scaling and supragingival and subgingival plaque and calculus removal.

- Removal or repositioning of soft tissue (periodontal flaps);
- Extractions of teeth;
- Regenerative surgery (for natural renewal of a tissue or part);
- Procedures to remove or re-contour gums (gingivectomy or gingivoplasty); and
- Local administration of antiseptics or antibiotics.

The bill revises two references in s. 474.2165, F.S., to substitute the term “physical examination” for “examination,” to conform to the definition of “physical examination” created in s. 474.202(10), F.S.

The bill amends s. 474.202, F.S., to conform cross-references.

The bill takes effect July 1, 2017.

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:

By specifying the practice of veterinary medicine includes alternative veterinary medicine, veterinary telemedicine, and veterinary dentistry, as defined in CS/SB 220, and requiring that such activities be performed by licensed veterinarians (and others if properly supervised), CS/SB 220 may adversely affect persons who have previously engaged in such activities, but are not licensed as veterinarians in Florida.

The DBPR maintains that licensure as a veterinarian is required for a person to provide the complementary or alternative and integrative therapies described in the bill.²⁷ Prosecution of the unlicensed practice of veterinary medicine by the DBPR is based upon

²⁷ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for SB 220, dated February 2, 2017 (on file with Senate Committee on Regulated Industries) at page 2.

the definition of “veterinary medicine” in s. 474.202(13), F.S.²⁸ The DBPR has prosecuted individuals for unlicensed activity based on the performance of the services described in the bill as “veterinary dentistry” and “veterinary telemedicine,” and the revised definition of veterinary medicine may increase the number of persons deemed to be engaging in the unlicensed practice of veterinary medicine.²⁹

C. Government Sector Impact:

The DBPR indicates the bill has no fiscal impact. However, the bill could lead to an increase in the number of cases of unlicensed veterinary practice.³⁰ It is indeterminate how many new cases could result, but, according to the DBPR, it could handle an increase with existing staff.³¹ The DBPR also indicates that rulemaking may be necessary to clarify undefined terms in the bill and to implement veterinary telemedicine regulations, including:

- The means and methods of such implementation; and
- Any requirements for third-party service providers to be licensed by the DBPR.³²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 474.202 and 474.2165.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Regulated Industries on February 8, 2017:

The committee substitute revises:

- The definition of “physical examination” in s. 474.202(10), F.S., to substitute the term “veterinarian” for “licensed veterinary practitioner”; and
- The definition of “veterinary telemedicine” in s. 474.202(17), F.S., to substitute:
 - The term “veterinarian” for the term “licensed Florida veterinarian”; and
 - The term “physical examination,” for the term “complete physical examination.”

²⁸ *Id.*

²⁹ *Id.* at page 5.

³⁰ *Id.* at pp. 4 and 5.

³¹ *Id.* at page 5.

³² *Id.* at page 5.

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 the Committee on Regulated Industries; and Senator Latvala

580-01749-17

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A bill to be entitled

An act relating to veterinary medicine; amending s. 474.202, F.S.; defining "complementary or alternative and integrative therapies," "physical examination," "veterinary dentistry," and "veterinary telemedicine"; revising the definitions of "veterinarian/client/patient relationship," and "veterinary medicine"; amending s. 474.2165, F.S.; conforming terminology; providing an effective date.

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

Section 1. Section 474.202, Florida Statutes, is amended to read:

474.202 Definitions.—As used in this chapter:

(1) "Animal" means any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead.

(2) "Board" means the Board of Veterinary Medicine.

(3) "Client" means the owner or caretaker of an animal who arranges for its veterinary care.

(4) "Complementary or alternative and integrative therapies" means a heterogeneous group of preventive, diagnostic, and therapeutic philosophies and practices that are not considered part of conventional or Western medicine as practiced by most veterinarians. These therapies include, but are not limited to, veterinary acupuncture, acupressure, and acupressure; veterinary homeopathy; veterinary manual or manipulative therapy, such as therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy; veterinary nutraceutical therapy; and veterinary physiotherapy.

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~~(5)(4)~~ "Department" means the Department of Business and Professional Regulation.

~~(6)(5)~~ "Immediate supervision" or words of similar purport mean a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.

~~(7)(6)~~ "Limited-service veterinary medical practice" means offering or providing veterinary services at any location that has a primary purpose other than that of providing veterinary medical service at a permanent or mobile establishment permitted by the board; provides veterinary medical services for privately owned animals that do not reside at that location; operates for a limited time; and provides limited types of veterinary medical services.

~~(8)(7)~~ "Mobile veterinary establishment" and "mobile clinic" mean a mobile unit which contains the same treatment facilities as are required of a permanent veterinary establishment or which has entered into a written agreement with another veterinary establishment to provide any required facilities not available in the mobile unit. The terms do not refer to the use of a car, truck, or other motor vehicle by a veterinarian making a house call.

~~(9)(8)~~ "Patient" means any animal for which the veterinarian practices veterinary medicine.

~~(10)~~ "Physical examination" means the evaluation of a patient by the personal inspection, palpation, and auscultation by a veterinarian. This definition does not apply to s. 474.2185.

~~(11)(9)~~ "Practice of veterinary medicine" means diagnosing the medical condition of animals and prescribing, dispensing, or

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administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease thereof; performing any manual procedure for the diagnosis of or treatment for pregnancy or fertility or infertility of animals; or representing oneself by the use of titles or words, or undertaking, offering, or holding oneself out, as performing any of these functions. The term includes the determination of the health, fitness, or soundness of an animal.

(12)~~(10)~~ "Responsible supervision" or words of similar purport mean the control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services which she or he delegates to unlicensed personnel.

(13)~~(11)~~ "Veterinarian" means a health care practitioner who is licensed to engage in the practice of veterinary medicine in Florida under the authority of this chapter.

(14)~~(12)~~ "Veterinarian relationship," "client relationship," or "patient ~~veterinarian/client/patient~~ relationship" means a relationship where the veterinarian has assumed the responsibility for making medical judgments regarding the health of the animal and its need for medical treatment.

(15) "Veterinary dentistry" means a discipline within the scope of veterinary practice that involves the professional examination, evaluation, diagnosis, prevention, and nonsurgical and surgical treatment of conditions, diseases, and disorders of the oral cavity and maxillofacial area and their adjacent and associated structures. A veterinary dental cleaning refers to

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scaling, supragingival and subgingival plaque and calculus removal, and polishing of the teeth with power or hand instruments by a licensed veterinarian or under his or her immediate supervision. Periodontal therapy, which is also included within veterinary dentistry, refers to the treatment of diseased periodontal tissues which includes professional dental cleaning as defined in this subsection and one or more of the following treatments: root planing, gingival curettage, periodontal flaps, extractions, regenerative surgery, gingivectomy or gingivoplasty, and local administration of antiseptics or antibiotics.

(16)~~(13)~~ "Veterinary medicine" includes, with respect to animals, surgery, acupuncture, obstetrics, veterinary dentistry, physical therapy, radiology, theriogenology, complementary or alternative veterinary medicine, veterinary telemedicine, and other branches or specialties of veterinary medicine.

(17) "Veterinary telemedicine" means the practice of veterinary medicine by a veterinarian following a physical examination and the establishment of a valid patient relationship where patient care, treatment, or service is provided through the use of medical information exchanged from one site to another via electronic communications.

Section 2. Subsection (3) and paragraph (a) of subsection (4) of section 474.2165, Florida Statutes, are amended to read:

474.2165 Ownership and control of veterinary medical patient records; report or copies of records to be furnished.—

(3) Any records owner licensed under this chapter who makes a physical ~~an~~ examination of, or administers treatment or dispenses legend drugs to, any patient shall, upon request of

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the client or the client's legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X rays. The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

(4) Except as otherwise provided in this section, such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the client or the client's legal representative or other veterinarians involved in the care or treatment of the patient, except upon written authorization of the client. However, such records may be furnished without written authorization under the following circumstances:

(a) To any person, firm, or corporation that has procured or furnished a physical ~~such~~ examination or treatment with the client's consent.

Section 3. This act shall take effect July 1, 2017.

APPEARANCE RECORD

3/16/17

Meeting Date

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

220

Bill Number (if applicable)

Topic

Veterinary Medicine

Amendment Barcode (if applicable)

Name

Corinne Mixon

Job Title

Lobbyist

Address

119 S. Monroe St

Phone

Street

Tallahassee

FL

Email

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida Veterinary 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.

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

S-001 (10/14/14)

412-K 10:00 AM
SEN. APP.

THE FLORIDA SENATE

APPEARANCE RECORD

3-16-2017

Meeting Date

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

SB 220

Bill Number (if applicable)

Topic VETERINARY MEDICINE

Amendment Barcode (if applicable)

Name STEPHEN B. WINN

Job Title EXECUTIVE DIRECTOR

Address 2544 BLAIRSTONE PINES DR NE

Phone 878-7364

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

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

Representing

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)

CourtSmart Tag Report

Room: KN 412

Case No.:

Type:

Caption: Senate Appropriations Committee

Judge:

Started: 3/16/2017 10:02:03 AM

Ends: 3/16/2017 11:20:55 AM

Length: 01:18:53

10:02:05 AM	Sen. Latvala (Chair)
10:03:02 AM	TAB 1 - Presentation on Security Issues by the Department of Corrections
10:03:27 AM	Julie Jones, Secretary, Florida Department of Corrections
10:11:39 AM	Sen. Latvala
10:11:41 AM	Sen. Montford
10:12:27 AM	J. Jones
10:12:46 AM	Sen. Montford
10:12:54 AM	J. Jones
10:13:04 AM	Sen. Montford
10:13:31 AM	J. Jones
10:14:37 AM	Sen. Montford
10:15:18 AM	J. Jones
10:19:44 AM	Sen. Latvala
10:20:46 AM	J. Jones
10:21:15 AM	Sen. Latvala
10:21:22 AM	Sen. Montford
10:21:50 AM	Sen. Latvala
10:21:55 AM	J. Jones
10:22:44 AM	Sen. Montford
10:22:52 AM	J. Jones
10:22:54 AM	Sen. Montford
10:23:11 AM	J. Jones
10:23:32 AM	Sen. Montford
10:23:48 AM	Sen. Latvala
10:24:05 AM	Sen. Book
10:24:53 AM	J. Jones
10:25:59 AM	Sen. Book
10:26:52 AM	J. Jones
10:27:22 AM	Sen. Latvala
10:27:24 AM	Sen. Bradley
10:28:46 AM	J. Jones
10:28:59 AM	Sen. Bradley
10:29:23 AM	Sen. Latvala
10:29:29 AM	Sen. Powell
10:29:47 AM	J. Jones
10:30:21 AM	Sen. Powell
10:30:42 AM	J. Jones
10:31:02 AM	Sen. Powell
10:31:24 AM	J. Jones
10:31:52 AM	Sen. Latvala
10:31:54 AM	Sen. Brandes
10:32:03 AM	J. Jones
10:32:05 AM	Sen. Brandes
10:32:08 AM	J. Jones
10:32:11 AM	Sen. Brandes
10:32:25 AM	J. Jones
10:33:12 AM	Sen. Brandes
10:33:30 AM	J. Jones
10:36:52 AM	Sen. Brandes
10:37:24 AM	J. Jones
10:38:20 AM	Sen. Brandes
10:38:52 AM	Sen. Latvala

10:38:55 AM	Sen. Bracy
10:39:44 AM	J. Jones
10:41:15 AM	Sen. Bracy
10:41:20 AM	J. Jones
10:42:02 AM	Sen. Bracy
10:42:17 AM	J. Jones
10:42:44 AM	Sen. Latvala
10:42:51 AM	Sen. Gibson
10:43:29 AM	J. Jones
10:44:10 AM	Sen. Gibson
10:44:29 AM	J. Jones
10:44:42 AM	Sen. Gibson
10:45:07 AM	J. Jones
10:45:42 AM	Sen. Gibson
10:45:47 AM	J. Jones
10:45:55 AM	Sen. Gibson
10:46:18 AM	J. Jones
10:46:58 AM	Sen. Gibson
10:47:43 AM	J. Jones
10:48:06 AM	Sen. Gibson
10:48:10 AM	Sen. Latvala
10:49:49 AM	S 118
10:49:59 AM	Sen. Steube
10:50:56 AM	Sen. Flores (Chair)
10:51:02 AM	Am. 844898
10:51:05 AM	Sen. Steube
10:51:25 AM	Sen. Flores
10:51:31 AM	S 118 (cont.)
10:51:36 AM	Nancy Daniels, Legislative Consultant, Florida Public Defender Association, Inc. (waives in support)
10:51:45 AM	Jorge Chamizo, Attorney, Florida Association of Criminal Defense Lawyers (waives in support)
10:51:51 AM	Sen. Brandes
10:52:12 AM	Sen. Flores
10:52:17 AM	Sen. Steube
10:52:41 AM	Sen. Flores
10:53:43 AM	S 174
10:53:49 AM	Sen. Artilles
10:54:02 AM	Sen. Flores
10:54:13 AM	S 350
10:55:08 AM	Sen. Clemens
10:55:24 AM	Sen. Flores
10:55:35 AM	Bernadette Howard, Government Affairs Coordinator, The Florida Police Chiefs Association (waives in support)
10:55:39 AM	Victoria Hernandez, Director of Government Affairs, Miami-Dade College (waives in support)
10:55:46 AM	Ron Draa, External Affairs Director, Florida Department of Law Enforcement (waives in support)
10:56:46 AM	S 60
10:56:51 AM	Sen. Bean
10:57:13 AM	Sen. Flores
10:57:23 AM	Alan Abramowitz, Executive Director, Guardian Ad Litem Program (waives in support)
10:58:16 AM	S 1020
10:58:21 AM	Sen. Powell
10:58:51 AM	Sen. Flores
10:59:51 AM	S 7008
11:00:01 AM	Sen. Gibson
11:00:23 AM	Sen. Flores
11:00:29 AM	Jessica Kraynak, Deputy Legislative Director, The Florida Department of Veterans' Affairs (waives in support)
11:01:28 AM	S 7010
11:01:36 AM	Sen. Gibson
11:01:53 AM	Sen. Flores
11:02:50 AM	S 164
11:02:54 AM	Sen. Grimsley
11:03:20 AM	Sen. Flores

11:04:19 AM S 7006
11:04:24 AM Sen. Benacquisto
11:04:56 AM Sen. Flores
11:05:05 AM Bernadette Howard, Government Affairs Coordinator, The Florida Police Chiefs Association (waives in support)
11:05:12 AM Stephen Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
11:06:09 AM S 358
11:06:12 AM Sen. Garcia
11:07:22 AM Sen. Flores
11:07:28 AM Jill Gran, Policy Director, Florida Behavioral Health Association (waives in support)
11:07:55 AM Sen. Garcia
11:08:28 AM Sen. Flores
11:09:13 AM S 220
11:09:17 AM Sen. Latvala
11:10:25 AM Sen. Flores
11:10:32 AM Stephen Winn, Executive Director, Florida Osteopathic Medical Association (waives in support)
11:10:41 AM Corinne Mixon, Lobbyist, Florida Veterinary Medical Association (waives in support)
11:11:33 AM Sen. Gibson
11:11:54 AM Sen. Flores
11:11:58 AM Sen. Bracy
11:12:03 AM Sen. Flores
11:12:08 AM Sen. Grimsley
11:12:16 AM Sen. Flores
11:12:21 AM Sen. Latvala (Chair)
11:12:30 AM S 78
11:12:45 AM Sen. Flores
11:14:11 AM Sen. Latvala
11:14:26 AM Mark Landreth, Senior Director, Government Relations, American Heart Association (waives in support)
11:14:33 AM Diana Padgett, Government Consultant, Florida School Nutrition Association (waives in support)
11:14:47 AM Fely Curva, Ph.D., Partner, Curva and Associates LLC, Society of Health and Physical Education Florida (waives in support)
11:14:56 AM John Trombetta, CEO, Florida State Alliance of YMCAs (waives in support)
11:15:04 AM Rivers Buford III, Governmental Relations Director, American Heart Association (waives in support)
11:15:11 AM Grace Frances, Parent, Public School Children (waives in support)
11:15:36 AM Paul Hamilton, Elementary Public School Teacher (waives in opposition)
11:15:43 AM Michelle Salzman, Legislative Committee, Florida PTA (waives in support)
11:15:55 AM Sen. Montford
11:17:36 AM Sen. Latvala
11:17:45 AM Sen. Gibson
11:18:21 AM Sen. Latvala
11:18:25 AM Sen. Montford
11:18:41 AM Sen. Latvala
11:18:48 AM Sen. Flores
11:19:48 AM Sen. Latvala